CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32580/96
by Ahmet KOÇ
against Turkey

The European Court of Human Rights (Second Section), sitting on 23 September 2003 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE, *judges*,
and Mr T.L. EARLY, *Deputy Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 6 June 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the Court's partial decision of 30 March 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ahmet Koç, who was born in 1953, is a Turkish national and lives in Ankara. He is represented before the Court by Mr Mehdi Bektaş, a lawyer practising in Ankara.

A. The circumstances of the case

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

On 17 February 1981 police officers from the Ankara Security Directorate arrested the applicant on suspicion of membership of an illegal organisation, namely the Dev-Yol ("*Revolutionary Path*"). On 15 April 1981 the judge at the Ankara Martial Law Court ordered the applicant's detention on remand.

On 26 February 1982 the public prosecutor attached to the Ankara Military Court filed a bill of indictment with the Ankara Martial Law Court against the applicant and 722 other defendants. The prosecution called for the applicant to be convicted and sentenced pursuant to Article 168 § 2 of the Criminal Code on account of his membership of an illegal armed organisation.

During the court hearings the applicant challenged the reliability of the statements that he had made to the police and alleged that they had been made under duress.

On 31 December 1983 the applicant was released pending trial.

On 11 November 1987 the court requested the public prosecutor to formulate his opinion on the charges. On 23 March 1988 the public prosecutor filed his opinion with the court.

On 5 May 1988 the lawyers of the defendants were requested to submit their observations to the court. It took the defence lawyers ten months to submit their observations.

On 19 July 1989 the Ankara Martial Law Court found the applicant guilty as charged. The court held that the applicant's allegation that his statements in police custody were made under duress was ill-founded. It reasoned that the applicant's statements had been corroborated by the statements of other defendants. The court sentenced the applicant to six years and eight months' imprisonment and permanently debarred him from public service.

The applicant lodged an appeal with the Military Court of Cassation.

Following promulgation of Law no. 3953 of 27 December 1993, which abolished the jurisdiction of the martial law courts, the Military Court of Cassation acquired jurisdiction over the case and the file was transmitted to it. On 27 December 1995 the Military Court of Cassation revised the judgment of the first-instance court, sentenced the applicant to five years' imprisonment and debarred him from public service for three years.

On 23 May 1996 the applicant was dismissed from his post at the Ankara Municipality on account of his conviction.

On 11 December 1996 the applicant was permitted to return to his previous post and to work as the head of the research and planning department of the municipality.

B. Relevant domestic law and practice

A full description of the relevant domestic law may be found in the *Şahiner v. Turkey* judgment, no. 29279/95, § 17, 25 September 2001.

COMPLAINTS

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

He further complains that his case was not heard by an independent and impartial tribunal, as required by Article 6 § 1 of the Convention. In this regard, he submits that the Ankara Martial Law Court was composed of five members including two military judges and one army officer without any legal training. All three members were accountable to their military superiors.

He also alleges that he did not have a fair trial as the courts based their reasoning on statements that he made to the police under duress. In this connection, he relies on Article 6 §§ 1 and 2 of the Convention.

THE LAW

A. The Government's preliminary objection

The Government argue that the applicant's complaint in respect of the independence and impartiality of the Ankara Martial Law Court must be rejected for failure to comply with the six-month rule contained in Article 35 § 1 of the Convention.

They maintain that as the applicant is complaining of the lack of independence and impartiality of the Ankara Martial Law Court, he should have lodged his application with the Commission within six months of the date on which that court rendered its judgment, namely 19 July 1989.

They further maintain that if the applicant had any additional objections to the independence and impartiality of the Military Court of Cassation, which was not clear from the application form, he should have applied to the Commission within six months of the date on which his case was transferred to the Military Court of Cassation, namely 27 December 1993.

The Court reiterates its established case-law to the effect that in order to determine the conformity of criminal proceedings with the requirements of Article 6 of the Convention it is necessary to take into consideration the entirety of the proceedings (see *John Murray v. the United Kingdom,*

judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, § 63). It notes that victim status under Article 6 § 1 of the Convention is not established until the final decision is a case is rendered.

In the present case the Court notes that the Military Court of Cassation rendered its final ruling on 27 December 1995. Given that the application was lodged with the Commission on 6 June 1996, the applicant must be considered to have complied with the six-month rule under Article 35 § 1 of the Convention.

Accordingly, the Court rejects the Government's preliminary objection.

B. Merits

1. The applicant complains under Article 6 § 1 of the Convention that the criminal proceedings which began on 26 February 1982 and ended on 27 December 1995 with the decision of the Military Court of Cassation were not concluded within a reaonable time. Article 6 § 1 of the Convention provides, in so far as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law."

The Government submit that the length of the criminal proceedings cannot be considered to have been unreasonably long, having regard to the difficulties which arose out of the need to examine thousands of case files. In this connection, the Government highlight the complexity of the case and the nature of the offences with which the applicant was charged. They maintain that the courts had to deal with a trial involving 723 defendants, including the applicant, whose activities and connections with other defendants had to be established. It was extremely difficult for the authorities to ascertain the role played by each of the defendants. As most of the accused were only known by their nicknames, their true identities had to be established. Moreover, the organisation to which the applicant and the rest of the accused belonged was an illegal organisation, which had been involved in ninety-nine murders, fifty-one attempted murders and various other crimes, such as arson and possession of fire arms.

The Government state that there were no periods of inactivity attributable to the authorities.

The applicant reiterates his view that the proceedings were unreasonably long.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within

the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complains under Article 6 § 1 of the Convention that his right to a fair trial was breached as he was tried by the Ankara Martial Law Court which lacked independence and impartiality on account of the presence of two military judges and one army officer on the bench.

The Government did not comment on this complaint.

The Court considers that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant further alleges under Article 6 §§ 1 and 2 of the Convention that he did not have a fair trial as the courts based their judgment on statements which had been taken from him under duress while in police custody.

The Government reject the applicant's allegations. They argue that the statements impugned by the applicant were not the sole grounds for his conviction. They maintain that the courts relied on statements given by other defendants as well as on other evidence, such as evidence provided by weapons used in killings, testimonies of witnesses, expert opinions and other items of proof.

The Court points out that the Convention does not lay down rules on evidence as such. The admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them (see *Kostovski v. the Netherlands,* judgment of 20 November 1989, Series A no. 166, p. 19, § 39). However, an issue may arise under Article 6 § 1 in respect of evidence obtained in violation of Article 3 of the Convention even if the admission of such evidence was not decisive in securing the conviction.

In the instant case, the Court notes that in the proceedings before the domestic courts the applicant confined himself to challenging the admissibility of his statements to the police officers. However, apart from the allegation that his statements were taken under duress, he did not at any stage give any indication to the national courts of the sort of ill-treatment which he allegedly suffered. The Court further observes that the applicant did not specifically set out in his application form to the Commission the details of the duress to which he had been allegedly subjected. It is also to be noted that he has not submitted any concrete evidence, such as a medical certificate, to substantiate an allegation of ill-treatment. It considers therefore that the applicant has not laid the basis of an arguable claim that his statements were taken under duress of a nature amounting to ill-treatment and which may have vitiated the fairness of his trial.

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

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the denial of his right to a fair hearing within a reasonable time by an independent and impartial tribunal;

Declares the remainder of the application inadmissible.

T.L. EARLY
Deputy Registrar

J.P COSTA
President