CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42576/98
by Hasan KORKMAZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 17 January 2006 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 30 November 1997,

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 regard to the Court's partial decision of 24 January 2002,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Hasan Korkmaz, is a Turkish national who was born in 1953 and lives in Ankara. He is a retired non-commissioned army officer.

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

On 13 July 1996, based on the statements of two suspects arrested while they were attempting to sell arms to undercover police agents, the applicant was arrested and taken into custody by police officers at the Ankara Security Directorate on suspicion of membership of an organisation involved in arms smuggling.

On 24 July 1996 the Ankara Security Directorate held a press conference. The applicant and twenty-five other detainees were shown to the journalists while standing behind a table on which the arms and ammunition retrieved from the police operation were displayed.

On 25 July 1996 newspapers and television channels reported the press conference. The applicant submitted copies of articles published in three newspapers.

On 25 July 1996 the applicant was brought before the public prosecutor at the Ankara State Security Court (hereafter the "SSC") where he denied the accusations against him. He submitted that his statements given in police custody were taken under duress and torture.

On 26 July 1996 the applicant appeared before a judge at the SSC. The latter ordered his remand in custody.

On 2 August 1996 the prosecutor filed a bill of indictment against the applicant for membership of an organisation involved in arms smuggling. He requested that the applicant be convicted and sentenced under Article 12 §§ 2 and 4 of Law no. 6136, and Articles 31, 33, 40 and 80 of the Criminal Code.

On 2 September 1996 the criminal proceedings against the applicant and four other co-accused commenced.

On 30 September 1996 the SSC held its first hearing. The applicant was represented for the first time by three lawyers.

On 25 November 1996 the SSC convicted the applicant as charged and sentenced him to six years and three months' imprisonment and to a fine of TRL 2,362,500. In its decision, the court relied on the statements of the applicant, the statements of the co-accused Mr M.K and Mr E.A., the testimony of buyers of the guns and ammunition, and the evidence of the guns and ammunition retrieved.

On 30 April 1997 the Court of Cassation held a hearing upon the request of the applicant's representatives.

On 7 May 1997 the Court of Cassation upheld the judgment of the first-instance court in the absence of the applicant and his lawyers. The judgment of the Court of Cassation was deposited with the Registry of the

first-instance court on 10 June 1997. The applicant claims that he only learned of the decision of the Court of Cassation on 1 July 1997 when it was served on him in prison.

On 1 June 1998 the SSC dismissed the applicant's request of 25 May 1998 for a re-opening of the criminal proceedings. The applicant's subsequent requests for re-opening were also dismissed.

Following the applicant's request, the judgment of 7 May 1997 was served on him on 14 February 2000.

COMPLAINTS

In his letter and application form dated 30 March 1998 and 13 May 1998 respectively, the applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that he had been deprived of his right to the assistance of a lawyer during his police custody. He further complained under Article 6 § 2 of the Convention that his right to the presumption of innocence had been violated since, subsequent to his arrest, the police officers had organised a press conference where he had been presented as a criminal to journalists.

THE LAW

The applicant complained that he had been deprived of his right to the assistance of a lawyer during his police custody and that his right to the presumption of innocence had been violated at a police press conference. He relied on Article 6 §§ 1, 2 and 3 (c) of the Convention, which, in relevant parts, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

The Government argued, under Article 35 § 1 of the Convention, that the application should be rejected for non-exhaustion of domestic remedies and for failure to comply with the six month rule. They maintained that the applicant had not raised his complaints before the domestic courts or lodged a separate complaint with the domestic authorities. They further argued that

the applicant should have lodged his complaints with the Court within six months of his release from police custody and the press conference respectively.

The applicant refuted these arguments.

The Court considers it unnecessary to determine whether the applicant has exhausted domestic remedies or whether the running of the six month time-limit should be calculated from the date of the applicant's release from police custody or the press conference, since the application is, in any event, inadmissible as having been introduced outside the time-limit laid down by Article 35 § 1 of the Convention for the reasons set out below.

The Court notes that the "final decision" within the meaning of Article 35 § 1 of the Convention was the judgment of the Court of Cassation on 7 May 1997, dismissing the applicant's appeal against the decision of the Ankara State Security Court. It observes that an application for re-opening of the proceedings does not constitute an effective remedy for the purposes of the Convention, unless it is successful and results in the actual re-opening of the case (see, *mutatis mutandis*, *Çıraklar v. Turkey*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VII, pp. 3070-71, §§ 29-32).

The Court re-affirms its practice, in cases where the domestic law does not provide for the service of a written copy of a final domestic decision, that the six month period in Article 35 § 1 begins to run from the date when the decision was finalised, i.e. when the parties were definitely able to be informed of its contents (see, among many others, *Seher Karataş v. Turkey*, no. 33179/96, § 27, 9 July 2002, and *Karatepe v. Turkey* (dec.), no. 43924/98, 3 April 2003). In the instant case, the judgment of the Court of Cassation was at the disposal of the applicant and his lawyers as of 10 June 1997, when the judgment was sent to the registry of the first-instance court.

Although the applicant's first letter to the Court was dated 30 November 1997, his present complaints were only raised for the first time in his letter of 30 March 1998. The Court reiterates that, when a new complaint is raised for the first time during the proceedings before the Court, the six month period is not interrupted until this complaint is actually lodged (see, *Sarl Aborcas and Borowik v. France* (dec.), no. 59423/00, 10 May 2005, and *Loyen v. France* (dec.), no. 46022/99, 27 April 2000).

In these circumstances, even assuming that the applicant learned of the decision of the Court of Cassation on 1 July 1997, the Court concludes that these complaints have been introduced out of time, and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention. It is appropriate, therefore, to discontinue the application of Article 29 § 3 of the Convention in the present case.

For these reasons, the Court unanimously

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President