AS TO THE ADMISSIBILITY OF

Application No. 26480/95
by Yalçin BÜRKEV
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 16 September 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 27 October 1994 by Yalçin BÜRKEV against Turkey and registered on 10 February 1995 under file No. 26480/95 ;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen born in 1957, resides in Ankara. He is represented before the Commission by Oya Ataman, a lawyer practising in Ankara.

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

The applicant, accused of being a member of the organisation Dev-Yol (Revolutionary Way), was taken into police custody in Ankara on 24 November 1980 and was subsequently detained on remand following a decision of the Ankara Court-Martial on 27 January 1981. He was released on 14 December 1988.

On 26 February 1982 the military prosecutor filed a bill of indictment in the Court-Martial against altogether 723 defendants including the applicant.

It was alleged that the applicant was a member of an illegal organisation whose aim was to undermine the constitutional order and

replace it with a Marxist-Leninist regime. It was also alleged that he had instigated a number of violent acts such as the killing of H.A. and wounding O.A., bombing a bank, acting as an armed look-out and shooting with gun at a house. In addition, it was alleged that the weapon registered as C 328813 belonging to the applicant, had been used during those violent acts. The prosecution called for the applicant to be sentenced pursuant to Article 146 of the Turkish Criminal Code.

On 30 December 1980 the applicant in his statement to the police confessed his illegal activities related to the organisation. However, during his questioning by the Public Prosecutor and at the court hearings, the applicant denied his statements and alleged that they had been made under duress.

After martial law was lifted, the Ankara Court-Martial took the name of Court-Martial attached to the 4th army corps. It continued to deal with this case until 27 December 1993, pursuant to a provision in Article 23 of the Martial Law Act (no. 1402) of May 1971, amended on 19 September 1982.

In a judgment of 19 July 1989, the Court-Martial found the applicant guilty of the offences as charged. It held that although the applicant had denied his statement made to the police, his activities had been verified and corroborated by the statements of others who had also been accused. The court further referred to the weapons which had been found following the applicant's confession and the expert reports, which confirmed the applicant's illegal activities. It sentenced him to sixteen years' of imprisonment, debarred him from employment in the civil service and also placed him under judicial guardianship during his detention.

Following the applicant's appeal, the case was referred to the Military Court of Cassation.

Pursuant to a law promulgated on 27 December 1993, the case-file was eventually transferred to the non-military court, Court of Cassation, by Act No. 3953.

On 27 December 1995 the Court of Cassation held that the first instance court had failed to evaluate all the evidence regarding the applicant's situation. Therefore it quashed the relevant parts of the court decision concerning the applicant. The criminal proceedings were referred back to the State Security Court where they are still pending.

COMPLAINTS

1. The applicant complains under Article 5 para. 3 of the Convention that his detention on remand was prolonged beyond reasonable time.

2. The applicant further complains that the criminal proceedings brought against him were not concluded within a "reasonable time" as required by Article 6 para. 1 of the Convention.

3. He also complains that he did not have a fair trial as the courts based their reasoning on statements which he had made to the police under duress, which is contrary to Article 6 para. 1 of the Convention.

4. He complains that his case was not heard by an independent and impartial tribunal, as required by Article 6 para. 1 of the Convention. He explains that the Court-Martial was composed of five members: two military judges, two civil judges and one army officer with no legal training and fully accountable to the military commander of the state of martial law.

5. He further complains that his case was not heard by a tribunal established by law within the meaning of Article 6 para. 1 of the Convention. Although martial law was lifted in Ankara on 19 July 1985, the Court-Martial continued to try cases pending before it.

6. He lastly complains under Article 6 para. 2 of the Convention that owing to its excessive length his detention on remand could no longer be considered as a provisional measure, but constituted an anticipatory sentence.

THE LAW

1. The applicant complains that the length of his detention exceeded a reasonable time within the meaning of Article 5 para. 3 (Art. 5-3) of the Convention. He also complains that because of its excessive length it could not be considered as a provisional measure, but constituted an anticipatory sentence, infringing the presumption of innocence under Article 6 para. 2 (Art. 6-2) of the Convention.

The Commission recalls that according to Article 26 (Art. 26) of the Convention, it may only deal with applications introduced within a period of six months after the final decision or, where there are no domestic remedies available, after the end of the situation complained of.

In this respect, the Commission observes that the applicant's detention within the meaning of Article 5 para. 1(c) and 3 (Art. 5-1-c, 5-3) ended on 14 December 1988 when he was released, whereas the application was submitted to the Commission on 27 October 1994, that is more than six months after the end of the situation complained of.

It follows that the applicant's above complaints have been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant further complains that his case was not heard by a tribunal established by law within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. In this context he explains that although martial law was lifted in Ankara on 19 July 1985, Court-Martial continued to try cases pending before it.

The Commission observes that the Ankara Court-Martial remained competent to deal with this case even after the lifting of martial law, until 27 December 1993, pursuant to a provision in Article 23 of the Martial Law Act (no. 1402) of 13 May 1971, amended on 19 September 1982. This provision was deleted by Act No. 3953 of 27 December 1993, amending Act No. 1402 and the case-file was transferred to the non-military criminal courts.

The Commission further considers that in this case, the applicant was prosecuted and convicted on the basis of legal provisions empowering a Court-Martial to decide, even in peacetime, cases against civilians suspected of having committed offences designed to undermine the constitutional system.

It follows that the Court-Martial, which decided and convicted the applicant, may be considered to be a tribunal "established by law" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (Mitap and Müftüoglu v. Turkey, Comm. Report 8 December 1994, para. 86, to be published in Reports of Judgments and Decisions, 1996).

The Commission considers that in these circumstances it must reject this complaint as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that he did not have a fair trial as the courts based their reasoning on statements which he had made to the police under duress, which is contrary to Article 6 para. 1 (Art. 6-1) of the Convention.

The applicant further complains that his case was not heard by an independent and impartial tribunal, as required by Article 6 para. 1 (Art. 6-1) of the Convention. He explains that the Court-Martial was composed of five members: two military judges, two civil judges and one army officer with no legal training and fully accountable to the military commander of the state of martial law. The Commission notes that these complaints relate exclusively to the military court which formerly dealt with the proceedings against the applicant.

The Commission further notes that the criminal proceedings against the applicant are still pending before the State Security Court.

According to its constant case-law, the Commission must take into consideration the entire criminal proceedings brought against the applicants in order to express an opinion as to whether they comply with the requirements of Article 6 (Art. 6) of the Convention (cf. e.g. Nos. 23878/94, 23879/94, 23880/94, 23881/94, 23882/94, 23883/94, Dec. 25.5.95, D.R. 81-B p. 94).

These complaints therefore appear premature given the current stage of the proceedings before the domestic courts. The present complaints on this point must therefore be rejected as manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further complains that the criminal proceedings brought against him were not concluded within a "reasonable time" as required by Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of these complaints to the respondent Government.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaint concerning the length of the criminal proceedings instituted against him,

unanimously,
DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber