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

SECOND SECTION

DECISION

Application no. 33639/10
Pınar SELEK
against Turkey

The European Court of Human Rights (Second Section), sitting on 16 December 2014 as a Committee composed of:

Helen Keller, *President*,
Egidijus Kūris,
Jon Fridrik Kjølbro, *judges*,

and Abel Campos, *Deputy Section Registrar*,

Having regard to the above application lodged on 17 June 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Pınar Selek, is a Turkish national, who was born in 1971 and lives in Berlin. She was represented before the Court by Mr A. Selek, a lawyer practising in Istanbul.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 11 July 1998 the applicant was taken into police custody in Istanbul on suspicion of membership of an illegal armed organisation and of being involved in a bomb attack at the Spice Market, which killed seven persons and wounded more than hundred others. During her police interrogation, the applicant was not assisted by a lawyer as she was accused of a crime which fell within the jurisdiction of state security courts (Section 31 of Law no. 3842, now repealed). The applicant was allegedly ill-treated during her police custody. In particular, it is alleged that she was stripped naked, insulted, threatened, beaten, subjected to Palestinian hanging and electric shocks were administrated on her. According to the applicant, as a result of Palestinian hanging her shoulder was dislocated. In a report issued on 13 July 1998 by the police officers and signed by the

applicant, it was stated that the applicant had fallen over her arm and injured her shoulder at the police station.

4. Following her police statement, on 18 July 1998 the applicant was taken to for a medical control and the report stated that there were no signs of ill-treatment on the applicant's body. On the same day, the applicant was taken before the public prosecutor and the investigating judge. In her respective statements, taken in the absence of a lawyer, the applicant did not mention her ill-treatment complaints. On 28 July 1998 the public prosecutor filed his indictment with the Istanbul State Security Court and accused the applicant of membership of an illegal armed organisation and of participating in a bomb attack. On 22 December 2000 the applicant was released pending trial. In 2004 State Security Courts were abolished following a constitutional amendment, and the case was transferred to the Istanbul Assize Court.

5. During the course of the trial against her, the applicant and her lawyers constantly maintained that she had been subjected to ill-treatment during her police custody.

6. On 8 June 2006 the Istanbul Assize Court concluded that there was no need to pronounce a judgment due to lack of evidence.

7. On 17 April 2007 the Court of Cassation quashed this judgment, holding that the first instance court should render a decision. Accordingly, on 23 May 2008 the Istanbul Assize Court acquitted the applicant of the charges against her. In the judgment, the trial court made no reference to the applicant's ill-treatment allegations.

8. On 10 March 2009 the Court of Cassation quashed the decision of the first-instance court. The proceedings resumed before the Istanbul Assize Court, and on 9 February 2011 the assize court persisted on its previous judgment. Subsequently, by an interim decision dated 22 November 2012 the assize court revoked its decision and decided to continue the proceedings. As a result, on 24 January 2013 the applicant was found guilty as charged and sentenced to lifetime imprisonment. According to the latest information, on 11 June 2014 the Court of Cassation quashed the first-instance court's decision and the case file was remitted once again to the Istanbul Assize Court for further examination.

9. In the meantime, on 1 June 2010 the applicant applied to a health centre in Germany and obtained a medical report. This report stated that the applicant suffered from post-traumatic stress disorder, most probably caused as a result of her alleged ill-treatment under custody and of being left in uncertainty for a long time as a result of the unreasonable length of the criminal proceedings against her.

COMPLAINTS

10. The applicant alleged under Article 3 of the Convention that she had been ill-treated during her police custody. Invoking Article 5 of the Convention, she further complained about the length of her police custody. Under Article 6 of the Convention, the applicant complained about the excessive length and unfairness of the criminal proceedings. She stated that the domestic courts had failed in the interpretation of evidence and domestic law, that she had been denied legal assistance during her police custody, that her statements which had been taken under duress had been used by the trial court, that the trial court could not be considered as independent and impartial and that her right to presumption of innocence had been breached. Finally, without elaborating on her complaint, the applicant also invoked Article 10.

THE LAW

A. Article 3 of the Convention

11. The applicant alleged that she had been ill-treated during her police custody in 1998. In this connection, she maintained that she had been stripped naked, insulted, threatened, beaten, subjected to Palestinian hanging and electric shocks were administrated on her.

12. The Court observes that an examination of the case file reveals that the applicant was not sent for a medical control on the first day of her arrest. However the medical report issued on the last day of her custody indicated no signs of injury on her body. While it is evident that the applicant repeatedly stated before the domestic courts that she had been ill-treated during her custody, the Court notes that it is clear that the domestic courts did not take this allegation seriously and did not initiate an investigation. The Court also notes that at no stage of the proceedings had the applicant or her lawyers applied to the public prosecutor to file a complaint. Although the applicant was released from detention in 2000, it was only on 1 June 2010, namely sixteen days before lodging her application with the Court that she applied to a health centre to obtain a medical report in support of her allegations. In this connection the Court observes that a lengthy period, namely 12 years, elapsed between the applicant's police custody and the lodging of the application. Recalling that the six-month rule is to promote legal stability (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 50, Series A no. 12) and to ensure that cases raising issues under the Convention are dealt with within a reasonable time, the temporal limits of supervision carried out by the organs of the Convention signals to both

individuals and State authorities the period beyond which such supervision is no longer possible (see, among other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). Furthermore, the time-limit is ought to protect the authorities and other persons concerned from being in a state of uncertainty for a prolonged period of time (see *Bulut and Yavuz v. Turkey*, no. 73065/01, 28 May 2002; *İçöz v. Turkey* (dec.), no. 54919/00, 9 January 2003; and *Kenar v. Turkey* (dec.), no. 67215/01, 1 December 2005).

13. According to the established case-law, if no remedies are available or if they are judged to be ineffective, the six-month time-limit, in principle, runs from the date of the act complained of (see *Hazar and Others v. Turkey*, (dec.), nos. 62566/00 and others, 10 January 2002) or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see, *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III). In the present case, the Court notes at the outset that the alleged ill-treatment of the applicant took place in 1998, during her police custody. It further observes that the applicant and her lawyers did not file a separate complaint with the public prosecutor regarding her ill-treatment allegations. Nevertheless, in her defence submissions, she stated that she had been ill-treated. The Court considers that it is clear that the domestic authorities did not take any action in response to these allegations and therefore the ineffectiveness of the domestic remedies must have become apparent to the applicant, who was represented by a lawyer, on 23 May 2008 at the latest, when the Istanbul Assize Court acquitted her of the charges against her, without making any reference to her ill-treatment allegations.

14. In view of the above, the Court concludes that this part of the application should be rejected for non-compliance with the six-month time-limit pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Article 5 of the Convention

15. The applicant complained under Article 5 of the Convention about the length of her police custody.

16. The Court observed that the applicant's police custody ended on 18 July 1998, whereas the application was lodged on 17 June 2010. Therefore, this part of the applicant should also be rejected for

non-compliance with the six-month time-limit pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Article 6 of the Convention

1. Length of the proceedings

17. The applicant complained that the criminal proceedings in the present case had exceeded the reasonable time requirement under Article 6 of the Convention.

18. The Court observes that in the instant case the proceedings against the applicant commenced on 11 July 1998 and are still pending. They have therefore lasted for more than sixteen years. In this connection, the Court recalls that 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 a 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. There is no reason to depart from this finding in the present case as well.

19. As a result, this part of the application should be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

2. Fairness of the proceedings

20. The applicant further complained under Article 6 of the Convention that the criminal proceedings against her had been unfair.

21. The Court observes that the impugned criminal proceedings against the applicant are still pending and as a result this part of the application is premature. After the final ruling is given in the case, it would be open to the applicant to re-submit her complaint to the Court if she still considered herself a victim of any alleged violation.

22. Having regard to the foregoing, the Court concludes that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

D. Article 10 of the Convention

23. The applicant, without elaborating on her complaint, alleged that her right to freedom of speech had been breached.

24. An examination by the Court of the material submitted to it does not disclose any appearance of a violation of this provision. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible under Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Abel Campos
Deputy Registrar

Helen Keller
President