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

SECOND SECTION

DECISION

Application no. 37363/05
Zeynel YURTSEVER and others
against Turkey

The European Court of Human Rights (Second Section), sitting on 7 November 2017 as a Committee composed of:

Ledi Bianku, *President,*
Paul Lemmens,
Jon Fridrik Kjølbro, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 September 2005,

Having regard to the decision of 17 November 2009,

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

Having deliberated, decides as follows:

# THE FACTS

1. The applicants, Mr Zeynel Yurtsever, Mr Nuh Teke and Mr Mustafa Yılmaz are Turkish nationals who were born in 1962, 1969 and 1973 respectively and live in Istanbul. They are represented before the Court by Mrs Y. Filorinalı, a lawyer practising in Istanbul.

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

## A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 25 November 1997 the applicants were taken into custody on suspicion of membership of the MLSPB/DK (*Marksist-Leninist Silahlı*

*Propaganda Birliği – Devrimci Kurtuluş*, Armed Group of Marxist and Leninist-Revolutionary Liberation).

5. On 8 December 1997 the public prosecutor at the Istanbul State Security Court filed a bill of indictment, charging the first and third applicants with aiding and abetting a terrorist organisation under Article 169 of the Criminal Code. The second applicant was also charged with membership of an illegal organisation under Article 168 § 2 of the Criminal Code.

6. On 19 March 2008 the Istanbul Assize Court decided to discontinue the proceedings against the applicants, holding that the prosecution was time-barred.

### B. Relevant domestic law

7. A description of the relevant domestic law may be found in *Turgut and Others v. Turkey* ((dec.), no. 4860/09, §§ 19-26, 26 March 2013).

## COMPLAINT

8. The applicants complained under Article 6 of the Convention that the length of the proceedings had been excessive.

## THE LAW

9. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

10. The Government noted that pursuant to Law no. 6384 a Compensation Commission had been established to deal with applications concerning the length of proceedings and the non-execution of judgments. They maintained that the applicants had not exhausted domestic remedies, as they had not made any application to the Compensation Commission: this ground had also been recognised by the Court in its decision in the case of *Turgut and Others v. Turkey* ((dec.), no. 4860/09, 26 March 2013).

11. The Court observes that, as pointed out by the Government, a domestic remedy has been established in Turkey following the application of the pilot judgment procedure in the case of *Ümmühan Kaplan v. Turkey* (no. 24240/07, 20 March 2012). Subsequently, in its decision in the case of *Turgut and Others*, cited above, the Court declared a new application inadmissible on the ground that the applicants had failed to exhaust domestic remedies, that is to say the new remedy. In so doing, the Court

considered in particular that this new remedy was *a priori* accessible and capable of offering a reasonable prospect of redress for complaints concerning the length of proceedings.

12. The Court notes that in its judgment in the case of *Ümmühan Kaplan* (cited above, § 77) it stressed that it could nevertheless examine, under its normal procedure, applications of this type which had already been communicated to the Government.

13. However, taking account of the Government's preliminary objection with regard to the obligation of the applicants to make use of the new domestic remedy established by Law no. 6384, the Court reiterates its conclusion in the case of *Turgut and Others* (cited above). It therefore concludes that the application 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 remainder of the application inadmissible.

Done in English and notified in writing on 30 November 2017.

| | |
|---|---|
| Hasan Bakırcı | Ledi Bianku |
| Deputy Registrar | President |

## APPENDIX

1. Zeynel YURTSEVER is a Turkish national who was born in 1962, lives in İSTANBUL and is represented by Y. Filorinalı

**2.** Nuh TEKE is a Turkish national who was born in 1969, lives in İSTANBUL and is represented by Y. Filorinalı

**3.** Mustafa YILMAZ is a Turkish national who was born in 1973, lives in İSTANBUL and is represented by Y. Filorinalı