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. 18667/02
by Ramazan ŞİMŞEK
against Turkey

The European Court of Human Rights (Third Section), sitting on 14 October 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 15 April 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ramazan Şimşek, is a Turkish national, who was born in 1976 and lives in Batman. He is represented before the Court by Ms Y. Dora Şeker, a lawyer practising in Adana.

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

On 23 October 1995 the applicant was arrested by police officers from the anti-terrorist branch of the Izmir Security Directorate on suspicion of his involvement in the PKK. He was later handed over to the police officers

from the Adana Security Directorate for interrogation, where he was placed in custody.

On 1 November 1995 the applicant gave a statement to the police, where he confessed that he had been involved in certain activities for the PKK.

On 5 November 1995 the police officers drafted three reports of the re-construction of events, which were signed by the applicant.

On 6 November 1995 the applicant was brought before the Adana Public Prosecutor and the investigating judge. He denied the statements he had given to the police, alleging that they had been taken under duress. On the same day the investigating judge decided that the applicant be placed in detention on remand.

On a later date the public prosecutor of the Adana State Security Court decided that he has no jurisdiction over the case and sent the case file to the Konya State Security Court.

On 20 November 1995 the public prosecutor at the State Security Court filed an indictment with the same court accusing the applicant of being a member of the PKK, distributing illegal leaflets, having participated in the execution team of the organisation and of having being involved in the killing of N.K, N.P, H.K and R.Ş.

On 19 May 1997, after the promulgation of Law No. 4210, which abolished the Konya State Security Court, the case file was transferred to the Adana State Security Court. The criminal proceedings at the Adana State Security Court began on 11 June 1997.

During the hearing of 24 March 1998 the applicant requested that M.S., S.S, and H.E. be heard as witnesses before the court. The court dismissed this request stating that the mentioned persons were charged with the same offence, namely for being members of the same organisation, thus their testimonies would not be reliable.

On 16 June 1998 the State Security Court convicted the applicant of the offence as charged and sentenced him to the death penalty. It then commuted this to life imprisonment.

On 6 May 1999 the Court of Cassation quashed the judgment of the State Security Court on account of "the lack of a final investigation" and remitted the case file back to it.

The criminal proceedings at the State Security Court began on 24 August 1999. On 23 November 1999 the court convicted the applicant of the same offence and issued the same sentence.

On 27 September 2000 the Court of Cassation quashed the judgment of the first instance court on the grounds that the State Security Court did not obtain the statements given by M.S., S.Ş, and H.E. outside of police custody when delivering its judgment, thus the criminal proceedings were not conducted properly.

Following this, the State Security Court obtained the approved written testimonies of the above-mentioned persons outside of police custody.

These testimonies were read out to the applicant and he was asked as to whether he had any counter-arguments against them.

On 15 March 2001, having considered the testimony of the applicant in the reports of the re-construction of events, the testimony he made before the public prosecutor and the investigating judge, the statements that were retrieved from M.S., S.Ş., and H.E. outside of police custody, the expert reports and other evidence before it, the State Security Court delivered the same judgment and sentenced the applicant to life imprisonment.

On 27 September 2001 the Court of Cassation upheld the latter judgment.

The applicant found out about the content of this final judgment on 9 April 2002.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was ill-treated whilst in police custody.

The applicant further complains under Article 5 § 3 of the Convention that the length of his detention on remand exceeded a "reasonable time" requirement within the meaning of this provision.

The applicant alleges under Article 6 §§ 1, 2 and 3 of the Convention that the criminal proceedings brought against him were not concluded within a reasonable time, that the State Security Court which tried and convicted him had not conducted a fair trial anyway and was prejudiced against him from the beginning of the criminal proceedings, and that he was denied the right to have his witnesses heard.

THE LAW

1. The applicant complains under Article 3 of the Convention that he was ill-treated whist in police custody.

The Court notes that during 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 provide any details as to what kind of ill-treatment he had suffered nor provided any medical evidence in support of his allegation. In this regard, the Court is of the

opinion that the applicant has not laid the basis of an arguable claim that he was subjected to ill-treatment whilst in police custody.

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.

2. The applicant further complains under Article 5 § 3 of the Convention about the length of his detention on remand.

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 finally alleges under Article 6 §§ 1, 2, and 3 (d) of the Convention that the criminal proceedings brought against him were not concluded within a reasonable time, that the State Security Court which tried and convicted him had not conducted a fair trial anyway, that the court was prejudiced against him from the beginning of the trial, and that his request that the other defendants be heard as defence witnesses was rejected by the court.

(a) As regards the complaint about the length of the criminal proceedings, the Court observes that they were instigated on 23 October 1995 when the applicant was arrested and ended on 27 September 2001 when the Court of Cassation upheld the judgment of the Adana State Security Court, a period lasting approximately six years.

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 the established case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Mitap and Müftüoğlu v. Turkey*, judgment of 25 March 1996, *Reports of Judgments and Decisions* 1996-II, p. 8, § 32).

The Court notes that, in the instant case, the domestic courts examined the applicant's case in six instances. In these circumstances, the total period of six years cannot be considered as unreasonably long. Moreover, the applicant failed to demonstrate to the Court any period of substantial inactivity that could be attributable to the judicial authorities during the conduct of the proceedings.

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.

(b) As to the complaint about the fairness of the proceedings, the Court observes that, in the instant case, the applicant's complaint of a fair trial was not related to the question of the status of members of the state security courts. It further notes that the applicant's arguments were far too general in nature and that he failed to substantiate them.

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.

(c) As regards the complaint that his witnesses were not heard before the court, the Court reiterates that as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which the defendants seek to adduce. The Court's task is to ascertain whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair (see, among other authorities, *Edwards v. the United Kingdom*, judgment of 6 December 1992, Series A, no. 247-B, pp. 34-35, § 34). The Court further draws attention to the fact that Article 6 § 3 (d) does not grant the accused an unlimited right to secure the appearance of a witness in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a witness (see among other authorities, *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V); its essential aim, as indicated by the words "under same conditions", is a full equality of arms in matter.

The Court notes that, in the present case, the Court of Cassation quashed the judgment of the State Security Court twice during the criminal proceedings on account of the lack of a final investigation, and on other procedural grounds, one of which also was in line with the applicant's allegation that the witnesses were not heard by the court.

The Court further observes that, before delivering its final judgment of 15 March 2001, the State Security Court obtained the witnesses' testimonies which were taken outside of police custody. These testimonies were read out to the applicant during the hearing, and he was asked whether he had any counter-arguments against them.

The State Security Court further took note of the applicant's testimonies in the reports of the re-construction of events, the statements he made before the public prosecutor and the investigating judge, the statements that were retrieved from M.S., S.Ş., and H.E. outside of police custody, and the expert reports in the case file, and then convicted the applicant on the basis of the facts and evidence before it as a whole.

In light of the above considerations, the Court concludes that, in the present case, the domestic courts cannot be regarded as having violated the applicant's right under Article 6 § 3 (d) of the Convention.

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.

For these reasons, the Court,

unanimously,

Decides to adjourn the examination of the applicant's complaint concerning the length of the detention on remand;

by a majority,

Declares the complaint about the length of the criminal proceedings inadmissible;

unanimously,

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President