CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36212/97
by Gülbahar GÜNDÜZ
against Turkey

The European Court of Human Rights (First Section) sitting on 12 October 1999 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 Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 January 1997 by Gülbahar Gündüz against Turkey and registered on 24 May 1997 under file no. 36212/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1962, is a Turkish citizen resident in Gebze, Istanbul. She is represented before the Court by Mr Hasip Kaplan, a lawyer practising in Istanbul.

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

The applicant claims that on an unknown date state security forces and members of "the Special Forces" burned her house in the Ataçınar village of Tunceli during her absence. On 21 March 1995 she went to Tunceli to see her house and was taken into police custody on the same day. The police requested her, *inter alia*, to sign a statement declaring that her house had been burnt by PKK "guerrillas". She refused to sign. The applicant alleges that the police then tortured her until she agreed to sign the statement in which she admitted to being a member of MLKP-K, an illegal armed organisation.

The applicant maintains that as a result of being tortured, her legs were partially paralysed. She was detained at police headquarters for "15 days" until she was arrested on an unknown date, possibly on 5 April 1995.

While being detained at Malatya Prison, the applicant complained about various health problems which she alleges were the result of the torture to which she was subjected during her previous detention. The prison doctor had her examined at the Malatya State Hospital, which in turn referred her to a hospital in Ankara. The applicant was twice transferred to Ankara Prison which sent her to the Ankara Numune Hospital where she was treated over several days. She was subsequently transferred back to Malatya Prison.

In the meantime, the applicant was charged with membership of an illegal armed organisation before the Malatya State Security Court No. 2. She pleaded not guilty and claimed that she signed the above-mentioned statement under torture. On 5 December 1995 the court acquitted her. The court noted in its judgment that the applicant had pleaded not guilty and had denied the contents of her previous statement since it had been signed under torture. The court further noted that there was no convincing evidence against her. The applicant was released.

COMPLAINTS

The applicant complains that her house was unlawfully burned by the special forces. She invokes Article 1 of Protocol No. 1 to the Convention.

She further complains that the length of her detention in custody was unlawful and therefore in breach of Article 5 § 3 of the Convention.

In addition, the applicant complains that she was subjected to torture and degrading treatment during detention and was a victim of a violation of her right to respect for her personal integrity, in breach of Article 8 of the Convention. She also complains under Article 3 of the Convention that the competent authorities did not open an investigation against the police officers who tortured her.

The applicant alleges in addition that the length of her judge-ordered arrest was unreasonable and refers to Article 6 §§ 1, 2 and 3 of the Convention.

Furthermore, with regard to all her complaints, the applicant complains that she was discriminated against on the grounds of her regional and ethnic background as well as her sect. She relies on Articles 14 and 17 of the Convention.

Finally, without invoking any specific Article of the Convention, the applicant complains that no effective remedy in law can be expected in Turkey having regard to "the place where the incidents complained of occurred".

THE LAW

The Court recalls 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.

It observes in this respect that the applicant never sought a domestic remedy in respect of her complaints under Article 1 of Protocol No. 1 to the Convention and Articles 3 and 8 of the Convention. As to the first complaint, the applicant would appear not to have alleged before any domestic authority that her house had been deliberately destroyed by the special forces. As to the latter complaints, it is to be observed that the Maltaya State Security Court No. 2 was apprised of her allegations that she had been tortured in custody and indeed noted them in its judgment. In the applicant's submission, she had no effective remedy in respect of any of these complaints since the events giving rise to them occurred in south-east Turkey.

The Court recalls that it has found in previous cases against the respondent State arising out of the security situation in south-east Turkey that an applicant who alleges that his property has been destroyed or that he has been ill-treated in custody may be absolved from seeking a local remedy in respect of his complaint if the existence of special circumstances justify this conclusion (see the Akdivar and Others v. Turkey judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV; the Gündem v. Turkey judgment of 25 May 1998 *Reports* 1998-III; the Aksoy v. Turkey judgment of 18 December 1996 *Reports* 1996-VI).

In the Court's opinion it does not have to ascertain whether there existed any special circumstances which dispensed the applicant in the instant case from complying with the rule on exhaustion. Even assuming the correctness of the applicant's submissions that local remedies were ineffective to secure redress for her complaints and, as least as regards her Articles 3 and 8 complaints, that she had done all that could be reasonably expected of her to bring these complaints to the attention of the authorities by making her allegation of torture a live issue in the criminal proceedings before the Malatya State Security Court No. 2, the Court nevertheless considers that the application is time-barred under the second limb of Article 35 § 1 of the Convention.

The Court observes in this connection that in the absence of domestic remedies the six months' period runs from the date of the acts complained of in the application. However, special considerations may apply in exceptional circumstances where an applicant first avails

himself of a domestic remedy and only at a later stage becomes aware, or should become aware, of the circumstances which make that remedy ineffective. In such a situation, the six months' period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances.

Even having regard to this flexibility, the Court nevertheless concludes that in the instant case, and as regards the complaints under Articles 3 and 8, the six months' period must be considered to run as from the date of the applicant's acquittal or shortly thereafter. In its opinion, the applicant has not made out a case that there were any exceptional circumstances which plead in favour of extending the date for calculating the running of the six-month rule. The applicant has not substantiated that she took any steps following the date of her acquittal to complain about the treatment she allegedly suffered and there is nothing in the file to indicate that the authorities investigated the references to her torture allegations contained in the domestic court's judgment. Furthermore, and as stated above, the applicant does not appear to have raised at any stage before a domestic authority her complaint under Article 1 of Protocol No. 1, or indeed her other complaints under Article 5 § 3 and Article 6 §§ 1-3, the Article 6 complaints being in any event inadmissible *ratione materiae* since she was in fact acquitted of the charges brought against her.

Having regard to the above considerations and for the reasons stated, the Court concludes that the application is inadmissible as a whole in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President