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. 34509/03
by Recep ÇELİK
against Turkey

The European Court of Human Rights (Second Section), sitting on 2 October 2007 as a Chamber composed of:

Mrs F. TULKENS, *President,*
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr M. UGREKHELIDZE,
Mr V. ZAGREBELSKY,
Mrs A. MULARONI,
Mr D. POPOVIĆ, *judges,*

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 22 July 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Recep Çelik, is a Turkish national who was born in 1965 and is currently serving a life sentence in Midyat prison in Turkey. 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 and as they appear from the documents submitted by him, may be summarised as follows.

On 29 October 1996 the applicant was arrested and taken into custody by officers from the Diyarbakır Police Headquarters. A 26-page statement was taken from him by police officers on 13 November 1996. When making his statement, the applicant was not represented by a lawyer. According to the statement, which the applicant claims was extracted from him by ill-treatment and which he signed without having read it as he was illiterate, the applicant accepted that he had been a member of the PKK[1] and had carried out a number of illegal activities on its behalf.

On 15 November 1996 the applicant was taken before the public prosecutor at the Diyarbakır State Security Court. He told the prosecutor that, although he had been trained by the PKK, he had not taken part in any armed attack. The police custody statement had been taken from him under duress.

After having been questioned by the prosecutor, the applicant was brought before a duty judge at the same court, who remanded him in custody.

According to a medical report drawn up the same day, the applicant's body bore no signs of ill-treatment.

On 25 November 1996 the public prosecutor at the Diyarbakır State Security Court filed a bill of indictment charging the applicant and three other persons[2] with the offence defined in Article 125 of the Criminal Code, i.e. carrying out activities aimed at breaking up the unity of the State and removing part of the national territory from the State's control.

The first hearing in the case was held on 31 January 1997 by the 2nd Chamber of the Diyarbakır State Security Court (hereinafter the "trial court") during which the applicant and the other co-accused were present. Another set of criminal proceedings, pending against the applicant since 1994, was also joined to the case. The applicant submitted before the trial court that he had not committed any offence.

On 9 December 1997 the trial court requested the 1st and 4th Chambers of the Diyarbakır State Security Court to submit to it the case files in two cases which were pending against a certain A.A. and S.K. and which were related to the applicant's case. This request was repeated on 10 September 1998.

In the course of the hearing on 5 November 1998, the applicant denied the accusations against him and submitted that he had been tortured in

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

[2] Cf. *Geçgel v. Turkey*, no. 8747/02 also pending before the Court.

police custody. He also asked to be released on bail, but this request was rejected.

Case files concerning A.A. and S.K. were finally submitted to the trial court on 22 April 1999 and 28 September 2000.

On 18 June 1999 Turkey's Grand National Assembly amended Article 143 of the Constitution, excluding military members from State Security Courts. Following similar amendments made on 22 June 1999 to the Law on the State Security Courts, on 31 August 1999 the military judge sitting in the trial court hearing the applicant's case was replaced by a civilian judge.

The public prosecutor submitted his observations on the merits of the case on 9 November 2000.

Between 5 April 2001 and 27 September 2001, the trial court adjourned the case in order to study the case file.

On 6 December 2001 the public prosecutor submitted his observations on the merits of the case for a second time.

The applicant was not represented by a lawyer until the 39th hearing which was held on 10 October 2002. His newly appointed lawyer asked the trial court to allow time for the preparation of the defence submissions of her client. However, the court ordered the lawyer to submit those observations at the next hearing. Accordingly, the applicant's response was submitted to the trial court in the course of the 40th hearing which was held on 24 October 2002.

On the same day, the trial court rendered its judgment. It found the applicant guilty as charged and sentenced him to life imprisonment. In convicting the applicant, the trial court relied on the statements which the applicant had made in police custody on 13 November 1996, as well as on a previous occasion on 4 October 1994, in which he accepted having taken part in a number of illegal activities on behalf of the PKK. The trial court also noted that the applicant had accepted before the prosecutor and the duty judge on 15 November 1996 that he had joined the PKK, whilst asserting that he had not actually carried out any activities on its behalf. Having regard to the medical report of 15 November 1996, the trial court concluded that the applicant had not been ill-treated in police custody.

In the course of the trial, at the end of each hearing, the court took into consideration “the nature of the offence with which [the applicant] was charged, and the state of the evidence”, and prolonged the applicant's remand in custody.

On 11 March 2003 the Court of Cassation upheld the judgment of the trial court.

COMPLAINTS

The applicant complained under Article 5 § 3 of the Convention that the length of his detention on remand had been excessive.

Invoking Article 5 § 4 of the Convention, he further complained that the existing remedies by which the lawfulness of his detention on remand could be challenged, were ineffective.

Under Article 6 § 1 of the Convention, the applicant alleged that he had not been tried by an independent and impartial tribunal because one of the three judges on the bench of the trial court had been an army officer. He also alleged that the procedure adopted by State Security Courts was unfair.

Invoking the same Article, the applicant submitted that he had informed the trial court that his police custody statement had been taken from him under duress, and that he had not known what was written in it as he was illiterate. Nevertheless, the trial court had taken that statement into account when convicting him.

The applicant also alleged that the length of the criminal proceedings against him had been in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention.

Invoking Article 6 § 2 of the Convention, the applicant complained that the fact that he had been forced to incriminate himself violated his right to the presumption of innocence.

Under Article 6 § 3 (c) of the Convention, the applicant complained that he had not been able to consult a lawyer, when questioned in police custody and in the course of the trial, until the 39th hearing. Given that he was illiterate, the trial court should have provided him with legal assistance.

Finally, invoking Article 6 § 3 (d) of the Convention, the applicant maintained that a witness, whose evidence was used in arresting and subsequently convicting him, was not summoned before the trial court and that, consequently, he had not had an opportunity to have this witness questioned by the court.

THE LAW

1. The applicant complained that his detention on remand had been in violation of Article 5 § 3 of the Convention. Under Article 5 § 4 of the Convention he also argued that he had not had an effective remedy by which he could have challenged the lawfulness of his detention on remand.

The Court reiterates that, if an applicant has been detained pending trial under Article 5 § 3, that form of custody would end on the day on which the charge is determined, even if only by a court of first instance (*Wemhoff v. Germany* judgment of 27 June 1968, Series A no. 7, p. 23 § 9). In the

present case the applicant was convicted on 24 October 2002 but he did not lodge his application with the Court until 22 July 2003. He thereby failed to observe the six months rule laid down in Article 35 § 1 of the Convention. This aspect of the case must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. The applicant complained that the criminal proceedings against him had not been concluded within a reasonable time within the meaning of Article 6 § 1 of the Convention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint at the present stage. It is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the case to the respondent Government.

3. Under Article 6 § 1 of the Convention the applicant also alleged that he had not been tried by an independent and impartial tribunal because one of the three judges on the bench of the trial court had been an army officer. He also alleged that the procedure adopted by State Security Courts was unfair.

The Court notes that the military judge in question had not participated in any decision relating to the merits of the case or the applicant's defence rights, and that on 31 August 1999 he was replaced by a civilian judge (see *Ceylan v. Turkey* (dec.), no. 68953/01, 30 August 2005).

As regards the remaining complaint under Article 6 of the Convention, the Court finds that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

4. Also under Article 6 § 1 of the Convention the applicant complained that he had been convicted on the basis of a police custody statement which had been extracted from him through ill-treatment.

The Court observes that the applicant has not submitted any evidence which would indicate that he was indeed ill-treated in police custody. Nor did the applicant submit any details of such ill-treatment to the domestic authorities or the Court. According to the medical report which was drawn up when leaving police custody, there were no signs of ill-treatment on the applicant's person.

In the light of the foregoing, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. Under Article 6 § 3 (c) of the Convention, the applicant complained that he had not been able to consult a lawyer when he was questioned in police custody, nor afterwards, until the 39th trial hearing. He also alleged that he had been forced to incriminate himself when giving evidence in

police custody, which violated his right to the presumption of innocence within the meaning of Article 6 § 2 of the Convention.

The Court deems it appropriate to examine these complaints under Article 6 § 3 (c) of the Convention alone, and considers that it cannot, on the basis of the case file, determine their admissibility at the present stage. It is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the case to the respondent Government.

6. Invoking Article 6 § 3 (d) of the Convention, the applicant maintained that the main prosecution witness had never been summoned before the trial court to be questioned.

The Court again considers that it cannot, on the basis of the case file, determine the admissibility of this complaint at the present stage. It is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the case to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning his right to a fair hearing within a reasonable time, his right to defend himself through legal assistance and his right to have examined witnesses against him;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

F. TULKENS
President