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. 31320/02
by Mehmet Reşit ARSLAN
against Turkey

The European Court of Human Rights (Third Section), sitting on 1 June 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President,*
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges,*

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 21 August 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mehmet Reşit Arslan, is a Turkish national who was born in 1966 and was serving a prison sentence in Diyarbakır prison at the time of his application to the Court. He was a student at the Faculty of Medicine in Istanbul at the time of his arrest. He is represented before the Court by Ms S. Gürcan and Mr E. Kanar, lawyers practising in Istanbul.

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

On 2 April 1993 the applicant was taken into custody by police officers attached to the anti-terror branch of the Istanbul Security Directorate in

Istanbul on suspicion of membership in the PKK. He remained in police custody until 19 April 1993. During his police custody he was subjected to ill-treatment. His statements were taken under duress.

On 19 April 1993 he was brought before a judge at the Istanbul State Security Court who ordered his detention on remand. The applicant was then transferred to Sağmalcılar prison.

On 28 April 1993 the applicant filed an objection against the detention order, which was dismissed.

On 29 April 1993 he was examined by a doctor in the Sağmalcılar State Hospital who noted that there was a restraint of the functioning of the right shoulder and elbow.

On 4 May 1993 a doctor from the Eyüp branch of the Forensic Medicine Institute, R. Şendil, drew up a report according to which there were numerous ecchymoses and lesions on the various parts of the applicant's body and there was a restraint of the functioning of the right arm.

In a further report dated 9 July 1993, R. Şendil opined that the injuries rendered the applicant unfit for work for ten days.

On 5 May 1993 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant, along with twenty-seven other persons, charging him with membership of an illegal organisation under Article 168 § 1 of the Criminal Code and Article 5 of Law no. 3713.

On 12 July 1993 the applicant maintained before the Istanbul State Security Court that his statements had been taken under torture while in police custody.

On 22 January 1997 the public prosecutor proposed to alter the charge against the applicant to treason against the integrity of the State, a capital offence under Article 125 of the Criminal Code.

On 20 October 1998 the applicant was diagnosed as suffering from hepatitis-B since 1997. Subsequently, he periodically received treatment while he was detained on remand.

Throughout the proceedings, the applicant requested to be released pending trial. The first-instance court dismissed his requests on all occasions.

On 18 February 2000 the first-instance court requested the applicant to submit his defence submissions on the merits of the case. The applicant's representative maintained that he had not been able to see the applicant due to the regulations concerning admission to the prisons, according to which lawyers and their documents were searched while entering prisons. The lawyer requested to be granted an extension. The court decided to grant an extension. However, it notified the applicant and his representative that their excuse for not submitting the defence submissions was not satisfactory.

On 6 March 2000 the applicant submitted his defence submissions. He maintained, *inter alia*, that he respected Abdullah Öcalan and that he supported the "Democratic Republic Project" initiated by him.

On the same day, the Istanbul State Security Court convicted the applicant under Article 125 of the Criminal Code and sentenced him to death, commuted to life imprisonment. In its judgment, the first-instance court did not list the applicant's statements taken by the police as evidence as it acknowledged that these statements had been taken under duress. It nevertheless convicted the applicant holding that other evidence corresponded to the applicant's statements taken by the police.

The applicant appealed. In his petition to the Court of Cassation the applicant reiterated that he had been subjected to torture while in police custody.

On 21 March 2001 the Court of Cassation upheld the judgment of 6 March 2000 in respect of the applicant.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was subjected to torture while in police custody and the authorities had failed to conduct an investigation into his allegations of ill-treatment.

The applicant contends under Article 5 § 1 of the Convention that he was unlawfully and arbitrarily deprived of his liberty as there was no reasonable suspicion for his arrest. The applicant complains under Article 5 §§ 2 and 3 of the Convention that he was not informed of the reasons for his arrest and of the charge against him and that he was held in police custody for an excessive length of time without being brought before a judge.

The applicant further complains under Article 5 § 3 of the Convention about the excessive length of his detention on remand.

The applicant maintains under Article 6 § 1 of the Convention that the criminal proceedings brought against him were not concluded within a reasonable time. He further complains under the same heading that the reasons given by the first-instance court for the continuation of his detention on remand were not satisfactory.

The applicant submits under Article 6 §§ 1 and 3 (b) and (c) of the Convention that the first-instance court's notification on 18 February 2000 was in violation of the principles of equality of arms.

The applicant complains under Article 6 § 3 (a) of the Convention that he was not informed of the nature and cause of the accusation against him until 19 April 1993, the date on which he was detained on remand.

The applicant contends under Articles 9 and 10 of the Convention that the first-instance court convicted him on the basis of his submissions concerning Abdullah Öcalan.

The applicant finally alleges under Article 2 of Protocol No. 1 that his conviction constituted a deprivation of his right to education.

THE LAW

1. The applicant submits under Article 3 of the Convention that he was subjected to ill-treatment while in police custody and that the authorities failed to investigate his allegations.

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.

2. The applicant complains under Article 5 § 1 of the Convention that there was no reasonable suspicion for his arrest. He further contends under Article 5 §§ 2 and 3 of the Convention that he was not informed of the reasons for his arrest and of the charge against him and that he was held in police custody for an excessive length of time without being brought before a judge.

The Court reiterates that pursuant to Article 35 § 1 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. When the acts of an authority are not open to any effective remedy, the six-month period runs from the date on which the act took place.

The Court observes that the applicant was taken into police custody on 2 April 1993 and that his detention in police custody ended on 19 April 1993, when the judge ordered his detention on remand. The applicant introduced his application with the Court on 21 August 2001, i.e. more than six months later.

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.

3. The applicant complains under Article 5 § 3 of the Convention about the excessive length of his detention on remand. He further complains under Article 6 § 1 of the Convention that the reasons given by the first-instance court for the continuation of his detention on remand were not satisfactory.

The Court considers that the complaint under Article 6 § 1 of the Convention should be examined from the standpoint of Article 5 § 3 of the Convention.

The Court notes that the judge at the Istanbul State Security Court ordered the applicant's detention on remand on 19 April 1993, which continued until the final judgment of the State Security Court of 6 March 2000. Following that date, the applicant was detained "after conviction by a competent court". However, the application was lodged with the Court on 21 August 2001, which is more than six months from the end of the detention period complained of.

It follows that these complaints are introduced out of time and must be rejected for non-compliance with the six-month rule pursuant to Article 35 §§ 1 and 4 of the Convention.

4. The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings brought against him were not concluded within a reasonable time.

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 contends under Article 6 §§ 1 and 3 (b) and (c) of the Convention that the first-instance court's notification on 18 February 2000 was in violation of the principles of equality of arms.

The Court notes that on 18 February 2000 the applicant failed to submit his defence submissions on the merits of the case as he could not communicate with his lawyer prior to this date. However, on the same day the first-instance court granted an extension of almost three weeks to the applicant for the submission of his observations on the merits of the case. The Court therefore finds no element which would allow it to conclude that, in the present case, the fairness of the proceedings was infringed as a result of the first-instance court's notification. Furthermore, the applicant also failed to specify in his application to the Court how the Istanbul State Security Court's statement in question infringed his right to a fair trial.

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.

6. The applicant complains under Article 6 § 3 (a) of the Convention that he was not informed of the nature and cause of the accusation against him until 19 April 1993, the date on which he was detained on remand.

The Court first notes that the applicant alleges to have been questioned about his affiliation to the PKK and ill-treated in police custody. Therefore, he could have realised at that stage that he was suspected of being involved in the PKK. Furthermore, when he was brought before the judge at the Istanbul State Security Court on 19 April 1993 he was notified of the charges against him. Moreover, the bill of indictment of 5 May 1993 lodged against the applicant was sufficiently concrete to enable him to determine the offences with which he was charged. It contained a detailed description of the offences allegedly committed by the applicant. The applicant was able to challenge the content of the bill of indictment during the criminal proceedings brought against him, which commenced on 12 July 1993 and was assisted by a lawyer to this effect. In these circumstances, the Court considers that the applicant received sufficient information about the charges against him.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

7. The applicant complains under Articles 9 and 10 of the Convention that the first-instance court convicted him on the basis of his submissions concerning Abdullah Öcalan.

The Court observes that in its judgment of 6 March 2000 the Istanbul State Security Court relied on the arrest, search and identification reports, the statements of five persons and an expert report while convicting the applicant. It further observes that the first-instance court cited the applicant's statement that he had sympathy and respect for the opinions of Abdullah Öcalan as an element demonstrating that the applicant had been involved in the activities of the PKK and that he did not express any regret for these activities. The Court therefore considers that the conviction of the applicant cannot be viewed as an interference with his rights under Article 9 and 10 of the Convention (see *Kılıç v. Turkey* (dec.), no. 40498/98, 8 July 2003) .

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

8. The applicant alleges under Article 2 of Protocol No. 1 that his conviction constituted a deprivation of his right to education.

The Court considers that the fact that the applicant was prevented during the period corresponding to his lawful detention after conviction by a court from continuing his university education, cannot be construed as a deprivation of the right to education within the meaning of Article 2 of Protocol No. 1 to the Convention (see *Sorabjee v. the United Kingdom*, no. 23938/94, Commission decision of 23 October 1995, and *Durmaz and Others v. Turkey* (dec.), nos. 46506/99, 46569/99, 46570/99 and 46939/99, 4 September 2001).

In the circumstances of the case, the Court considers that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning his ill-treatment while in police custody and the length of criminal proceedings brought against him;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President