CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 10309/03
by Alaattin ARAT
against Turkey

The European Court of Human Rights (Second Section), sitting on 8 January 2008 as a Chamber composed of:

Françoise Tulkens, *President,*
András Baka,
Ireneu Cabral Barreto,
Riza Türmen,
Mindia Ugrekhelidze,
Antonella Mularoni,
Danutė Jočienė, *judges,*

and Sally Dollé, *Section Registrar*,

Having regard to the above application lodged on 8 January 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Alaattin Arat, is a Turkish national who was born in 1961 and lives in Diyarbakır. He is represented before the Court by Mr Mesut Beştaş and Ms Meral Beştaş, lawyers practising in Diyarbakır.

The circumstances of the case

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

The applicant is the owner of a grocery shop in Diyarbakır which he runs with his brother. On 15 February 2001, before the applicant opened the shutters of his shop, a number of police officers arrived and started smashing the shutters and windows of the shop with sledgehammers. When the applicant and his brother attempted to stop the police officers they were beaten up, arrested and subsequently placed in police custody.

According to the report of arrest, the police officers had gone to the applicant's shop upon receiving information that the applicant had refused to open his shop as a protest to mark the second anniversary of the arrest of Abdullah Öcalan, the leader of the PKK[1]. When the officers had arrived at the shop, the applicant had sworn at them and had told them that the State could not interfere with his business. The police officers had then used force to subdue the applicant before arresting him.

According to a medical report drawn up at the Diyarbakır branch of the Forensic Medicine Institute the same day, there was a bruise measuring 4cm by 1cm, and a traumatic oedema on the front of the applicant's left arm. There was also another bruise, measuring 15cm by 3cm, on the outside of his left thigh.

On 17 February 2001 the prosecutor at the Diyarbakır State Security Court granted authorisation to the police to detain the applicant for an additional period of two days.

On 18 February 2001, while he was still being detained in police custody, the applicant was questioned. In the verbatim records of the questioning, the applicant was recorded as having stated that he sympathised with the policies of the PKK. On 13 February 2001 he had found a leaflet on the floor outside the shop, which had been prepared and distributed by the PKK, inviting the local businesses not to open their shops on 15 February. Following this invitation, he had intended not to open his shop until 1.30 p.m.

On 19 February 2001 the applicant was examined for a second time at the Diyarbakır branch of the Forensic Medicine Institute. The report prepared at the end of this examination refers to the two above-mentioned injuries, and describes another bruise, measuring 10 square centimetres, on the applicant's left foot.

The same day the applicant was brought before the prosecutor at the Diyarbakır State Security Court and then before the duty judge at the same court. In the statement taken by the prosecutor, the applicant was recorded as having stated that "he had been beaten up by the police but he did not wish to make a complaint". He also retracted the statement he made in police custody and stated that he had merely been late in opening his shop on 15 February because he had guests at his house; he had not been

[1] The Kurdistan Workers' Party, an illegal organisation.

protesting at all. The duty judge ordered the applicant's detention in a prison.

On 21 February 2001 the prosecutor at the Diyarbakır State Security Court filed an indictment, charging the applicant with the offence of aiding and abetting an illegal organisation, contrary to Article 169 of the Criminal Code.

The Diyarbakır State Security Court (hereafter "the trial court"), which consisted of three civilian judges, held its first hearing on 26 April 2001. During the trial the applicant – who was represented by a lawyer – denied having made any protest on 15 February 2001 and maintained that he had been late in opening his shop. He also maintained that the police officers had beaten him up and arrested him. The trial court also heard evidence from a number of prosecution and defence witnesses. When the testimonies of the prosecution witnesses were challenged by the applicant, the trial court questioned the same witnesses again to eliminate a number of inconsistencies.

On 28 June 2001 the trial court released the applicant on bail.

On 28 February 2002 the trial court found the applicant guilty as charged and sentenced him to three years and nine months' imprisonment. The applicant appealed and asked the Court of Cassation to hold a hearing.

In his written observations submitted to the Court of Cassation, the prosecutor asked for the conviction to be quashed as the applicant's guilt had not been proven beyond reasonable doubt.

On 11 November 2002 the Court of Cassation, observing the applicant's lawyer's absence, decided not to hold a hearing and upheld the applicant's conviction.

COMPLAINTS

The applicant alleged that the treatment to which was subjected by the police officers had been in violation of Article 3 of the Convention.

Invoking Article 6 of the Convention, the applicant complained that the trial court had not been independent and impartial and that it had taken sides with the police. The trial court had favoured the testimonies given by the prosecution witnesses but had failed to adequately examine the testimonies of the defence witnesses. Under the same Article, the applicant also complained that the written observations submitted to the Court of Cassation by the prosecutor had not been forwarded to him.

THE LAW

1. Relying on Article 3 of the Convention, the applicant referred to the above mentioned medical reports and complained that he had been beaten up by the police officers who had arrested him.

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 it to the respondent Government.

2. The applicant next complained that the Diyarbakır State Security Court which tried and convicted him was not an independent or impartial tribunal, within the meaning of Article 6 § 1 of the Convention, and that it had taken sides with the police and had also failed to take into account the testimonies of the defence witnesses.

The Court observes that it is not its task to act as a court of appeal or as a court of fourth instance in respect of the decisions of domestic courts. According to its case-law, the latter are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, among many authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 32, and *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, § 34).

The Court notes that the Diyarbakır State Security Court consisted of three civilian judges. The applicant and his lawyer were given adequate opportunities to present their oral and written defence submissions. When they challenged the testimony of the prosecution witnesses and argued that they were contradictory, the trial court questioned those witnesses again to eliminate any inconsistencies. The trial court also heard evidence from the witnesses proposed by the applicant. In the light of the foregoing, it cannot be said that the State Security Court acted in an arbitrary fashion when conducting the trial.

Consequently, the Court considers that this limb of the applicant's complaint under Article 6 § 1 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Under Article 6 § 1 of the Convention, the applicant complained that the observations which the public prosecutor had submitted to the Court of Cassation had not been forwarded to him.

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 it to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the ill-treatment to which he was allegedly subjected and his right to a fair hearing in respect of the non-communication of the public prosecutor's observations;

Declares the remainder of the application inadmissible.

Sally Dollé Registrar	Françoise Tulkens President