CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46281/99
by Cihan SİNCAR and Others
against Turkey

The European Court of Human Rights (Third Section), sitting on 24 March 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Ms R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 25 January 1999,

Having regard to the partial decision of 29 September 2002,

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 applicants, Mrs Cihan Sincar, Mr Oktay Bağatır and Mr Mehmet Hanafi Baran, are Turkish nationals who were born in 1957, 1962 and 1964 respectively and live in Ankara, Batman and Diyarbakır. They were represented before the Court by Mr M. Vefa, a lawyer practising in Diyarbakır.

A. The circumstances of the case

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

According to the information gathered by the police, at the time of the events giving rise to the present application, demonstrations and hunger strikes were being organised in the Diyarbakır and Batman offices of HADEP (*Halkın Demokrasi Partisi-People's Democracy Party)*, in order to protest the arrest of the PKK leader Abdullah Öcalan in Italy, on 13 November 1998.

On 16 November 1998 the head of the Diyarbakır Security Directorate requested the Diyarbakır public prosecutor to issue a search warrant in order to inspect the party offices. The public prosecutor issued the search warrant on the same day.

1. Regarding the first and second applicants

The first applicant was a member of the HADEP. She was appointed to organise the party's election campaign in Batman and to supervise the activities of the branch offices in the region. The second applicant was a practising lawyer in Batman and he was also a member of the party.

Following the seizure of a handwritten fax in the branch office in Batman, addressed to the Italian Minister of Justice, asking him to help to free Abdullah Öcalan and to found a Kurdish state, on 18 November 1998 the applicants were taken into police custody by the police officers at the Batman Security Directorate.

On the same day the applicants were examined at the Batman State Hospital and at the Diyarbakır State Hospital. In the medical reports it was concluded that there were no traces of ill-treatment on their bodies.

In a letter dated 20 November 1998 the Diyarbakır Security Directorate requested the Diyarbakır Public Prosecutor to extend the applicants' detention period until 22 November 1998 together with hundred and seven others. On the same day, considering the number of the accused and the difficulty to obtain evidence, the public prosecutor authorised to extend the detention period as requested.

On 22 November 1998 a judge at the Diyarbakır State Security Court decided to extend the applicants' detention period until 28 November 1998, following the Diyarbakır Security Directorate's second request.

On both 23 and 24 November 1998 the applicants consulted their lawyers for an hour.

On 25 November 1998 the first applicant's lawyer filed a petition with the Diyarbakır public prosecutor complaining about the alleged torture that his client and five others had been subjected to in police custody. The public prosecutor initiated an investigation against the police officers who were responsible for the alleged torture.

In their statements given to the police on 25 November 1998 the applicants described their affiliation with the HADEP, however they refused to make any comment concerning their alleged involvement with the PKK until they were brought before a judicial authority. Moreover, they refuted the allegations concerning their involvement in organising demonstrations and hunger strikes in order to protest Abdullah Öcalan's arrest. The first applicant also contended that she had not drafted the fax letter which was addressed to the Italian Minister of Justice.

According to a report prepared on the same day, by a handwriting expert from the Diyarbakır Criminal Police Laboratory, the fax letter addressed to the Italian Minister of Justice was not drafted by either of the applicants.

On 26 November 1998 the applicants went through a medical examination by a doctor at the Diyarbakır Clinic. In the medical report it was noted that no traces of ill-treatment or torture were found on the applicants' bodies.

On the same day the applicants were brought before a public prosecutor at the Diyarbakır State Security Court. During their questioning they rejected the accusations against them and stated that they were not involved with the PKK and had not participated in any demonstration to support its activities. They refuted their statements given in police custody alleging that they were blindfolded while signing them.

Following the office of the public prosecutor, they were brought before a judge at the Diyarbakır State Security Court, where they reiterated their statements given before the public prosecutor. The judge ordered their release pending trial.

On 17 December 1998 the Diyarbakır Public Prosecutor filed a bill of indictment with the Diyarbakır State Security Court accusing the first applicant of aiding and abetting members of a terrorist organisation. On the same day three public prosecutors attached to the Diyarbakır State Security Court decided that no prosecution should be brought against the second applicant on the ground that there existed no evidence to convict him.

On 25 February 1999 the Diyarbakır State Security Court took the first applicant's statements. The latter reiterated her statements of 26 January 1998, given before the judge and the public prosecutor at the Diyarbakır State Security Court. She refuted her statements dated 23 November 1998 given in police custody claiming that she was blindfolded when she had signed the document.

On 16 April 1999 the first applicant's statements concerning her allegations of torture were taken by the competent public prosecutor. Without giving any details, she complained of having been subjected to torture.

On 27 September 1999 the public prosecutor issued a decision of non-jurisdiction concerning the complaints of torture in police custody and

transferred the case-file to the office of the Diyarbakır Governor in accordance with the provisions of the Law on Prosecution of Civil Servants.

Relying on the custody records and the medical reports, the police investigator appointed by the Governor, drafted a recommendation report (*fezleke*) where he concluded that the applicant's allegations were not substantiated. Subsequently, on 4 May 2000 the Governor approved the recommendation report. On 30 May 2000 the Provincial Administration Council in Diyarbakır decided that no charges should be brought against the police officers.

On 3 April 2001 the Diyarbakır State Security Court decided to defer the imposition of a final sentence upon the first applicant, pursuant to Law no. 4616. The court held, under Article 1 § 4 of the same law, that the criminal proceedings against her would be suspended and a final sentence would be imposed should she be convicted of a further intentional offence within five years of this decision.

2. Regarding the third applicant

The applicant is a member of the HADEP. On 17 November 1998 he was taken into police custody together with a group of twenty people outside the party's headquarter in Diyarbakır.

On the day of his arrest the applicant was examined by a doctor at the Diyarbakır State Hospital, who noted in the medical report that there were no signs of injuries on his body.

In a letter dated 18 November 1998 the Diyarbakır Security Directorate requested the Diyarbakır Public Prosecutor to extend the detention period of the applicant along with hundred and ten others until 21 November 1998. On the same day the public prosecutor authorised the security directorate to extend the detention period until that date.

On 20 November 1998, following a request from the Diyarbakır Security Directorate and considering the number of the accused, the judge at the Diyarbakır State Security Court decided to extend the detention period until 26 November 1998. In his statements given in police custody the applicant confirmed that he was a member of HADEP but rejected the allegations concerning his involvement in organising demonstrations and hunger strikes.

On 25 November 1998 the applicant was examined by a doctor at the Diyarbakır Clinic. The medical report recorded that there were no traces of ill-treatment on his body. On the same day the applicant was brought before a public prosecutor at the Diyarbakır State Security Court. During his questioning he denied the allegations against him. He alleged that he had signed his statement in police custody while he was blindfolded.

On the same day the applicant was brought before a judge at the Diyarbakır State Security Court. He reiterated the statement he had given before the public prosecutor and alleged that he was blindfolded when he

signed his statement in police custody. The judge ordered the applicant's release pending trial.

On an unspecified date the Diyarbakır Public Prosecutor filed a bill of indictment with the Diyarbakır State Security Court accusing the applicant of aiding and abetting members of a terrorist organisation.

On 22 February 2001 the Diyarbakır State Security Court decided to defer the imposition of a final sentence upon the applicant, pursuant to Law no. 4616. The court held, under Article 1 § 4 of the same law, that the criminal proceedings against the applicant would be suspended and a final sentence would be imposed should he be convicted of a further intentional offence within five years of this decision.

On 11 June 2002 the applicants' representative informed the Court that there were no medical reports which could prove that they were subjected to torture.

On 22 March 2003 the applicants' representative took the statements of two persons who were detained together with the third applicant. In these statements the witnesses recalled their detention in police custody, without giving any detail concerning the applicant.

On 24 March 2003 a doctor from the Diyarbakır Branch of the Turkish Human Rights Association drafted a report on the third applicant's medical situation. According to this report the applicant applied to the association on 30 November 1998, complaining that he had been tortured in police custody and that since then he was undergoing a psychological treatment. It was noted that his physical treatment was completed.

B. Relevant domestic law

The relevant domestic legislation is outlined in the Court's *İğdeli v. Turkey* judgment (no. 29296/95, §§ 16-21, 20 June 2002).

COMPLAINTS

The applicants alleged under Article 3 of the Convention that they were tortured while in police custody. Moreover they complained that the national authorities failed to initiate an investigation against the police officers who tortured them.

The first applicant complained under Article 5 § 1 (c) of the Convention that there was no reasonable suspicion for her arrest and detention.

The applicants complained under Article 5 § 3 of the Convention that they were held in police custody for an excessive period of time.

The applicants also alleged under Article 13 of the Convention, in conjunction with the above Articles, that they had no effective domestic remedy in Turkish law in respect of their Convention grievances.

THE LAW

A. Complaint under Article 3 of the Convention

The applicants complained that they had been subjected to torture in police custody, in violation of Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. The Government's objections

The Government argued that the applicants should have brought their allegations of torture to the Court within six months from the last day of their detention in police custody, namely 26 November 1998 for the first and second applicants, and 25 November 1998 for the third applicant.

Furthermore, the Government submitted that the applicants have failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention as they did not seek compensation in accordance with civil and administrative law remedies. The second and the third applicants also failed to exhaust criminal remedies that were available under domestic law, since they did not complain before any judicial authority about their allegations of torture.

The applicants disputed the Government's arguments and alleged that they were absolved from having recourse to domestic remedies since they were ineffective.

The Court does not find it necessary to determine whether or not the applicants complied with the requirements under Article 35 of the Convention as their complaint under Article 3 is, in any event, manifestly ill-founded for the reasons stated below.

2. Merits

The Government argued that according to medical reports dated 18 and 26 November 1998 no traces of ill-treatment or torture were found on the applicants' bodies. They stressed that the applicants have failed to submit any cogent evidence to substantiate their allegations of torture.

The applicants contended that the so-called medical reports relied on by the Government were not capable of undermining the credibility of their

complaints. They claimed that the doctors did not properly examine everyone as there were too many accused to be examined.

The Court observes that in the instant case a number of facts raise doubts as to whether the applicants, as they maintained, suffered treatment prohibited by Article 3 when they were detained in police custody.

Firstly, the Court observes that apart from stating that they were blindfolded while signing their statements given in police custody, the applicants never complained of any act of ill-treatment before the public prosecutor and the judge at the Diyarbakır State Security Court. Furthermore, in her petition filed with the public prosecutor's office, the first applicant merely stated that she was subjected to torture in police custody without giving any details of the alleged acts.

Secondly, the witness statements taken by the applicants' lawyers on 22 March 2003 evoked their detention in police custody in general without giving any detail concerning the applicants.

Thirdly, on 11 June 2002 the applicants informed the Court that there were no medical reports which could substantiate their allegations of torture. However, according to a medical report dated 24 March 2003, the third applicant was allegedly undergoing a psychological treatment since his detention in police custody, while his physical treatment was completed. The Court is struck by the fact that the applicant failed to inform it about the treatment that he was allegedly receiving at the date of his application and did not furnish this evidence until almost four years later.

The Court observes that the applicants did not adduce any concrete evidence of having been ill-treated as alleged. Accordingly, the materials relied on by the applicants cannot *per se* raise a presumption that they were ill-treated while in custody so as to make out an arguable complaint of ill-treatment. They did not produce any evidence which serves to contradict the results of the medical examination carried out following their release from detention.

In the light of these considerations, the Court finds that the applicants' complaint under Article 3 of the Convention is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Complaint under Article 13 of the Convention, in conjunction with Article 3

The applicants alleged under Article 13 of the Convention, in conjunction with Article 3, that the national authorities failed to initiate an investigation against the police officers who tortured them. Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government contended that upon the first applicant's complaint the authorities initiated an investigation and examined her allegations of torture effectively. However the second and third applicants did not bring any complaint in this respect.

The applicants claimed that the second and third applicants did not complain before the domestic authorities, about the alleged torture inflicted on them, because they believed that even if they did, the outcome would have been the same as in the first applicant's case.

The Court recalls that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nor does the effectiveness of a remedy for the purposes of Article 13 depend on the certainty of a favourable outcome for the applicant (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2286, § 95, and *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 122)

The Court considers that the second and third applicants had not made out an arguable claim that they were ill-treated at the hands of the police. Besides maintaining that they were blindfolded while signing their statements given in police custody they did not complain of any sort of ill-treatment in the hands of the police. In the particular circumstances of the case, it considers that the procedural obligation of the authorities of the respondent State cannot be said to have been breached.

Assuming that the first applicant's complaint disclosed an "arguable" claim for the purposes of Article 13 of the Convention, the Court observes that following the petition filed by the applicant's lawyer complaining about the alleged torture that his client had been subjected to in police custody, the public prosecutor initiated an investigation against the police officers. In the applicant's statements taken by the public prosecutor she briefly maintained that she had been subjected to torture without giving any details. Considering the custody records, the medical reports which did not record any traces of ill-treatment on her body and the applicant's statements which did not contain the particulars of the alleged act, the Provincial

Administrative Council decided to bring no charges against the police officers.

In the light of the foregoing, the Court considers that the above mentioned situation cannot be regarded as a breach of the applicant's right to an effective remedy, since the authorities had no evidence on which to lay the basis of a case against police officers.

The applicants' complaint in this respect is, accordingly, manifestly ill-founded and must be rejected pursuant to Articles 35 §§ 3 and 4 of the Convention.

C. Complaint under Article 5 of the Convention

The first applicant complained under Article 5 of the Convention that there was no reasonable suspicion for her arrest and detention. Moreover all three applicants complained that they were held in police custody for nine days, in breach of the same Article of the Convention.

1. The Government's objections

(a) The six-month rule

The Government claimed that the applicants were required to bring their complaints under Article 5 of the Convention within six months from the last day of their detention in police custody, namely 26 November 1998 for the first and second applicants and 25 November 1998 for the third applicant.

In view of the fact that the introduction date of the application is 25 January 1999, the Court dismisses the Government's objection.

(b) Exhaustion of domestic remedies

The Government submitted that Law no. 466 provides for the payment of compensation to persons who have been unlawfully arrested or detained. The applicants could have lodged compensation proceedings at the nearest assize court within three months of the final decision taken against them concerning their allegations under Article 5 of the Convention. However, they failed to do so.

In reply, the applicants maintained that as the length of their detention was in conformity with the domestic law, any claim for compensation lodged under Law no. 466 would have been futile.

The Court considers that a claim for compensation as indicated by the Government would not make it possible to end detention in custody of an unjustified nature within the meaning of Article 5 § 1 of the Convention (see *Elçi and Others v.Turkey*, nos. 23145/93 and 25091/94, Commission decision of 2 December 1996).

As to the Article 5 § 3 complaint, the Court observes that the applicants complained of the length of their detention in police custody, not that they had no remedies whereby they could obtain compensation. The remedy mentioned by the Government with reference to Law no. 466 concerns Article 5 § 5 only, which has not been invoked by the applicant (see *Demir and Others v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VI, pp. 2652-53 § 37).

Accordingly, the Court dismisses the Government's objection.

2. Merits

(a) Article 5 § 1 (c)

The Government contended that the first applicant was taken into police custody in the course of an operation carried out by police, following the seizure of a letter addressed to the Italian Minister of Justice, in the Batman office of the HADEP, in order to support the acts of a terrorist organisation. They maintained that since she was one of the directors of the Batman branch of the party there was a reasonable suspicion of her being responsible for the impugned letter.

The applicant argued that she was arrested because she was a well-known person by the police for her activities within the party.

The Court observes that the police initiated an investigation against those responsible for the hunger strikes and demonstrations organised in the Diyarbakır and Batman offices of HADEP, in order to protest the arrest of the leader of PKK. Furthermore the police was searching for the drafters of the letter sent from the branch office in Batman to the Italian Minister of Justice asking him to help Abdullah Öcalan. Since the applicant was one of the directors of the Batman branch of the party, the Court considers that her arrest and detention in police custody was on the basis of a "reasonable suspicion" within the meaning of Article 5 § 1 (c). The Court further notes that she was later charged with aiding an abetting a terrorist organisation.

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) Article 5 § 3

The Government contended that the length of the applicants' custody period was in accordance with the regulation which was in force at the time of the events. Furthermore, the regulations concerning the custody periods have been amended and brought in conformity with the requirements of the Court's case-law.

The applicants contested the Government's submissions.

The Court considers that this complaint raises complex issues of law and fact, the determination of which should depend on an examination of the

merits of the application as a whole. The Court concludes, therefore, that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

D. Complaint under Article 13 of the Convention, in conjunction with Article 5

The applicants also complained under Article 13 of the Convention, in conjunction with Article 5, that they had no effective domestic remedies in Turkish law to challenge the lawfulness and length of their detention in police custody.

The Court will examine this complaint under Article 5 § 4 of the Convention, since its essence is related to that Article.

The Court considers that this complaint raises complex issues of law and fact, the determination of which should depend on an examination of the merits of the application as a whole. The Court concludes, therefore, that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicants' complaints concerning the length of their detention in police custody and lack of an effective domestic remedy to challenge the lawfulness of their detention;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President