AS TO THE ADMISSIBILITY OF

Application No. 32962/96
by Halil KIZILÖZ
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
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 25 June 1996 by Halil Kizilöz against Turkey and registered on 13 September 1996 under file No. 32962/96;

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, a Turkish citizen born in 1957, resides in Ankara.

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

The applicant, accused of being a member of the organisation Dev-Yol (Revolutionary Way), was taken into police custody in Ankara on 1 December 1980 and was subsequently detained on remand upon decision of the Ankara Court-Martial on 6 February 1981. He was released on 24 April 1985 pending trial.

On 26 February 1982 the military prosecutor filed a bill of indictment in the Court-Martial against altogether 723 defendants including the present applicant.

It was alleged that the applicant was a member of an illegal organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime. In addition it was alleged that the applicant, being an officer in the Ministry of Education, had

made his colleagues aware about Dev-Yol, had organised and trained them, had obtained funds for the organisation, had bought two cars for the organisation, had established various kinds of offices such as an insurance agency, book shops, accounting offices in order to make some money for the organisation, had provided flats for the members of the organisation, had also provided false idendity cars for the members of the organisation and had stolen State authorities' seals. The prosecution called for the applicant to be sentenced pursuant to Article 168 of the Turkish Criminal Code.

On 8 January 1980 the applicant in his statement made to the police confessed his illegal activities related to the organisation.

On 23 March 1981 the applicant was also questioned by the Public Prosecutor in the Ankara Court-Martial. He confirmed his statement made to the police, but he denied vehemently his membership of Dev-Yol. Then, during the court hearings he totally denied his previous statements.

After martial law was lifted, the Ankara Court-Martial took the name of Court-Martial attached to the 4th army corps.

In a judgment of 19 July 1989, the Court-Martial found the applicant guilty of the offences as charged. It held that although the applicant had denied his statement made to the police, his activities had been corroborated by the statements of the other accused. The court further referred to the false idendity cards, stolen seals and the unlicenced weapons together with explosives which had been found in his flat. The court concluded that this evidence confirmed the applicant's illegal activities and sentenced him to thirteen years and four months' imprisonment, debarred him from employment in the civil service and also placed him under judicial guardianship during his detention.

Following the applicant's appeal, the case was referred to the Military Court of Cassation.

Pursuant to a law promulgated on 27 December 1993, the case-file was transferred to the non-military criminal court, Court of Cassation, by Act 3953. On 27 December 1995 the Court of Cassation quashed the first instance court's decision on the ground that the court had failed to apply all the legal provisions relevant to the crime in question. The Court of Cassation ruled that there was no need for retrial of the case. Accordingly, it revised the judgment and finally sentenced the applicant to ten years' imprisonment.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention of the conditions of his detention in police custody.

2. Under Article 5 of the Convention, the applicant alleges violations of:

- para. 2 in that he was not informed promptly of the reasons for his arrest or of any charge against him;

- para. 3 in that his detention on remand was prolonged beyond a reasonable time.

- para. 5 in that he has been deprived of his right to compensation

3. The applicant complains that the criminal proceedings brought against him were not concluded within a "reasonable time" as required by Article 6 para. 1 of the Convention.

4. The applicant also complains that his case was not heard by an independent and impartial tribunal, as required by Article 6 para. 1 of the Convention. He explains that the Court-Martial was composed of five members: two military judges, two civil judges and one army officer with no legal training and fully accountable to the military commander of the state of martial law.

5. He complains under Article 6 para. 2 of the Convention that owing to its excessive length his detention on remand could no longer be considered as a provisional measure, but constituted an anticipatory sentence.

6. The applicant also complains under Article 6 para. 3 of the Convention that he was not informed promptly of the nature and cause of the accusation against him, that he did not have adequate time for the preparation of his defence and that it was impossible for him to examine witnesses against him.

7. He also complains under Article 7 para. 1 of the Convention that his conviction was based on legal principles which had not existed at the time of the commission of the offence.

8. He lastly complains under Articles 10 and 11 of the Convention that the investigations carried out were the direct consequence of conflicting views between the applicant and the Turkish authorities on the current political system.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention about the conditions of his police custody. He alleges that during his interrogation by the police he was subjected to various forms of ill-treatment, without giving any details of the alleged ill-treatment.

Under Article 5 (Art. 5) of the Convention, he also alleges violations of:

- para. 2 in that he was not informed promptly of the reasons for his arrest or of any charge against him;

- para. 3 in that his detention on remand was prolonged beyond a reasonable time.

- para. 5 in that he has been deprived of his right to compensation.

He also complains under Article 6 para. 2 (Art. 6-2) of the Convention that owing to its excessive length his detention on remand could no longer be considered as a provisional measure, but constituted an anticipatory sentence. In this context the Commission notes that his detention on remand ended on 24 April 1985.

The Commission recalls that the declaration made by Turkey on 28 January 1987, pursuant to Article 25 (Art. 25) of the Convention, by which Turkey recognised the Commission's competence to examine individual petitions, extends only to facts and judgments based on events occurring after that date. The Commission notes that the above complaints concern a period which is prior to 28 January 1987.

It follows that the applicant's complaints in this respect must be rejected as falling outside the competence ratione temporis of the Commission and therefore as being incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant complains under Article 7 para. 1 (Art. 7-1) of the Convention that his conviction was based on legal principles which had

not existed at the time of the commission of the offence.

The Commission recalls that under Article 19 (Art. 19) of the Convention its sole task is to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention. It is not competent to examine applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law (No. 19890/92, Dec. 3.5.93, D.R. 74 p. 239).

In this case, the Commission notes that the applicant's complaints concern the national courts' evaluation of the facts and evidence and the interpretation of the domestic law. The courts held that the provisions of the Turkish Criminal Code were applicable to the applicant's offence. The Commission finds no element which would allow it to conclude that the courts established the facts in an arbitrary or unreasonable manner or that they misinterpreted the applicable provisions of the criminal law. Therefore, there is no appearance of the applicant's conviction not being in conformity with Article 7 (Art. 7) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that the criminal proceedings brought against him were not concluded within a "reasonable time" as required by Article 6 para. 1 (Art. 6-1) of the Convention.

The applicant also complains that his case was not heard by an independent and impartial tribunal, as required by Article 6 para. 1 (Art. 6-1) of the Convention. He explains that the Court-Martial was composed of five members: two military judges, two civil judges and one army officer with no legal training and fully accountable to the military commander of the state of martial law.

The applicant also complains under Article 6 para. 3 (Art. 6-3) of the Convention that he was not informed promptly of the nature and cause of the accusation against him, that he did not have adequate time for preparation of his defence and that it was impossible for him to examine witnesses against him.

He lastly complains under Articles 10 and 11 (Art. 10, 11) of the Convention that the investigations carried out were the direct consequence of conflicting views of the applicant and the Turkish authorities on the current political system.

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 examination of the applicant's complaints concerning the length and fairness of the criminal proceedings instituted against him and his complaint concerning the independence and impartiality of the court and his complaint that his conviction unjustifiedly interfered with his freedoms of thought and expression,

unanimously,
DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber