EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 55672/12
Uğur OK
against Turkey

The European Court of Human Rights (Second Section), sitting on 8 November 2016 as a Committee composed of:

Nebojša Vučinić, *President,*
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 June 2012,

Having regard to the declaration submitted by the respondent Government on 21 June 2016 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Uğur Ok, is a Turkish national, who was born in 1983 and is detained in Kandıra. He was represented before the Court by Mr F.N. Ertekin and Mr K. Öztürk, lawyers practising in Istanbul.

2. The Turkish Government ("the Government") were represented by their Agent.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 26 September 2006 the applicant was arrested on suspicion of being a member of an illegal terrorist organisation.

5. On 27 September 2006 the Balıkesir Magistrates' Court placed the applicant in detention on remand.

6. On 27 October 2006 the public prosecutor filed an indictment with the Istanbul Assize Court charging the applicant with membership of an illegal terrorist organisation.

7. At the hearings dated 20 December 2011 and 3 July 2012 respectively the applicant's release requests were rejected. The applicant filed objections.

8. However, they were dismissed by the Istanbul 11th Assize Court on 18 January 2012 and 2 August 2012 respectively. In delivering its decisions, the court took into consideration the written opinion of the public prosecutors, which had not been communicated to the applicant or his representative.

9. On 3 July 2012 the applicant was convicted as charged. On 24 January 2013 this decision was upheld by the Court of Cassation and became final.

COMPLAINTS

10. The applicant complained under Article 5 §§ 4 and 5 of the Convention about the non-communication of the public prosecutor's opinion during the proceedings to challenge the lawfulness of the detention and the right to compensation under domestic law in respect of this complaint.

THE LAW

11. The applicant complained about the non-communication of the public prosecutor's opinion during the proceedings to challenge the lawfulness of the detention and the right to compensation under domestic law in respect of this complaint. He relied on Article 5 §§ 4 and 5 of the Convention.

12. After the failure of attempts to reach a friendly settlement, by a letter of 21 June 2016 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

13. The declaration provided as follows:

> "The Government of Republic of Turkey hereby wishes to express by way of unilateral declaration its acknowledgement that the applicant's rights to liberty and security did not meet the standards enshrined in Article 5 § 4 and Article 5 § 5 of the Convention.
>
> Consequently, the Government is prepared to pay the applicant 595 (five hundred ninety five) Euros to cover any pecuniary and non-pecuniary damages and as well as

costs and expenses, including lawyer fees. This sum will be converted into Turkish Liras at the rate applicable on the date of payment, and will be free of any further taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within said three-month period, the Government undertakes to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

The Government therefore invites the court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention."

14. By a letter of 21 July 2016, the applicant indicated that he was not satisfied with the terms of the unilateral declaration.

15. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

16. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

17. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

18. The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaint about the non-communication of the public prosecutor's opinion during the proceedings to challenge the lawfulness of the detention and right to compensation under domestic law in respect of this complaint (see, for example, *Altınok v. Turkey*, no. 31610/08, §§ 57-61, 29 November 2011).

19. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

20. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied

that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

21. The Court considers that these amounts should be converted into currency of the respondent State at the rate applicable at the date of payment, and paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amounts in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

22. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

23. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 5 §§ 4 and 5 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 1 December 2016.

Hasan Bakırcı
Deputy Registrar

Nebojša Vučinić
President