

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

SECOND SECTION

DECISION

Application no. 47720/08
Ahmet DURMAZ
against Turkey

The European Court of Human Rights (Second Section), sitting on 15 January 2013 as a Committee composed of:
Dragoljub Popović, *President,*
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*
Having regard to the above application lodged on 3 September 2008,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ahmet Durmaz, is a Turkish national, who was born in 1970 and is serving a prison sentence in the Mardin Prison.

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

On 3 December 2001 the applicant was arrested and taken into police custody on suspicion of involvement in *Hizbullah*, an illegal organisation. On 7 December 2001 he was placed in detention on remand. On 7 January 2002 the public prosecutor filed a bill of indictment with the Diyarbakır State Security Court, charging the applicant and several other co-accused persons with membership of an illegal organisation under Article 146 § 1 of the former Criminal Code.

While the proceedings were pending, Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, abolished State Security

Courts. The case against the applicant was therefore transferred to the Diyarbakır Assize Court.

On 19 December 2006 the Diyarbakır Assize Court found it established that the applicant had ordered the killing of two former *Hizbullah* members and ordered the burning of a car belonging to another person. On the basis of witness statements, the scene of crime protocol (*yer gösterme tutanağı*) and the other evidence in the case file, the court convicted the applicant as charged, and sentenced him to life imprisonment.

On 5 May 2008 the Court of Cassation upheld the decision.

COMPLAINTS

1. In his letter submitted on 3 September 2008, without relying on any Article of the Convention, the applicant complained in a general manner that the criminal proceedings against him had been unfair.

2. On 16 March 2009 the applicant submitted an application form and complained that he had been subjected to ill-treatment during his police custody. He further complained under Article 6 of the Convention that he had been denied access to a lawyer during the preliminary investigation. Finally, relying on Article 5 of the Convention he contended that the length of his pre-trial detention had been excessive.

THE LAW

1. In his initial letter submitted to the Court on 3 September 2008, without relying on any Article of the Convention, the applicant complained that he had not had a fair trial.

The Court notes that the applicant's complaint essentially concerns the first-instance court's evaluation of the facts and evidence before it and should therefore be examined from the standpoint of Article 6 § 1 of the Convention.

The Court recalls that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, for the decisions of domestic courts. According to the case-law, the latter are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, amongst many authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B; *Edwards v. the United Kingdom*, § 34, 16 December 1992, Series A no. 247-B).

In the present case, it is observed that the national courts' decisions were given on the basis of domestic law and the particular circumstances of the case. The Court finds no element which might lead it to conclude that the

domestic courts acted in an arbitrary or unreasonable manner in establishing the facts or interpreting the domestic law.

In the light of the foregoing, the Court finds that this complaint should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. As regards the subsequent complaints of the applicant, the Court reiterates that where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment. Where, as in the present case, the domestic law does not provide for service, the date on which the final domestic decision was deposited with the registry of the first instance court should be taken as the starting-point, the date on which the applicant as definitively been able to find out about the content of the final decision at the latest (see *Ipek v. Turkey* (dec.), no. 39706/98, 7 November 2000, and *Yavuz and Others v. Turkey* (dec.), no. 48064/99, 1 February 2005).

In the instant application, the case-file does not contain any information as to the date of deposition of the decision of the Court of Cassation with the registry of the first-instance court. However, on 3 September 2008 the applicant lodged an application with the Court and in this letter he specified that the Court of Cassation had upheld the decision of the first-instance court. Consequently, it is safe to assume that the applicant had become aware of the Court of Cassation's decision before 3 September 2008.

The Court further recalls that, pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter "within a period of six months from the date on which the final decision was taken". The running of the six-month time-limit is, as a general rule, interrupted by the first letter from the applicant indicating an intention to lodge an application and giving some indication of the nature of the complaints made. As regards complaints not included in the initial application, the running of the six months time-limit is not interrupted until the date when the complaint is first submitted to a Convention organ (see, *Allan v. the UK* (dec.), no. 48539/99, 28 August 2001).

The Court observes that the subsequent complaints were lodged on 16 March 2009. Even assuming that the applicant learned of the final decision of the Court of Cassation on 3 September 2008; i.e. on the day when he lodged his application with the Court, the remaining complaints were not submitted within the six-months time-limit pursuant to Article 35 of the Convention.

Consequently, the Court concludes that this part of the application should be rejected for being introduced out of time pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos Deputy Registrar	Dragoljub Popović President