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

SECOND SECTION

DECISION

Application no. 81773/12
Hakkı YILDIRIM
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 June 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 20 September 2012,

Having regard to the declaration submitted by the respondent Government on 20 January 2017 requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Hakkı Yıldırım, is a Turkish national, who was born in 1989 and lives in Balıkesir. He was represented before the Court by Mr M. Filorinalı, a lawyer 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 19 May 2012 the applicant was placed in detention on remand on suspicion of theft.

5. The applicant filed an objection against this decision. On 5 June 2012 the Bandırma Assize Court dismissed the objection based on the public prosecutor's written opinions, which were not communicated to the applicant or to his representative.

6. On 12 October 2012 the applicant was released from detention on remand.

COMPLAINTS

7. The applicant complained under Article 5 §§ 4 and 5 of the Convention about the non-communication of the public prosecutor's opinion during the proceedings to challenge the lawfulness of the detention and the right to compensation under domestic law in respect of this complaint.

THE LAW

8. After the failure of attempts to reach a friendly settlement, by a letter of 20 January 2017 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

9. The declaration provided as follows:

> "The Government of Republic of Turkey hereby wishes to express by way of unilateral declaration its acknowledgement that the applicant's rights to liberty and security did not meet the standards enshrined in Article 5 of the Convention.
>
> I declare that the Government accordingly offer to pay applicant 150 (one hundred and fifty) euros (EUR) to cover any and all pecuniary and non-pecuniary damages and EUR 150 (one hundred fifty) to cover any and all costs and expenses, plus any tax that may be chargeable to the applicants.
>
> The Government therefore invites the court to strike the present case out of the list of cases. It suggests 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.
>
> The above mentioned sum will be converted into Turkish Liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases/ in the event of failure to pay this sum within said three-month period, the Government undertakes to pay simple interest on it, from 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."

10. The Court has not received a response from the applicant which accepts the terms of unilateral declaration.

11. 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".

12. 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.

13. 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).

14. The Court has established in a number of cases, including those brought against Turkey, its practice concerning complaint about the non-communication of the public prosecutor's opinion during the proceedings to challenge the lawfulness of the detention and right to compensation under domestic law in respect of this complaint (see, for example, *Altınok v. Turkey*, no. 31610/08, §§ 57-61, 29 November 2011).

15. Having regard to the nature of 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)).

16. 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*).

17. The Court considers that these amounts should be converted into currency of the respondent State at the rate applicable at the date of payment, and paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amounts in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

18. Finally, the Court emphasizes 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).

19. 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 under Article 5 §§ 4 and 5 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases pursuant to Article 39 of the Convention in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 6 July 2017.

Hasan Bakırcı
Deputy Registrar

Ledi Bianku
President