CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 67214/01
by Abidin DOĞAN
against Turkey

The European Court of Human Rights (Fourth Section), sitting on 7 June 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr R. TÜRMEN,
Mr R. MARUSTE,
Mr K. TRAJA,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 2 November 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Abidin Doğan, is a Turkish national who was born in 1972 and lives in Elazığ. 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 8 February 1995 the applicant was taken into police custody on suspicion of membership of the PKK.

On 17 February 1995 he was released from police custody.

On 15 June 1995 the public prosecutor at the Istanbul State Security Court filed a bill of indictment charging the applicant under Article 168 § 2 of the Criminal Code with membership of the PKK.

On 24 September 1995 the applicant was once again taken into police custody.

On 5 October 1995 he was detained on remand.

On an unspecified date, the Istanbul State Security Court decided to join the proceedings against the applicant with other cases brought against five other persons who had been accused of membership of the same organisation.

On 22 October 1998 the first-instance court convicted the applicant under Article 168 § 2 of the Criminal Code. The court sentenced the applicant to twelve years and six months' imprisonment and permanently debarred him from employment in the civil service.

On 13 May 1999 the Court Cassation quashed the judgment of 22 October 1998. It held that the copies of the documents containing the applicant's statements before the police and the public prosecutor, which were relied on by the first-instance court in its judgment, were not of an official nature. The case-file was then referred to the Istanbul State Security Court.

Following the promulgation of Law no. 4390 of 22 June 1999, which amended Law no. 2845 on the State Security Courts, the military judge sitting on the bench of the Istanbul State Security Court was replaced by a civil judge.

The applicant requested to be released pending trial at various times before the first-instance court until 31 August 2000. The court dismissed his requests having regard to the state of the evidence and the content of the case-file. On 31 August 2000 the Istanbul State Security Court ordered the applicant's release pending trial.

On 7 February 2002 the Istanbul State Security Court convicted the applicant under Article 168 § 2 of the Criminal Code. It sentenced him once again to twelve years and six months' imprisonment and permanently debarred him from employment in the civil service.

On 9 October 2002 the Court of Cassation quashed the judgment of the first-instance court on procedural grounds.

On 9 March 2004 the Istanbul State Security Court rendered its judgment and convicted the applicant once again under Article 168 § 2 of the Criminal Code.

On 6 December 2004 the Court of Cassation upheld the judgment of 9 March 2004.

COMPLAINTS

The applicant complains under Article 5 § 1 of the Convention that he was arrested without a judicial decision.

He contends under Article 5 § 2 of the Convention that he was not informed of the reasons of his arrest and the charges against him.

The applicant further maintains under Article 5 § 3 of the Convention that he was held in custody for a total of twenty-two days without being brought before a judge. He further complains under the same head that the length of his detention on remand was excessive.

The applicant complains under Article 5 § 4 of the Convention that there were no remedies in domestic law to challenge the lawfulness of his detention in police custody.

The applicant complains under Article 6 § 1 of the Convention that he was denied a fair hearing by an independent and impartial tribunal on account of the presence of the military judge on the bench of the Istanbul State Security Court which tried and convicted him. He further maintains under the same head that the criminal proceedings against him were not concluded within a reasonable time.

The applicant maintains under Article 6 § 2 of the Convention that the first-instance court took no notice of the applicant's statements before it and based its judgment on the allegations made by the security forces.

The applicant complains under Article 6 § 3 of the Convention that he was not informed of the charges against him and that he was deprived of his right to legal assistance during the preliminary investigation. He further maintains under the same head that he was deprived of his right to have adequate time and facilities for the preparation of his defence. In particular, he was not provided with the opportunity to submit his arguments concerning the public prosecutor's observations on merits. Furthermore, the written observations of the principal public prosecutor at the Court of Cassation on the merits of his appeal were not served on him, thus depriving him of the opportunity to put forward his counter-arguments.

The applicant complains under Article 14 of the Convention that he was discriminated against as a result of his trial before a State Security Court as the criminal procedures for offences tried before these courts were different from those followed in respect of offences tried in other courts.

THE LAW

1. The applicant complains under Article 5 §§ 1, 2, 3 and 4 of the Convention that the guarantees set out in the aforementioned Article were not respected by the domestic authorities during his detention in police

custody. He further alleges under Article 5 § 3 of the Convention that the length of his detention on remand was excessive.

a) As to the complaints concerning the applicant's detention in police custody, the Court reiterates that according to the established case-law of the Convention organs, where no domestic remedy is available the six-month period runs from the date of the act alleged to constitute a violation of the Convention; however, where it concerns a continuing situation, the period of six-month runs from the end of the situation concerned (see, among other authorities, *Ege v. Turkey* (dec.), no. 47117/99, 10 February 2004).

The Court notes that the applicant's detention in police custody ended on 17 February 1995, when he was released from custody and on 5 October 1995, when the Istanbul State Security Court ordered his detention on remand. The applicant introduced his application to the Court on 2 November 2000, i.e. more than six months later.

It follows that this part of the application was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

b) As to the complaint concerning the length of the applicant's detention on remand, 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 6 § 1 of the Convention that his right to a fair hearing was breached as he was tried and convicted by the Istanbul State Security Court, which lacked independence and impartiality. He further complains under the same head that the length of the criminal proceedings brought against him exceeded a reasonable time. The applicant contends under Article 6 § 2 of the Convention that the first-instance court took no notice of the applicant's statements before it and it based its judgment on the allegations made by the security forces. He maintains under Article 6 § 3 of the Convention that he was not informed of the charges against him and that he did not have legal assistance during the investigation. He finally complains under this head that he was deprived of his right to have adequate time and facilities for the preparation of his defence.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints 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.

3. The applicant complains under Article 14 of the Convention that he was discriminated against as a result of his trial before a State Security Court as the criminal procedures for offences tried before these courts were different from those followed in respect of offences tried in other courts.

The Court reiterates that Article 14 is not concerned with all differences of treatment but only with differences having as their basis or reason a personal characteristic ("status") by which persons or a group of persons are distinguishable from each other (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark,* judgment of 7 December 1976, Series A no. 23, p. 29, § 56). In the instant case, the distinction was made not between different groups of people, but between different types of offence, according to the legislature's view of their gravity (see *Gerger v. Turkey* [GC], no. 24919/94, § 69, 8 July 1999). The Court, therefore, sees no ground for concluding that this practice amounts to a form of "discrimination" that is contrary to the Convention.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the length of his detention on remand and his right to a fair trial;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President