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. 36091/97
by Ömer Keskin and others
against Turkey

The European Court of Human Rights (First Section) sitting on 7 September 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr B. Zupančič,
Mr T. Pantiru,
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 26 December 1996 by Ömer Keskin And others against Turkey and registered on 14 May 1997 under file no. 36091/97;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicants, whose names appear in the appendix, are Turkish nationals.

They are represented before the Court by Mr Vural Soytekin, a lawyer practising in İstanbul (Turkey).

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

The applicants, accused of being members of the illegal organisation Dev-Yol, (Revolutionary Way), were taken into police custody on various dates between 1980 and 1982.

In 1983, the military public prosecutor instituted criminal proceedings against the applicants in the Erzincan Martial Law Court. It was alleged that the applicants were members of an illegal organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime. The prosecution called for the applicants to be sentenced pursuant to Section 146 of the Turkish Criminal Code.

All the applicants were released pending trial on various dates between 1982 and 1986. Only one of the applicants, Özcan Bölükbaş, was kept in detention on remand until 1988.

On 24 August 1988 the Martial Law Court delivered its judgment and acquitted the applicants of the charges against them.

The public prosecutor challenged the judgment of the first instance court as regards 16 of the applicants. However, he did not appeal against the acquittals of four of the applicants, namely Ayten Atmaca, İzzet Gündüz, Mehmet Özcan, Mahmut Koç, and the decision against them became final in 1988.

Pursuant to the law No. 3953 promulgated on 30 December 1993 the case-file was transferred to a non-military court, the Court of Cassation. On 4 July 1995 the Court of Cassation ordered that the criminal proceedings against the applicants be terminated on the ground that the statutory time-limit under Section 102 of the Turkish Criminal Code had expired.

The applicants' lawyer obtained a copy of this decision in July 1995.

COMPLAINTS

1. The applicants complain under Article 5 of the Convention about the length of their detention on remand.

2. The applicants further complain under Article 6 of the Convention that the criminal proceedings brought against them were not concluded within a reasonable time, as required by the Convention.

THE LAW

1. The applicants complain under Article 5 of the Convention about the length of their detention on remand.

The Court observes that all of the applicants except Özcan Bölükbaş, were released pending trial on various dates between 1982 and 1986. Özcan Bölükbaş was released in 1988.

The Court recalls that according to the Turkish Government's declaration, made on 28 January 1987, pursuant to Article 25 of the Convention, the Commission's competence to examine individual petitions extends only to facts and judgments based on events occurring after that date. The Court notes that, on the assumption that its own competence is governed by this declaration, the above complaint concerns a period prior to 28 January 1987.

Consequently, for the applicants who were released before 1987, this part of the application is outside the competence of the Court *ratione temporis* and must be rejected for being incompatible with the provisions of the Convention, within the meaning of Article 35 of the Convention.

As to Özcan Bölükbaş, who was released in 1988 pending trial, the Court further notes that pursuant to Article 35 of the Convention, "the Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken. In the absence of domestic remedies, the six-month period runs from the act complained of."

The Court observes that in the instant case, the applicant was released from detention on remand in 1988, whereas the application was introduced on 26 December 1996, i.e. more than six months later.

It follows that this part of the applicant's complaint has been introduced out of time and must be rejected under Article 35 of the Convention.

2. The applicants further complain under Article 6 of the Convention that the criminal proceedings brought against them were not concluded within a reasonable time as required by the Convention.

The Court recalls that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the object and the purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment. Where, as in the present case, the domestic law does not provide for service, the Court considers it appropriate to take the date on which the decision was finalised as the starting point, that being when the parties were definitely able to find out its content (See, Eur. Court HR, Papachelas v. Greece, judgment of 25 March 1999).

The Court also 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 (No.14056/88, Dec. 28.05.1991, D.R. 70, p. 208).

In the instant case, the final decision as regards the first 16 applicants was delivered on 4 July 1995 by the Court of Cassation and the lawyer of the applicants obtained a copy of

it in July 1995. Although the decision of the Court of Cassation was not officially served on the applicants, the six-month period starts to run from the date on which the lawyer found out about the content of the final decision.

As regards the four applicants (Ayten Atmaca, İzzet Gündüz, Mehmet Özcan and Mahmut Koç), who were acquitted in 1988, the six-month period starts to run from the date of the first-instance court's judgment, as the public prosecutor did not challenge this judgment against them.

Consequently, as the application was lodged with the Court on 26 December 1996, i.e. more than six months later, this part of the application should be rejected for being introduced out of time.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President

APPENDIX

LIST OF APPLICANTS

1. Ömer KESKİN, who was born in 1964, resides in Fatsa (Ordu).
2. Erol SASA, who was born in 1964, resides in Fatsa (Ordu).
3. Yüksel GENÇ, who was born in 1964, resides in Fatsa (Ordu).
4. Onur Rüştü YÜCEL, who was born in 1959, resides in Fatsa (Ordu).
5. Mehmet ÖZCAN, who was born in 1953, resides in Fatsa (Ordu).
6. Yaşar ALTAY, who was born in 1952, resides in Fatsa (Ordu).
7. Naim SERDAR, who was born in 1938, resides in Fatsa (Ordu).
8. Mehmet UYGUN, who was born in 1961, resides in Fatsa (Ordu).
9. Ahmet UYAR, who was born in 1955, resides in Fatsa (Ordu).
10. Şuayip ENİ, who was born in 1959, resides in Fatsa (Ordu).
11. Hasan SAYIN, who was born in 1956, resides in Fatsa (Ordu).
12. Cavit ATILKAN, who was born in 1948, resides in Fatsa (Ordu).
13. Özcan BÖLÜKBAŞ, who was born in 1963, resides in Fatsa (Ordu).
14. Yaşar YILMAZ, who was born in 1958, resides in Fatsa (Ordu).
15. Hüseyin ŞEN, who was born in 1953, resides in Fatsa (Ordu).
16. Cemal KOÇ, who was born in 1949, resides in Fatsa (Ordu).
17. Ayten SÜZEN ATMACA, who was born in 1961, resides in Fatsa (Ordu).
18. İzzet GÜNDÜZ, who was born in 1951, resides in Fatsa (Ordu).
19. Mahmut ÖZCAN, who was born in 1960, resides in Fatsa (Ordu).
20. Mahmut KOÇ, who was born in 1945, resides in Fatsa (Ordu).