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. 52991/99
by Hatip ÇELİK
against Turkey

The European Court of Human Rights (First Section), sitting on 17 October 2000 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 the above application introduced on 27 July 1999 and registered on 29 November 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Turkish national, born in 1954 and living in Konya (Turkey). He is represented before the Court by Mr İsmail Erdem Gencan, a lawyer practising in Diyarbakır.

A. The circumstances of the case

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

On 11 November 1980 police officers arrested the applicant on suspicion of membership of the PKK.

On 8 January 1980 the Diyarbakır Martial Law Court (*sıkıyönetim askeri mahkemesi*) ordered the applicant's detention on remand.

On 14 September 1981 the Military Public Prosecutor filed an indictment with the Diyarbakır Martial Law Court charging the applicant with membership of the PKK and undertaking actions aimed at separating a portion of the territories that are under the sovereignty of the state from the administration of the state. The charges were brought under Articles 125 and 168 of the Turkish Criminal Code.

In a judgment dated 19 February 1985 the Martial Law Court found the applicant guilty of offences under Articles 125 and 168 and sentenced him to 24 years' imprisonment. The applicant appealed.

On 10 April 1990 the Military Court of Cassation (*askeri yargıtay*) quashed the judgment of 19 February 1985 holding that there was insufficient evidence for the applicant's conviction.

On 18 June 1990 the applicant was released pending trial.

Following promulgation of the Law of 27 December 1993, which abolished the jurisdiction of the martial law courts, the Diyarbakır Assize Court acquired jurisdiction over the case and the case file was sent to it.

On 13 July 1998 the Diyarbakır Assize Court acquitted the applicant of the charges. This judgment was served on the applicant on 19 March 1999.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings brought against him were not concluded within a reasonable time.

He maintains under Article 6 § 1 that his right to a fair hearing was breached since he was tried by the Martial Law Court which lacked independence and impartiality.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings brought against him were not concluded within a reasonable time.

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

2. The applicant maintains that his right to a fair hearing was breached since he was tried by the Martial Law Court which lacked independence and impartiality. He invokes Article 6 § 1 of the Convention which provides, in so far as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal..."

The Court notes that in a judgment dated 10 April 1990 the Military Court of Cassation quashed the Martial Law Court's judgment of 19 February 1985. The applicant was subsequently acquitted by the Diyarbakır Assize Court's judgment of 13 July 1998. In these circumstances, the Court finds that the alleged violation of the applicant's right under Article 6 § 1 regarding his conviction by the Martial Law Court and the proceedings concerned were rectified at the domestic level.

Consequently, the applicant cannot claim to be a victim of a violation of his right under Article 6 § 1 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint that the criminal proceedings brought against him were not concluded within a reasonable time.

DECLARES INADMISSIBLE the remainder of the application.

Michael O'Boyle
Registrar

Elisabeth Palm
President

Commented [Note1]: Summarise the complaints without necessarily citing the invoked Convention Articles.