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. 16622/02
by Ali KANAT
against Turkey

The European Court of Human Rights (Third Section), sitting on 28 April 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 12 March 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ali Kanat, is a Turkish national, who was born in 1967. He is represented before the Court by Ms T. Yüksel, a lawyer practising in Istanbul.

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

On 11 May 1994 the applicant was arrested by police officers from the Anti-Terrorist Branch of the Istanbul Security Directorate and placed in custody.

On 18 May 1994 he was brought before the public prosecutor of the Istanbul State Security Court, where he denied the charges against him.

On 19 May 1994 the applicant was brought before the investigating judge of the Istanbul State Security Court, where he repudiated the content of his police statement, alleging that it was taken under duress. On the same day the judge ordered that the applicant be placed in detention on remand. The applicant was placed in Bayrampaşa Prison.

On 1 June 1994 the public prosecutor of the Istanbul State Security Court filed an indictment with the same court accusing the applicant of being a member of the PKK. He requested that the applicant be sentenced pursuant to Article 168 § 2 of the Criminal Code and Article 5 of Law No. 3713 (Anti-terror law).

On 29 July 1994 the applicant was examined by a doctor at the Eyüp Forensic Institute and was issued a medical report. The report found an inguinal direct hernia (*kasık fıtığı*) on the right inguinal of the applicant, which may have been an outcome of an infirmity of the abdominal region, as well as the result of an external trauma. In the report it was noted that this finding would suffice to prevent the applicant from working for fifteen days and other injuries for five days.

On 1 December 1994 the Istanbul State Security Court took a statement from the applicant at the first hearing. The applicant denied the charges against him and gave the details about the ill-treatment he was allegedly subjected to during the police custody. He stated that after he was arrested by the police officers, he was put in a car; his head was covered with his coat, and he was beaten inside the car. After another two and a half hours' drive, he was forced to lie on the ground face down. Someone stepped on his head and they shot two or three bullets near the left and right side of his head. He was then taken to the Istanbul Security Directorate, where he was stripped naked and suspended from his elbows. Electrics shocks were administered to his toes and to his genitals. He was also beaten on the soles of his feet. At the same hearing, the applicant submitted to the court the report issued by the Eyüp Forensic Institute.

On 8 December 1995 the applicant was transferred from Bayrampaşa Prison to Ümraniye Prison along with some other detainees.

On 29 May 1997 the applicant was convicted by the State Security Court of the offence as charged and was sentenced to twelve years and six months' imprisonment.

On 14 December 1998 the Court of Cassation quashed the applicant's conviction on the ground that the State Security Court delivered its judgment without obtaining a last statement from the applicant.

During the criminal proceedings the applicant made submissions for his release pending trial. The court dismissed the applicant's request on each occasion and ordered that he should remain in detention on remand due to

“the nature of the offence, the state of the evidence and the content of the file”.

On 17 April 2001 the State Security Court adhered to its first judgment. It relied on the leaflets and the receipt vouchers of the organisation captured from the applicant's residence, the witnesses' statements, the cartridge clips and guns seized during the investigation.

The applicant appealed against the judgment. In his petition he repeated his allegation of ill-treatment in police custody and that his statement was taken under duress.

The applicant further submitted to the court several petitions on numerous dates asking for a deduction of his previous unjustified detention on remand period from his current sentence. He stated that he was detained on remand between 23 July 1989 and 14 March 1990, when he was tried for the offences he allegedly had committed before 1990 and was acquitted in the end.

The court rejected the applicant's request on each occasion, noting that the applicant previously had been charged for the offence he had allegedly committed before 1990, whereas the present charges were brought against him for the offence he had committed between 1990 and 1994, and thus his request of deduction was unjustified.

On 8 October 2001 the Court of Cassation upheld the latter judgment of the State Security Court.

On 23 September 2003 the applicant was released from prison.

On 29 January 2004 the applicant's lawyer provided the Registry with a medical report of 6 January 2004, which was drafted by a commission of medical experts of the Human Rights Foundation. The report noted that the applicant applied to the Foundation on 7 November 2003 and complained about his continuing suffering as a result of ill-treatment on account of his previous detentions.

The report concluded that the finding of 3 cm damaged tissue to the applicant's head was in line with the applicant's testimony about the operation in Ümraniye Prison and that the diagnoses of a right inguinal hernia was compatible with the story of physical pressure put on the abdominal region. According to the report, the applicant suffered from physical and psychological problems. The commission opined that the medical findings were a result of physical ill-treatment inflicted on the applicant.

COMPLAINTS

The applicant complains that he was ill-treated whilst in police custody and in prison. He invokes Article 2 § 1 of the Convention in this respect.

The applicant alleges under Article 5 § 3 of the Convention that the length of his detention on remand exceed a "reasonable time" requirement within the meaning of this provision. In conjunction with this he also alleges under Article 6 § 2 of the Convention that his right to be presumed innocent until proven guilty has been violated.

He further complains that his previous unjustified period of detention on remand for eight months had not been deducted from his latest conviction.

The applicant argues under Article 6 § 1 of the Convention that the State Security Court which tried and convicted him was not an impartial and independent tribunal on account of the presence of a military judge sitting on the bench of the court.

The applicant alleges under Article 6 § 3 (b) of the Convention that he did not have adequate time and facilities to prepare his defence as he was not present at many of the hearings.

The applicant finally alleges that the non-applicability of Law No. 4616 (Law on Conditional Release and Suspension) to his case amounts to discrimination. He appears to be relying on Article 14 of the Convention in this respect.

THE LAW

1. The applicant complains that he was ill-treated whilst in police custody and in prison. He invokes Article 2 § 1 of the Convention in this respect. Nevertheless, the Court notes that it is appropriate to examine this complaint under Article 3 of the Convention, as it falls within the scope of it.

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 5 § 3 of the Convention that the length of his detention on remand exceeded the reasonable time requirement. In conjunction with this he also alleges that his right to be presumed innocent until proven guilty has been violated. He invokes Article 6 § 2 of the Convention in this respect.

The Court notes that the Istanbul State Security Court ordered the applicant's detention on remand on 19 May 1994, which continued until the final judgment of the State Security Court of 17 April 2001. Following that date, the applicant was detained "after conviction by a competent court" and no longer for the purpose of bringing him before the competent legal authority. However, the application was lodged with the Court on

12 March 2002, which is more than six months from the end of the detention period complained of.

It follows that these complaints are introduced out of time and must be rejected for non-compliance with the six-month rule pursuant to Article 35 §§ 1 and 4 of the Convention.

3. The applicant further complains that his previous unjustified detention on remand period has not been deducted from his latest conviction. He has not invoked any Article of the Convention to this effect.

The Court notes that under domestic law, a person who claims to have been a victim of an unlawful detention can apply for compensation as of right for damages using the procedure laid down in Law No. 466. The mentioned law provides that compensation shall be awarded to persons, *inter alia*, who have been unlawfully detained (see *Erdoğan v. Turkey,* no. 25160/04, Commission decision of 7 September 1995, Decisions and Reports (DR) 82-A, p. 128). The Court observes that the applicant did not claim compensation for his unjustified detention pursuant to this law before the domestic authorities, and thus failed to comply with the requirement of exhaustion of domestic remedies of the Convention.

Furthermore, the domestic court rejected his requests for deduction on each occasion noting that he had been convicted of the offence he had committed between 1990 and 1994, whereas his previous detention was for the offences he had allegedly committed before 1990; thus the applicant's request for deduction was unjustified. The Court therefore finds no reason to conclude that there has been a breach of any provision of the Convention in relation to this complaint.

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

4. The applicant argues under Article 6 §§ 1 and 3 of the Convention that the State Security Court which tried and convicted him is not an impartial and independent tribunal on account of the presence of a military judge sitting on the bench of the court, and that he did not have adequate time and facilities to prepare his defence as he was not present at many of the hearings.

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.

5. The applicant finally alleges under Article 14 of the Convention that the non-applicability of Law No. 4616 (Law on Conditional Release and Suspension) to his case amounts to discrimination.

The Court considers that the distinction alleged by the applicant is not a distinction which is made between different groups of people, but between different types of offences, according to the legislature's view of their

gravity. The Court previously held that such distinctions are not contrary to Article 14 of the Convention (see *Gerger v. Turkey* [GC], no. 24919/94, § 69, 8 July 1999). The Court therefore concludes that the practice in question does not amount to a form of "discrimination" that is contrary to the Convention.

It follows that this complaint is 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 Articles 3 and 6 §§ 1 and 3 of the Convention;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President