CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

Application no. 74409/01
by İbrahim TEKBUDAK
against Turkey

The European Court of Human Rights (Second Section), sitting on 28 September 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE, *judges*,

and Mr T.L. EARLY, *Deputy Section Registrar*,

Having regard to the above application lodged on 19 July 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr İbrahim Tekbudak, is a Turkish national, who was born in 1972 and resides in İzmir. He is represented before the Court by Mr N. Değirmenci and Mrs B. Değirmenci, lawyers practising in Izmir.

On 1 May 1996 the applicant was injured during a clash between demonstrators and the police during the May-day demonstrations.

The applicant alleges that there was a clash between the security forces and a group of people trying to take part in the demonstrations without having to undergo a search. The applicant was mistaken for a demonstrator and was beaten by the police.

According to the report prepared by the police, a group of 500 persons attacked the policemen with sticks and stones. The applicant and another person were captured when trying to escape. The report stated that the applicant resisted arrest.

On the same day the applicant was taken to a hospital.

On 2 May 1996 the Izmir Magistrates' Court decided that the applicant should be detained on remand.

On 3 May 1996 the applicant was operated on in the Izmir State Hospital for a fracture of his left arm. According to the expert report prepared by the orthopaedic department, the applicant had an oedema, bruises, palpitations and a broken left elbow.

On 3 May 1996 the decision of the court to detain him on remand was read out to the applicant by a judge who went to the hospital.

On 3 May 1996 the applicant was released from hospital.

The applicant objected to the decision of the Izmir Magistrates' Court. In his petition, he stated that he had not taken part in the demonstration and that he had been beaten by policemen.

On 10 May 1996 the Izmir Public Prosecutor filed a bill of indictment against the applicant and the other detainee charging them with having resisted arrest.

On 14 May 1996 the Criminal Court of First Instance ruled that the applicant should be released.

On 26 May 1996 the applicant filed a petition with the public prosecutor against the policemen who were on duty on 1 May. The applicant stated that he had been beaten, that he had had to have stitches inserted in his head in three or four places and that his arm had been broken. He also claimed that the policemen used excessive force and requested that those responsible for his injuries be found and convicted.

On 10 September 1996 the Izmir Forensic Medicine Institute delivered a report following an examination of the applicant's hospital records. The Institute concluded that the applicant's life was not in danger and authorised him to take 25 days' sick leave.

On 25 January 1996 the public prosecutor filed a bill of indictment against the policemen whose signature appeared on the arrest report and requested that they be tried under Articles 245 and 50 of the Criminal Code.

On 1 April 1997 the Izmir Prefect summoned the applicant to give a statement about the events.

On 18 June 1997 the Izmir Criminal Court of First Instance decided that the trial of the policemen should be discontinued in accordance with Article 253 § 4 of the Criminal Procedure Law as the charges related to the performance of their administrative duties. It was therefore necessary to obtain the permission of the Provincial Administrative Board before any action could be taken on the indictment filed by the public prosecutor.

On 31 July 1997 the Provincial Administrative Board decided that the policemen should not be prosecuted for lack of evidence.

On 10 October 1997 the İzmir Criminal Court of First Instance acquitted the applicant of the charges against him for lack of evidence. During the trial, the policemen stated that they did not know whether the applicant and the other detainee had taken part in the clash.

On 27 October 1997 the applicant lodged an objection against the decision of the Provincial Administrative Board with the Supreme Administrative Court.

On 5 November 1999 the Supreme Administrative Court rejected the applicant's objection on account of lack of evidence.

COMPLAINTS

The applicant complains under Article 3 of the Convention that excessive force was used against him when he was being arrested. He also alleges a violation of Article 13 of the Convention on account of the lack of an effective investigation into his complaint and the absence of an independent authority before which his ill-treatment complaint could be brought with any prospect of success.

The applicant further complains under Article 6 of the Convention that the policemen were not tried and convicted.

THE LAW

The Court notes that the applicant failed to submit within the time-limit his reply to the observations submitted by the respondent Government on 26 February 2004. The applicant also failed to respond to further communications from the Registry of the Court, the last of which was a registered letter dated 13 May 2004, received on 27 May 2004. It further notes that the applicant was clearly informed of the possible consequences which might result from his failure to manifest his interest in the proceedings.

Having regard to Article 37 § 1 (a) of the Convention, the Court concludes that the applicant does not intend to pursue the application. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President