AS TO THE ADMISSIBILITY OF

Application No. 31961/96
by Metin SAHiN
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 22 October 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 7 June 1996 by Metin SAHiN against Turkey and registered on 18 June 1996 under file No. 31961/96 ;

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 1959, resides in Izmir. He is represented before the Commission by Mehdi Bekdas, a lawyer practising 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 19 September 1979 and was subsequently detained on remand following a decision of the Ankara Court-Martial on 24 September 1979. He was released on 12 June 1980. The applicant was taken into police custody again on 26 September 1980 and was detained on remand again following a decision of the Ankara Court-Martial on 4 March 1981.

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. It was also alleged that he had campaigned for the organisation and obtained funds and weapons for it, made the university students in O.D.T.U. aware of Dev-Yol and trained and organised the youth in his capacity as an executive member

of the Youth Division of Dev-Yol. In addition it was alleged that he had instigated a number of violent acts, such as killing M.V. and M.G. and opening fire on houses. The Prosecution called for the applicant to be sentenced pursuant to Articles 64, 159, 142, 264 of the Turkish Criminal Code.

The applicant, in his statement made to the police in February 1981, confessed that he had made the university students in O.D.T.U. aware of Dev-Yol, trained and organised the youth in his capacity as an executive member of the Youth Division of Dev-Yol, obtained funds and weapons and campaigned for the organisation. He also stated that he had formerly been charged with being a member of an illegal organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime and had been released pending trial. On 3 March 1981 the applicant was questioned by the Public Prosecutor at the Ankara Court-Martial. In his questioning he confessed that he was the executive member of the Youth Division and had made the university students in O.D.T.U. aware of Dev-Yol, but vehemently denied all the illegal activities of which he was accused.

However, during the court hearing on 4 March 1981 the applicant denied his statements made to the police and alleged that they had been made under duress.

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. The court rejected the applicant's objection that his statement to the police was made under duress. It concluded that the applicant's and his co-activists' statements were corroborated by the evidence which was collected according to the statements in question. The court further held that the applicant had been arrested in a house together with a nurse, while he was receiving medical treatment for his wounds. According to the applicant's co-activists' statements he was wounded during the killing of M.V. and M.G. There was strong evidence of his relationship with the organisation and his illegal activities. The court ruled that the applicant had also participated in killing M.V. and M.G. It sentenced him to life 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 Act No. 3953, promulgated on 27 December 1993, the case-file was transferred to the Court of Cassation, a non-military court. On 27 December 1995 the Court of Cassation upheld the first-instance court's decision.

COMPLAINTS

1. The applicant complains that he did not have a fair trial as the courts based their reasoning on statements which he had made to the police under duress, which is contrary to Article 6 para. 1 of the Convention.

2. The applicant further 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.

3. The applicant lastly complains that his case was not heard by a tribunal established by law within the meaning of Article 6 para. 1 of the Convention. Although martial law was lifted in Ankara on 19 July 1985, the Court-Martial continued to deal with cases pending before it.

THE LAW

1. As far as the applicant complains that, under Article 6 para. 1 (Art. 6-1) of the Convention, the criminal proceedings brought against him were not concluded within a "reasonable time" and that he did not have a fair trial as the courts based their reasoning on statements which he had made to the police under duress, 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.

2. The applicant also complains that his case was not heard by a tribunal established by law within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. In this context, he explains that although martial law was lifted in Ankara on 19 July 1985, the Court-Martial of Ankara continued to deal with cases pending before it.

The Commission observes that the Court-Martial remained competent to deal with this case even after the lifting of martial law, until 27 December 1993, pursuant to a provision in Article 23 of the Martial Law Act (no. 1402) of 13 May 1971, amended on 19 September 1982. This provision was repealed by Act No. 3953 of 27 December 1993, amending Act No. 1402 and the case-file was transferred to the non-military criminal courts.

The Commission further considers that in the present case, the applicant was prosecuted and convicted on the basis of legal provisions empowering a Court-Martial to decide, even in peacetime, cases against civilians suspected of having committed offences designed to undermine the constitutional system.

It follows that the Court-Martial, which tried and convicted the applicants, may be considered to be a tribunal "established by law" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (Mitap and Müftüoglu v. Turkey, Comm. Report 8 December 1994, para. 86, Reports of Judgments and Decisions 1996 - II No. 6).

The Commission considers that in these circumstances the complaint has to be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaints related to the length of the criminal proceedings instituted against him and to his right to a fair trial;

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber