AS TO THE ADMISSIBILITY OF

Application No. 31859/96
by ismail Taki USANMAZ
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 9 December 1997, the following members being present:

Mrs G.H. THUNE, President
MM 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 8 March 1996 by Ismail Taki Usanmaz against Turkey and registered on 12 June 1996 under file No. 31859/96;

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, born in 1956, is a Turkish citizen and resident in Ankara. He is represented by Mr Ömer Öneren and Mustafa Balci, lawyers practising in Ankara.

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

On 5 April 1983 the applicant was arrested on account of crimes he had allegedly committed under Articles 169 and 146 para. 3 of the Turkish Penal Code. He was released nine months later.

On 5 December 1985 he was arrested again and detained on remand on account of his being a member of an armed group whose aim was to abolish the constitutional order. He was released in November 1986 as he had been acquitted by the Ankara Martial Law Court.

He was therefore held in detention for 1 year and 8 months.

On 14 April 1994 the applicant obtained the reasoned judgment of the Ankara Martial Law Court and filed an action requesting

compensation for unjustified detention in accordance with Law No. 466.

On 4 November 1994 the Ankara Assize Court granted compensation of 50,000,000 Turkish Liras to the applicant.

The applicant lodged an appeal against the judgment of the court as he considered the compensation insufficient.

On 21 November 1995 the Court of Cassation dismissed the applicant's appeal and upheld the judgment of the Ankara Assize Court.

COMPLAINTS

1. The applicant complains under Article 5 paras. 1, 3 and 5 of the Convention that he was unjustly held in detention and that he was not granted sufficient compensation.

2. He further complains of a violation of Article 3 of the Convention in that the reasoned judgment of the Ankara Martial Law Court which acquitted him was served on him very late and that he was thus compelled to live as an accused for 11 years.

THE LAW

1. The applicant complains under Article 5 paras. 1, 3 and 5 (Art. 5-1, 5-3, 5-5) of the Convention that he was unjustly held in detention and that he was not granted sufficient compensation.

Insofar as the applicant complains under Article 5 paras. 1 and 3 (Art. 5-1, 5-3) of the Convention, the Commission notes that the applicant was detained until November 1986 when he was acquitted by the Ankara Martial Law Court.

However, Turkey has only recognised the competence of the Commission to examine individual applications concerning facts which occurred after 28 January 1987.

As the applicant's complaints relate to events occurring before 28 January 1987, this part of the application is outside the competence of the Commission ratione temporis and must accordingly be rejected as being incompatible with the provisions of the Convention, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. As regards the applicant's complaint under Article 5 para. 5 (Art. 5-5) of the Convention, the Commission recalls that the right to compensation within the meaning of this provision presupposes that a violation of one of the other paragraphs of Article 5 (Art. 5) has been established, either by a domestic authority or by the Convention institutions (see, for example, No. 22761/93, Dec. 14.4.94, D.R. 77 p. 98; No. 24722/94, Dec. 10.4.95, D.R. 81 p. 130).

The Commission notes that, while the applicant was acquitted and even granted compensation for his detention, the Turkish courts did not make any finding of a violation of Article 5 (Art. 5) of the Convention.

Consequently, since in the present case no violation of any of the provisions of Article 5 paras 1 to 4 (Art. 5-1, 5-2, 5-3, 5-4) has been established, the compensation proceedings in 1994/95 do not fall to be considered under Article 5 para. 5 (Art. 5-5) of the Convention.

It follows that this part of the application is outside the competence of the Commission ratione materiae and must accordingly be rejected as being incompatible with the provisions of the Convention,

within the meaning of Article 27 para. 2 (Art. 27-2).

3. The applicant further complains of a violation of Article 3 (Art. 3) of the Convention in that the reasoned judgment of the Ankara Martial Law Court which acquitted him was served on him very late and that he was thus compelled to live as an accused for 11 years.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of the Convention, in particular Articles 3 and 6 para. 1 (Art. 3, 6-1) thereof, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with a matter...within a period of six months from the date on which the final decision was taken".

In the present case, the Commission notes that the reasoned judgment of the Ankara Martial Law Court was served on the applicant on 14 April 1994, whereas the application was introduced with the Commission on 8 March 1996, i.e. more than six months later.

It follows that this part of the application has been introduced out of time and must therefore be rejected under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber