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. 46286/99
by Hacı ÖZEN
against Turkey

The European Court of Human Rights (Third Section), sitting on 10 April 2003 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 lodged on 22 December 1998,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Hacı Özen, is a Turkish national, who was born in 1943 and lives in Şırnak. He is represented before the Court by Mr Mahsum Batı, a lawyer practising in Diyarbakır.

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

On 11 June 1998 at around 11-12 a.m. the applicant was arrested by gendarmerie officers from the Şırnak provincial gendarmerie command on

suspicion of aiding an illegal organisation, the PKK. It is to be noted that according to the protocols that were drawn up by the gendarmerie officers the applicant was arrested on 15 June 1998. However, the hour of the arrest was specified as 8.30 a.m. in the arrest protocol, whereas in the scene of incident protocol it was noted as around 4 a.m. It is mentioned in the scene of the incident protocol that the applicant was arrested while he was taking clothes to members of the PKK.

Following his arrest, the applicant's hands were tied, his mouth was covered and he was blindfolded. He was then placed in custody in the Şırnak provincial gendarmerie command. During his detention in the custody of the gendarmerie he was subjected to ill-treatment. In particular his hands were tied, his mouth was covered, he was blindfolded, stripped naked and subjected to beatings. He was also deprived of food and water and was prevented from going to the toilet. The applicant was kept in a small and dark cell, threatened with death and insulted. Furthermore, the gendarmerie officers attempted to rape him.

In the evening of 11 June 1998, the applicant's son, Mehmet Özen, applied to the Security Directorate claiming that his father left home at around 8 - 8.30 a.m. to go to their farm and that he was seen by one of their neighbours, Ömer Katar, at around midday while being abducted by an armed group of six or seven persons. On 12 June 1998 an official protocol was drawn up concerning Mehmet Özen's claim.

On 13 June 1998 a similar protocol was drawn up containing Ömer Katar's statement about the applicant's arrest. He stated that he had seen the applicant being taken away by seven men who were carrying rifles. Ömer Katar testified that Hacı Özen's hands were tied and that he was being beaten up by these men.

On 15 June 1998 the applicant was brought before a forensic doctor, Mr Veli Gül. The medical report drafted by the doctor referred to the following marks on the applicant's body: a bruise on the right of his head, scratches and bruises on the front of his right arm, bruises on the right part of his back, bruises of 2 x 2 cm on his waist, bruises on the front of his left arm, a bruise on the back of his left shoulder, bruises of 2 x 2 cm on his left hip and a trauma of 2 x 4.5 cm on his parietal bone.

On 24 June 1998 the applicant was examined by the same doctor who noted the presence of the traces of old bruises on his shoulders and arms.

On the same day the applicant was brought before the Chief Public Prosecutor in Şırnak. He denied the charges against him. The statements that he had allegedly made at the gendarmerie command were read to him. The applicant denied that he had made those statements, according to which the applicant willingly acted as a courier. He claimed that he was threatened with death by two men to deliver a bag to some people whom he had not known. He alleged that he had been told to apply his thumbprint on a document when he was questioned by gendarmerie officers.

After being questioned by the Chief Public Prosecutor he was brought before the Şırnak Magistrates' Court *(Sulh Ceza Mahkemesi),* where he denied the charges against him. He further pleaded not guilty and reiterated his statement that he had made before the Chief Public Prosecutor. The Şırnak Magistrates' Court ordered the applicant's detention on remand. The court also took note of the applicant's allegation that he was threatened with death and decided to refer it to the Chief Public Prosecutor's office.

On 30 June 1998 the Chief Public Prosecutor in Şırnak issued a decision of non-jurisdiction and sent the case file to the Chief Public Prosecutor's office in the Diyarbakır State Security Court.

On 17 August 1998 the Chief Public Prosecutor in Şırnak decided to discontinue the investigation based on Mehmet Özen's allegation. The Chief Public Prosecutor found that the applicant had not been abducted as alleged by Mehmet Özen but taken into custody on suspicion of aiding the PKK.

On 9 July 1998 the Chief Public Prosecutor at the Diyarbakır State Security Court filed a bill of indictment with the latter charging the applicant under Article 169 of the Criminal Code with aiding and abetting an illegal organisation.

On 21 December 1998 the applicant's representative stated before the Diyarbakır State Security Court that the applicant was arrested on 11 June 1998. He alleged that the protocols prepared by gendarmerie officers contained false information. He maintained that the medical report of 15 June 1998 established the ill-treatment of the applicant at the hands of gendarmerie officers. He further complained that the length of the applicant's detention was excessive. He made an oral complaint against the gendarmerie officers in relation to the ill-treatment of the applicant before the State Security Court and requested the court to notify the Chief Public Prosecutor's office concerning their complaint. In reply to the request of the applicant's representative the State Security Court stated:

> "It has been decided that the representative of the accused be authorised to lodge a complaint with the Chief Public Prosecutor's office where the act took place and that the copy of the hearing minutes be provided if needed."

On 22 December 1998 the applicant lodged his application with the European Court of Human Rights alleging violations of Articles 3, 5, 6 and 13 of the Convention.

On 8 February 1999 the Diyarbakır State Security Court ordered the applicant's release pending trial.

On 13 December 1999 the Diyarbakır State Security Court convicted the applicant of aiding and abetting the members of the PKK and sentenced him to three years and nine months' imprisonment. In its judgment, the court relied, inter alia, on the applicant's confession statements made in the custody of the gendarmerie.

On 18 October 2000 the Court of Cassation dismissed the applicant's appeal and upheld the judgment of the Diyarbakır State Security Court.

On an unspecified date following the decision of the Court of Cassation the applicant was released pursuant to Law no. 4616, which provides for the suspension of proceedings and the execution of sentences regarding certain offences committed before 23 April 1999.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was subjected to ill-treatment while in detention in the Şırnak provincial gendarmerie command. He alleges that he was blindfolded, stripped naked, deprived of food and was prevented from going to the toilet. He further alleges that he was subjected to beatings and verbal abuse and that he was detained *incommunicado* in a dark cell. He also alleges that the gendarmerie officers attempted to rape him.

The applicant alleges a violation of Article 5 § 3 of the Convention in that he was kept in police custody for fourteen days between 11 June 1998 and 24 June 1998 without being brought before a judge.

The applicant complains under Article 6 § 1 of the Convention that he was denied a fair hearing on account of the presence of a military judge on the bench of the Diyarbakır State Security Court, which tried and convicted him.

He further alleges violations of Article 6 § 1 of the Convention as the criminal proceedings brought against him were not concluded within a "reasonable time" and since the judgment of the Diyarbakır State Security Court was based on the statements taken under duress.

The applicant submits under Article 6 § 2 of the Convention that his right to be presumed innocent until proved guilty was infringed throughout the investigation and the trial.

The applicant complains under Article 6 §§ 1 and 3 (b) and (c) of the Convention that his right to a fair hearing was violated, as he did not have adequate facilities for the preparation of his defense and he was deprived of his right to legal assistance during the investigation.

The applicant complains of a lack of effective remedies in domestic law in respect of his complaint regarding inhuman treatment and torture under Article 13 of the Convention.

THE LAW

1. The applicant complains that he was subjected to ill-treatment during his detention in the custody of the gendarmerie, which amounted to inhuman treatment and torture, contrary to Article 3 of the Convention. The applicant further complains that he had no effective remedy within the meaning of Article 13 of the Convention in respect of his complaint of ill-treatment.

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 these parts of the application to the respondent Government.

2. The applicant complains that he was detained in the custody of the gendarmerie for fourteen days without being brought before a judge contrary to 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 his right to a fair hearing was breached as he was tried and convicted by the Diyarbakır State Security Court which lacked independence and impartiality. He further alleges a breach of Article 6 § 1 of the Convention that the Diyarbakır State Security Court's judgment was based on his statements taken under duress in the custody of the gendarmerie. He also complains that the criminal proceedings brought against him were not concluded within a reasonable time as required by Article 6 § 1. The relevant parts of Article 6 § 1 provide as follows:

> " 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."

a) As to the applicant's complaint that the length of the criminal proceedings exceeded the reasonable time requirement under Article 6 of the Convention, the Court notes that the period to be taken into consideration began in June 1998 when the applicant was arrested and taken into custody. The criminal proceedings in question ended on 18 October 2000 when the Court of Cassation rejected the applicant's appeal. The proceedings therefore lasted approximately two years and four months.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in its established case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. (*Yağcı and Sargın v. Turkey*, judgment of 8 June 1995, Series A319-A, p. 20, § 59)

The Court notes that, in the present case, the applicant's case was dealt with by two levels of jurisdiction in approximately two years and four months. Moreover, the applicant has not shown any substantial periods of inactivity attributable to the judicial authorities. The Court therefore considers that the total period at issue does not appear to be unreasonably long.

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

b) As to the applicant's complaint regarding the independence and impartiality of the Diyarbakır State Security Court, 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.

c) Concerning the applicant's complaint that the Diyarbakır State Security Court's judgment was based on his statements taken under duress 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 § 2 of the Convention that his right to be presumed innocent until proved guilty was infringed throughout the investigation and the trial. Article 6 § 2 provide as follows:

> " Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Court observes that the applicant did not specifically set out in his application form to the Court the details of the alleged violation of Article 6 § 2. The Court is of the opinion that the applicant has failed to substantiate his allegation and to provide an arguable claim allowing an examination of his complaint by the Court.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

5. The applicant complains under Article 6 §§ 1 and 3 (b) and (c) of the Convention that he did not have adequate facilities for the preparation of his defence and he was deprived of his right to legal assistance during the criminal proceedings. Article 6, in so far as relevant, provides as follows:

> 1. 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.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing..."

a) As to the applicant's allegation that he did not have adequate facilities to prepare his defence the Court observes that the applicant did not specifically set out in his application form to the Court the details of the alleged violation of Article 6 § 3 (b). The Court is of the opinion that the applicant has failed to substantiate his allegation and to provide an arguable claim allowing an examination of his complaint by the Court.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

b) In relation to the applicant's complaint that he was deprived of his right to legal assistance during the criminal proceedings, 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.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning ill-treatment, his right to be brought promptly before a judge, his right to a fair hearing by an independent and impartial tribunal within a reasonable time, his right to legal assistance and his right to an effective remedy regarding his complaint of ill-treatment;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President