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. 36590/97
by Mehmet GOÇ
against Turkey

The European Court of Human Rights (Fourth Section) sitting on 14 October 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr R. Türmen,
Mr V. Butkevych,
Mr J. Hedigan, *judges*,

and Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 28 April 1997 by Mehmet Goç against Turkey and registered on 20 June 1997 under file no. 36590/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1956 in Mardin, is a Turkish citizen living in İzmir, Turkey. He is represented before the Court by Mr Güney Dinç, a lawyer practising in İzmir.

A. Particular circumstances of the case

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

At the material time the applicant was employed as a clerk in the İzmir 2nd Court of Taxation. On 18 July 1995 the İzmir Civil Court of General Jurisdiction forwarded the name and workplace of the applicant to the İzmir Public Prosecutor's Office, stating that it suspected him of having stolen and falsified court documents relating to a pending case.

At 5.10 p.m. on 24 July 1995 the applicant was taken into police custody and detained at the İzmir Security Department. He was accused of the above charges. The applicant was not permitted to contact his family or consult a lawyer. He alleges that he was insulted and beaten for two hours. At 5.00 p.m. on 27 July 1995 the police released him.

In the evening of 27 July 1995, following his release, the applicant went to the İzmir State Hospital. He was subsequently granted four days' sick leave by his employer.

On 31 July 1995 the Office of the Public Prosecutor of Karşıyaka decided not to bring charges against the applicant (*takipsizlik kararı*) on the ground of lack of evidence. The decision was served on the applicant on 19 August 1995.

On 5 September 1995 the applicant filed a complaint under Law No. 466 with the Karşıyaka Assize Court (*Ağır Ceza Mahkemesi*) against the Treasury requesting 200,000,000 TRL by way of compensation for his detention between 24 and 27 July 1995. In the petition, the applicant's lawyer stated, *inter alia*, that the applicant, while in detention, had been ill treated, tortured and deprived of his right to contact his family and a lawyer. He did not invoke any specific section of Law No. 466.

On 14 September 1995 the three-judge Karşıyaka Assize Court commissioned one of its members (*naip hakim*) to investigate the case and draft a report. The judge rapporteur designated for this purpose verified, *inter alia*, that the Office of the Public Prosecutor of İzmir had dropped the charges against the applicant. He also obtained information from the Security Department about the applicant's personal, financial and social status. On 7 December 1995 the Office of the Public Prosecutor, as required by Law no. 466, submitted his opinion to the Karşıyaka Assize Court. The Public Prosecutor noted that the applicant was taken into custody on 25 July 1995, and not on 24 July 1995 as claimed, and was released on 27 July 1995. The Public Prosecutor recommended that the applicant be given compensation for non-pecuniary damage in an amount to be assessed by the court. This opinion was not served on the applicant. The judge rapporteur found that the evidence obtained was sufficient to enable him to draft his report and decided in the exercise of his discretion under section 3 of Law No. 466 that it was unnecessary to hear the applicant.

The judge rapporteur stated in his report of 7 December 1995 to the Karşıyaka Assize Court, *inter alia*, that the applicant had been detained for two days from 25 July to 27 July 1995 and upon his release had obtained a medical report which indicated that he had been hit ("*darp edildiği*"). The judge recommended that the applicant be awarded compensation for

non-pecuniary damage in respect of his detention, calculated on the basis of his personal, financial and social status.

On 7 December 1995 the Karşıyaka Assize Court found that the applicant was detained for two days and qualified for compensation. In its judgment, the court noted all the complaints in the petition submitted by the applicant's lawyer. With reference to the applicant's personal, financial and social status, the court awarded the applicant 10,000,000 TRL by way of compensation and 1,500,000 TRL in respect of his legal fees.

The applicant's lawyer and the Treasury both appealed against the award. The applicant's lawyer contended on appeal that the amount of compensation was insufficient. He did not challenge the dates of detention as determined by the Court. On 17 October 1996 the Chief Public Prosecutor at the Court of Cassation submitted his opinion on the merits of both parties' appeals. In his written submissions to the Court of Cassation the Chief Public Prosecutor stated that neither of the parties had grounds for appeal and advised that both their appeals be rejected. This opinion (*tebliğname*) was not submitted to the applicant.

On 7 November 1996 the 6th Chamber of the Court of Cassation for Criminal Law Matters (*Yargıtay*) upheld the judgment of 7 December 1995.

B. Relevant domestic law

Article 19 of the Constitution provides:

"Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with the formalities and conditions prescribed by law:

...

The arrested or detained person must be brought before a judge within forty-eight hours at the latest or, in the case of offences committed by more than one person, within fifteen days...These time-limits may be extended during a state of emergency...

...

A person deprived of his liberty, for whatever reason, shall have the right to take proceedings before a judicial authority which shall give a speedy ruling on his case and order his immediate release if it finds that the deprivation of liberty was unlawful.

Compensation must be paid by the State, as the law shall provide, for damage sustained by persons who have been victims of treatment contrary to the above provisions."

Under section 128 of the Code of Criminal Procedure, an arrested person must be brought before a judge within twenty four hours or, where the offence has been committed by more than one person, within four days.

Section 1 of Law No. 466 on the payment of compensation to persons arrested or detained provides:

"Compensation shall be paid by the State in respect of all damage sustained by persons:

(1) who have been arrested, or detained under conditions or in circumstances incompatible with the Constitution or statute law;

(2) who have not been immediately informed of the reasons for their arrest or detention;

(3) who have not been brought before a judicial officer after being arrested or detained within the time-limit laid down by statute for that purpose;

(4) who have been deprived of their liberty without a court order after the statutory time-limit for being brought before a judicial officer has expired;

(5) whose close family have not been immediately informed of their arrest or detention;

(6) who, after being released or detained in accordance with the law, are not subsequently committed for trial..., or are acquitted or discharged after standing trial;

or

(7) who have been sentenced to a period of imprisonment shorter than the period spent in detention or ordered to pay a pecuniary penalty only."

COMPLAINTS

The applicant complains that he was unlawfully detained by the police for three days. He contends that he was detained without a court order and without justification. He invokes Article 5 of the Convention.

He also complains with reference to Article 3 of the Convention that he was tortured and ill-treated by the police while in detention.

The applicant further complains that the Karşıyaka Assize Court and the 6th Chamber of the Court of Cassation for Criminal Law Matters gave judgment on his claim without holding a public hearing. He also complains that the submissions of the Office of Public Prosecutor to the first instance court and those of the Office of the Chief Public Prosecutor to the Court of Cassation were never served on him thus depriving him of the opportunity to put forward his counter-arguments. The applicant invokes Article 6 of the Convention.

Finally the applicant complains that the amount of compensation and legal costs and expenses awarded by the domestic court was extremely low and therefore unjust. In this respect, he invokes Article 5 § 5 of the Convention.

THE LAW

1. The applicant submits that he was detained in the absence of a court order and held for a period of three days before being released without charge. He invokes Article 5 of the Convention, which provides as relevant:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ...

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

The Court observes that an action in damages in respect of an allegation that an individual has been unlawfully detained in violation of Article 5 § 1 (c) of the Convention is an effective remedy which must be exhausted in accordance with Article 35 § 1 of the Convention.

It notes that the applicant availed himself of the provisions of section 1 of Law no. 466 in order to claim compensation. However, it would appear that he did not maintain in his petition that he had been arbitrarily deprived of his liberty. He emphasised, rather, the length of his detention, the denial of access to a lawyer or family members and the treatment to which he had been subjected. The damages awarded by the domestic court were intended to compensate him for the fact that he was released without charge within the meaning of section 1(6) of Law no. 466. The court, like its judge rapporteur, did not make a specific finding that the applicant was arbitrarily deprived of his liberty. On the other hand, the court, in line with its judge rapporteur's finding, held that the applicant had been detained for two days, and not three as alleged. The applicant did not argue on appeal that the sum awarded to him should have been increased to reflect the arbitrary nature of his detention; nor did he challenge either the court's finding that his detention lasted two days. He disputed generally before the Court of Cassation the amount of the compensation without specifying the grounds for his objection.

Having regard to the above considerations the Court concludes that the applicant has failed to exhaust domestic remedies in respect of the complaints which he now brings before the Court under Article 5 §§ 1 (c) of the Convention.

In so far as Article 5 § 3 is concerned, the Court does not discern any appearance of a violation of that provision.

2. The applicant further submits that the compensation awarded to him by the domestic courts did not amount to just satisfaction in breach of Article 5 § 5 of the Convention, which provides:

"Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."

The Court observes that Article 5 § 5 of the Convention guarantees an enforceable right to compensation only to those who have been the victims of arrest or detention in contravention of the provisions of Article 5 (see the Wassink v. the Netherlands judgment of 27 September 1990, Series A no. 185-A, p. 14, § 38). Having regard to the fact that the applicant's complaint under Article 5 §§ 1 (c) and 3 are inadmissible for the reason stated above, the provisions of Article 5 § 5 cannot be relied on.

The Court concludes accordingly that the complaint under this head is inadmissible *ratione materiae*.

3. The applicant states that he was denied a fair hearing on the determination of his claim for compensation in breach of Article 6 of the Convention, which provides in relevant part:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... ."

The applicant submits that he never had a public hearing on his compensation claim and that the submissions of the Office of the Public Prosecutor to the Karşıyaka Assize Court as well as those of the Office of the Chief Public Prosecutor to the Court of Cassation were never served on him.

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 § 3 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

Commented [Note1]: Change as necessary.

4. The applicant alleges that he was ill-treated while in detention in breach of Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

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 § 3 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

Commented [Note2]: Change as necessary.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaints that he was ill-treated in custody and was denied a fair and public hearing on his claim for compensation;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Matti Pellonpää
President