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

SECOND SECTION

DECISION

Application no. 6426/12
İbrahim SÜER
against Turkey

The European Court of Human Rights (Second Section), sitting on 17 May 2016 as a Committee composed of:

Ksenija Turković, *President,*
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*

and Milan Blaško, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 9 January 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr İbrahim Süer, is a Turkish national, who was born in 1976 and is detained in Mardin.

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 15 October 2008 the applicant was detained pending trial within the context of criminal proceedings brought against him before the Diyarbakır Assize Court with the charge of aiding and abetting an illegal organisation.

5. On 25 October 2013 the applicant was convicted by the Diyarbakır Assize Court as charged while he was still in detention.

6. On 23 June 2014 the Court of Cassation upheld this judgment.

COMPLAINT

7. The applicant complained under Article 5 § 3 of the Convention about the length of his detention on remand.

THE LAW

8. The Government maintained that the applicant had not exhausted domestic remedies, as he was still in detention on remand on 23 September 2012 and should have applied to the Constitutional Court.

9. The applicant did not comment on the Government's preliminary objection.

10. Having examined the main aspects of the new remedy before the Turkish Constitutional Court, the Court found that the Turkish Parliament had entrusted that court with powers that enabled it to provide, in principle, direct and speedy redress for violations of the rights and freedoms protected by the Convention, in respect of all decisions that had become final after 23 September 2012, and declared it as a remedy to be used (see *Hasan Uzun v. Turkey*, (dec.), no. 10755/13, §§ 68-71, 30 April 2013).

11. The Court further notes that the Constitutional Court's jurisdiction *ratione temporis* had begun on 23 September 2012 and that it was clear from the judgments already delivered that it accepted an extension of its jurisdiction *ratione temporis* to situations involving a continuing violation which had begun before the introduction of the right of individual application and had carried on after that date.

12. In the present case, the applicant's detention started on 15 October 2008 and ended on 25 October 2013 when he was convicted. Accordingly, the applicant's detention, even for the period before 23 September 2012 came within the Constitutional Court's temporal jurisdiction (see *Koçintar v. Turkey* (dec.), no 77429/12, §§ 15-26, 39, 1 July 2014, and *Levent Bektaş v. Turkey*, no. 70026/10, §§ 40-42, 16 June 2015).

13. As a result, taking into account the Government's preliminary 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.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 June 2016.

Milan Blaško
Acting Deputy Registrar

Ksenija Turković
President