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

SECOND SECTION

DECISION

Application no. 45461/12
Furkan ÜYE
against Turkey

The European Court of Human Rights (Second Section), sitting on 22 November 2016 as a Committee composed of:

Paul Lemmens, *President,*
Ksenija Turković,
Jon Fridrik Kjølbro, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 21 May 2012,

Having regard to the declaration submitted by the respondent Government on 26 May 2016 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Furkan Üye, is a Turkish national, who was born in 1986 and lives in İzmir. He was represented before the Court by Mr O. Ata, a lawyer practising in Istanbul.

2. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant complained under Article 5 § 1 of the Convention about the four days' room confinement imposed on him by his military superiors as a disciplinary measure.

4. The application had been communicated to the Government.

THE LAW

5. The applicant complained about the room confinement imposed on him by his military superiors as a disciplinary measure. He relied on Article 5 of the Convention.

6. After the failure of attempts to reach a friendly settlement, by a letter of 26 May 2016 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applicant. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

7. The declaration provided as follows:

> "The Government hereby wishes to express by the way of unilateral declaration that the applicant's detention by order of his high-ranking commander does not meet the standards enshrined in Article 5 § 1 of the Convention.
>
> Consequently, the Government is prepared to pay the applicant 850 (eight hundred fifty) Euros to cover any pecuniary and non-pecuniary damage. This sum will be converted into the national currency at the rate applicable on the date of payment, and will be free of any further taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertakes to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.
>
> The Government therefore invites the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 §1 (c) of the Convention."

8. By a letter of 2 July 2016, the applicant's lawyer indicated that they were not satisfied with the terms of the unilateral declarations.

9. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

10. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

11. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.),

no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

12. Having regard to the nature of the admissions contained in the Government's declarations, as well as the amount of compensation proposed, in the particular circumstances of the present case, the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1 (c)).

13. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

14. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

15. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 15 December 2016.

Hasan Bakırcı
Deputy Registrar

Paul Lemmens
President