CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30493/96
by Ersin DEMİREL
against Turkey

The European Court of Human Rights (First Section) sitting on 9 March 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 10 January 1996 by Ersin DEMİREL against Turkey and registered on 19 March 1996 under file no. 30493/96;

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 1960, is a Turkish citizen resident in Giresun. He is represented before the Court by Ms Semra Dural, a lawyer practising in İzmir.

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

On 4 December 1980 the applicant, who was accused of being a member of the illegal organisation THKP-C, was taken into police custody. On 11 March 1981 he was placed in detention on remand by order of İstanbul Military Court.

On 10 August 1981 the public prosecutor started criminal proceedings against the applicant in the İstanbul Military Court. In his indictment the public prosecutor alleged that the applicant was a member of the terrorist organisation, THKP-C, whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist Regime. The prosecution also accused the applicant of instigating a number of acts of violence and called for the applicant to be sentenced pursuant to Section 146 para.1 of the Turkish Criminal Code.

On 27 September 1984 the İstanbul Military Court found the applicant guilty as charged and sentenced him to lifetime imprisonment.

The applicant appealed. On 6 June 1990 the Military Court of Cassation quashed the judgment of 27 September 1984 on the ground that the first-instance court had failed to apply the relevant legal provision to the crime in question.

On 14 April 1991 the applicant was released pending trial.

On 6 April 1993 the İstanbul Military Court found the applicant guilty under Section 146 para. 3 of the Turkish Criminal Code and sentenced him to five years' and ten months' of imprisonment.

The applicant appealed.

The applicant's case is still pending before the Court of Cassation.

COMPLAINTS

1. The applicant complains that the criminal proceedings against him were not dealt with within a "reasonable time" as required by Article 6 § 1 of the Convention.

2. The applicant also complains under Article 5 § 3 of the Convention that his detention on remand was prolonged beyond a reasonable time.

THE LAW

1. The applicant complains that the criminal proceedings against him were not dealt with within a "reasonable time" as required by Article 6 § 1 of the Convention.

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

2. The applicant also complains under Article 5 § 3 of the Convention that his detention on remand was prolonged beyond a reasonable time.

The Court recalls that according to Article 35 of the Convention, it may only deal with applications introduced within a period of six months after the final domestic decision. The Court also refers to its established case-law according to which when there is no available remedy in national law, the six-month period runs from the end of the situation complained of (No. 8007, Dec. 10.7.78, D.R. 13, p.85).

The Court observes in the present case that there was no domestic remedy available to the applicant in order to challenge, after release, the length of his detention on remand under Turkish law (Eur. Court HR., Yağcı and Sargın v. Turkey judgment of 8 June 1995, Series A No. 319-A, p. 12 para. 41-44). The Court notes that the applicant was released, pending trial, on 14 April 1991, whereas the application was submitted to the Court on 10 January 1996, i.e. more than six months after the end of the situation complained of.

It follows that this part of the application was introduced out of time and must be rejected under Article 35 §1 of the Convention.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint concerning the length of the criminal proceedings.

DECLARES INADMISSIBLE the remainder of the application.

Michael O'Boyle
Registrar

Josep Casadevall
President