APPLICATION/REQUÊTE N° 14723/89

Recep ERDOGAN v/TURKEY

Recep ERDOGAN c/TURQUIE

DECISION of 9 July 1992 on the admissibility of the application

DÉCISION du 9 juillet 1992 sur la recevabilité de la requête

Article 6, paragraph 1 of the Convention *Reasonable time (criminal)*

a) Relevant factors the complexity of the case the manner in which the judicial authorities conducted the proceedings the applicant's conduct

b) Where the Commission, by reason of its competence ratione temporis, can only examine part of the proceedings, it can take into account in order to assess the length, the state of the proceedings at the beginning of the period under consideration

c) When an accused living abroad decides not to appear for trial in a State which respects the rule of law, even after being officially informed of the proceedings against him, he cannot claim about the length of the proceedings

Article 6, paragraph 3 (a) of the Convention *This provision does not require the observance of any particular formalities for informing the accused of the nature of the charges against him*

In this case, information given in the arrest warrant considered sufficient and non-transmission of the bill of indictment attributable to the applicant

Article 6, paragraph 3 (a) and (b) of the Convention *Because of the logical connection between these provisions, the information about the nature and cause of the accusation must be adequate to enable the accused to prepare his defence*

Article 25, paragraph 1 of the Convention *Someone who has received adequate redress at the domestic level for the alleged violations of the Convention cannot claim to be a victim of those violations*

Article 26 of the Convention *An applicant, not in detention and living abroad, who alleges a violation of Article 6, para 3 (a) on the ground that an arrest warrant issued by a Turkish court has not been officially served on him, is not required, in order to exhaust domestic remedies, to apply to have the warrant revoked on payment of bail before appearing before the court nor to claim damages for unlawful detention*

(TRANSLATION)

THE FACTS

The applicant, a Turkish national, was born in 1944. He is an educational adviser, resident in Strasbourg.

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

The applicant states that while employed at the Turkish Consulate General in Strasbourg between 1974 and 1980 as an attaché dealing with employment matters he helped to train French primary teachers who had Turkish pupils in their classes, working for the CFFISEM, a department of the Alsace Region Education Authority, on secondment to the Meinau teacher training college in Strasbourg.

He asserts that on a date he has not specified he learned from a reliable source that a warrant for his arrest dated 11 June 1985 had been issued by the Ankara Martial Law Court after an investigation opened in 1983 into allegations that he had engaged in activities hostile to Turkey abroad. He then wrote to the Ankara Martial Law Court on 29 May 1986 and to the public prosecutor in Ezine, the place where the particulars of his civil status were registered, asking to be informed whether criminal proceedings had been instituted against him, but received no reply. Subsequently, and again from an unofficial source, he learned that his file had been transferred on 13 March 1986 by the Ankara Public Prosecutor's Office to the Office of the Public Prosecutor attached to the Ankara State Security Court, with the reference number 85 252. A file bearing the applicant's name was then opened at the State Security Court.

According to the information supplied by the respondent Government at the request of the Rapporteur and the Commission, a criminal investigation of the applicant's case was opened by the military prosecutor's office on the order, dated 23 March 1984, of the officer commanding the state of siege operations in Ankara. On 11 June 1985 the Ankara Martial Law Court issued a warrant for the applicant's arrest. After the state of siege in Ankara had been lifted on 19 July 1985, the applicant's file (no. 85 252) was transmitted to the Ankara public prosecutor who in turn transmitted

it to the public prosecutor attached to the Ankara State Security Court On 21 March 1986 the public prosecutor instituted criminal proceedings against the applicant in the State Security Court on the charge of contravening Article 140 of the Turkish Criminal Code

On 18 September 1986 the Turkish Consulate General in Strasbourg wrote to the applicant inviting him to discuss a matter concerning him" The applicant wrote back asking to be informed in writing of the matter it was proposed to discuss He received no reply

On 16 October 1986 the French section of Amnesty International sent a letter to the Turkish Embassy in Paris stating that they had reason to believe a warrant had been issued for the applicant's arrest and asking what the charge might be

The trial in the State Security Court could not begin in the defendant's absence, this not being possible under the provisions of the Code of Criminal Procedure governing proceedings against absent defendants Consequently, at each of a number of sessions held at monthly intervals, on average, between 28 March 1986 and 22 May 1991 the court looked into the question whether the applicant had returned to Turkey

The applicant states that he appointed a lawyer in Turkey, after learning through the proceedings before the Commission, what charge had been brought against him His lawyer's bail application was rejected at a hearing on 27 March 1991

In the meantime on 12 April 1991 Article 140 of the Turkish Criminal Code was repealed, and at its session of 22 May 1991 the State Security Court granting an application from the public prosecutor attached thereto acquitted the applicant

In June 1991 the applicant travelled to Turkey and went to the village where he was born The officer commanding the local gendarmerie not having been informed of the applicant's acquittal, informed him that a warrant for his arrest had been issued and asked him to report to the gendarmerie barracks on the following day On 27 June 1991 the applicant went first to the gendarmerie barracks in his village and then with his file, and accompanied by a gendarme to the gendarmerie barracks in the town of Ezine The Ezine public prosecutor received him at 10 a m spoke on the telephone to the registry of the Ankara State Security Court and gave the applicant a certificate stating that he was no longer wanted by the judicial authorities The applicant left the Public Prosecutor s Office at 4 p m the same day

COMPLAINTS (Extract)

1 The applicant alleges in the first place a violation of Article 6 para 3 (a) of the Convention in that he was not informed of the criminal charge against him since he was not formally served with the warrant for his arrest

2 The applicant also complains of the length of the criminal proceedings conducted against him for six years and in that connection relies on Article 6 of the Convention

3 The applicant further complains that he was prosecuted for expressing his opinions on various subjects concerning Turkey in the context of his teaching activity while working for the CEFISEM department of the Alsace Region Education Authority He alleges an infringement of his freedom of expression and in that connection relies on Articles 10 and 11 of the Convention

THE LAW (Extract)

1 The applicant complains in the first place that he was not informed of the criminal charge against him, since he was not formally served with either the warrant for his arrest or the bill of indictment setting out the charges against him In that connection he relies on Article 6 para 3 (a) of the Convention

The respondent Government plead the inadmissibility of the above complaint for failure to exhaust domestic remedies The Government s main argument is that the applicant made no application to have the arrest warrant rescinded They observe in particular that the applicant did not lodge an objection to the arrest warrant issued by the court (Article 298 of the Code of Criminal Procedure) nor did he apply to have the arrest warrant rescinded at the sessions held by the State Security Court to look into the situation They further assert that the applicant did not apply for bail (Article 119 of the Code of Criminal Procedure) nor did he seek protection against arrest by depositing a security (Article 288 of the Code of Criminal Procedure) The Government further claim that the applicant could have brought an action for damages after his acquittal under Law No 466

In reply, the applicant observes that the application for bail submitted by his lawyer at the hearing of 27 March 1991 was rejected by the State Security Court Above all, he could do nothing against an arrest warrant without being formally informed of its existence

The Commission notes that on 27 March 1991 the Ankara State Security Court, rejecting the application made by the applicant's lawyer decided to uphold the arrest warrant in force in order to secure the applic nt's appearance It also notes that it was impossible for the applicant to apply for bail before appearing in court With regard to the possibility of seeking compensation for unlawful imprisonment the Commission takes the view that the applicant, who was never detained was not bound to try that remedy

Consequently, the respondent Government s objection cannot be upheld

The Government submit that in Turkish law a defendant against whom an arrest warrant has been issued in his absence is informed at the time of his arrest of the reasons therefor The judge before whom he is brought, within forty-eight hours at the latest, explains to him the nature and cause of the accusation against him

With regard to the merits of the application, the Government observe that in this case the applicant found out the reasons for the issue of the arrest warrant They maintain that the applicant could only have obtained this information through his lawyer, since only the prosecutor, the accused and his lawyer have access to the file The applicant, who had previously worked at the Turkish Consulate General, was in a better position than anyone to know the procedure in consulates for the service of procedural documents in criminal cases They maintain that the applicant, who did not reply to the invitation issued by the Consul with a view to informing him about his situation, is in no position to complain to the Commission about the lack of information concerning the criminal proceedings instituted against him

The applicant on the other hand, maintains that it is for the State to inform those accused of an offence of the existence of warrants for their arrest He maintains that in spite of all his attempts he did not succeed in finding out the reasons why the warrant for his arrest had been issued

The Commission recalls that the right of a person charged with an offence to be informed of the charge against him forms part of the general principle of respect for the rights of the defence This right is also linked to the right to have adequate facilities for the preparation of one's defence, guaranteed by Article 6 para 3 (b) of the Convention Compliance with the requirement that the accused be informed 'promptly' must be assessed in the light of the circumstances of the case The applicant who complains of a delay due to his own fault would be in no position to allege a violation of the rights of the defence Moreover, the Commission recalls its previous rulings to the effect that Article 6 para 3 (a) does not require compliance with any particular procedures for informing the accused of the nature and cause of the accusation against him (No 7899/77, unpublished, No 8361/78, Dec 17 12 81 D R 27 p 37)

In this case, with regard to the fact that the applicant was not informed of the existence of the arrest warrant, the Commission notes at the outset that in Turkish law an arrest warrant cannot be served until the arrest of the wanted person It further notes that the applicant, when submitting his application to the Commission, was able to mention the date and number of the arrest warrant issued by the Martial Law Court and the information concerning the transmission of his file to the State Security Court The Commission accordingly considers that the applicant was aware before applying to the Commission, of the reasons why he was being sought

With regard to the failure to send the applicant a copy of the bill of indictment of 21 March 1986, the Commission considers that the applicant by not responding to

the consulate's invitation of 18 September 1986, and by not returning to Turkey for fear of arrest, caused a situation imputable to him which made it impossible to inform him formally and in detail of the charges against him

It follows that this part of the application must be rejected as being manifestly ill founded, pursuant to Article 27 para 2 of the Convention

2 Secondly, the applicant complains that his case was not heard within a reasonable time by the Turkish courts, contrary to Article 6 para 1 of the Convention, which provides as follows

> "In the determination of any criminal charge against him, everyone is entitled to a hearing within a reasonable time by (a) tribunal

The respondent Government submit that under Article 269 of the Code of Criminal Procedure a person resident outside Turkey accused of an offence is declared absent when he cannot be summoned to appear before the competent court or when it is evident that such a summons has been fruitless They also observe that, under Article 278 of the Code of Criminal Procedure, absent defendants cannot be tried, the only steps permissible being those aimed at protecting the evidence In this case, since the applicant was missing, the State Security Court, bound by the provisions of the Code of Criminal Procedure, was unable to take any procedural steps The court was unable to hear either the defendant or witnesses, and no argument was presented before it In the end, after a change in the law, the applicant was acquitted by the court without being tried

The applicant contests the Government's argument and stresses the fact that a criminal charge against him remained undetermined from 11 June 1985 to 27 June 1991

The Commission recalls that the reasonableness of the length of proceedings must be assessed with particular regard to the complexity of the case, the conduct of the applicant and that of the judicial authorities (see Eur Court H R Eckle judgment of 15 July 1982, Series A no 51, p 35, para 80)

The Commission considers that the period to be taken into consideration began on 11 June 1985, the date on which the arrest warrant was issued by the Ankara Martial Law Court, and ended on 22 May 1991, the date on which the applicant was acquitted by the Ankara State Security Court The proceedings thus lasted nearly six years The Commission considers that for lack of competence *ratione temporis* it cannot examine as such, the length of the criminal proceedings before 28 January 1987 (date of deposit of the Turkish Government's declaration under Article 25 of the Convention), but that it can take into account the state of the proceedings on 28 January 1987

It notes that the arrest warrant issued on 11 June 1985 and the bill of indictment filed on 21 March 1986 are the main steps in the proceedings at issue and that these occurred before 28 January 1987 During the proceedings subsequent to that date the court was unable, under the provisions of the Code of Criminal Procedure governing proceedings against absent defendants, to take any pertinent procedural steps The Government assert that (at sessions held, on average at monthly intervals) the court looked into the question whether the applicant had returned to Turkey After repeal of the provision of the Criminal Code the applicant was accused of contravening, the court acquitted him The Commission considers that, in the circumstances of the case, it was only the applicant's decision not to go to Turkey, even after being officially informed through the proceedings before the Commission, and to disregard the principle of the rule of law, which affected the length of the proceedings (see, *mutatis mutandis*, Ventura v Italy, Comm Report 15 12 80 para 197, D R 23 p 5) It follows that this part of the application must be considered manifestly ill founded within the meaning of Article 27 para 2 of the Convention

3 The applicant further complains that he was prosecuted contrary to Articles 10 and 11 of the Convention

Article 10 of the Convention guarantees to everyone the right to freedom of expression In addition Article 11 of the Convention affords to everyone the right to freedom of peaceful assembly and to freedom of association with others

The Commission, having regard to the provisions of Law No 3713 amending the Turkish Criminal Code, and to the judgment of 22 May 1991 in which the Ankara State Security Court acquitted the applicant, considers that effective redress has been afforded in respect of the applicant's complaint through the repeal of the relevant provision of the Criminal Code The Commission also notes that during the criminal proceedings brought against the applicant he did not undergo detention at any time

That being the case, the applicant can no longer claim to be the victim within the meaning of Article 25 of the Convention, of a violation by Turkey of the rights guaranteed by Articles 10 and 11 of the Convention It follows that this complaint is manifestly ill founded within the meaning of Article 27 para 2 of the Convention