CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

# PARTIAL DECISION

# AS TO THE ADMISSIBILITY OF

Application no. 38041/97
by Cuma ŞAT
against Turkey

The European Court of Human Rights (First Section) sitting on 2 March 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr B. Zupančič,
Mr T. Pantiru,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 15 January 1997 by Cuma ŞAT against Turkey and registered on 3 October 1997 under file no. 38041/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

**THE FACTS**

The applicant, born in 1957, is a Turkish citizen who is currently being held in prison in the Bayrampaşa district of Istanbul. He is represented before the Court by Mr Özcan Kılıç, a lawyer practising in Istanbul.

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

On 17 December 1992 the applicant was arrested by policemen and taken to the Anti-Terror branch of the Istanbul Security Directorate. He was charged with being a member of an illegal organisation.

He was placed in a cell to be questioned by policemen. He was stripped naked, strung up by his arms and subjected to the form of torture known as "Palestinian hanging". Electric shocks were then administered to sensitive parts of his body. He was hosed with pressurised water, beaten on the soles of his feet, insulted, threatened with death, denied food and liquid and was prevented from sleeping. He was subsequently requested to give information and sign papers.

Thereafter, the applicant was placed in another cell where his wife was being detained. He was blindfolded and gagged. Afterwards, he was made to listen to the cries of his wife being tortured.

On 4 January 1993 the applicant was brought before the Public Prosecutor at the Istanbul State Security Court. He was questioned about his involvement in an illegal organisation, the Turkish Communist Labour Party (*Türkiye Komünist Emek Partisi*). He denied the offence with which he was charged and complained that he had been tortured at the police station with a view to extracting confessions. He maintained that he was unable to recognise the policemen who had tortured him as he was blindfolded during questioning. He requested that criminal proceedings be instituted against the policemen who had tortured him. On the same day he was brought before the Istanbul State Security Court which ordered him to be detained on remand.

On 16 February 1993 the applicant was taken to the Forensic Medical Institute in Eyüp district of Istanbul on the orders of the Eyüp Public Prosecutor. A medical report was prepared, which stated that the applicant had, among other symptoms, the long term functional loss of his arms. The doctor who prepared the report also noted that these findings were not life threatening, but they would prevent the applicant from working for fifteen days.

On 13 January 1996 the applicant filed a petition with the Public Prosecutor's office in the Fatih district of Istanbul. He complained that the policemen at the Anti-Terror branch of the Istanbul Security Directorate had tortured him during his detention in custody. He explained the details of the torture inflicted on him and requested that the policemen be tried and convicted.

On 15 July 1996 the Fatih Public Prosecutor issued a decision of non-prosecution in relation to the police officers at the Istanbul Security Directorate. He noted that there was no finding of ill-treatment in the medical reports. He considered that there was insufficient evidence on which to institute criminal proceedings against the police officers.

On 16 August 1996 the applicant filed an objection with the Beyoğlu Assize Court against the Fatih Public Prosecutor's decision of 15 July 1996.

On 31 October 1996 the Beyoğlu Assize Court dismissed the applicant's objection.

In the meantime, on 12 December 1995 the Istanbul State Security Court convicted the applicant of membership of an illegal organisation. The Court of Cassation upheld this judgment on 13 May 1996.

## COMPLAINTS

The applicant primarily alleges that he was tortured in violation of Article 3 of the Convention. He submits that the suffering he experienced, taken as a whole, amounted to torture. Thus, while in detention in the Anti-Terror branch of the Istanbul Security Directorate, he claims that he was kept blindfolded during questioning, was suspended from his arms and subjected to the form of torture known as "Palestinian hanging", was hosed with pressurised water, beaten on the soles of his feet, insulted, threatened with death, denied food and liquid and prevented from sleeping. He also alleges that he was made to listen to the cries of his wife being tortured.

The applicant complains under Article 5 § 3 of the Convention that he was kept in detention in police custody for eighteen days without being brought before a judge.

The applicant maintains that he was denied access to a court in violation of Article 6 of the Convention. He submits in this respect that the Public Prosecutor failed to institute court proceedings against the policemen responsible for torturing him, as a result of which he could not exercise his civil right to compensation. The applicant contends in this respect that civil proceedings have no prospect of success unless the facts concerning the events have been established and the perpetrators identified and prosecuted.

The applicant also alleges a violation of Article 13 of the Convention on account of the lack of an independent authority before which a complaint could be brought with prospect of success.

The applicant finally submits under Article 14 of the Convention, in conjunction with Article 5 § 3, that there is a difference between the proceedings in State Security Courts and in the ordinary courts as regards the length of permissible police custody, which amounts to unlawful discrimination.

## THE LAW

1. The applicant complains under Article 5 § 3 of the Convention that he was kept in detention in police custody for eighteen days without being brought before a judge.

The applicant submits under Article 14 of the Convention, in conjunction with Article 5 § 3, that there is a difference between the proceedings in State Security Courts and in the ordinary courts as regards the length of permissible police custody, which amounts to unlawful discrimination.

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, either alone or in conjunction with Article 14 of the Convention, 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 an act of an authority is 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 4 January 1993, whereas the application was introduced on 15 January 1997, that is more than six months after the detention of which 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 that he was tortured in violation of Article 3 of the Convention. He submits that the suffering he experienced, taken as a whole, amounted to torture. Thus, while in detention in the Anti-Terror branch of the Istanbul Security Directorate, he claims that he was kept blindfolded during questioning, was suspended from his arms and subjected to the form of torture known as "Palestinian hanging", was hosed with pressurised water, beaten on the soles of his feet, insulted, threatened with death, denied food and liquid and prevented from sleeping. He also alleges that he was made to listen to the cries of his wife being tortured.

The applicant maintains that he was denied access to a court in violation of Article 6 of the Convention. He submits in this respect that the Public Prosecutor failed to institute court proceedings against the policemen responsible for torturing him, as a result of which he could not exercise his civil right to compensation. The applicant contends in this respect that civil proceedings would have no prospect of success unless the facts concerning the events have been established and the perpetrators identified and prosecuted.

The applicant also alleges a violation of Article 13 of the Convention on account of the lack of an independent authority before which a complaint can be brought with any prospect of success.

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,

**DECIDES TO ADJOURN** the examination of the applicant's complaints under Articles 3, 6 and 13 of the Convention;

unanimously,

**DECLARES INADMISSIBLE** the remainder of the application.

Michael O'Boyle
Registrar

Elisabeth Palm
President