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. 61908/00
by Mehmet GÜNEŞ
against Turkey

The European Court of Human Rights (Third Section), sitting on 26 May 2005 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,
Ms R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar,*

Having regard to the above application lodged on 23 July 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mehmet Güneş, is a Turkish national who was born in 1951 and lives in Turkey. He is represented before the Court by Mr E. Kanar, a lawyer practising in Istanbul.

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

On 16 July 1993 the applicant was taken into police custody by police officers from the anti-terrorist branch of the Istanbul Security Directorate on suspicion of membership in an illegal organisation, the TDP (*Revolutionary Party of Turkey*). He was held in police custody until 30 July 1993. During

his detention in police custody, he was allegedly subjected to various forms of ill-treatment. It is to be noted that the applicant did not specify the details thereof.

On 30 July 1993 he was brought before a judge who ordered his detention on remand. He asserted that he had not signed any statement and claimed that he had been subjected to ill-treatment while in police custody.

On 15 September 1993 the Chief Public Prosecutor at the Istanbul State Security Court filed a bill of indictment with the latter charging the applicant under Article 168 § 1 of the Criminal Code with membership in an illegal organisation.

On 25 January 2000 the applicant was released from detention.

On 17 February 2004 the Istanbul State Security Court ordered that the criminal proceedings against the applicant be terminated on the ground that the statutory time-limit under Articles 102 and 104 of the Criminal Code had expired.

COMPLAINTS

The applicant asserts under Article 5 § 1 of the Convention that he was unlawfully deprived of his liberty. He submits under Article 5 § 2 of the Convention that he was not promptly informed about the reasons for his arrest. He alleges a violation of Article 5 § 3 of the Convention on account of the length of his police custody which lasted fourteen days. He further maintains under the same heading that during his police custody he was not brought before a judge or other officer authorised by law to exercise judicial power. He asserts under Article 5 § 4 of the Convention that he had no effective domestic remedy to contest the unlawfulness of his detention in police custody.

The applicant also complains under Article 5 § 3 of the Convention about the excessive length of his detention on remand.

He contends under Article 6 § 1 of the Convention that that the criminal proceedings brought against him were not concluded within a “reasonable time”.

The applicant submits under Article 6 §§ 1, 2 and 3 of the Convention that he was denied a fair hearing by an independent and impartial tribunal and that his right to be presumed innocent until proved guilty was infringed throughout the investigation and the trial. He further complains under the same heading that he was not informed promptly in detail of the nature and the cause of the accusation against him and that he was denied the assistance of a lawyer during the preliminary stages of the criminal proceedings.

He maintains under Article 13 of the Convention that he was denied an effective remedy in domestic law in respect of his complaint regarding his unlawful detention in police custody.

The applicant complains under Article 14 of the Convention that he was discriminated against on the basis of his political opinions.

THE LAW

1. The applicant complains under Article 5 §§ 1, 2, 3 and 4 of the Convention that none of the guarantees set out in the aforementioned Article were respected by the domestic authorities during his police custody. The applicant further complains under Article 13 of the Convention of the lack of an effective domestic remedy in respect of his complaints concerning his unlawful detention in police custody. The Court considers that this complaint should be examined under Article 5 § 4 of the Convention. The Court recalls that according to the established case-law of the Convention organs (see *Kabasakal and Atar v. Turkey* (dec.) nos. 70084/01 and 70085/01, 1 July 2003), 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 months runs from the end of the situation concerned.

The Court notes that the applicant was released from police custody on 30 July 1993, whereas the application was introduced with the Court on 23 July 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.

2. The applicant complains about the excessive length of his detention on remand. He invokes Article 5 § 3 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.

3. The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings brought against him were not concluded within a "reasonable time".

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.

4. The applicant complains under Article 6 §§ 1, 2 and 3 of the Convention that he was denied a fair hearing by an independent and impartial tribunal, that his right to be presumed innocent until proved guilty was infringed throughout the investigation and the trial, that he was not informed promptly in detail of the nature and the cause of the accusation against him, and that he was denied the assistance of a lawyer during the initial stages of the criminal proceedings.

The Court notes that the criminal proceedings against the applicant were terminated on the ground that the statutory time-limit had expired. He is therefore not a victim within the meaning of Article 34 of the Convention (see *Yıldırım v. Turkey* (dec.) no. 78170/01, 7 October 2004).

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

5. The applicant complains under Article 14 of the Convention that he was discriminated against on the basis of his political opinion.

The Court observes that the applicant did not submit any evidence in support of his allegation under Article 14 of the Convention. It is therefore of the opinion that the applicant has failed to substantiate his allegation and to lay the basis of an arguable claim of a breach of Article 14.

It follows that this part of the application is manifestly ill-founded within the meaning of 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 the applicant's detention on remand and the criminal proceedings against him;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President