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

SECOND SECTION

DECISION

Application no. 22278/20
Fikret POLAT
against Türkiye

The European Court of Human Rights (Second Section), sitting on 12 November 2024 as a Committee composed of:

Jovan Ilievski*, President*,
Péter Paczolay,
Stéphane Pisani*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 22278/20) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 4 June 2020 by a Turkish national, Mr Fikret Polat, who was born in 1986, is detained in Istanbul ("the applicant") and was represented by Ms E. Topal, a lawyer practising in Istanbul;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged unfairness of criminal proceedings against the applicant.

2. By an indictment dated 24 May 2017, the Istanbul Public Prosecutor charged the applicant for membership of the organisation described by the Turkish authorities as FETÖ/PDY ("*Fetullahist Terror Organisation/Parallel State Structure*"), which was considered by the authorities to be behind the coup attempt of 15 July 2016.

3. On 16 February 2018 the Istanbul 28th Assize Court convicted the applicant of membership of a terrorist organisation and sentenced him to six years, ten months and fifteen days' imprisonment. The trial court based its decision on the applicant's use of accounts in Bank Asya (a bank allegedly linked to FETÖ/PDY), the records of the Social Security Institution on his

employment in a company allegedly affiliated with FETÖ/PDY and witness statements indicating that the applicant was a member of this organisation and that he coordinated and participated in the organisation's meetings on a regular basis.

4. Throughout the proceedings, the applicant had claimed that the witness statements were not accurate and that his employment status as well as his bank account activities could not be construed as criminal offences under the domestic law.

5. On 11 November 2018 the Court of Cassation upheld the trial court's judgment despite the applicant's above-mentioned submissions, finding that the judgment had been rendered in compliance with the applicable law and legal procedure.

6. On 16 December 2019 the Constitutional Court declared the applicant's complaints under Articles 5 and 6 of the Convention inadmissible for not fulfilling the admissibility criteria, without specifying which criterion had not been met.

7. Relying upon Article 6 § 1 of the Convention, the applicant complained that the criminal proceedings had not been conducted in a fair and impartial manner. He claimed that he had been deprived of his defence rights and that his right to a reasoned decision had been violated. He did not submit any further details to substantiate these complaints. He further raised other complaints under Articles 3, 5, 7 § 1, 8 and 14 of the Convention and Article 1 of Protocol No. 1 thereto.

THE COURT'S ASSESSMENT

8. In determining whether the applicant sufficiently substantiated his various complaints under Article 6 of the Convention, the Court reiterates that the complaints an applicant proposes to make under Article 6 of the Convention must contain all the parameters necessary for the Court to define the issue it will be called upon to examine (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 89, 1 June 2023). It must be stressed that the scope of application of Article 6 of the Convention is very broad and that the Court's examination is necessarily delimited by the specific complaints submitted to it (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 104, 6 November 2018).

9. In order to be able to lodge an application in accordance with Article 34 of the Convention, an individual must be able to show that he or she was directly affected by the measure complained of; this is indispensable for putting the protection mechanism of the Convention into motion (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 96, ECHR 2014). Likewise, the Court can base its decision only on the facts complained of (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 120-121 and 124, 20 March 2018). It is

therefore not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto (*ibid*., § 110), in a manner which should not leave the Court to second-guess whether a certain complaint was raised or not (see, in the context of exhaustion of domestic remedies, *Farzaliyev v. Azerbaijan*, no. 29620/07, § 55, 28 May 2020, and *Grosam*, cited above, § 90). This follows from Rule 47 § 1 (e)-(f) and § 2 (a) of the Rules of Court, which provides that all applications must contain, *inter alia*, a concise and legible statement of the facts and of the alleged violation(s) of the Convention and the relevant arguments, and that this information should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document (see *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, §§ 145-146, 1 June 2023).

10. This means that the Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (see *Grosam*, cited above, § 91).

11. The Court further reiterates that it may declare an application inadmissible as being manifestly ill-founded where the applicant simply cites one or more provisions of the Convention without explaining in what way they have been breached (see *Baillard v. France* (dec.), no. 6032/04, 25 September 2008; and also *Bordei and Others v. Romania* (dec.) [Committee], nos. 15446/15 and 19 others, 11 October 2018).

12. In the present case, the Court notes that in his complaint the applicant merely cited the provision of Article 6 § 1 of the Convention, alleging the unfairness of the proceedings brought against him. He did not elaborate on factual grounds as to why any of the specific aspects of his right to a fair trial was allegedly violated. Rather, he vaguely claimed that he "had not been tried in a fair and impartial manner" and that his defence rights and his right to a reasoned decision had been violated.

13. In particular, the Court observes that the applicant complained about the lack of "fairness" of the proceedings in a very vague manner and failed to make the essence of his complaint clear. In other words, he failed to elaborate on his grievances, as to whether they concern the outcome of the proceedings or the institutional or procedural guarantees of a fair trial under Article 6 of the Convention.

14. Moreover, while claiming to have been convicted in a way which did not comply with the right to a reasoned decision and his defence rights, the Court notes that the applicant did not explain in what way his conviction lacked reasoning or disregarded the rights of the defence.

15. Accordingly, in so far as the applicant complained of the breach of procedural safeguards enshrined in Article 6 of the Convention, the Court cannot but note that he failed to raise any specific claim which would have enabled the Court to define the crux of his complaints under the said

provision. Were the Court to delve into these aspects of the complaint, it would necessarily second-guess the applicant's complaints, a task which is not for the Court undertake (see *Grosam,* cited above). The Court concludes that the applicant has failed to substantiate adequately the said complaints. It would add that, in so far as the applicant could be taken to complain of "unfair" outcome of the trial, the Court notes no arbitrariness or manifest unreasonableness in the domestic court's decisions at first glance. It follows that the complaints under Article 6 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

16. The applicant also raised other complaints under Articles 3, 5, 7 § 1, 8 and 14 of the Convention and Article 1 of Protocol No. 1 thereto. The Court observes that the applicant failed to raise these complaints before the Turkish Constitutional Court in compliance with the time-limits and procedural rules of that court. Therefore, these further complaints must be declared inadmissible for non-exhaustion of available domestic remedies (Article 35 § 1).

17. It follows that the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 December 2024.

Dorothee von Arnim
Deputy Registrar

Jovan Ilievski
President