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

SECOND SECTION

DECISION

Application no. 28790/10
Ufuk ÖZYILDIZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 5 September 2017 as a Committee composed of:

Julia Laffranque, *President,*
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 April 2010,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ufuk Özyıldız, is a Turkish national, who was born in 1961 and was detained in Manisa Prison at the time when the application was lodged.

2. The Turkish Government ("the Government") were represented by their Agent. By a letter of 28 February 2013 the Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

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

4. On 27 August 2006 the applicant was arrested on suspicion of sexual abuse of a minor.

5. On 28 August 2006 the Izmir Magistrates' Court ordered the applicant's detention on remand having regard to the nature of the offence

with which he had been charged, the state of evidence and risk of absconding.

6. On 21 September 2006 the Izmir public prosecutor filed a bill of indictment with the Izmir Assize Court, charging the applicant with sexual abuse of a minor and attempted assault.

7. On 7 March 2007 the applicant was sentenced to seventeen years and six months' imprisonment.

8. On 25 February 2008 the Court of Cassation quashed that judgment and remitted the case file to the first instance court.

9. On 1 March 2011 the Izmir Assize Court found the applicant guilty as charged and sentenced him to a total of seventeen years' imprisonment. The court also ordered the applicant's continued detention.

10. On 20 December 2011 the judgment of the first-instance court was upheld by the Court of Cassation and became final.

COMPLAINTS

11. The applicant complained that the length of his pre-trial detention had been excessive.

12. The applicant further maintained under Article 6 of the Convention that the criminal proceedings against him had not been concluded within a reasonable time.

THE LAW

A. As regards Article 5 of the Convention

13. The applicant stated that the length of his detention on remand had been unreasonably long.

14. The Government rejected the allegation, submitting that the applicant had failed to exhaust domestic remedies, referring to the possibility of claiming compensation for unlawful detention under Article 141 of the Code on Criminal Procedure ("CCP").

15. The applicant did not submit observations in reply.

16. The Court observes that the domestic remedy in application of Article 141 of the CCP with regard to length of detention on remand was examined in the case of *Demir v. Turkey*, ((dec.), no. 51770/07, §§ 17-35, 16 October 2012), where the Court held that that remedy had to be exhausted by the applicants whose convictions became final.

17. In the instant case, the Court notes that the applicant's conviction became final on 20 December 2011. From that date onwards the applicant was entitled to seek compensation under Article 141 of the CCP (see *Demir*, cited above, § 35), but failed to do so.

18. The Court reiterates that the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *İçyer v. Turkey* (dec.), no. 18888/02, § 72, ECHR 2006‑I). The Court has previously departed from this rule in cases concerning the above-mentioned remedy in respect of the length of detention, which became applicable after the final decision on the criminal proceedings (see also, among others, *Tutal and Others v. Turkey* (dec.), 11929/12, 28 January 2014). The Court takes the view that the exception should be applied in the present case as well.

19. As a result, taking into account the Government's objection, the Court concludes that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. As regards Article 6 of the Convention

20. The applicant complained that the length of the criminal proceedings against him did not comply with the "reasonable time" requirement of Article 6 of the Convention.

21. The Government noted that pursuant to Law no. 6384 a new Compensation Commission had been established to deal with applications concerning the length of proceedings and the non-execution of judgments. They maintained that the applicant had not exhausted domestic remedies, as he had not made any application to that Compensation Commission.

22. The Court observes that, as pointed out by the Government, a new domestic remedy has been established in Turkey following the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). Subsequently, in its decision in the case of *Turgut and Others* ((dec.), no. 4860/09, §§ 19-26, 26 March 2013), the Court declared a new application inadmissible on the ground that the applicants had failed to exhaust domestic remedies once the new domestic remedy had come into being. In so doing, the Court considered in particular that this new remedy was a priori accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

23. The Court notes that in its decision in the case of *Ümmühan Kaplan* (cited above, § 77) it stressed that it could nevertheless examine applications of this type which have already been communicated to the Government.

24. However, taking account of the Government's preliminary objection with regard to the applicant's failure to make use of the new domestic remedy established by Law no. 6384, the Court reiterates its conclusion in the case of *Turgut and Others*(cited above). It therefore concludes that there are no exceptional circumstances capable of exempting the present applicant from the obligation to exhaust domestic remedies.

25. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Hasan Bakırcı
Deputy Registrar

Julia Laffranque
President