CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38228/05
by Rahib MAKSIMOV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 1 February 2007 as a Chamber composed of:

Mr C.L. ROZAKIS, *President,*
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges,*

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 12 October 2005,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Rahib Maksimov, is an Azerbaijani national who was born in 1961. He is represented before the Court by Mr E. Osmanov, a lawyer practising in Baku.

A. The circumstances of the case

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

1. The applicant's original conviction and commutation of death penalty to life imprisonment

The applicant is of Lezgi ethnic origin. He was a member of "Sadval" which was considered by its members as a Lezgi welfare and cultural organisation. The organisation, however, has also been accused of harbouring extreme nationalist and separatist ideas.

In 1994 the applicant was arrested and brought to trial as one of the planners and perpetrators of a bomb attack in the Baku Metro (underground railway system), which was carried out on 19 March 1994. As a result of this attack, 14 people died and 50 people received bodily injuries of various degrees. The applicant was also accused of cultivating narcotic plants in his garden.

On 3 May 1996 the Supreme Court, sitting as a court of first instance for especially serious crimes, found that the applicant, together with the other accused persons, was guilty, *inter alia*, of creating an anti-governmental organised group which planned and carried out a bomb explosion in the Baku Metro which resulted in numerous casualties among the civilian population. The court convicted the applicant under Articles 15, 17, 61, 65 and 227 of the Criminal Code of 1960, which was effective at that time, and sentenced him to the death penalty with confiscation of property. This judgment was final and not subject to appeal under the rules of criminal procedure applicable at that time.

On 10 February 1998 Parliament adopted the Law on Amendments to the Criminal Code, Code of Criminal Procedure and Correctional-Labour Code of the Republic of Azerbaijan in Connection with the Abolition of the Death Penalty in the Republic of Azerbaijan (hereinafter the "Law of 10 February 1998"). The Law of 10 February 1998 amended all the relevant domestic legal provisions, replacing the death penalty with life imprisonment. Pursuant to this law, the penalties of all the convicts sentenced to death, including the applicant, were automatically commuted to life imprisonment.

Upon Azerbaijan's admission to the Council of Europe, the applicant's name was included in the lists of the "alleged political prisoners in Azerbaijan" submitted to the experts of the Secretary General.

2. Cassation proceedings in the Supreme Court

In 2000 a new Code of Criminal Procedure (hereinafter "CCrP") and new Criminal Code of the Republic of Azerbaijan were adopted. Before the new CCrP's entry into force on 1 September 2000, on 14 July 2000 Parliament passed a transitional law allowing the lodging of an appeal under the new CCrP against final first instance judgments delivered in accordance with the old criminal procedure rules (hereinafter the "Transitional Law").

The applicant attempted to use the opportunity provided to him by the Transitional Law and on 4 August 2004 filed a cassation appeal with the

Supreme Court. He drafted this appeal himself, without any legal assistance. In his appeal, he claimed that his conviction on 3 May 1996 had been unfair. He did not receive any reply from the Supreme Court for several months.

In the meantime, his relatives hired a lawyer who prepared a new draft of the cassation appeal on behalf of the applicant and submitted it to the Supreme Court on 26 May 2005.

However, by a letter of 14 June 2005, the Supreme Court informed the lawyer that on 12 April 2005 it had already held a hearing and examined the applicant's original cassation appeal of 4 August 2004.

By a letter of 21 June 2005, the Supreme Court sent the applicant the full copy of the Supreme Court's decision of 12 April 2005. According to this decision, the court found that the applicant's guilt had been duly established during the trial in the first instance court. The court dismissed the applicant's appeal as unsubstantiated.

3. Additional cassation proceedings in the Plenum of the Supreme Court

The applicant filed an additional cassation appeal with the President of the Supreme Court, asking that the case be referred to the Plenum of the Supreme Court. This request was granted.

Before the Plenum of the Supreme Court, the applicant argued, *inter alia*, that his conviction had been unfair and that his death penalty should have been commuted to a fixed-term imprisonment of up to 15 years. He also claimed that his conviction under Article 61 ("Sabotage") of the Criminal Code of 1960 should be "re-characterised" under Article 282 ("Sabotage") of the Criminal Code of 2000, according to which the maximum sentence was 15 years' imprisonment.

On 24 November 2005 the Plenum of the Supreme Court dismissed the applicant's additional cassation appeal in the part concerning the fairness of his conviction and the lawfulness of commutation of the death penalty to life imprisonment. However, the Plenum accepted that, due to changes in the substance of certain crimes under the Criminal Code of 2000, it was necessary to "re-characterise" the applicant's convictions. Accordingly, the Plenum "re-characterised" the applicant's convictions under Articles 15, 17, 61 and 65 of the Criminal Code of 1960 to Articles 29, 32.2, 282.2, 214.2 and 274 of the Criminal Code of 2000, leaving his sentence of life imprisonment intact. In particular, the Plenum held that the applicant's conviction under Article 61 ("Sabotage") of the Criminal Code of 1960 corresponded to Article 214 ("Terrorism") of the Criminal Code of 2000, due to the change in substance of the crime of "sabotage" which no longer contained the element of "aimed at killing or injuring people or otherwise damaging their health". Under the Criminal Code of 2000, this element now constituted part of the substance of the crime of "terrorism".

As of the time of lodging the application with the Court, the applicant was serving his prison sentence in Gobustan Prison.

B. Relevant domestic law

1. Criminal responsibility for torture and inhuman and degrading treatment

In accordance with the Criminal Code, torture of an individual who is under detention or otherwise deprived of his or her liberty is a crime punishable by imprisonment for a term of seven to ten years (Article 113). Infliction of physical or psychological suffering to an individual by way of systematic beating or other violent actions performed by a public official in his official capacity is a crime punishable by imprisonment for a term of five to ten years (Article 133).

In accordance with Article 37 of the Code of Criminal Procedure, criminal proceedings are instituted on the basis of a complaint by the victim of an alleged criminal offence.

2. Civil action against public authorities' unlawful act or omission

The Law on Complaints against Acts and Omissions Infringing Individual Rights and Freedoms, dated 11 June 1999 (hereinafter the "Law"), provides for a judicial avenue for claims against public authorities. In accordance with Article 2 of the Law, any act or omission by a public authority infringing an individual's rights or freedoms may be challenged either (a) directly before a court; or (b) before a higher (supervising) public authority. If the complaint is first filed before a supervising public authority, such authority must inform the complainant in writing, within one month of the receipt of the complaint, of the results of the examination of his or her complaint.

In accordance with Article 5 of the Law, a direct judicial complaint must be filed within one month from the date the complainant became aware of the infringement of his rights or freedoms. However, if the complainant has initially filed a complaint against acts or omissions of the subordinate public authority with a supervising public authority, a judicial complaint challenging the decision of the supervising authority must be filed within one month of receipt of this decision. Provided the complainant had a good reason for the filing of a complaint after expiry of the deadline, the court may still accept it.

According to Article 6 of the Law, the court is entitled to declare the disputed act or omission unlawful, to lift the liability imposed on the complainant or to take other measures to restore the infringed right or freedom, and to determine the liability of the public authority for its unlawful act or omission. The court's finding of an infringement of the

individual rights and freedoms gives rise to a civil claim for damages against the State.

The Civil Code contains similar provisions. In accordance with the Civil Code, disputes between individuals and public authorities concerning individual rights and freedoms may be the subject matter for a civil action (Articles 2 and 5). Unlawful acts or omissions of a public authority or its officials give rise to a civil claim for damages against the State (Article 22). The State's civil liability is the same as that of an ordinary legal person (Article 43).

The Code of Civil Procedure provides for the procedure by which an individual can sue the State for damages in civil proceedings.

3. Criminal Code of 1960

Article 15 concerns criminal responsibility for preparation to commit a crime and attempted crime. Article 17 defines complicity in a crime. Article 65 concerns carrying out organised activities aimed at preparation and perpetration of particularly dangerous crimes against the state, as well as participation in an anti-state organisation (this was a blanket provision applied only in conjunction with Articles 57-64 and not separately). Article 227 concerns the crime of cultivation of prohibited plants containing narcotic substances.

Article 61. Sabotage

"Perpetration of explosions, arson or other actions aimed at killing or injuring people or otherwise damaging their health, destruction of enterprises, buildings, roads, means of communication or other state or public property for the purposes of weakening the ... State, as well as mass poisoning or dissemination of infectious diseases among people and animals carried out with the same purposes –

is punishable by ... deprivation of liberty for a term of eight to fifteen years or death penalty together with confiscation of property."

4. Criminal Code of 2000

Article 29 concerns an attempted crime. Article 32 defines complicity in a crime. Article 274 concerns the crime of state treason.

Article 214. Terrorism

"214.1. Terrorism, that is perpetration of explosion, arson or other actions creating a danger to human life or significant material damage or other grave consequences, if such actions are carried out for the purpose of violating the public security, frightening the population or exerting influence on the state authorities or international organisations to take certain decisions, as well as the threat to carry out the mentioned actions with the same purposes –

is punishable by deprivation of liberty for a term of eight to twelve years together with confiscation of property.

214.2. The same actions:

214.2.1. if carried out by an organised group or a criminal organisation;

214.2.2. if committed repeatedly;

214.2.3. if carried out with the use of weapons or objects used as weapons;

214.2.4. if inadvertently resulting in human death or other grave consequences –

are punishable by deprivation of liberty for a term of ten to fifteen years or life imprisonment together with confiscation of property."

Article 282. Sabotage

"282.1. Perpetration of explosions, arson or other actions aimed at destruction of enterprises, buildings, roads, means of communication or other state or public property for the purposes of weakening the defensive capabilities or economic security of the Republic of Azerbaijan, as well as mass poisoning or dissemination of infectious diseases among people and animals carried out with the same purposes –

is punishable by deprivation of liberty for a term of eight to fifteen years.

282.2. The same actions, if carried out by an organised group –

are punishable by deprivation of liberty for a term of twelve to fifteen years."

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that:

(a) he was subjected to ill-treatment after his arrest in 1994 during the pre-trial detention, as well as in February 2005; and

(b) the current conditions of his detention in the Gobustan Prison amount to ill-treatment.

2. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that the trial by the first instance court resulting in his conviction on 2 May 1996 had been unfair and that the court rejected, without any good reason, the applicant's petitions to interrogate those witnesses who were prepared to testify on his behalf.

3. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that the Supreme Court had not informed him of the date and place of the hearing and examined his cassation appeal in his and his lawyer's absence, but in the presence of a public prosecutor. The hearing in the Plenum of the Supreme Court was also held in his absence. As a result, he was deprived of the opportunity to properly present his arguments and effectively participate in the cassation and additional cassation proceedings.

4. The applicant complained under Article 7 of the Convention that:

(a) the commutation of the death penalty to life imprisonment by way of a parliamentary act, instead of a court decision, was unlawful; and

(b) the substitution of the death penalty with life imprisonment in 1998 had been to his detriment because, at the time he committed the acts for which he was convicted, the heaviest alternative to the death penalty was

the fixed-term imprisonment of up to 15 years. Accordingly, when abolishing the death penalty, his sentence should have been commuted to the fixed-term imprisonment of up to 15 years. However, by introducing a new form of punishment (life imprisonment) and automatically commuting his death penalty to life imprisonment in 1998, the authorities applied the new law retroactively to his detriment.

5. Again relying on Article 7 of the Convention, the applicant complained that, when "re-characterising" his conviction under the Criminal Code of 2000, the Plenum of the Supreme Court wrongfully applied provisions of the new Code which did not have an equivalent in the Criminal Code of 1960 at the time he committed the acts for which he was convicted.

6. The applicant further complained under Articles 13 and 14 of the Convention that the domestic remedies in his case were ineffective and that he was discriminated against due to his membership in "Sadval".

THE LAW

1. (a) The applicant complained under Article 3 of the Convention that he was subjected to ill-treatment during his pre-trial detention in 1994 as well as in Gobustan Prison in February 2005.

As to the applicant's allegation that he had been ill-treated during his detention in 1994, the Court notes that this part of the complaint concerns the events that occurred prior to 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan. It follows that this part of the complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

As to the alleged ill-treatment in February 2005, the applicant submitted that, during a mutiny attempt in Gobustan Prison which took place at that time, a number of prisoners, including the applicant, were ill-treated by state security forces for the purpose of intimidation.

Even assuming that the applicant has exhausted domestic remedies in connection with this part of the complaint, the Court notes that the applicant has not provided any specific details of whether and how he personally was ill-treated during those events. Moreover, he has not submitted any evidence of ill-treatment, such as medical reports of any injuries he might have received. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

1. (b) The applicant complained under Article 3 of the Convention that his current conditions of detention in Gobustan Prison amounted to ill-treatment. Specifically, he alleged that he was kept in a very small cell

where he was not allowed to possess a radio that he was allowed a very limited number of visits by his relatives that he could spend no more than 30 minutes per day outside his cell that the prison meals were of poor quality, etc.

The Court notes that the applicant has not complained to any domestic authority or courts about his conditions of detention. It further notes that the Law on Complaints against Acts and Omissions Infringing Individual Rights and Freedoms provides for a judicial avenue for challenging any act or omission by a public authority infringing an individual's rights or freedoms. Both Article 46 of the Constitution of the Republic of Azerbaijan and Article 3 of the Convention, which is directly applicable in the domestic legal system, prohibit inhuman and degrading treatment. Therefore, relying on these provisions, the applicant could either file a complaint with the Ministry of Justice (as a supervising authority for prisons) or file a lawsuit directly with the domestic courts, complaining about the conditions of his detention. However, the applicant has not attempted to do so. Moreover, he has not shown convincingly that such steps were bound to be ineffective. Mere doubts about the effectiveness of a remedy are not sufficient to dispense with the requirement to make normal use of the available avenues for redress (see e.g. *Kunqurova v. Azerbaijan* (dec.), no. 5117/03, 3 June 2005).

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that the trial by the first-instance court resulting in his conviction on 2 May 1996 had been unfair and that the court rejected his petitions to have additional witnesses interrogated.

The Court notes that the first-instance proceedings took place prior to 15 April 2002, the date of Azerbaijan's ratification of the Convention. Therefore, even though the applicant lodged a cassation appeal against the first-instance judgment after the Convention's entry into force with respect to Azerbaijan, the Court has no competence to examine the alleged unfairness of the first-instance proceedings which gave rise to this cassation appeal (see e.g. *Abbasov v. Azerbaijan* (dec.), no. 24271/05, 24 October 2006).

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

3. The applicant complained under Article 6 of the Convention that he was not summoned to the hearing concerning the examination of his cassation appeal by the Supreme Court. Therefore, he could not participate in the hearing and was not given a chance to properly argue his case before the court. He further complained that the hearing in the Plenum of the Supreme Court was also held in his absence.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

4. (a) The applicant complained under Article 7 of the Convention that the manner in which the commutation of the death penalty to life imprisonment was performed in 1998, i.e., by way of a parliamentary act instead of a judicial decision, was unlawful.

Even assuming that this part of the complaint falls within the ambit of Article 7 of the Convention, the Court considers that it is in any event inadmissible for the following reason. The impugned event, i.e., the commutation of the death penalty by the operative provision of the parliamentary act, took place on 10 February 1998. This act occurred prior to 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan. The Court finds that this was an instantaneous act, insofar as it had an effect of immediate change in the status of the convicts concerned, including the applicant (see *Hummatov v. Azerbaijan* (dec.), nos. 9852/03 and 13413/04, 8 May 2006).

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

4. (b) The applicant complained under Article 7 of the Convention that the Supreme Court applied the Law of 10 February 1998 and the Criminal Code of 2000 retroactively to his detriment, since life imprisonment was a heavier penalty than the fixed-term imprisonment of up to 15 years, which had been the heaviest alternative to the abolished death penalty at the time of his conviction. The applicant contended that, in order to assess whether the application of the Law of 10 February 1998 was to his detriment, it was not proper to simply compare the severity of the death penalty in relation to that of life imprisonment. Rather, the applicant argued that if, instead of being replaced by life imprisonment, the death penalty had been simply abolished, his penalty would have been commuted to the fixed-term imprisonment for up to 15 years. Therefore, because life imprisonment did not exist as a form of punishment prior to 1998, it could not be applied retroactively to the applicant, taking into account the existence of the lighter alternative in the law applicable at the material time.

The applicant also maintained that the Criminal Code of 2000 introduced new rules for early release of prisoners. This allegedly had an even more detrimental effect on his situation, because the Criminal Code of 2000 provided for a possibility of early release to life prisoners only after they had served a minimum of 25 years of their sentence, while under the old criminal law they could become eligible for early release after 15 years.

In connection with this part of the complaint, the Court recalls that Article 7 of the Convention provides that "[no] heavier penalty [shall] be

imposed than the one that was applicable at the time the criminal offence was committed".

At the outset, the Court notes that, although the issue of applicability of the new sentence of life imprisonment in the applicant's case was confirmed by the courts of cassation and additional cassation after the Convention's entry into force with respect to Azerbaijan, the penalty of life imprisonment was imposed on the applicant in February 1998, i.e. before the Convention's entry into force (see section 4 (a) above). However, even assuming that this part of the complaint falls within the Court's competence *ratione temporis*, it is inadmissible for the following reasons.

The Court notes that this complaint is identical in its essence to the complaint raised in the *Hummatov* case (cited above), which was declared inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court finds no reasons to deviate from its decision in that case.

Specifically, the Court once more reiterates that, for the purposes of Article 7 of the Convention as applied to the present complaint, it is only concerned with the question whether the new retroactively applied penalty is heavier than the penalty which was applicable at the time the criminal offence was committed and actually imposed as a punishment for that criminal offence at the time of the applicant's conviction, and not compared to any other alternative penalties which also existed at the time of conviction but were never actually imposed on the applicant by the court which convicted him.

The Court notes that the applicant was never sentenced to a fixed-term imprisonment of any duration. The applicant was actually sentenced to the death penalty on 3 May 1996 under Articles 61 and 65 of the Criminal Code of 1960, effective at that time. It is clear that this death penalty was prescribed by law and applicable to the criminal offence for which the applicant was convicted at the time this criminal offence was committed. This death penalty was commuted to life imprisonment in 1998 and this commutation was subsequently confirmed by the domestic courts during the cassation and additional cassation proceedings. The Court considers, as in the *Hummatov* case (cited above), that life imprisonment is not a heavier sentence than the death penalty. Accordingly, the Court cannot conclude that a heavier penalty was imposed on the applicant than the one that was applicable at the time the criminal offence was committed.

It follows that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

5. The applicant complained under Article 7 of the Convention that, when re-characterising his conviction under the Criminal Code of 2000, the Plenum of the Supreme Court incorrectly applied to him provisions of the Criminal Code of 2000. More specifically, he complained that the Plenum

"re-characterised" the act for which he was convicted under Article 61 of the Criminal Code of 1960 as falling under Article 214 of the Criminal Code of 2000 dealing with the crime of "terrorism". He claimed that, instead, the Plenum should have applied Article 282 of the Criminal Code of 2000 dealing with the crime of "sabotage", because the domestic law did not provide for a crime of "terrorism" at the time of commission of the offence.

The Court recalls that Article 7 § 1 of the Convention is not confined to prohibiting the retroactive application of the criminal law to the disadvantage of an accused person. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment; it follows from this that an offence must be clearly defined in law (see *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p. 22, § 52).

The Court's supervisory function, for the purposes of this Article, consists in making sure that, at the moment when the accused person performed the act which led to his being prosecuted, there was in force a legal provision which made that act punishable and that the punishment imposed does not exceed the limits fixed by that provision (see e.g. *Trojanowski and Rogosz v. Poland* (dec.), no. 32731/96, 30 November 1999)

The Court observes that the applicant was convicted on 3 May 1996 of the act committed on 19 March 1994. This act was found by the convicting court to constitute, *inter alia*, an offence of "sabotage" under Article 61 of the Criminal Code of 1960. The Criminal Code of 1960 was applicable both at the time when the offence was committed and at the time of the conviction. Therefore, it is clear that at the relevant time there was in force a legal provision which made the applicant's act punishable. This fact is undisputed by the applicant.

Accordingly, it only remains to be seen whether the "re-characterisation" of the applicant's offence as falling under Article 214 of the Criminal Code of 2000 led to a situation where the applicant was held guilty on account of an act which did not constitute a criminal offence under national law at the time when it was committed.

In this connection, the Court notes that it is not its task under Article 7 of the Convention to judge whether such "re-characterisation" was at all necessary in the circumstances of the case. However, it was presumably done with the purpose of avoiding confusion which had arisen out of the differences in defining certain crimes in the old and new Criminal Codes such as, for example, crimes classified as "sabotage" for which each Code provided different elements constituting the substance of the crime, as well as different maximum sentences.

The Court notes in this connection that, for the purposes of the present complaint, it is not concerned with the formal classifications or names given to criminal offences under the domestic law. To ensure that the requirements of Article 7 were complied with, it would suffice to determine that the act leading to the conviction constituted, in its substance, a criminal offence under the national law at the relevant time, irrespective of the different names (such as "sabotage" or "terrorism") by which that offence was referred to at various times.

The Court notes that, in accordance with the Supreme Court's judgment of 3 May 1996, the applicant was found guilty of perpetrating, as a member of an organised group, a bomb attack in the Baku Metro aimed at, and leading to, the death of 14 people and physical injuries to 50 people. It was also found that this attack was directed against the security of the state. The finding that this attack created a risk of loss of human life, and actually led to it, was one of the elements resulting in the applicant's conviction under Article 61 of the Criminal Code of 1960.

The Court observes that the substance of the crime of "sabotage" under Article 282 of the Criminal Code of 2000 is notably different from that under Article 61 of the Criminal Code of 1960, in that it lacks the important element of the criminal act being aimed at killing or injuring people or creating a danger of human casualties.

On the other hand, in accordance with Article 214 of the Criminal Code, essentially the same act constitutes the crime of "terrorism" if there is an additional element of "creating a danger to human life". Therefore, it appears that Article 214 of the Criminal Code of 2000 covered essentially the same elements of the crime as those provided for by Article 61 of the Criminal Code of 1960 under which the applicant was found guilty on 3 May 1996. As such, there was no need to afford the applicant a possibility to advance any different defence than the one used at the original trial (see, *a contrario*, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 60, ECHR 1999-II, and *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 55, ECHR 2001-VIII).

Moreover, the maximum punishment imposed by Article 214 of the Criminal Code (life imprisonment with confiscation of property) exceeds neither the limits fixed by Article 61 of the Criminal Code of 1960 (death penalty subsequently commuted to life imprisonment, with confiscation of property), nor the actual penalty imposed on the applicant by the judgment of 3 May 1996.

Therefore, having regard to the circumstances of the present case, the Court cannot conclude that the "re-characterisation" of the applicant's conviction under Article 61 of the Criminal Code of 1960 to Article 214 of the Criminal Code of 2000 led to a situation where the applicant was found guilty of an act which did not constitute a criminal offence at the time when it was committed. Nor can it conclude that such "re-characterisation"

constituted a retroactive application of the new criminal law to the applicant's detriment.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

6. Having regard to the applicant's remaining complaints (cf. complaint no. 6), in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning his absence from the appeal hearings;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President