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. 38940/02
by Mahmut ASLAN
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 J. HEDIGAN,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Mr E. MYJER, *judges,*

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 13 July 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mahmut Aslan, is a Turkish national who was born in 1974 and was detained in Muş prison at the time of his application to the Court. He is represented before the Court by Mr E. Talay and Mr S. Akbaş, lawyers practising in Diyarbakır.

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

On 19 June 1999 the applicant was arrested by police officers from the anti-terror branch of the Van Security Directorate on suspicion of membership in the PKK.

On the same day, the director of the anti-terror branch sent a letter to the Hospital of the Yüzüncü Yıl University in Van requesting that the applicant be subjected to a medical examination and treatment. He maintained in his letter that the police officers who had arrested the applicant had used force during the arrest as the applicant had disobeyed their order to put his hands up and had attempted to reach his gun. The director further stated that during the body search two pistols were found on the applicant. He also mentioned that the applicant had suffered pain in his left arm.

On the same day, the applicant was taken to the hospital. The doctor who examined him observed that his left arm was broken. A plaster cast was put on his arm as treatment. According to the doctor's notes, there were marks on the applicant's right leg, pelvic region, back and neck. There was also an ecchymose around his left eye.

Between 19 June 1999 and 25 June 1999 the applicant was held in police custody. He was subjected to ill-treatment while in police custody. In his statements taken by the police, he acknowledged his participation in the activities of the PKK.

On 25 June 1999, at the end of the police custody, the applicant was taken before a forensic expert who noted that there were no new marks on the applicant's body other than those mentioned in the report of 19 June 1999.

On the same day, the applicant was taken before the public prosecutor and a single judge at the Van State Security Court, where he reiterated his statements that he had made before the police. The judge ordered the applicant's detention on remand.

On 28 June 1999 the public prosecutor at the Van State Security Court filed a bill of indictment against the applicant and six other persons. The applicant was accused of carrying out activities for the purpose of bringing about the secession of part of the national territory under Article 125 of the Criminal Code.

Before the first-instance court the applicant maintained that although he was a member of the PKK, he had not participated in any of the activities of the organisation. He further contended that his statements had been taken under torture by the police and that his statements before the public prosecutor and the judge of the state security court of 25 June 1999 did not reflect the truth as he had been coerced and threatened by the police officers.

On 14 December 1999 the applicant made an oral complaint against the police officers who had allegedly inflicted ill-treatment upon the applicant before the state security court and requested the court to notify the public

prosecutor's office concerning his complaint. In reply to this request the first-instance court stated:

> "It has been decided that the accused and his representative be authorised to lodge a complaint with the public prosecutor's office or the relevant administrative authority."

On 11 April 2000 the Van State Security Court convicted the applicant under Article 125 of the Criminal Code. The court did not find the applicant's submissions made during the trial convincing and relied on the applicant's statement taken by the police while rendering its judgment. The applicant was sentenced to death, later commuted to life imprisonment.

On 19 December 2000 the Court of Cassation upheld the judgment of the first-instance court.

In the meantime, on 15 September 1999 the applicant was examined by the prison doctor in Muş prison, who noted that there were several scars on various parts of the applicant's body. The doctor opined that there should be a forensic examination in order to determine how these injuries had occurred.

On 7 October 1999 the applicant was referred to the Van State Hospital where the doctors found that he had suffered a trauma to his head. The applicant remained in the hospital until 19 October 1999.

On 6 January 2000 the applicant filed a petition with the Van public prosecutor's office alleging that he had been subjected to torture while he was in police custody. His petition was referred to the Van Administrative Council.

A superintendent from the Van Security Directorate was appointed to conduct an investigation into the applicant's allegations. On 7 April 2000 the superintendent submitted a report to the Van Administrative Council after having completed the investigation.

On 12 April 2000 the Van Administrative Council decided that the police officers from the anti-terror branch of the Van Security Directorate should not be prosecuted. Referring to the report of 7 April 2000, the administrative council held that the applicant had sustained the fracture in his arm during his arrest.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was subjected to ill-treatment while in police custody and that, on the fifth day of his custody, his arm was broken as a result of torture. He further contends under the same head that he was ill-treated in prison.

The applicant maintains under Article 6 of the Convention that the state security court which tried and convicted him was not independent and impartial. He contends under the same heading that he was not allowed to

consult a lawyer during his custody period and that he was not informed of the nature and cause of the accusation against him until the serving of the bill of indictment on him. He further complains under Article 6 that the first-instance court based its judgment on his statements extracted under torture while in police custody. The applicant finally maintains that the decision of the Van Administrative Council of 12 April 2000 was in violation of his right under Article 6.

The applicant complains under Article 13 of the Convention that he did not have an effective remedy for his Convention grievances.

The applicant alleges under Article 14 that the treatment that he suffered was motivated by his ethnic origin.

THE LAW

1. The applicant complains under Article 6 of the Convention that he was not allowed to consult a lawyer during his custody period.

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 3 of the Convention that he was ill-treated while in police custody and as a result of the treatment to which he was subjected, his arm was broken on the fifth day of his custody. The applicant further maintains under the same head that he was subjected to ill-treatment in prison.

a) As to the applicant's allegation of having been subjected to ill-treatment while in police custody, the Court recalls at the outset that, in assessing evidence in a claim of a violation of Article 3 of the Convention, it adopts the standard of proof "beyond reasonable doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 161).

The Court notes that there are a number of elements in the case which cast doubt on whether the applicant suffered treatment prohibited by Article 3 when he was detained in police custody.

Firstly, according to the letter sent by the director of the anti-terror branch to the Hospital of the Yüzüncü Yıl University in Van on 19 June 1999, the applicant had suffered pain in his left arm and the security forces had used force during the arrest as the applicant had disobeyed their order to put his hands up and had attempted to reach his gun. The doctor

who examined the applicant in the hospital on the day of the applicant's arrest observed that his left arm was broken and that there were marks on his body.

Secondly, according to the medical report drafted on 25 June 1999, at the end of the applicant's police custody, there were no new marks on the applicant's body other than those mentioned in the report of 19 June 1999.

The Court further observes that the applicant did not submit any other medical evidence which would confirm his allegation that his arm had been broken on the fifth day of his police custody and contradict the findings contained in the medical reports.

In view of the above, the Court finds that the applicant's complaint relating to the alleged ill-treatment to which he was subjected while in police custody is unsubstantiated. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

b) As regards the applicant's allegation of having been subjected to ill-treatment in prison, the Court reiterates that the rule of exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from having to answer for their acts before an international body prior to having had an opportunity to put matters right through their own legal system (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 50).

The Court further reiterates that it is sufficient that the complaints intended to be made subsequently in Strasbourg should have been raised, at least in substance and in compliance with the formal requirements before the national authorities (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

The Court notes that, both before the state security court and in his petition to the public prosecutor's office in Van, the applicant did raise his allegation of having been subjected to ill-treatment while in police custody but did not complain, either in form or substance, that he had been subjected to ill-treatment in prison.

It follows that the applicant has failed to exhaust domestic remedies and that this part of the application must be rejected as being inadmissible under Article 35 §§ 1 and 4 of the Convention.

3. The applicant complains under Articles 6 and 13 of the Convention that he did not have an effective remedy at his disposal for his allegations of ill-treatment in police custody in domestic law.

The Court considers that the applicant's complaint under Articles 6 and 13 of the Convention should be examined from the standpoint of Article 13 alone.

The Court recalls that Article 13 of the Convention guarantees a remedy at the national level to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured within the domestic legal order. However, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

The Court reiterates, on the basis of the evidence adduced in the present case, that it has not been established beyond reasonable doubt that the applicant was subjected to ill-treatment in police custody. Having regard to the considerations which led it to conclude that the applicant's complaint under Articles 3 of the Convention was manifestly ill-founded, the Court considers that the applicant has not presented an "arguable claim" for that grievance which would have required a remedy under Article 13.

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

4. As regards the applicant's other complaints under Articles 6 and 14 of the Convention, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols in the light of all the material in its possession, and in so far as the matters complained of are within its competence.

It follows that this part of the application should be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the alleged lack of legal assistance for the applicant while he was in police custody;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President