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

SECOND SECTION

DECISION

Application no. 58756/09
Leyla ZANA
against Turkey

The European Court of Human Rights (Second Section), sitting on 1 October 2013 as a Committee composed of:
Peer Lorenzen, *President,*
András Sajó,
Nebojša Vučinić, *judges,*
and Seçkin Erel, *Acting Deputy Section Registrar,*
Having regard to the above application lodged on 6 October 2009,
Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Leyla Zana, is a Turkish national, who was born in 1961 and lives in Diyarbakır. She was represented before the Court by Mr M. Beştaş and Ms M. Danış Beştaş, lawyers practising in Diyarbakır.

A. The circumstances of the case

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

On various dates the applicant participated in several demonstrations and conferences, and she further made certain speeches and read out press statements concerning the problems of the Kurdish people.

On 7 May 2008 criminal proceedings were brought against the applicant by the Diyarbakır Public Prosecutor.

On 4 November 2008 the Diyarbakır Assize Court convicted the applicant under Article 314 of Criminal Code and Article 7 § 2 of the Prevention of Terrorism Act, and sentenced her to eleven years and three months' imprisonment.

The case is still pending before the national court.

B. Relevant domestic law

A description of the relevant domestic law may be found in *Hasan Uzun v. Turkey* ((dec.), no. 10755/13, §§ 68-71, 30 April 2013).

COMPLAINTS

The applicant contends under Article 10 of the Convention that the institution of criminal proceedings against her for making a speech constituted an unjustified interference with her right to freedom of expression.

The applicant further complains under Article 6 § 1 of the Convention that the right to a fair trial was violated as the drafting process of indictments and their admission by the relevant court occurs without the involvement of the defendant in the Turkish criminal system is against the principle of equality of arms and the admission of the indictment by the court indicates the partiality of the domestic court as it has prejudged the guilt of the applicant.

THE LAW

The Court observes that in the instant case the proceedings against the applicant are still pending before the Court of Cassation.

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 (*Hasan Uzun v. Turkey*, cited above, §§ 68-71).

Accordingly, the applicant should avail herself of the new remedy before the Turkish Constitutional Court offered by Law no. 6216 (*ibidem*).

It follows that this complaint 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 application inadmissible.

Seçkin Erel	Peer Lorenzen
Acting Deputy Registrar	President