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. 31540/02
by Hüseyin ATICI
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 25 July 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Hüseyin Atıcı, is a Turkish national who was born in 1970 and lives in Kocaeli. He is represented before the Court by Mrs G. Tuncer, a lawyer practising in Istanbul.

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

On 12 October 1992 the applicant was arrested by police officers from the anti-terrorism branch of the Istanbul Security Directorate on suspicion of his membership of the Dev-Sol (the Revolutionary Left) and was taken into police custody.

On 26 October 1992 he was brought before the investigating judge at the Istanbul State Security Court, who ordered the applicant's detention on remand.

On 8 January 1993 the public prosecutor at the Istanbul State Security Court filed a bill of indictment against the applicant and seventeen other co-accuseds, charging them, *inter alia*, with membership of an illegal armed organisation and for participating in the activities that undermine the constitutional order of the State. The public prosecutor sought the death penalty for the applicant pursuant to Article 146 § 1 of the Criminal Code.

At the time of the application, the criminal proceedings were still pending before the Istanbul State Security Court.

COMPLAINTS

The applicant complains under Article 5 §§ 1, 2, 3 and 4 of the Convention of the length of his detention in police custody, of the lack of information on the reasons for his arrest, and the absence of an effective remedy to challenge the lawfulness of his detention. He also alleges that the length of his detention on remand which lasted for ten years exceeded the reasonable-time requirement.

Invoking Article 6 §§ 1, 2 and 3 (d) of the Convention, the applicant maintains that he did not receive a fair trial by an independent and impartial tribunal due to the presence of the military judge on the bench of the Istanbul State Security Court, as well as on account of the status of the civil judges of the court. He further complains that he was denied access to a lawyer whilst in police custody and that he did not have adequate time and facilities to prepare his defence. He also alleges that the criminal proceedings against him were not concluded within a reasonable time.

Finally, the applicant alleges under Articles 13 and 14 of the Convention taken together with Article 6 that the different judicial procedure applied in the State Security Courts compared to the one in ordinary courts gave rise to discrimination.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings against him exceeded the reasonable-time requirement of the Convention.

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 alleges under Article 5 §§ 1, 2, 3 and 4 of the Convention that he was not brought promptly before a judge or other officer authorised by law to exercise judicial power, and that he was not informed of the reasons for his arrest when he was taken to the police custody. He further complains that he did not have any remedy to challenge the lawfulness of his detention, and that the length of his detention on remand exceeded the reasonable-time requirement of the Convention.

a) As regards the applicant's complaints concerning the length of his detention in police custody, the lack of information about the reasons for his arrest, and the absence of an effective remedy whereby he could challenge the lawfulness of his detention, the Court notes that the applicant was arrested on 12 October 1992 and he was remanded in custody on 26 October 1992. However, the application was introduced to the Court on 25 July 2002, which is more than six months after the end of his police custody.

Accordingly, this part of the application should be rejected for non-compliance of the six-month time limit pursuant to Article 35 §§ 1 and 4 of the Convention.

b) As to the applicant's complaint in relation to the excessive length of his detention on remand which lasted for ten years, the Court notes that this complaint is already the subject of another application brought by the applicant before the Court (no. 19735/02), which was communicated to the respondent Government on 20 June 2005.

Consequently, this complaint is inadmissible in accordance with Article 35 § 2 (b) of the Convention as being substantially the same as in previous application.

3. The applicant finally complains under Article 6 §§ 1, 2 and 3 (d) of the Convention that he did not have a fair trial on account of the presence of a military judge on the bench of the Istanbul State Security Court, as well as on account of the status of the civil judges, that he was denied access to legal assistance during police custody and that, as the defence, they were not given sufficient time and facilities to prepare their submissions. In conjunction with Article 6 of the Convention, he also alleges violations of Articles 13 and 14 of the Convention in that the procedure within the jurisdiction of the State Security Courts differed from the one in ordinary courts, giving rise to discrimination.

The Court reiterates that any claims concerning the fairness of the trial under Article 6 of the Convention have to be assessed in the light of the proceedings as a whole (see *Kanbur v. Turkey* (dec.), no. 9984/03, 14 February 2006). The Court notes that, when last informed, the criminal proceedings against the applicant were still pending before the State Security Court.

It follows therefore that this part of the application is premature and must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the criminal proceedings;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President