

**APPLICATION/REQUÊTE N° 17128/90**

**Mehmet ERDAGOZ v/TURKEY**

**Mehmet ERDAGOZ c/TURQUIE**

**DECISION** of 10 July 1991 on the admissibility of the application

**DECISION** du 10 juillet 1991 sur la recevabilité de la requête

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**Article 26 of the Convention**

- a) *The person who has raised in substance before the highest competent national authority the complaint he makes before the Commission has exhausted domestic remedies Even in a State where the Convention is directly applicable the applicant may instead of invoking a precise provision of the Convention, raise equivalent arguments before the national authority*
- b) *With regard to ill treatment allegedly inflicted by the police during custody (Turkey), a criminal complaint is an effective remedy*
- c) *The six month period runs from the decision of the highest national authority competent to decide on the complaint which forms the object of the application to the Commission In this case the judgment of the Court of Cassation (Turkey) in criminal proceedings brought following a complaint about ill-treatment by the police during custody*

*(TRANSLATION)*

**THE FACTS (Extract)**

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

The applicant, a Turkish national, was born in 1955. He is a civil servant resident in Adana

He submits that when he was working in the customs service at the frontier he lodged a complaint with the judicial and administrative authorities against the Adana Chief of Police and the other units of that force

At 10 a.m. on 23 October 1987, while the applicant was at home on sick leave, he was arrested by officers of the Adana police. He maintains that the police officers searched his flat and assaulted him. They then took him away to police headquarters where he was placed in police custody. The applicant was interrogated by the public order section of the police until 1 p.m. on 24 October 1987. The applicant was taken before the court at 4 p.m. and subsequently released.

The applicant immediately lodged a complaint with the Adana Public Prosecutor's Office against the four police officers and the Adana Chief of Police himself, alleging that they had ill-treated him during his time in police custody. He also complained that he had not been brought before the court within the 24 hour period prescribed by law, and that there had been an interference with his private life and an intrusion into his home.

At the public prosecutor's request, the applicant was examined the same day, 24 October 1987, by the duty doctor at Adana hospital, whose medical report mentioned bruising on his back, chest and penis, pinprick bruising under his moustache and a 3 cm by 3 cm bruise on the sole of each foot. The forensic medicine laboratory confirmed the medical report on 26 October 1987 and signed the applicant off work for two days.

In an indictment drawn up on 3 December 1987 the Adana public prosecutor instituted proceedings in the Adana Criminal Court against the four police officers, accusing them of inflicting ill treatment on the applicant within the meaning of Article 245 of the Turkish Criminal Code.

On the same day the public prosecutor dismissed the charges relating to the applicant's other complaints, i.e. those concerning the length of his detention in police custody and the alleged invasion of his privacy and home. On 2 March 1989 the applicant lodged an objection to the above decision to dismiss charges with the presiding judge of the Tarsus (Adana) Assize Court, who, on the basis of the files submitted to him, dismissed the applicant's objection on 17 March 1989.

The public prosecutor also gave a decision on 13 June 1989 dropping the charges based on the applicant's complaints against the Adana Chief of Police for lack of evidence implicating the latter in the case. This decision to drop charges was upheld by the judge on 27 July 1989.

In a judgment given on 9 November 1989 the Adana No. 5 Criminal Court acquitted the four police officers due to lack of evidence. The court took account of the fact that the applicant's wife had stated that she had seen the police officers maltreating her husband at the time of his arrest, whereas the applicant had told the

court at the previous hearing that he had been maltreated in police custody. The court held that it had not been proved that the marks found during the medical examination had been caused by treatment inflicted by the accused.

On appeal by the applicant the Court of Cassation upheld the Criminal Court's judgment in a judgment given on 15 February 1990 and signed on 19 February 1990.

### **THE LAW (Extracts)**

1 The applicant complains in the first place that he was subjected to torture while in police custody at Adana police headquarters and relies in that connection on Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The respondent Government first plead inadmissibility on the ground of failure to comply with the six month time-limit laid down by Article 26 of the Convention. They observe that the criminal proceedings instituted as a result of the applicant's complaint against the Adana Chief of Police ended with the prosecution's decision to drop the charges, which was upheld by the judge on 27 July 1989, whereas the application was introduced ten months later, i.e. on 21 May 1990.

The applicant contests this argument and maintains that the final decision concerning his complaints was that given on 20 April 1990 by the Court of Cassation.

The Commission notes that the applicant lodged a criminal complaint against five police officers, including the Adana Chief of Police, alleging that they had ill-treated him during the time he spent in police custody. The preliminary inquiry concerning the Chief of Police ended on 13 June 1989 with a decision to drop the charges against him for lack of evidence implicating him in the case, whilst the proceedings against the four police officers accused of torturing the applicant ended only with the Court of Cassation's judgment of 15 February 1990.

The Commission refers to its case-law to the effect that the period of six months runs from the decision of the highest national authority competent to decide on a complaint which forms the object of the application to the Commission (Nos 9863/82 and 10924/84, joined, Dec 6 12 84, D R 39 p 93).

The Commission observes that in this case the decision to drop the charges against the Chief of Police was based on the finding that he was not involved in the case. In maintaining his complaint against four other police officers the applicant chose

an effective domestic remedy with a view to proving his allegations of ill treatment in the criminal courts, which would subsequently have enabled him to bring an action for damages in the civil or administrative courts

It follows that the six month limit began to run with the judgment given by the Court of Cassation on 19 February 1990, which was the last decision in the criminal proceedings in question and the final decision in the case under consideration. Consequently, the applicant, who introduced his application on 21 May 1990, has complied with the six month rule laid down by Article 26 of the Convention

The respondent Government also plead, in a twofold objection, the inadmissibility of the application on the ground of failure to exhaust domestic remedies

They maintain in the first place that as, during the trial, the applicant did not request further investigative measures he did not make use of an available remedy

The applicant contests the Government's argument

The Commission observes that in the criminal complaint lodged by the applicant against the police officers he set out his allegations and submitted the evidence against the accused. The Turkish criminal courts, which were, moreover, competent to examine of their own motion all the evidence they considered relevant, and which, in reaching their decisions, were required to satisfy themselves beyond reasonable doubt, had the opportunity to give judgment on the merits of the applicant's allegations. Consequently, a request for further investigative measures could not, as such, constitute a true remedy

The respondent Government further observe that at no stage in the proceedings did the applicant invoke in the criminal courts the relevant provisions of the Convention, which nevertheless forms part of domestic law

The applicant contests the Government's argument

The Commission refers to its established case-law to the effect that the person who has raised in substance before the highest competent national authority the complaint he makes before the Commission has exhausted domestic remedies. Even where the Convention is directly applicable in a State's domestic law (as is the case in Turkey), the person concerned may also rely before the domestic courts on "other arguments to the same effect" (No 7367/76, Dec 10 3 77, D R 8 pp 185, 210)

The Commission notes that in this case the applicant alleged in the Court of Cassation that he had been tortured and ill-treated while in police custody and appealed against the acquittal at first instance of the police officers accused of the alleged offences. It considers that the applicant raised in substance in the domestic proceedings the complaint he now makes before the Commission

It follows that this plea of inadmissibility, based on the alleged failure to exhaust domestic remedies, cannot be upheld