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

SECOND SECTION

DECISION

Application no. 69750/12
Faysal YACAN
against Turkey
(see appended table)

The European Court of Human Rights (Second Section), sitting on 21 October 2021 as a Committee composed of:

Branko Lubarda, *President,*
Pauliine Koskelo,
Marko Bošnjak, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 28 September 2012,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant's details are set out in the appended table.

The applicant was represented by Ms N. Paşa, a lawyer practising in İzmir.

The applicant's complaints under Article 6 of the Convention concerning the unfairness of the criminal proceedings against the applicant owing to (i) the use of the allegedly unlawfully obtained evidence, namely flyers reportedly found on his person during his arrest and a document entitled "action report (*faaliyet raporudur*)" found during a search carried out in the house of another co-defendant, İ.H.B., (ii) allegedly flawed operation of procedural safeguards as regards the admissibility and reliability of the above mentioned evidence, and (iii) national courts' alleged failure to provide sufficient reasons in respect of the applicant's defence submissions when convicting him were communicated to the Turkish Government ("the Government").

THE LAW

The Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by these complaints. They further requested the Court to strike out the application in accordance with Article 37 of the Convention

The Government acknowledged the violation of Article 6 of the Convention. They offered to pay the applicant the amount detailed in the appended table and invited the Court to strike the application out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The amount would be converted into the currency of the respondent State at the rate applicable on the date of payment and would be payable within three months from the date of notification of the Court's decision. In the event of failure to pay this amount within the above-mentioned three-month period, the Government undertook 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 applicant was sent the terms of the Government's unilateral declaration on 7 September 2021. The Court received a response from the applicant refusing the terms of the declaration on 21 September 2021 on the ground that the amount offered by the Government was too low.

The Court observes that Article 37 § 1 (c) enables it 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".

Thus, it may strike out applications 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 (see, in particular, the *Tahsin Acar v. Turkey* judgment (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI).

The Court has established clear and extensive case-law concerning complaints relating to the use of unlawful evidence (see, for example, *Bykov v. Russia* [GC], no. 4378/02, §§ 88-105, 10 March 2009, and *Budak v. Turkey*, no. 69762/12, §§ 68-91, 16 February 2021) and the right to a reasoned judgment (see, for example, *Ayetullah Ay v. Turkey*, nos. 29084/07 and 1191/08, §§ 127-8, 27 October 2020).

The Court also takes note of to the fact that on 31 July 2018 the Turkish Law No. 7145 entered into force. Articles 4, 17, 18 and 19 of this new law provide for a right to request the reopening of domestic court proceedings or investigation following the Court's decision to strike out a case on the basis of a friendly settlement or a unilateral declaration. The Court has already

stressed on several occasions that the reopening of the domestic proceedings is the most appropriate way to provide an effective solution to an alleged breach. In this connection, bearing in mind the Court's subsidiary role in protecting the rights and freedoms guaranteed by the Convention and its protocols, it falls in the first place to the national authorities to redress any violation of the Convention.

Having regard to the above and noting the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

In the light of the above considerations, 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*).

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

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 arrangements 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 18 November 2021.

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Viktoriya Maradudina
Acting Deputy Registrar

Branko Lubarda
President

APPENDIX

Application raising complaints under Article 6 of the Convention
(unfairness of the criminal proceedings)

Application no. Date of introduction	Applicant's name Year of birth	Date of receipt of Government's declaration	Date of receipt of applicant's comments	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses (in euros)[1]
69750/12 28/09/2012	**Faysal YACAN** 1982	03/09/2021	21/09/2021	2,250

[1] Plus any tax that may be chargeable to the applicant