CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32207/96
by Selahattin AYDAR
against Turkey

The European Court of Human Rights (First Section) sitting on 4 May 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 28 June 1996 by Selahattin AYDAR against Turkey and registered on 10 July 1996 under file no. 32207/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, who was born in 1957, is a Turkish citizen resident in İstanbul. He is represented before the Court by Mr Faik Işık, a lawyer practising in İstanbul.

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

The applicant is the former Mayor of Bingöl. On 22 June 1994, when he was still a mayor, he spoke at a meeting in Diyarbakır.

On 30 November 1994 the public prosecutor attached to the Diyarbakır State Security Court instituted criminal proceedings against the applicant. The public prosecutor accused the applicant, under Section 312 of the Turkish Criminal Code, of attempting to incite people to hatred and enmity through his speech of 22 June 1994.

On 7 December 1994 the Diyarbakır State Security Court convicted the applicant of the offences as charged and sentenced him to 10 months' imprisonment and a fine of 183,333 Turkish Liras. The court, considering the applicant's past conduct and personality, decided to suspend the execution of this sentence pursuant to Section 95 of the Turkish Criminal Code. On 27 February 1995 the applicant's appeal to the Court of Cassation was rejected.

On 22 May 1995 the public prosecutor attached to the Court of Cassation dismissed the applicant's request for rectification of the decision of 27 February 1995.

On 16 May 1995 the Ministry of the Interior applied to the Supreme Administrative Court for the annulment of the applicant's election as the Mayor of Bingöl consequent to his conviction for a "public order" offence under Section 312 of the Turkish Criminal Code.

On 4 July 1995 the Supreme Administrative Court announced the revocation of the applicant's post as the mayor of Bingöl.

The Supreme Administrative Court referred to Section 11 of the Act No. 2839, regulating the Deputy Elections for the Turkish Grand National Assembly, which provides that a person who is convicted under Section 312 para.2 of the Turkish Criminal Code, is not eligible to be elected as a deputy. The court further recalled that pursuant to Section 95 of the Turkish Criminal Code a conviction, leading to a suspended sentence, could be considered as non-existent, if the person is not sentenced to a punishment for another crime within five years. Accordingly, the Supreme Administrative Court held that the applicant was not eligible to be elected as a deputy until his conviction is removed from the criminal record at the end of the five years period.

The applicant appealed against the judgment of 4 July 1995. On 22 September 1995 the General Assembly of the Supreme Administrative Court (Danıştay Genel Kurulu) dismissed the applicant's request. This decision was served on the applicant on 31 January 1996.

COMPLAINTS

The applicant alleges violations of Articles 9 and 10 of the Convention for the following reasons:

- He is convicted by criminal courts consequent to his speech on 22 June 1994 in a public meeting;

- The Supreme Administrative Court announced the revocation of his office as the mayor of Bingöl;

- Pursuant to the Act on the Deputy Elections for the Turkish Grand National Assembly, his conviction under section 312 of the Turkish Criminal Code prevents him from standing for the deputy elections for five years, until it is annulled from the criminal records.

He also complains that his right to a fair trial was breached as regards the national criminal courts' evaluation of facts and interpretation of domestic law. In this regard he invokes Article 6 of the Convention.

THE LAW

1. The applicant complains that pursuant to the Act on the Deputy Elections for the Turkish Grand National Assembly, his conviction under section 312 of the Turkish Criminal Code prevents him from standing for election as a deputy for five years until it is removed from the criminal records. The applicant also complains of the annulment of his office as the Mayor of Bingöl on account of his conviction following his speech in a meeting in Diyarbakır. He alleges a violation of Articles 9 and 10 of the Convention.

The Court considers that it cannot, on the basis of the file, determine the admissibility of these complaints and therefore it is necessary, in accordance with Rule 54 §3(b) of the Rules of Procedure, to give notice of these complaints to the respondent Government.

2. The applicant submits, under Articles 9 and 10 of the Convention, that his conviction following his speech on 22 June 1994 in a public meeting constituted an unjustified interference with his freedom of thought and freedom of expression. He also complains that his right to a fair trial was breached as regards the national criminal courts' evaluation of facts and the interpretation of domestic law. In this regard he invokes Article 6 of the Convention.

The Court notes that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Articles 6, 9 and 10, as Article 35 §1 of the Convention provides that the Court "may only deal with the matter...within a period of six months from the date on which the final decision was taken".

The Court observes that the Diyarbakır State Security Court convicted the applicant of inciting people to hatred and enmity on 7 December 1994. The Court of Cassation rejected the applicant's appeal on 27 February 1995. The Court notes that the applicant requested the rectification of that decision; however, under Turkish Criminal Law, an application for rectification of a decision is not a legal remedy directly available to the applicant (see Eur. Court H.R., Çıraklar v. Turkey judgment of 28 October 1998, to be published in *Reports of*

Judgments and Decisions..., para.32). The Court further notes that the proceedings in the Supreme Administrative Court concerned only qualifications for recruitment to the civil service and had no bearing on the criminal proceedings. Therefore, the six months period began to run on 27 February 1995, after the final decision concerning the applicant's conviction was delivered; whereas the application was introduced on 28 June 1996, i.e. more than six months after the final decision was taken.

It follows that this part of the application was introduced out of time and must be rejected under Article 35 of the Convention.

For these reasons, the Court,

DECIDES TO ADJOURN the complaints as regards the applicant's inability to stand for elections as a deputy and the revocation of his post as Mayor;

unanimously,

DECLARES INADMISSIBLE the remainder of the application.

Michael O'Boyle
Registrar

J. Casadevall
President