CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46284/99
by Ufuk YANIKOĞLU
against Turkey

The European Court of Human Rights (Third Section), sitting on 31 January 2002 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Court of Human Rights on 16 January 1999 and registered on 22 February 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ufuk Yanıkoğlu, is a Turkish national, born in 1971 and living in the Netherlands. He is represented before the Court by Mr Kazım Bayraktar, a lawyer practising in Ankara.

A. The circumstances of the case

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

On 12 November 1991 police officers from the Ankara Security Directorate arrested the applicant at home in Ankara, on suspicion of his involvement in the activities of an illegal organisation, TDKP/GKB *(Turkish Revolutionary Communist Party/ Young Communist Union)*. The applicant was placed in police custody on the same day.

On 19 November 1991 a written statement was taken from the applicant at the police station concerning his involvement in the activities of the above-mentioned organisation.

On 25 November 1991 the Public Prosecutor at the Ankara State Security Court questioned the applicant in relation to his involvement in the TDKP/GKB. The applicant denied the content of his written statement of 19 November 1991 alleging that it was taken under duress. On the same day the applicant was taken to a medical doctor for forensic examination.

On 26 November 1991 the applicant was brought before a single judge of the Ankara State Security Court, who ordered his release pending trial.

On 30 December 1991 the Public Prosecutor at the Ankara State Security Court filed a bill of indictment with the court against the applicant accusing him of membership of an illegal organisation. The charges were brought under Article 7 § 1 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991).

On 13 April 1993 the Ankara State Security Court convicted the applicant on the ground that "sufficient and satisfactory" evidence was collected to disclose that he had committed the alleged offences. It sentenced him to three years' imprisonment and debarred him from employment in civil service for three months. Both the applicant and the Public Prosecutor appealed.

On 8 February 1994 the Court of Cassation quashed the judgment of the first instance court on the ground that the applicant should have been convicted under Article 168 § 2 of the Criminal Code on the ground that the evidence collected disclosed that the applicant was responsible of the

offences under the article in question. It referred the case to the Ankara State Security Court.

On 27 November 1997 the Ankara State Security Court adhered to the decision of the Court of Cassation. It sentenced the applicant, under Article 168 § 2 of the Criminal Code, to twelve years and six months' imprisonment and permanently debarred him from employment in civil service. The applicant appealed.

On 17 September 1998 the Court of Cassation upheld the above judgment.

B. Relevant domestic law

Article 168 of the Criminal Code reads as follows:

> "Any person who, with the intention of committing the offences defined in Articles..., forms an armed gang or organisation or takes leadership...or command of such a gang or organisation or assumes some special responsibility within it shall be sentenced to not less than fifteen year's imprisonment.
>
> The other members of the gang or organisation shall be sentenced to not less than five and not more than fifteen years' imprisonment."

Article 7 § 1 of the Prevention of Terrorism Act (Law no. 3713 of 12 April 1991) provides as follows:

> ".... the leaders forming an organisation, as mentioned under Article 1 of this Act, or members of this organisation co-ordinating and leading its activities will be punished by five to ten years' of imprisonment ... and being within the organisation will be punished by three to five years of imprisonment ..."

COMPLAINTS

The applicant complains under Article 5 § 3 of the Convention about the excessive length of his detention in police custody.

The applicant complains under Article 6 § 1 of the Convention that he was not tried before an independent and an impartial tribunal. According to him, the State Security Court cannot be considered as a « independent and impartial tribunal » due to its bench, composed of a military judge, responsible to his hierarchic senior commanders, and two other civilian judges, appointed by the Supreme Council of Judges and Prosecutors, presided by the Ministry of Justice.

The applicant further alleges under Article 6 § 1 of the Convention that his right to a fair trial was breached since the domestic courts convicted him under Article 168 § 2 of the Criminal Code on the basis of his written

statement he had made to the police under duress, without collecting any additional factual information or evidence during the proceedings.

The applicant finally maintains that the criminal proceedings instituted against him were not concluded within a reasonable time period as required in Article 6 §1.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that his right to a fair hearing was breached on account of being tried and convicted by a State Security Court, which lacked independence and impartiality. He further submitted that his right to a fair hearing was violated and that the criminal proceedings against him were not concluded within a reasonable time.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 of the Rules of the Court, to give notice of these parts of the application to the respondent Government.

2. The applicant submits under Article 5 § 3 of the Convention that he was held in detention in police custody for fourteen days without being brought before a judge.

The Court notes that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 5 of the Convention, as Article 35 § 1 of the Convention provides that 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 instant case the Court observes that the applicant was arrested pursuant to the Law on the Procedures of State Security Courts and that no domestic remedy was available in order to challenge the lawfulness and the length of his pre-trial detention (see, *mutatis mutandis*, the Sakık and Others v. Turkey judgment of 26 November 1997, *Reports of Judgments and Decisions* 1997-VII, § 53). The Court recalls that, according to the established case-law, when there are no domestic remedies to challenge an act or an omission of an authority, the six-month period runs from the date on which the act or the omission took place.

The Court notes that the applicant's detention in police custody ended on 26 November 1991, whereas the application was introduced on 16 January 1999, that is more than six months after the pre-trial detention of which complaint is made.

It follows that this part of the application has been introduced out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Articles 6 § 1of the Convention;

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President