CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37793/97
by Saim Bölükbaş and others
against Turkey

The European Court of Human Rights (First Section) sitting on 12 October 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr B. Zupančič,
Mr T. Panţîru,
Mr R. Maruste, *judges*,

and 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 14 April 1997 by Saim Bölükbaş And Others against Turkey and registered on 15 September 1997 under file no. 37793/97;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicants, whose names appear in the appendix, are Turkish nationals.

They are represented before the Court by Mr Vural Soytekin, a lawyer practising in İstanbul (Turkey).

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

The applicants, accused of being members of the illegal organisation Dev-Yol (Revolutionary Way), were taken into police custody on various dates between August 1980 and October 1980.

In 1983, the military public prosecutor instituted criminal proceedings against the applicants in the Erzincan Martial Law Court. It was alleged that the applicants were members of an illegal organisation aiming to undermine the constitutional order and to replace it with a Marxist-Leninist regime. The prosecution called for the applicants to be sentenced pursuant to Section 146 of the Turkish Criminal Code, which regulates felonies against the state.

The applicants were released pending trial (Saim Bölükbaş on 25 February 1987, Hasan Salbaş on 3 May 1988, Mesut Uygun on 9 June 1983 and Mustafa Sarıtaş on 26 January 1984).

On 24 August 1988 the Martial Law Court delivered its judgment. It convicted Saim Bölükbaş and Hasan Salbaş as charged and sentenced them to imprisonment. The Court further decided that Mustafa Sarıtaş and Mesut Uygun be acquitted of the charges against them. On 17 December 1990 the decision as to the acquittal of Mesut Uygun became final, as the public prosecutor did not appeal against him.

The public prosecutor challenged the judgment of the first instance court as regards Mustafa Sarıtaş. The other two applicants, Saim Bölükbaş and Hasan Salbaş also appealed against their conviction. Pursuant to the law No. 3953, promulgated on 30 December 1993 the case-file was transferred to a non-military court, namely, the Court of Cassation. On 4 July 1995 the Court of Cassation delivered its decision. It upheld the sentence of Hasan Salbaş. As to the applicants Saim Bölükbaş and Mustafa Sarıtaş, the Court of Cassation ordered that the criminal proceedings be terminated on the ground that the statutory time-limit under Section 102 of the Turkish Criminal Code had expired.

The decision was not officially served on the applicants. However, the applicants' lawyer obtained a copy of this decision in July 1995.

COMPLAINTS

1. The applicants complain under Article 5 of the Convention about the length of their detention on remand.

2. The applicants further complain under Article 6 of the Convention that the criminal proceedings brought against them were not concluded within a reasonable time, as required by the Convention.

THE LAW

1. The applicants complain under Article 5 of the Convention about the length of their detention on remand.

The Court observes that the applicants were released on various dates pending trial (Saim Bölükbaş on 25 February 1987, Hasan Salbaş on 3 May 1988, Mesut Uygun on 9 June 1983 and Mustafa Sarıtaş on 26 January 1984).

The Court recalls that according to the Turkish Government's declaration, made on 28 January 1987, pursuant to former Article 25 of the Convention, the Commission's competence to examine individual petitions extends only to facts and judgments based on events occurring after that date. The Court notes that, on the assumption that the Court's own competence is governed by this declaration, the above complaint as regards Mesut Uygun and Mustafa Sarıtaş concerns a period prior to 28 January 1987.

Consequently, for these applicants, this part of the application is outside the competence of the Court *ratione temporis* and must be rejected for being incompatible with the provisions of the Convention, within the meaning of Article 35 of the Convention.

As to the first two applicants, Saim Bölükbaş and Hasan Salbaş, the Court further notes that pursuant to Article 35 of the Convention, "the Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken. In the absence of domestic remedies, the six-month period runs from the act complained of."

The Court observes that in the instant case, the applicants were released from detention on remand on 25 February 1987 and 3 May 1988 relatively pending trial, whereas the application was introduced on 14 April 1997, i.e. more than six months later.

It follows that these complaints have been introduced out of time and must be rejected under Article 35 of the Convention.

2. The applicants further complain under Article 6 of the Convention that the criminal proceedings brought against them were not concluded within a reasonable time as required by the Convention.

The Court recalls that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the object and the purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment. Where, as in the present case, the domestic law does not provide for service, the Court considers it appropriate to take the date on which the decision was finalised as the starting point, that being when the parties were definitely able to find out its content (See, Eur. Court HR, Papachelas v. Greece, judgment of 25 March 1999).

The Court also reiterates that the six-month period runs from the date on which the applicant's lawyer became aware of the decision completing the exhaustion of the domestic remedies, notwithstanding the fact that the applicant only became aware of the decision later (No.14056/88, Dec. 28.05.1991, D.R. 70, p. 208).

In the instant case, the final decision as regards Saim Bölükbaş, Hasan Salbaş and Mustafa Sarıtaş was delivered on 4 July 1995 by the Court of Cassation and the lawyer of the applicants obtained a copy of it in July 1995. Although the decision of the Court of Cassation, according to the practice in Turkish criminal procedure, was not officially served on the applicants, the six-month period starts to run from the date on which the lawyer found out about the content of the final decision.

As regards the third applicant Mesut Uygun, who was acquitted in 1988, the six-month period starts to run from the date on which the decision of the first-instance court became final, i.e. 17 December 1990 in the instant case.

Consequently, as the application was lodged with the Court on 14 April 1997, i.e. more than six months later than these events, this part of the application should be rejected for being introduced out of time pursuant to Article 35 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President

APPENDIX

LIST OF APPLICANTS

1. Saim Bölükbaş, who was born in 1949, resides in Fatsa (Ordu).
2. Hasan Salbaş, who was born in 1959, resides in Fatsa (Ordu).
3. Mesut Uygun, who was born in 1937, resides in Fatsa (Ordu).
4. The heirs of Mustafa Sarıtaş, who died on 8 July 1995:
   Narin Sarıtaş, who was born in 1950 is the former wife of Mesut Sarıtaş.
   Ayla Sarıtaş, who was born in 1977 is the daughter of Mesut Sarıtaş.
   Sema Sarıtaş, who was born in 1980 is the daughter of Mesut Sarıtaş.
   Kani Sarıtaş, who was born in 1985, is the son of Mesut Sarıtaş.