AS TO THE ADMISSIBILITY OF

Application No. 29495/95
by Hasan ERDEMLi
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 14 January 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM 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 13 October 1995 by Hasan Erdemli against Turkey and registered on 7 December 1995 under file No. 29495/95;

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, born in 1956, is a Turkish citizen and currently imprisoned in Aydin. He is represented before the Commission by Mr Hüsnü Öndül, a lawyer practising in Ankara.

A. Particular circumstances of the case

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

On 21 April 1992, at 1 a.m., the applicant was arrested in connection with an investigation by policemen from the Anti-Terror branch of the Security Directorate in Samsun. Following his arrest, the Director of the Anti-Terror branch sent a letter to the Public Prosecutor of Samsun requesting a permission to hold the applicant in custody long enough to question him. The Public Prosecutor granted a custody order for 15 days.

On 27 April 1992 the applicant was questioned by the police about his involvement with an illegal organisation, the THKP/C-DEV-SOL. In his statements he told the police that he had been involved in the activities of the organisation, that he regretted it, that his statements were true and that he had not made them under duress.

On 30 April 1992 the applicant was brought before the Public Prosecutor of Samsun. He stated to the Public Prosecutor that he had been a member of the THKP/C-DEV-SOL for three months or three months and a half, that he had not participated in any illegal activity during this time, that the statements he had made to the police were true and that he had not made them under duress.

On the same day, 30 April 1992, the applicant was brought before the Magistrate's Court for criminal cases. Before the magistrate he stated that he had not participated in any illegal activity of the organisation and that the statements he had made to the police and the Public Prosecutor were true. He was then remanded in custody.

On 27 May 1992 the Public Prosecutor attached to the Ankara State Security Court filed an indictment against the applicant under Article 168 para. 1 of the Turkish Penal Code.

On 3 July 1992, at the first trial before the Ankara State Security Court, the applicant allegedly stated that he had made his statements under duress and denied the accusations against him. The applicant was released by the court on the same day.

On 16 March 1993 the Ankara State Security Court acquitted the applicant on account of insufficient evidence on which to convict him.

Following an appeal by the Public Prosecutor the Court of Cassation on 30 September 1993 quashed the judgment delivered by the Ankara State Security Court on the ground that the applicant should have been convicted pursuant to Article 168 para. 1 of the Penal Code as he had participated in the illegal activities of the THKP/C-DEV-SOL and had carried out particular duties in the organisation.On 30 November 1994 the Ankara State Security Court, complying with the Court of Cassation's decision, sentenced the applicant to 18 years and 9 months' imprisonment under Article 168 para. 1 of the Turkish Penal Code.

The applicant lodged an appeal against the judgment of the Ankara State Security Court.

On 15 June 1995 the Court of Cassation upheld the judgment dated 30 November 1994.

B. Relevant domestic law

Article 168 para. 1 of the Turkish Penal Code

<Translation>

"Whoever establishes an armed group or undertakes the duty of chieftain or command or any other particular duty in such groups, with the purpose of committing the felonies defined in Articles 125, 131, 146, 147, 149 and 156, shall be punished by heavy imprisonment of not less than ten years."

COMPLAINTS

1. The applicant complains under Article 5 of the Convention that he was not informed promptly of the reasons for his arrest or of any charge against him. He alleges that he was told that he had been arrested in connection with an investigation and that he could learn the reasons for his arrest when he was questioned by the police, six days later.

The applicant also complains under Article 5 para. 3 of the Convention that he was not brought before a judge until nine days after his arrest, which was not promptly.

2. The applicant complains under Article 6 para. 1 of the Convention that he was deprived of his right to a fair trial as he was sentenced to imprisonment by the Ankara State Security Court, following the decision of the Court of Cassation to quash the first judgment, on account of his involvement in the activities of an illegal organisation. He maintains that the Ankara State Security Court based its judgment on the statements which he had made to the police under duress and on the testimonies of three witnesses, S.Ü, A.T. and N.K., which should have been ruled inadmissible.

3. He further complains under Article 6 of the Convention that he was not permitted the assistance of a lawyer during questioning by the police, the public prosecutor and the judge.

THE LAW

1. The applicant complains under Article 5 (Art. 5) of the Convention that he was not informed promptly of the reasons for his arrest or of any charge against him. He alleges that he was told that he had been arrested in connection with an investigation and that he could learn the reasons for his arrest when he was questioned by the police, six days later.

The applicant also complains under Article 5 para. 3 (Art. 5-3) of the Convention that he was not brought promptly before a judge in that he was not brought before a judge until nine days after his arrest.

However, concerning the above complaints, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions, as Article 26 (Art. 26) of the Convention provides that the Commission may only deal with the matter within a period of six months from the date on which the final decision was taken.

When an act of a public authority is not open to any effective remedy, the six-month period runs from the date on which the act took place. In this context the Commission refers to its established case-law (No. 8007/77, Dec. 10.7.78, D.R. 13, p. 85, at p. 153).

In the present case the Commission observes that the applicant was arrested pursuant to the Law on the Procedures of State Security Courts and that no domestic remedy was available in order to challenge the lawfulness and the length of his police custody. The situation complained of ended on 30 April 1992, whereas the application was submitted to the Commission on 13 October 1995, that is more than six months after the end of the situation complained of.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that he was deprived of his right to a fair trial as the Ankara State Security Court based its judgment on the statements which he had made to the police under duress and on the testimonies of three witnesses, S.Ü, A.T., N.K., which should have been ruled inadmissible.

He complains further under Article 6 (Art. 6) of the Convention that he was not permitted the assistance of a lawyer during questioning by the police, the public prosecutor and the judge.

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 applicant's complaints concerning his right to a fair trial and to legal assistance;

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber