

APPLICATION N° 25160/94

Mustafa Recep ERDOĞAN v/TURKEY

DECISION of 7 September 1995 on the admissibility of the application

Article 26 of the Convention *Anyone who complains that they have been unlawfully deprived of their freedom (Turkey) must bring an action against the State for damages (Law No 466) in order to exhaust domestic remedies*

THE FACTS

The applicant, who was born in 1944, is a Turkish national and lives in Strasbourg. He is an economist.

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

In 1986, a warrant was issued for the applicant's arrest. Ankara State Security Court acquitted the applicant in a judgment of 22 May 1991.

On 7 July 1994, while the applicant was on holiday in his native village of Geyikli (Çanakkale, Turkey), he was arrested and taken to Geyikli gendarmerie barracks where he was informed that he had been arrested under a warrant.

On 8 July 1994, the applicant was transferred to Ezine gendarmerie barracks. He was released at 8.30 p.m. on 9 July 1994 on condition that he report to the gendarmerie barracks again on 11 July 1994.

At 2 p.m. on that date the gendarmes informed the applicant that he was no longer wanted by the judicial authorities. At 8 a.m. the following day two gendarmes went to the applicant's house and brought him back to Ezine gendarmerie barracks. The officer commanding the local gendarmerie then informed him that he had been acquitted.

On 15 July 1994 the applicant wrote to Ezine gendarmerie asking for a document certifying that he had been detained and requesting an explanation as to why he had been arrested. He wrote a second letter to Ankara State Security Court seeking clarification in respect of the criminal proceedings brought against him. These requests remained unanswered.

The applicant sent a similar request to the Human Rights Commission of the National Assembly. The President of that Commission replied to the applicant on 25 January 1995, informing him that he had been arrested as a result of an error by Ankara Security Department, which had omitted to send the local gendarmerie the release order of 27 May 1991 issued by the public prosecutor attached to Ankara State Security Court following the judgment of 22 May 1991.

COMPLAINTS

The applicant complains that he was kept in custody for forty-six hours in Geyikli and Ezine gendarmerie barracks in Turkey. He complains that he was not informed of the reasons for his arrest, that he was not brought before a judge and that he had no remedy allowing him to challenge the lawfulness of his detention. He alleges a violation of Article 5 paras. 2, 3 and 4 of the Convention.

The applicant also alleges that there was a violation of Article 6 para. 3 (a) of the Convention in that he was not formally served with the warrant for his arrest.

The applicant complains finally of a violation of Articles 10 and 11 of the Convention. He intimates that he was arrested for anti-Turkish activities in France, which is similar to the charge laid against him in his previous trial.

THE LAW

The applicant complains that he was kept in custody for forty-six hours at Geyikli and Ezine gendarmerie barracks while on holiday in Turkey. He complains in particular that he was not informed of the reasons for his arrest or for the issue of the arrest warrant, that he was not brought promptly before a judge and that he had no legal remedy allowing him to challenge the lawfulness of his detention. Stressing that he had already been prosecuted for anti-Turkish activities abroad, he claims that similar accusations were behind his arrest and that his freedom of expression and association was therefore infringed.

The applicant invokes Article 5 paras 2, 3 and 4 and Articles 6 para 3 (a), 10 and 11 of the Convention

However, the issue before the Commission is not whether the matters alleged by the applicant disclose a violation of these provisions Under Article 26 of the Convention "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law"

The Commission observes that the President of the Human Rights Commission of the Turkish National Assembly informed the applicant in a letter of 25 January 1995 that his arrest was the result of an error by Ankara Security Department

The Commission recalls that, under Turkish law, anyone who complains that they have been unlawfully or unjustifiably deprived of their liberty can sue the authorities as of right for damages pursuant to Law No 466 This Law provides that compensation shall be awarded to persons who have been unlawfully detained and to persons detained pending trial who are subsequently acquitted

In this case, the applicant did not sue the authorities for damages, despite the fact that this remedy was available and accessible to him

The applicant has therefore failed to exhaust the domestic remedies available to him under Turkish law Furthermore, the examination of the case has not disclosed any particular circumstances such as to relieve the applicant, under the generally recognised rules of international law, of the obligation to exhaust domestic remedies

It follows that the application must be rejected, pursuant to Articles 26 and 27 para 3 of the Convention

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE