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. 66354/01
by Abdullah ALTUN
against Turkey

The European Court of Human Rights (Third Section), sitting on 24 March 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Ms R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 25 July 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Abdullah Altun, who was born in 1972, is a Turkish national. The applicant was serving his prison sentence in the Midyat prison at the time of his application to the Court. He is represented before the Court by Mr M.S. Enez, a lawyer practising in Ankara.

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

He was a student in the Medical Faculty of the Diyarbakır Dicle University at the time of the events giving rise to the present application.

On 23 March 1995 the applicant was notified by an arrest warrant, which he signed, about the basis and the reasons for his arrest. On the same day he was taken into custody by the police officers from the Anti-Terror Branch of the Diyarbakır Security Directorate (*Terörle Mücadele Şubesi*) on suspicion of his involvement in the PKK. He alleges that he was subjected to ill-treatment during his detention in police custody. In particular, he was hung from his arms, given electric shocks to various parts of his body, subjected to pressure hosing and beaten up.

On 5 April 1995 the police officers drafted a report of the re-construction of events, which was signed by the applicant.

On 9 April 1995 the applicant gave a statement to the police, where he confessed that he had been involved in certain activities for the PKK.

On 10 April 1995 he was brought before the judge who ordered his detention on remand. He denied the veracity of the statement he had given to the police while he was in police custody, alleging that it was taken under duress. He also claimed that he had been subjected to ill-treatment while in police custody.

On 13 April 1995 the chief public prosecutor at the Diyarbakır State Security Court filed a bill of indictment with the latter charging the applicant under Article 125 of the Criminal Code with carrying out activities for the purpose of bringing about the secession of part of the national territory.

On 3 June 1999 the Diyarbakır State Security Court composed of two civilian judges and a military judge, convicted the applicant of the charges against him and sentenced him to death under Article 125 of the Criminal Code. Taking into account the applicant's behaviour during the trial, the death penalty was commuted to a life sentence. It is to be noted that the Diyarbakır State Security Court held thirty hearings and heard nineteen witnesses.

On 21 February 2000 the Court of Cassation upheld the judgment of the Diyarbakır Security Court.

On 1 March 2000 the decision of the Court of Cassation was pronounced in the presence of the applicant's lawyer.

On an unspecified date, the Court of Cassation dismissed the applicant's request for rectification of decision.

In a letter dated 15 February 2001 the applicant's representative introduced new complaints to the Court.

COMPLAINTS

The applicant alleges under Article 3 of the Convention that he was subjected to ill-treatment in police custody.

He complains under Article 5 § 1 of the Convention that he was unlawfully deprived of his liberty. He submits under Article 5 § 2 of the Convention for not being promptly informed, in a language which he understands, about the actual reasons for being taken into custody. He maintains under Article 5 § 3 of the Convention that he was kept in police custody for eighteen days without being brought before a judge or other officer authorised by law to exercise judicial power.

The applicant contends under Article 6 § 1 of the Convention that he was denied a fair hearing by an independent and impartial tribunal on account of the presence of the military judge on the bench of the Diyarbakır State Security Court. The applicant further complains under the same heading that the criminal proceedings brought against him were not concluded within a "reasonable time".

He alleges under Article 6 § 2 and Article 7 of the Convention that his statements taken under duress were admitted to the case-file and that the judgment of the Diyarbakır State Security Court was based on these statements.

The applicant maintains under Article 6 § 3 (a) of the Convention that he was not informed promptly, in a language which he understands and in detail, of the nature and the cause of the accusation against him.

He complains under Article 6 § 3 (c) of the Convention that he was denied the assistance of a lawyer during his detention in police custody.

The applicant contends under Article 14 of the Convention that he was discriminated against on the basis of his political opinion and his ethnic origin.

He complains under Articles 1 and 17 of the Convention that the respondent State failed to secure his rights and freedoms set out in the Convention within its jurisdiction and applied restrictions to the Convention rights in violation of the Convention. He submits under Article 13 of the Convention that the national courts did not take his statements and petitions into consideration during the criminal proceedings.

THE LAW

1. The applicant alleges that he was subjected to various forms of ill-treatment during his detention in police custody within the meaning of Article 3 of the Convention. He further submits that the Diyarbakır State Security Court ignored his allegation of ill-treatment.

The Court points out that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *Laçin v. Turkey*, no. 23654/94, Commission decision of 15 May 1995, Decisions and Reports (DR) 81, p. 80).

The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter submitted within a period of six months from the date on which the final decision was taken in domestic law. However, in a case where an applicant avails himself of a domestic remedy and it becomes clear, at a later stage, that this remedy is not effective, the six-month period provided for in Article 35 of the Convention should in principle be calculated from the time when the applicant became aware, or should have become aware of, the ineffectiveness of the remedy (see *Laçin* cited above, p. 81).

The Court notes that in his defence submission to the Diyarbakır State Security Court the applicant contended that he had been subjected to ill-treatment in police custody. After the hearings between 17 April 1995 and 20 May 1999, the Diyarbakır State Security Court took certain procedural decisions in which no mention was made of the allegation of ill-treatment and the applicant did not pursue his allegation in the course of other court hearings. Nor did the State Security Court mention the applicant's allegation in its final judgment.

In the light of above, the Court considers that the failure of the judicial authorities to act must have become gradually apparent up until 3 June 1999 when the Diyarbakır State Security Court rendered its final decision on the matter. The applicant should have therefore been aware of the ineffectiveness of remedies in domestic law by that date. Accordingly, the six-month period provided for in Article 35 of the Convention should be considered to have started running not later than 3 June 1999 (see *İçöz v. Turkey* (dec.), no. 54919/00, 9 January 2003, and *Veznedaroğlu v. Turkey* (dec.), no. 32357/96, 7 September 1999). However, the application was introduced with the Court on 25 July 2000.

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.

2. The applicant contends under Article 6 § 1 of the Convention that he did not receive a fair trial by an independent and impartial tribunal due to the presence of a military judge at the State Security Court. He also complains that the criminal proceedings brought against him were not concluded within a reasonable time as required by Article 6 § 1.

The applicant submits under Articles 6 § 2 and 7 of the Convention that statements taken under duress were admitted to the case-file and that the judgment of Diyarbakır State Security Court was based on these statements.

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 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant complains under Article 5 §§ 1, 2, and 3 of the Convention that none of the guarantees set out in the aforementioned Article were respected by the domestic authorities during his detention.

The Court reiterates that according to the established case-law of the Convention organs, where no domestic remedy is available the six-month period runs from the date of the act alleged to constitute a violation of the Convention; however, where it concerns a continuing situation, the period of six-month runs from the end of the situation concerned.

The Court notes that the applicant was released from police custody on 10 April 1995 whereas the application was introduced with the Court on 25 July 2000, i.e. more than six months later.

It follows that this part of the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

4. The applicant complains under Article 6 § 3 (a) and (c) of the Convention that he was not informed promptly, in a language which he understands and in detail, of the nature and the cause of the accusation against him and that he was denied the assistance of a lawyer during his detention in police custody.

a) As to the applicant's complaint under Article 6 § 3 (a) of the Convention, the Court observes that the applicant was a student at the Medical Faculty of the Diyarbakır Dicle University at the time of the events giving rise to the present application. It is therefore reasonable to assume that the applicant has adequate knowledge of the Turkish language to understand the accusations against him.

The Court further observes that the arrest protocol which bears his signature, the report on re-construction of the events and his statement in the police custody were read out to the applicant by the domestic court on 10 April 1995 and he was asked as to whether he had anything to say. Therefore, the applicant must be deemed to have been aware of the reasons for his arrest.

It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

b) As to the applicant's complaint under Article 6 § 3 (c) of the Convention that he was denied the assistance of a lawyer during his detention in police custody, 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.

5. The applicant complains under Article 14 of the Convention that his detention, conviction and sentence constituted discrimination on the grounds of his political opinion and ethnic origin.

The Court observes that the applicant did not submit any evidence in support of his allegation under Article 14 of the Convention. It is of the opinion that the applicant has failed to substantiate his allegation and to lay the basis of an arguable claim of a breach of Article 14.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

6. The applicant complains under Article 1 and 17 of the Convention that the respondent State failed to secure his rights and freedoms set out in the Convention within its jurisdiction and applied restrictions to the Convention rights in violation of the Convention. He submits under Article 13 of the Convention that the national courts did not take his statements and petitions into consideration during the proceedings.

The Court notes that on 1 March 2000 the judgment of the Court of Cassation was pronounced in the presence of the applicant's lawyer. However, the complaints under Articles 1, 13 and 17 of the Convention were introduced with the Court on 15 February 2001, which is more than six months after the date of the final domestic decision.

It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the independence and impartiality of the Diyarbakır State Security Court, the use by the latter of statements allegedly taken under duress, the absence of legal assistance during the initial stages of the criminal proceedings and the length of the criminal proceedings in question;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President