AS TO THE ADMISSIBILITY OF

Application No. 30451/96
by Selçuk YILDIRIM
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 2 July 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 6 December 1995 by Selçuk Yildirim against Turkey and registered on 14 March 1996 under file No. 30451/96;

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 1960, resides in Ankara. He is represented before the Commission by Oya Ataman, 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 6 February 1981 and was subsequently detained on remand following a decision of the Ankara Court-Martial on 26 February 1982. He was released on 27 July 1991.

On 26 February 1982 the military prosecutor filed a bill of indictment in the Court-Martial against altogether 723 defendants including the present applicant.

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. In addition it was alleged

that he had acted on behalf of the organisation and hidden the weapons registered under numbers 9966-22217-783658-535100 together with some explosives which had been used in many violent acts. The prosecution called for the applicant to be sentenced pursuant to Article 146 of the Turkish Criminal Code.

On 27 February 1981 the applicant in his statement made to the police confessed his illegal activities related to the organisation. However, during his questioning by the Public Prosecutor and at the court hearings he denied his statements 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. It continued to deal with this case even after lifting of martial law, until 27 December 1993, pursuant to a provision in Article 23 of the Martial Law Act (no. 1402) of May 1971, amended on 19 September 1982.

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 made to the police was made under duress. It concluded that the applicant's activities had been verified and corroborated by the statements of other accused. The court further referred to the weapons and the explosives which were found following the applicant's confessions and which confirmed the applicant's illegal activities. The court sentenced him to life imprisonment, debarred him from employment in the civil service and also placed him under judicial guardianship during his detention.

The case was automatically referred to the Military Court of Cassation under the provision of Article 305 of the Turkish Code of Criminal Procedure which stipulates that there is an automatic appeal where the sentence passed at first instance exceeds fifteen years' imprisonment.

Pursuant to a law promulgated on 27 December 1993, the case-file was transferred to the non-military courts, Court of Cassation, by Act No. 3953. On 27 December 1995 the Court of Cassation upheld the first instance court's decision.

COMPLAINTS

1. The applicant complains under Article 5 para. 3 of the Convention that his detention on remand was prolonged beyond a reasonable time.

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. He also 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.

4. He complains that his case was not heard by an independent and impartial tribunal, as required by Article 6 para. 1 of the Convention. He explains that the Court-Martial was composed of five members: two military judges, two civil judges and one army officer with no legal training and fully accountable to the military commander of the state of martial law.

5. He further 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, Courts-Martial continued to deal with cases pending before them.

6. He lastly complains under Article 6 para. 2 of the Convention that owing to its excessive length his detention on remand could no longer be considered as a provisional measure, but constituted an anticipatory sentence.

THE LAW

1. The applicant complains that the length of his detention exceeded a reasonable time within the meaning of Article 5 para. 3 (Art. 5-3) of the Convention. He also complains that because of its excessive length it could not be considered as a provisional measure, but constituted an anticipatory sentence, infringing the presumption of innocence under Article 6 para. 2 (Art. 6-2) of the Convention.

The Commission recalls that according to Article 26 (Art. 26) of the Convention, it may only deal with applications introduced within a period of six months after the final decision or, where there are no domestic remedies available, after the end of the situation complained of.

In this respect the Commission observes that the applicant's detention within the meaning of Article 5 para. 1 (c) and 3 (Art. 5-1-c, 5-3) ended on 19 July 1989 when he was convicted in first instance, whereas the application was submitted to the Commission on 6 December 1995, that is more than six months after the end of the situation complained of.

It follows that these complaints have been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant further 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, Courts-Martial continued to deal with cases pending before them.

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 futher considers that in this 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 applicant, 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 Muftuoglu v. Turkey, Comm. Report 8 December 1994, para. 86, to be published in Reports of Judgments and Decisions 1996).

3. The applicant complains that the criminal proceedings brought against him were not concluded within a "reasonable time" as required by Article 6 para. 1 (Art. 6-1) of the Convention.

He also 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 (Art. 6-1) of the Convention.

The applicant further complains that his case was not heard by an independent and impartial tribunal, as required by Article 6 para. 1 (Art. 6-1) of the Convention. He explains that the Court-Martial was composed of five members: two military judges, two civil judges and one army officer with no legal training and fully accountable to the military commander of the state of martial law.

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.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaints concerning the length and fairness of the criminal proceedings instituted against him and his complaint concerning the independence and impartiality of the court,

unanimously,
DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber