



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

SECOND SECTION

CASE OF AYSU v. TURKEY

(Application no. 44021/07)

JUDGMENT

STRASBOURG

13 March 2012

FINAL

24/09/2012

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Aysu v. Turkey,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Işıl Karakaş,

Guido Raimondi,

Paulo Pinto de Albuquerque, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 14 February 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44021/07) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Yunus Aysu (“the applicant”), on 20 September 2007.

2. The applicant was represented by Mr M. Özbekli, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. On 7 September 2010 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1975 and is serving a prison sentence in Diyarbakır Prison.

5. On 20 October 2000 the Diyarbakır Security Directorate conducted an operation to arrest the applicant, who was being searched for on suspicion of membership of an armed illegal organisation, namely the Hizbullah. According to the arrest report, the applicant resisted and opened fire, killing a police officer. The other officers used force to neutralise and arrest the applicant.

6. The applicant was then taken to the Diyarbakır State Hospital for a medical examination. The doctors ordered an x-ray of his arms and shoulders. According to the medical report, the applicant had no fractures, but had a 2 cm cut on the back of his head. It was further noted that the applicant had bruises on his forehead, neck, near his left ear and on his right arm, bruises and scratches on both of his hands and fingers, bruises on both elbows and scratches on his chest and knees.

7. Subsequently, the applicant was taken to the Diyarbakır Security Directorate for questioning. According to the applicant, during his detention in police custody he was subjected to ill-treatment. He was allegedly stripped naked and his testicles were squeezed. He was also hosed with water, beaten with the butt of a gun, subjected to electric shocks and hung by his arms. The applicant further stated that police officers had extinguished cigarettes on his hands.

8 On 28 October 2000 the applicant was taken to a hospital and diagnosed as suffering from a soft tissue infection.

9. Subsequently, on 30 October 2000 the applicant was further examined at a health clinic. It was reported that the applicant had a hyperaemia measuring 2 x 2 cm on his back, scabs on his knees, wounds on both shoulders, and a 1 x 2 cm stitched wound on his head.

10. On the same day, the applicant was heard by the public prosecutor and the investigating judge respectively. Before the investigating judge he complained that he had been beaten during his time in police custody. He also denied the contents of his police statement. Upon the order of the investigating judge, the applicant was placed in detention pending trial.

11. On 9 November 2000 the public prosecutor at the Diyarbakır State Security Court filed an indictment against the applicant. Invoking Article 146 of the former Criminal Code, he accused the applicant of membership of an armed illegal organisation and of involvement in activities which undermined the constitutional order of the State.

12. On 30 November 2000, at the first hearing before the Diyarbakır State Security Court, the applicant, represented by a lawyer, stated that he had been subjected to ill-treatment during his time in police custody. He alleged, in particular, that the police officers had extinguished cigarettes on his right hand. The judges noted in the minutes that the applicant had five purple bruises on his right hand. At the end of the hearing, the court decided that the Diyarbakır Public Prosecutor's Office should be informed of the applicant's allegations of ill-treatment. The court further stated that if the applicant's lawyer wished to lodge a separate complaint with the public prosecutor, a certified copy of the minutes should be annexed to that application.

13. At the subsequent hearings, the court refused to release the applicant on account of the nature of the alleged offence and the state of the evidence. In his defence submissions, the applicant repeatedly stated that he had been ill-treated during his police custody.

14. By Law no. 5190, in June 2004 State Security Courts were abolished. Subsequently, the Diyarbakır Assize Court acquired jurisdiction over the case.

15. On 28 February 2008 the Diyarbakır Assize Court pronounced its judgment. It convicted the applicant as charged and sentenced him to life imprisonment.

16. The applicant appealed. On 27 May 2010 the Court of Cassation upheld the first-instance court's judgment.

17. In the meantime, on 7 June 2007, the applicant filed a petition with the Diyarbakır Public Prosecutor and stated that he had been subjected to ill-treatment during his detention in police custody. He complained that the domestic authorities had not taken any action to investigate his allegations.

18. On 13 September 2007 the Diyarbakır Public Prosecutor took a statement from the applicant. The applicant explained that during his police custody he had been subjected to torture and forced to admit to the accusations against him. He requested that the prosecutor investigate the matter.

19. On 30 December 2008 the Public Prosecutor requested the Forensic Medicine Institute to prepare a report regarding the applicant's allegations.

20. On 6 February 2009 the Forensic Medicine Institute experts examined the applicant. During his examination, the applicant stated that he had been hosed with pressurised water, hung by his arms and subjected to electric shocks. He also maintained that his testicles had been squeezed and cigarettes had been extinguished on his hand. The experts further examined the medical reports dated 20, 28 and 30 October 2000 respectively. They were also provided with the arrest report dated 20 October 2000, which indicated that the applicant had resisted the officers during his arrest.

21. On 6 March 2009 the Forensic Medicine Institute reported that the injuries on the applicant's body, as indicated in the three medical reports, could have been sustained as a result of a fall, in the course of resisting the officers during his arrest, or resulted from a blow with a blunt object. As a result, the experts concluded that it was not possible to determine how these injuries had been sustained. Regarding the bruises observed by the judges during the hearing of 30 November 2000, the experts stated that it was not possible to give a medical opinion on the matter, as these signs had not been noted in any medical report.

22. In the course of his investigation, the Public Prosecutor further took statements from the accused police officers who had been involved in the applicant's police questioning. They all denied that the applicant had been subjected to ill-treatment. According to them, the applicant was making false allegations for fear of reprimand from Hizbullah members for giving evidence about the activities of the illegal organisation.

23. On 7 April 2009 the Diyarbakır Public Prosecutor, finding the applicant's allegations unsubstantiated, issued a decision not to prosecute.

He concluded that the signs observed on the applicant's body had been caused when he resisted the police officers during his arrest.

24. Subsequently, on 26 June 2009 the applicant's appeal was dismissed by the Siverek Assize Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant alleged that he had been ill-treated while in police custody at the Diyarbakır Security Headquarters. He further complained that his complaint had not been examined effectively. In this connection, the applicant relied on Articles 3 and 13 of the Convention.

26. The Government disputed the allegations.

27. The Court considers that these complaints should be examined from the standpoint of Article 3 alone, which reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

1. Admissibility

28. The Government asked the Court to dismiss this part of the application for non-compliance with the six-month time-limit. In this connection, they drew the Court's attention to the lengthy period of time that had elapsed between the date on which the applicant's police custody had ended, namely, on 30 October 2000, and the date on which the applicant had filed a complaint with the public prosecutor, namely, on 7 June 2007.

29. The Court takes note of the fact that the applicant waited for more than seven years before lodging a separate complaint with the public prosecutor regarding his allegations of ill-treatment. Nevertheless, following his complaint, an investigation was initiated by the Diyarbakır Public Prosecutor and the merits of his case were examined both by the prosecutor's office and by the Siverek Assize Court. Consequently, the final decision regarding the applicant's allegations of ill-treatment was delivered by the Siverek Assize Court on 26 June 2009. As the application was lodged on 20 September 2007, the Government's objection regarding the six-month time-limit cannot be upheld.

30. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The substantive aspect of Article 3

31. The Court recalls that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Talat Tepe v. Turkey*, no. 31247/96, § 48, 21 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control, strong presumptions of fact will arise in respect of injuries occurring during such control (see, *mutatis mutandis*, *Maslova and Nalbandov v. Russia*, no. 839/02, § 99, 24 January 2008).

32. The Court emphasises that, in respect of a person who is placed under the control of the authorities, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336). Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch*, cited above, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In particular, when injuries have been sustained by a person who was in the custody of the police, it is up to the respondent Government to furnish convincing or credible arguments which would provide a basis to explain or justify the degree of force used by its agents (see, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, § 76, ECHR 2000-XII).

33. In the instant case, the Court firstly notes that it is undisputed that the applicant resisted police officers during his arrest and opened fire, killing a police officer. In this connection, the Court observes that the injuries noted in the medical report dated 20 October 2000 (see paragraph 6) appear to be consistent with the physical confrontation that had occurred between the applicant and the police officers during arrest. It is also indicated in the Forensic Medicine Institute’s report dated 6 March 2009 that the injuries noted on the applicant’s body in the reports dated 20 and 30 October 2000 respectively could have been sustained in resisting the police officers (see paragraph 21 above). Furthermore, there is no allegation or any indication in the case file that the police officers used excessive force, when, in the course of their duties, they were confronted with the resistance of the applicant.

34. The Court further notes that the applicant complained that during his interrogation in police custody, he had been subjected to ill-treatment. In this respect, he alleged that he had been hosed with pressurised water, hung

by his arms and subjected to electric shocks. He also maintained that his testicles had been squeezed and cigarettes had been extinguished on his hand. Nonetheless, several elements cast doubt on the veracity of his claims. In this connection, the Court finds it striking that his statements before the domestic authorities were not consistent with each other. While in his statement to the investigating judge, the applicant maintained that he had been beaten, during the first hearing held on 30 November 2000 he stated that cigarettes had been extinguished on his hand. Subsequently, in his petition to the Public Prosecutor he alleged that he had been ill-treated, without giving any details. Finally, when he was examined by the forensic medicine experts, he submitted that he had been hosed with pressurised water, hung by his arms and subjected to electro-shocks. He also maintained that his testicles had been squeezed and cigarettes had been extinguished on his hand (see paragraphs 10, 12, 17 and 20).

35. Moreover, the Court notes that any ill-treatment, as described by the applicant, would have left clear marks on his body. However, apart from the bruises observed by the judges (see paragraph 12 above), none of the medical reports included in the case file supports the applicant's allegations. It also observes that the applicant did not contest the content of these medical reports. There is also no indication in the case file that he requested or was refused permission to see another doctor. Consequently, there is no decisive evidence in the case file which could call into question the findings in the reports dated 20 and 30 October 2000 or add probative weight to the applicant's allegations.

36. The Court also has regard to the fact that the applicant allowed a considerable period of time, namely seven years, to elapse before he actually made a formal complaint with the public prosecutor.

37. In these circumstances, the Court cannot consider it established beyond reasonable doubt that the applicant was subjected to treatment contrary to Article 3 of the Convention.

38. It follows that there has been no violation of Article 3 of the Convention under its substantial limb.

(b) The procedural aspect of Article 3

39. The Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see, in particular, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-102, *Reports of Judgments and Decisions* 1998-VIII).

40. In the present case, the Court has not found it proved, on account of lack of evidence, that the applicant was ill-treated, as alleged. Nevertheless, as it has held in previous cases, that does not preclude this complaint in relation to Article 3 from being "arguable" for the purposes of the positive obligation to investigate (see, *Böke and Kandemir v. Turkey*, nos. 71912/01, 26968/02 and 36397/03, § 54, 10 March 2009). In reaching this conclusion,

the Court has had particular regard to the fact that in the first hearing which was held before the Diyarbakır State Security Court on 30 November 2000, the judges observed that the applicant had five purple bruises on his right hand and decided that the Diyarbakır Public Prosecutor's Office should be informed of the applicant's allegations of ill-treatment. Furthermore, prior to that date, namely on 30 October 2000, the applicant had also stated before the public prosecutor and the investigating judge that he had been ill-treated in custody. An investigation was therefore required.

41. The Court notes that a public prosecutor who is informed by any means whatsoever of a situation that gives rise to the suspicion that an offence has been committed is obliged, under Article 153 of the Code of Criminal Procedure in force at the material time, to investigate the facts by conducting the inquiries necessary to identify the perpetrators. However, according to the information in the case-file, no action whatsoever was taken by the public prosecutor on the allegations of ill-treatment that were brought to his attention. Moreover, while in his defence submissions before the trial court, the applicant stated that he had been ill-treated, the court did not take any action in response to these allegations. In this connection, the Court observes that it was only after 7 June 2007, the date on which the applicant filed a petition with the Diyarbakır Public Prosecutor, that an investigation was finally initiated into the applicant's ill-treatment allegations. In the course of the investigation, the Diyarbakır Public Prosecutor requested the Forensic Medicine Institute to prepare a medical report. That report was prepared on 6 March 2009, namely eight years and four months after the applicant's arrest, and it was concluded that it had not been possible to determine how the injuries on the applicant's body had been sustained. In the light of the foregoing, the Court considers that the applicant's allegation of ill-treatment was not investigated diligently and cannot therefore be considered as effective.

42. Having regard to all of these facts, the Court concludes that the authorities failed to conduct an effective investigation into the applicant's allegations of ill-treatment. There has therefore been a violation of the procedural aspect of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

A. Regarding the applicant's police custody

43. In his letter dated 26 April 2010, the applicant complained about the length of his police custody and invoked Article 5 §§ 3, 4 and 5 of the Convention.

44. The Court observes that the applicant's police custody ended on 30 October 2000 when the investigating judge ordered his pre-trial detention. As a result, this part of the application should be rejected for non-

compliance with the six-month time-limit pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Regarding the applicant's detention prior to conviction

45. Relying on Article 5 § 3 of the Convention, the applicant complained about the length of his detention pending the outcome of the proceedings against him.

46. The Government maintained that in view of the seriousness of the charges against the applicant and the evidence in the case file, the domestic court had had to extend his detention pending the outcome of the trial.

47. The Court considers in the first place that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

48. The Court observes that the applicant's detention began on 20 October 2000 with his arrest and ended on 28 February 2008 with the judgment of the Diyarbakır Assize Court. The period to be taken into consideration in the instant case is therefore seven years and four months. During this time, the domestic courts constantly extended the applicant's detention using identical, stereotyped terms, such as "having regard to the nature of the offence and the state of the evidence".

49. The Court has frequently found violations of Article 5 § 3 of the Convention in cases raising similar issues to those in the present application (see, for example, *Atıcı v. Turkey*, no. 19735/02, 10 May 2007; *Solmaz v. Turkey*, no. 27561/02, ECHR 2007-II (extracts); *Dereci v. Turkey*, no. 77845/01, 24 May 2005; and *Tacıroğlu v. Turkey*, no. 25324/02, 2 February 2006). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In the light of the foregoing, the Court finds that the length of the applicant's detention contravened Article 5 § 3 of the Convention. There has accordingly been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

50. The applicant complained under Article 6 § 1 of the Convention that the criminal proceedings against him had not been concluded within a reasonable time.

51. The Government contested that allegation.

52. The Court considers in the first place that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

53. The Court further notes that the proceedings in question commenced on 20 October 2000 when the applicant was taken into police custody and ended on 27 May 2010 with the decision of the Court of Cassation. They thus lasted for nine years and seven months before two levels of jurisdiction.

54. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

55. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see *Pélissier and Sassi*, cited above). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court therefore considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

56. There has accordingly been a breach of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. The applicant claimed a total of 60,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. He did not submit a specific claim for costs and expenses.

58. The Government contested the claims.

59. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. However, in respect of non-pecuniary damage, ruling on an equitable basis, it awards the applicant EUR 19,500.

60. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint regarding the length of the applicant’s police custody inadmissible;
2. *Declares* the complaint regarding the applicant’s ill-treatment admissible by a majority, and the remainder of the application admissible unanimously;

3. *Holds* unanimously that there has been no substantive violation of Article 3 of the Convention;
4. *Holds* by 5 votes to 2 that there has been a procedural violation of Article 3 of the Convention;
5. *Holds* unanimously that there has been a violation of Article 5 § 3 of the Convention in respect of the length of the applicant's detention;
6. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
7. *Holds* by 5 votes to 2
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 19,500 (nineteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Turkish liras at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judge Jočienė and Judge Sajó is annexed to this judgment.

F.T.
F.E.P.

JOINT PARTLY DISSENTING OPINION OF JUDGES JOČIENĖ AND SAJÓ

We voted with the majority in this case in finding a violation of Article 5 § 3 of the Convention in respect of the length of the applicant's detention and a violation of Article 6 § 1.

However, we do not share the majority's view that the complaint under Article 3 of the Convention is admissible and that there has been a procedural violation of that Article. In our opinion, the applicant's Article 3 complaints should have been dismissed for non-compliance with the six-month time-limit as indicated in Article 35 § 1 of the Convention.

The applicant alleged that he had been ill-treated while in police custody at the Diyarbakır Security Headquarters and that his complaint had not been examined effectively. In this connection, he relied on Articles 3 and 13 of the Convention.

As indicated in paragraph 28 of the judgment, the Government asked the Court to dismiss this part of the application for non-compliance with the six-month time-limit, drawing the Court's attention to the lengthy period of time that had elapsed between the date on which the applicant's time in police custody had ended, namely on 30 October 2000, and the date on which he had lodged a complaint with the public prosecutor, namely on 7 June 2007.

We would point out that the purpose of the six-month rule is to promote legal stability (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 50, Series A no. 12) and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see, among other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). Furthermore, it ought to protect the authorities and other persons concerned from being in a state of uncertainty for a prolonged period of time (see *Bulut and Yavuz v. Turkey*, no. 73065/01, 28 May 2002; *Içöz v. Turkey* (dec.), no. 54919/00, 9 January 2003; and *Kenar v. Turkey* (dec.), no. 67215/01, 1 December 2005).

According to the established case-law, if no remedies are available or if they are judged to be ineffective, the six-month time-limit, in principle, runs from the date of the act complained of (see *Hazar and Others v. Turkey*, (dec.), nos. 62566/00 and others, 10 January 2002) or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which

make that remedy ineffective. In such a situation, the six-month period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see *Bayram and Yildirim v. Turkey* (dec.), no. 38587/97, ECHR 2002-III).

We observe that in the present case, the alleged ill-treatment of the applicant took place in October 2000, while he was in police custody. It is clear from the case file that the applicant brought his complaint to the attention of the domestic authorities during his trial before the Diyarbakır State Security Court. We also take into account the fact that during the first hearing held on 30 November 2000, the judges of the Diyarbakır State Security Court observed certain bruises on the applicant's right hand. The trial court further decided that the Public Prosecutor's Office should be informed of the applicant's allegations of ill-treatment. Furthermore, the applicant's lawyer, who was present at the hearing, was advised to attach a certified copy of the minutes of the hearing to his application should he wish to lodge a separate complaint with the public prosecutor.

We would point out in this connection that a public prosecutor who is informed by any means possible of a situation that gives rise to the suspicion that an offence has been committed is obliged, under Article 153 of the Code of Criminal Procedure as in force at the material time, to investigate the facts by conducting the necessary inquiries to identify the perpetrators. However, according to the information in the case file, no action whatsoever was taken by the public prosecutor on the allegations of ill-treatment that were brought to his attention. Moreover, although in his defence submissions before the trial court, the applicant stated that he had been ill-treated, the court did not take any action in response to these allegations.

We also note that the applicant has not provided any information as to why he did not display due diligence in response to the outcome of the investigation into his ill-treatment allegations but lodged a complaint with the public prosecutor only on 7 June 2007, seven years after the events complained of. We consider that the applicant, who was represented by a lawyer during the domestic court proceedings, must already have become gradually aware of the alleged ineffectiveness of the investigation into his allegations by that time, more than seven years after the alleged events. Indeed, this is supported by the fact that in his application to the Court, lodged on 20 September 2007, the applicant actually complained under Article 13 of the Convention of the lack of an effective investigation into his alleged ill-treatment while in police custody. Although the prosecutor had recently commenced an investigation at that stage and had taken a statement from the applicant on 13 September 2007, we do not consider that this investigation, which ended on 26 June 2009 with the decision of the Siverek Assize Court, interrupted or reopened the running of the six-month period in the circumstances of the present case. We are of the opinion that the seven-

year period that had elapsed since the acts complained of clearly marked the temporal limits of the Court's supervision, which should no longer have been possible in the circumstances of the case in 2007.

Therefore, in our view, this part of the application was lodged more than six months after the applicant became aware or should have become aware that there was no effective remedy at domestic level as regards his Article 3 complaints. It should therefore have been rejected under Article 35 §§ 1 and 4 of the Convention.

Finally, as regards non-pecuniary damage under Article 41 of the Convention, we are of the opinion that, in the circumstances of the case, the applicant should have been awarded a smaller amount because his Article 3 complaints did not comply with the six-month rule.