CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 26119/02
by Çetin ALBAYRAK and Others
against Turkey

The European Court of Human Rights (Third Section), sitting on 1 June 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President,*
Mr J. HEDIGAN,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON, *judges,*

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 31 August 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Çetin Albayrak, Mr Mehmet Ali Kolay, Mr Özcan Uslu, Mr Aslan Çağlayan, Mr Adil Tatar, Ms Nazlı Yirik (Çağlayan), Mr İbrahim Yirik, Mr Adnan Alin, Mr Ömer Müjdat Tekinalp, Ms Nilüfer Küçüktay, Mr Muzaffer Karakoç, Mr Turgay Gürcan, Mr Muhittin Özbay, Mr Veli Metin Ulu, Mr Turan Ulu, Mr Cihan Durmuş, Mr Battal Uğun and Mr Ayhan Güven Koçulu, are Turkish nationals. They are represented before the Court by Ms S. Gürcan, a lawyer practising in Istanbul.

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

On different dates between 1979 and 1983 the applicants were arrested on suspicion of membership in an illegal organisation and subsequently detained on remand within the context of criminal proceedings brought against them.

Between 1984 and 1991 the applicants were released pending trial.

On 27 September 1984 the Istanbul Martial Law Court convicted the applicants under Articles 146 of the Criminal Code.

On 6 June 1990 the Military Court of Cassation quashed the judgment of the first-instance court.

On 6 April 1993 the Istanbul Martial Law Court once again convicted the applicants under Article 146 of the Criminal Code. İbrahim Yirik and Muhittin Özbay were sentenced to death. Özcan Uslu, Adil Tatar, Adnan Alin, Ömer Müjdat Tekinalp, Nilüfer Küçüktay, Veli Metin Ulu, Turan Ulu, Battal Uğun and Ayhan Güven Koçulu were sentenced to death, commuted to life imprisonment. Turgay Gürcan and Cihan Durmuş were sentenced to eight years and four months' imprisonment. Muzaffer Karakoç and Mehmet Ali Kolay were sentenced to twelve years and six months' and eight years' imprisonment respectively. Finally, Nazli Yirik (Çağlayan) and Aslan Çağlayan were sentenced to five and six years' imprisonment respectively.

Following promulgation of the Law of 26 December 1994, which abolished the jurisdiction of the martial law courts, the Court of Cassation acquired jurisdiction over the case and the case file was sent to it.

On 27 September 2000 the Court of Cassation upheld the judgment of the first-instance court in respect of Muhittin Özbay, Veli Metin Ulu and Özcan Uslu. It further ordered that the criminal proceedings against Muzaffer Karakoç, Adil Tatar, Ömer Müjdat Tekinalp, İbrahim Yirik, Turgay Gürcan, Adnan Alin, Aslan Çağlayan, Nazlı Yirik (Çağlayan), Nilüfer Küçüktay and Mehmet Ali Kolay be terminated on the ground that the statutory time limit under Articles 102 and 104 of the Turkish Criminal Code had expired.

On 14 January 2002 the decision of the Court of Cassation was deposited with the registry of the Üsküdar Assize Court which functioned as the Istanbul Martial Law Court before the promulgation of the Law of 26 December 1994.

Turan Ulu, Cihan Durmuş, Battal Uğun and Ayhan Güven Koçulu allege that the judgment of 6 April 1993 was never served on them and that, therefore, the judgment did not become final in their respect. The applicants submitted a document dated 24 August 2001 drawn up by the registry of the Üsküdar Assize Court to the Court in support of their allegation.

COMPLAINTS

The applicants complain under Article 5 of the Convention that they were unlawfully deprived of their liberty as there was no reasonable suspicion for their arrest and kept in police custody for an excessive length of time. They further allege that there were no remedies in domestic law to challenge the lawfulness of their detention in police custody.

The applicants complain under Article 6 § 1 of the Convention that the proceedings against them were not concluded within a reasonable time.

The applicants complain under Article 6 § 3 (a), (b) and (d) of the Convention that they were not informed of the nature of the accusations against them until the end of their detention in police custody and that they could not examine the witnesses against them.

THE LAW

A. As regards the applicant Çetin Albayrak

The Court notes that, in a letter of 9 September 2003, the applicant's representative was requested to complete the application as regards Çetin Albayrak. The applicant's representative failed to do so.

Having regard to Article 37 § 1 (a) of the Convention, the Court concludes that Çetin Albayrak does not intend to pursue the application. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of this application to be continued. Accordingly, the application of Article 29 § 3 of the Convention to the case should be discontinued.

B. As regards the applicants Mehmet Ali Kolay, Özcan Uslu, Aslan Çağlayan, Adil Tatar, Nazlı Yirik (Çağlayan), İbrahim Yirik, Adnan Alin, Ömer Müjdat Tekinalp, Nilüfer Küçüktay, Muzaffer Karakoç, Turgay Gürcan, Muhittin Özbay, Veli Metin Ulu, Turan Ulu, Cihan Durmuş, Battal Uğun and Ayhan Güven Koçulu

1. The applicants allege under Article 5 of the Convention that their arrest was unlawful as there was no reasonable suspicion for it and that they were held in police custody for an excessive length of time without being brought before a judge.

The Court observes that the applicants' detention in police custody ended on different dates between 1979 and 1983.

It reiterates that it can only consider the period that elapsed after 28 January 1987, the date on which Turkey recognised the competence of the Convention organs to examine individual petitions. The Court notes that the above complaint concerns a period prior to 28 January 1987.

Consequently, this part of the application is outside the Court's competence *ratione temporis* and must accordingly be rejected as being incompatible with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention.

2. The applicants complain under Article 6 § 1 of the Convention that the proceedings against them were not concluded within a reasonable time.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicants further complain under Article 6 § 3 (a), (b) and (d) of the Convention that they were not informed of the nature of the accusations against them until the end of their detention in police custody and that they could not examine the witnesses against them.

a) Regarding the applicants Turan Ulu, Cihan Durmuş, Battal Uğun and Ayhan Güven Koçulu, the Court observes that the Istanbul Martial Law Court's judgment of 6 April 1993 did not become final as it was not served on these applicants. The Court is consequently not in a position to make an overall examination of the proceedings against the applicants and considers that it cannot speculate either on what the national courts will decide or on what the outcome of a second appeal on points of law might be since that remedy would still be available to the applicants if they were to consider that their trial had ultimately infringed the rights on which they relied before the Court (see *Dikme v. Turkey*, no. 20869/92, § 111, ECHR 2000-VIII).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

b) As to the applicants Mehmet Ali Kolay, Özcan Uslu, Aslan Çağlayan, Adil Tatar, Nazlı Yirik (Çağlayan), İbrahim Yirik, Adnan Alin, Ömer Müjdat Tekinalp, Nilüfer Küçüktay, Muzaffer Karakoç, Turgay Gürcan, Muhittin Özbay and Veli Metin Ulu, the Court notes that the applicants have not adduced any evidence before the Court in support of their allegation that the fairness of the proceedings was infringed. The Court is therefore led to conclude that the applicants have failed to substantiate their allegation and lay the basis of an arguable claim allowing an examination of these complaints by the Court.

It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in respect of the applicant Çetin Albayrak;

Decides to adjourn the examination of the complaint concerning the length of criminal proceedings brought by the applicants Mehmet Ali Kolay, Özcan Uslu, Aslan Çağlayan, Adil Tatar, Nazlı Yirik (Çağlayan), İbrahim Yirik, Adnan Alin, Ömer Müjdat Tekinalp, Nilüfer Küçüktay, Muzaffer Karakoç, Turgay Gürcan, Muhittin Özbay, Veli Metin Ulu, Turan Ulu, Cihan Durmuş, Battal Uğun and Ayhan Güven Koçulu;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President