CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 18078/02
by İsrafil VAYİÇ
against Turkey

The European Court of Human Rights (Second Section), sitting on 28 June 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having regard to the above application lodged on 1 April 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr İsrafil Vayic, is a Turkish national who was born in 1963 and lives in Istanbul. He is represented before the Court by Mr E. Kanar and Ms Y. Başara, lawyers practising in Istanbul.

A. The circumstances of the case

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

On 9 September 1996 the applicant was taken into police custody by police officers from the Prevention of Terrorism Department of the Istanbul Security Directorate. On 18 September 1996 the judge at the Istanbul State Security Court ordered the applicant's detention on remand.

On 13 March 1997 the public prosecutor attached to the Istanbul State Security Court, filed a bill of indictment charging the applicant and sixteen others under Article 5 of the Law on the Prevention of Terrorism and Article 168 § 2 of the Criminal Code with membership of an illegal organisation.

During several hearings which took place before the Istanbul State Security Court the applicant's lawyer requested his client's release pending trial. The court dismissed his request considering the nature of the offence and the content of the case file.

On 22 May 2001 the applicant's lawyer filed a petition with the Istanbul State Security Court requesting the applicant's release pending trial, invoking Article 19 § 3 of the Constitution and Article 5 of the Convention. Moreover, he contended that the court was refusing the request for release without substantiating its decision. On 24 May 2001, in view of the arguments put forward by the applicant's lawyer in his written petition and the opinion of the public prosecutor, a different chamber of the Istanbul State Security Court dismissed the applicant's request to be released pending trial.

At the hearing of 19 October 2001, the court decided to release the applicant pending trial considering the length of his detention, the nature of the offence and the content of the case file.

On 31 January 2003 the court convicted the applicant under Article 168 § 2 of the Criminal Code and sentenced him to twelve years and six months' imprisonment.

On 25 May 2004 the Court of Cassation quashed the decision of the first instance court.

In the resumed proceedings, on 10 December 2004 the first instance court ordered the detention on remand of all the accused including the applicant, holding that their addresses were not to be found in the case-file.

The proceedings are still pending.

COMPLAINTS

The applicant complains under Article 5 § 3 of the Convention that he was held in police custody for nine days without being brought before a judge or other officer authorised by law to exercise judicial power.

He also complains under the same Article that his detention on remand which lasted over five years, exceeded the “reasonable time” requirement.

He alleges that the Istanbul State Security Court did not rely on relevant and sufficient grounds in dismissing his requests for release pending trial.

Furthermore, he complains that the length of the criminal proceedings brought against him, which are still pending after eight years, is in breach of the "reasonable time" requirement provided by the Convention. He invokes Article 5 § 3 of the Convention also in this respect.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention that he was held in police custody for nine days without being brought before a judge or other officer authorised by law to exercise judicial power

The Court reiterates that pursuant to Article 35 § 1 of the Convention, the Court 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-month period runs from the date of the act complained of.

The Court observes that the applicant's detention in police custody began on 9 September 1996 and ended on 18 September 1996, when the judge ordered his detention on remand. The applicant introduced his application with the Court on 1 April 2002, i.e. more than six months later.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The applicant complains under Article 5 § 3 of the Convention that the length of his detention on remand was excessive.

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.

3. The applicant also alleges that the criminal proceedings, which are still pending after almost eight years, were not concluded within a reasonable time.

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.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the length of his detention on remand and the length of criminal proceedings;

Declares the remainder of the application inadmissible

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President