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

SECOND SECTION

DECISION

Application no. 66676/12
Deniz TEPELI
against Turkey

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

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

Having regard to the above application lodged on 5 September 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, Ms Deniz Tepeli, is a Turkish national, who was born in 1977. She was represented before the Court by Ms G. Atalay 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 7 April 2006 the applicant was arrested by the police on suspicion of committing armed offences on behalf of the TKP/ML-TIKKO, an illegal organisation.

5. On 9 April 2006 Ordu Magistrates' Court ordered the applicant's detention on remand.

6. On 19 June 2006 a bill of indictment was filed with the Ankara Assize Court, charging the applicant with attempting to undermine the State's

constitutional order by force, endangering public safety, use of hazardous substances (explosives), destruction of public property, counterfeiting official documents and being a member of an armed criminal organisation.

7. On 13 November 2013 the Ankara Assize Court convicted the applicant and sentenced her to aggravated life imprisonment. The assize court ordered the applicant's continued detention.

8. The applicant appealed. The case file does not contain any further information about the outcome of the appeal proceedings before the Court of Cassation.

COMPLAINTS

9. The applicant complained under Article 5 § 3 of the Convention that the length of her pre-trial detention had been excessive.

10. Moreover, the applicant alleged under Article 5 § 4 Convention that there had been no effective remedy provided by the domestic legal system whereby she could effectively challenge her continued pre-trial detention.

11. The applicant maintained under Article 5 § 5 that she had no right to compensation under domestic law in respect of her complaint under Article 5 § 3 of the Convention.

THE LAW

A. Article 5 § 3 of the Convention

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

13. 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).

14. The Court further notes that the Constitutional Court's jurisdiction *ratione temporis* had begun on 23 September 2012 and 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 commenced before the introduction of the right of individual application

and had carried on after that date (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).

15. In the present case the applicant's detention commenced on 7 April 2006 and ended on 13 November 2013 when she was convicted. Accordingly, the applicant's detention, including the period before 23 September 2012, fell within the Constitutional Court's temporal jurisdiction.

16. As a result, taking into account the Government's preliminary objection with regard to the applicant's failure to make use of the new remedy before the Constitutional Court, 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. Article 5 § 5 of the Convention

17. The applicant complained under Article 5 § 5 of the Convention that she had not been provided with effective domestic remedies with regard to her complaint under Article 5 § 3 of the Convention.

18. The Court reiterates that paragraph 5 of Article 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (*Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court. Accordingly, the Court cannot consider an applicant's claim based exclusively on Article 5 § 5 unless a breach of Article 5 §§ 1 to 4 has been established directly or in substance, either by the domestic authorities or by the Court itself.

19. It follows that as the applicant's case does not disclose such a breach, her claim under Article 5 § 5 should be rejected for being incompatible *ratione materiae* with the provisions of the Convention.

C. Other complaints

20. Relying on Article 5 § 4 of the Convention, the applicant complained about the lack of adversarial proceedings in the review proceedings of the lawfulness of her detention and the non-communication of the public prosecutor's opinion during the same proceedings.

21. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the applicant's submissions do not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that this part of the

application is inadmissible for being manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President