CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45718/99
by İlhan KARAKURT
against Turkey

The European Court of Human Rights (Fourth Section), sitting on 29 January 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mr R. TÜRMEN,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 24 August 1998 and registered on 27 January 1999,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, İlhan Karakurt, is a Turkish national, who was born in 1961 and lives in Turkey. He is represented before the Court by Mr Erdoğan, a lawyer practising in Ankara.

A. The circumstances of the case

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

On 23 May 1995, upon receipt of intelligence reports to the effect that the applicant was a member of an illegal armed organisation, the applicant was arrested by policemen from Antalya Security Department. He was subsequently placed in custody at the Antalya Security Directorate Building, where he was interrogated. During his police interrogation the applicant signed a statement. He claims to have been subjected to pressure and ill-treatment when signing the document.

On 28 May 1995 the applicant was brought before the judge of the Antalya Court. The same day the court decided to place the applicant in detention on remand.

On 27 June 1995 the Public Prosecutor attached to the İzmir State Security Court filed an indictment with the court, accusing the applicant of being a member of an illegal armed organisation. He requested that the applicant be punished under Article 168/2 of the Turkish Criminal Code.

In the proceedings before the İzmir State Security Court the applicant pleaded not guilty and requested his acquittal.

On 18 April 1996 the İzmir State Security Court, composed of two civilian judges and a military judge, convicted the applicant as charged and sentenced him to 12 years and 6 months imprisonment. The court further debarred the applicant from public service indefinitely.

On 13 October 1997 the applicant appealed on points of law against the judgment of the İzmir State Security Court and the way in which it had assessed the evidence. He further criticised the court's legal classification of the offences.

On 2 February 1998 the Court of Cassation upheld the İzmir State Security Court's reasoning and assessment of evidence. The judgment was pronounced in the absence of the applicant and his lawyer and it was not notified to them.

The applicant was informed about the decision of the Court of Cassation on 27 April 1998, after his lawyer requested a copy of the document from the court.

COMPLAINTS

The applicant complains under Article *5* § 3 of the Convention that he was kept in police custody for 5 days without being brought before a judge.

The applicant alleges under Article 14 of the Convention, in conjunction with Article *5* that there is a difference between proceedings in State Security Courts and in ordinary criminal courts as regards the length of permissible police custody, which amounts to unlawful discrimination.

The applicant further maintains under Article 6 of the Convention that he did not have a fair trial as he was deprived of his right to legal assistance during his questioning by the police officers, the Public Prosecutor and the judge who ordered his detention on remand, that he was forced to sign a false statement under duress and that the decision of the Court of Cassation was not notified to him nor to his lawyer. He further complains about the impartiality and the independence of the İzmir State Security Court due to the presence of a military judge on the bench.

The applicant also invokes Article 14 of the Convention in conjunction with Article 6, and submit that the proceedings in the State Security Courts are different from those in ordinary courts, giving rise to discrimination in breach of the Convention.

THE LAW

The applicant complains under Article 6 of the Convention that he did not have a fair trial and that the Izmir State Security Court was not independent and impartial.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints under Article 6 of the Convention and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant's complaints under Article *5* § 3, Article 14 in conjunction with *5* § 3, Article 14 in conjunction with 6 § 1 do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application should be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the fairness of proceedings;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Sir Nicolas BRATZA
President