AS TO THE ADMISSIBILITY OF

Application No. 27530/95
by Hüsamettin ODABAŞ
against Turkey

The European Commission of Human Rights sitting in private on 9 September1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
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 23 February 1995 by Hüsamettin Odabaş against Turkey and registered on 7 June 1995 under file No. 27530/95;

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, who was born in 1953, is a Turkish citizen residing in İzmir. He is represented before the Commission by Mr Ahmet Odabaş, a lawyer practising in İzmir.

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

On 3 April 1992 the applicant was detained by order of the Bayкndкr Magistrate's Court in Criminal Matters, on the ground that he had insulted T.C. in an article published on 1 April 1992 in a local newspaper. The article was about a dispute over a contract of sale between the applicant and T.C.

On 7 April 1992 the Ödemiş Criminal Court rejected the applicant's request for release.

On 13 April 1992 the Bayкndкr Public Prosecutor started criminal proceedings against the applicant.

On 28 April 1992 the applicant was released as the case was still pending in the Bayкndкr Criminal Court.

In his defence before the court the applicant submitted that, in the article of 1 April 1992, he had written only about the facts of his civil litigation dispute with T.C. He also submitted that he had used his constitutional right to freedom of expression.

On 3 June 1992 the Bayкndкr Criminal Court convicted the applicant for defamation.

The applicant appealed. On 22 October 1992 the Court of Cassation quashed the judgment of 3 June 1992 for procedural reasons.

On 30 December 1992 the Bayкndкr Criminal Court applied the decision of the Court of Cassation. The court found that the applicant, who had sold one of his flats to T.C., had failed to hand this flat over to him. It also stated that T.C., who had the deeds to the flat, had moved some of his belongings into this flat, having found the door open, and that the applicant, who was angry with him for this, wrote an insulting article about him in a newspaper. Therefore, the court convicted the applicant of defamation and sentenced him to five months' imprisonment and a fine. It converted the applicant's imprisonment into a further fine.

Both the applicant and the intervener, T.C., appealed against the judgment. On 21 December 1993 the Court of Cassation quashed it on the ground that the Criminal Court had not decided on the amount of the compensation which should be awarded to the intervener.

On 24 March 1994 the Bayкndкr Criminal Court decided to suspend the intervener's right to compensation, at his request.

On 6 January 1995 the Court of Cassation rejected the applicant's appeal. The Court of Cassation explicitly stated in its decision that the Bayкndкr Criminal Court had delivered its judgment after examining all the allegations and defence submissions and considering all the evidence.

COMPLAINTS

1. The applicant complains under Article 5 of the Convention that his detention for 25 days neither had a reasonable purpose nor was necessary.

2. The applicant further complains under Article 6 of the Convention that the way in which his case was investigated and then heard was unfair since the decisions of the court did not set out the reasons on which they were based and that his complaints were not examined by the court.

3. The applicant also alleges under Article 6 of the Convention that the courts did not take any submissions from the person who filed the complaint against him.

THE LAW

1. The applicant complains under Article 5 of the Convention that he was detained without any reasonable purpose and that his detention was not necessary.

The Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 5, as Article 26 of the Convention provides that the Commission "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 months period runs from the act complained of.

The Commission notes that the applicant was detained from 3 to 28 April 1992, the date on which he was released, whereas the application was introduced with the Commission on 23 February 1995, i.e. more than six months after the end of the detention.

It follows that this part of the application must be rejected under Article 27 para. 3 of the Convention.

2. The applicant further complains under Article 6 of the Convention that the way in which his case was investigated and then heard was unfair since the decisions of the court did not set out the reasons on which they were based and that his complaints were not examined by the court.

The Commission accepts that under specific circumstances the absence of reasons in a court decision might raise an issue of procedural fairness, which is guaranteed by Article 6 para. 1 of the Convention. It refers, however, to the case of Hiro Balani v. Spain (cf. Eur. Court HR judgment of 9 December 1994, Series A no. 303, p. 29-30, para. 27), where the Court held that, while Article 6 para. 1 obliges the courts to give reasons for their judgments, it cannot be understood as requiring a detailed answer to every argument. The Commission also notes that a party does not have an absolute right to require reasons to be given for rejecting each of his arguments (No. 10857/84, Dec. 15.7.86, D.R. 48, p. 106).

The Commission also points out that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers on this point to its established case-law (No. 25062/94, Dec. 18.10.1995, D.R. 83-A, p. 77).

The Commission notes that in the present case, the criminal court established in its judgment of 30 December 1992 that the applicant had written an insulting article about T.C. in a newspaper concerning a civil litigation which was still pending at that time before the national courts. The Commission also refers on this point to the Court of Cassation's decision of 6 January 1995, which explicitly held that the criminal court had examined all the allegations and the defence submissions made by the applicant, evaluated all the evidence submitted to it and delivered an impartial judgment.

In these circumstances the Commission finds no sufficient grounds for concluding that the evaluation of evidence and the interpretation of domestic law were arbitrary and that the applicant's complaints disclose an appearance of a violation under Article 6 of the Convention.

It follows that this part of the Convention must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The applicant further alleges under Article 6 of the Convention that the national courts did not take any submissions from the person who had filed the complaint against him.

However, the Commission does not have to decide whether the facts alleged by the applicant show any appearance of a violation of the Convention. Under Article 26 of the Convention it "may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law". Therefore, the complaint brought before the Commission must have been raised, at least in substance, during the proceedings in question (No. 24722/94, Dec. 10.4.1995, D.R. 81, p. 130).

The Commission notes in this respect that the applicant did not raise, before any national court, his complaint that no submissions had been made by the person who had filed the complaint against him nor did he request any court to call him.

It follows that the applicant has not met the "exhaustion of domestic remedies" requirement and this part of the application must be rejected pursuant to Article 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber