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. 42576/98
by Hasan KORKMAZ
against Turkey

The European Court of Human Rights (Third Section), sitting on 24 January 2002 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 30 November 1997 and registered on 5 August 1998,

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 observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicant, Hasan Korkmaz, is a Turkish national, who was born in 1953 and lives in Turkey. He is a retired non-commissioned army officer.

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

On 13 July 1996 police officers from the Ankara Security Directorate arrested the applicant and placed him in custody on suspicion of membership of an organisation involved in arms smuggling.

The applicant was not allowed to consult his lawyer during his detention in police custody. He was forced to sign statements drafted by the police officers. The latter withdrew money from the applicant's account using his banker's card and put the money in his pocket as proof of illegal earnings from arms smuggling.

On 24 July 1996 the Ankara police held a press conference on the subject of the apprehension of members of the organisation, including the applicant, and referred to the inquiry that was under way. The applicant and twenty-five other detainees were shown to journalists while standing behind a table on which there were weapons, ammunition and some amount of money.

On 25 July 1996 newspapers and television channels reported this press conference. It was stated, among others, in the *Hürriyet* and *Milliyet* newspapers that a gang involved in arms smuggling was uncovered and that this operation started by apprehension of the applicant and two other persons with a number of Kalashnikov rifles and bullets in a car. It was noted that 10 revolvers and 1504 bullets were found and seized by the police at the houses and shops of the applicant and seven others. The authorities stated that the head of the gang had claimed that the applicant and three others had unlawfully supplied licences for firearms to 35 persons and that they had taken fifty million Turkish liras for each licence.

On the same day, 25 July 1996, the applicant was brought before the Public Prosecutor at the Ankara State Security Court, where he was questioned in relation to his involvement in smuggling weapons. The applicant denied the statements taken in police custody and alleged that the police officers forced him to sign false statements under duress.

On 26 July 1996 the State Security Court ordered the applicant's detention on remand.

On 2 August 1996 the Public Prosecutor filed an indictment against the applicant for membership of an organisation involved in arms smuggling.

On 2 September 1996 the first hearing took place in the Ankara State Security Court and the applicant did not have a lawyer.

Commented [Note1]: To be checked.

On 30 September 1996 the second hearing was held and the applicant was represented in the court by his lawyer. On the same day the applicant filed a petition with the President's office at the Ankara State Security Court and complained that he was held in detention without any reason. He further alleged, without giving any details, that he had been subjected to torture and verbal abuse during his detention in police custody.

On 25 November 1996 the Ankara State Security Court convicted the applicant as charged and sentenced him to 6 years and 3 months' imprisonment. The applicant appealed.

On 7 May 1997 the Court of Cassation upheld the above judgment which was served on the applicant on 1 July 1997.

COMPLAINTS

The applicant complains under Article 5 § 3 of the Convention that he was kept in detention in police custody for thirteen days without being brought before a judge or other officer authorised by law to exercise judicial power. He further submits under Article 5 § 4 that he had no remedy under Turkish law to challenge the lawfulness of his detention.

The applicant also alleges that the criminal proceedings against him were based on false statements drafted by police officers and that he was forced to sign those statements under duress. In this respect, he invokes Articles 6 § 1 and 13 of the Convention.

The applicant complains under Article 6 § 2 of the Convention that his right to presumption of innocence was violated since, subsequent to his arrest, the police officers put some money, weapons and ammunition on a table before him and presented him as a criminal to journalists.

The applicant maintains under Article 6 §§ 1 and 3 (c) of the Convention that he was denied a fair hearing as he was deprived of his right to legal assistance during his questioning by the police officers.

THE LAW

1. The applicant complains under Article 5 §§ 3 and 4 of the Convention that he was kept in detention in police custody for thirteen days without being brought before a judge or other officer authorised by law to exercise judicial power and that he had no remedy under Turkish law to challenge the lawfulness of his detention.

The Court notes that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 5§ 3, as Article 35 § 1 of the Convention provides that the Court

"may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the instant case the Court observes that the applicant was arrested pursuant to the Law on the Procedures of State Security Courts and that no domestic remedy was available in order to challenge the lawfulness and the length of his police custody (see, *mutatis mutandis*, Sakık and Others v. Turkey judgment of 26 November 1997, *Reports* 1997-VII, § 53). The Court recalls that, according to the established case-law, when the acts of an authority are not open to any effective remedy, the six-month period runs from the date on which the act took place (see, *among others*, application no. 10389/83, decision of 17 July 1986, D.R. 47, p. 72).

The Court notes that the applicant's detention in police custody ended on 25 July 1996, whereas the application was introduced on 30 November1997, that is more than six months after the detention of which the complaint is made.

It follows that this part of the application has been introduced out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

2. The applicant alleges under Articles 6 § 1 and 13 of the Convention that the criminal proceedings against him were based on false statements drafted by the police officers and that he was forced to sign those statements under duress.

The Court considers that the applicant's complaint in this part should be examined under Article 6 § 1. Thus, there is no need for the matter to be considered in the context of Article 13, which has less stringent requirements (see the Rappaport v. France decision of 6 April 1995, application no. 24142/94, DR 81, p. 108).

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 the 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 State Security Court 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 alleged duress his detention in police custody. It is also to be noted that he has not adduced any concrete evidence, such as a medical

certificate, of having been subjected to duress as alleged. In this regard, the Court is of the opinion that the applicant has not laid the basis of an arguable claim that his statements during his detention in police custody were taken under duress.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. The applicant submits under Article 6 §§ 1 and 3 (c) of the Convention that he was deprived of legal assistance during his detention in police custody.

The applicant complains under Article 6 § 2 of the Convention that he was presented as a criminal to the public at the press conference of 25July1996.

The Court considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Procedure, to give notice of them to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the fairness of the proceedings and his right to presumption of innocence;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President