CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 52991/99
by Hatip ÇELİK
against Turkey

The European Court of Human Rights (Third Section), sitting on 23 September 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mrs A. GYULUMYAN, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 27 July 1999,

Having regard to the First Section's partial decision of 17 October 2000,

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, Mr Hatip Çelik, is a Turkish national who was born in 1954 and lives in Konya. He was represented before the Court by Mr İ.E. Gencan, a lawyer practising in Diyarbakır.

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

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

On 8 January 1981 the Diyarbakır Martial Law Court (*sıkıyönetim askeri mahkemesi*) ordered the applicant's detention pending trial.

On 14 September 1981 the Military Public Prosecutor filed an indictment with the Diyarbakır Martial Law Court charging the applicant under articles 125 and 168 of the Criminal Code with membership of the PKK and undertaking actions aimed at separating a portion of the territories under the sovereignty of the State from the administration of the State.

On an unspecified date the applicant appointed a lawyer of his own choice to represent him throughout the domestic criminal proceedings.

On 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 26 December 1994, 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.

On 5 August 1998 the judgment of the Diyarbakır Assize Court was served on the applicant's representative.

On 10 September 1998 the judgment acquitting the applicant became final as neither the applicant nor the public prosecutor had appealed against it before the statutory time-limit.

On 4 February 1999 the applicant appointed a new lawyer, who is his representative in the proceedings before the Court.

On 19 March 1999 the now final judgment was served on the applicant's new lawyer upon his request.

On 30 April 1999 the applicant filed a claim with the Konya Assize Court under Law no. 466 requesting compensation for his unjustified detention on remand.

On 3 November 2000 the Konya Assize Court awarded compensation to the applicant.

On 14 June 2001 the Court of Cassation upheld the judgment of the first-instance court.

COMPLAINT

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 LAW

The applicant submitted that the length of the criminal proceedings against him had failed to satisfy the "reasonable time" requirement under Article 6 § 1. The relevant parts of Article 6 § 1 provide as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Government submitted that the application had not been introduced within the time allowed by Article 35 § 1 of the Convention. They maintained that the judgment of the Diyarbakır Assize Court had been served on the applicant's representative on 5 August 1998 and that this judgment had become final on 10 September 1998 as the applicant had not lodged an appeal. They submitted therefore that the six months had begun to run on 10 September 1998.

The applicant contested the Government's submissions. He contended that he had learned about the judgment of the Diyarbakır Assize Court on 19 March 1999 as he had not had any contact with his previous lawyer since 1985. He submitted that the six months should have started to run from 19 March 1999. In that connection, he asserted that he had applied to the domestic courts for compensation for his unjust detention under Law no. 466 and that the domestic courts had taken 19 March 1999 as the date on which the statutory time-limit began to run. He submitted to the Court decisions of the Court of Cassation concerning the statutory time-limit in the proceedings under Law no. 466 in support of his allegations.

The Court reiterates at the outset that, according to Article 35 § 1 of the Convention, it may only deal with an individual application lodged with it after all domestic remedies have been exhausted, according to generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

The Court further 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 (see *Martinus Godefridus Aarts v. the Netherlands*, no. 14056/88, Commission decision of 28 May 1991, Decisions and Reports (DR) 70, p. 208, at pp. 212 and 213, and the following decisions of the Court:

Keskin and Others v. Turkey (dec.), no. 36091/97, 7 September 1999; *Bölükbaş and Others v.Turkey* (dec.), no. 37793/97, 12 October 1999, and *Pejic v. Croatia* (dec.), no. 66894/01, 19 December 2002).

In the instant case, the Court observes that the judgment of the Diyarbakır Assize Court became final on 10 September 1998. Even assuming that the applicant became aware of the above-mentioned judgment on 19 March 1999 as he alleged, this date cannot be taken as the starting-date for the running of the six-month time-limit. The Court considers that if the applicant was not in contact with his former lawyer, this was due to his own negligence.

As regards the applicant's allegation that his case concerning the compensation claim filed under Law no. 466 was admitted by the domestic courts, the Court notes that the procedure laid down in Law no. 466 is not connected to the ordinary criminal procedure. The Court of Cassation's decisions concerning the starting-date of the statutory time-limits pertain solely to the aforementioned procedure. Moreover, the Court considers that it canot be bound by the time-limits in domestic law as regards calculation of the six-months period.

The Court concludes therefore that the final decision in the present case became final on 10 September 1998, whereas the applicant lodged his application with the Court on 27 July 1999.

It follows that the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President