CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 23710/02
by Adnan Akdeniz TAŞ
against Turkey

The European Court of Human Rights (Second Section), sitting on 13 September 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 22 May 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Adnan Akdeniz Taş, is a Turkish national who was born in 1975 and lives in Tokat. He is represented before the Court by Mr Hasan Erdoğan, a lawyer practising in Ankara.

A. The circumstances of the case

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

On 19 December 2000 the applicant, who was the chief editor of a periodical, participated in a demonstration protesting at the establishment of the F-Type prisons in order to report on the event for his newspaper. During the demonstration, the applicant got into a fight with the police and participated in the destruction of a police car.

On 21 March 2001 the applicant was arrested on suspicion of aiding a terrorist organisation, namely TDP *(Turkish Revolutionary Party)*. The applicant was taken to the anti-terror branch of the Ankara Security Directorate, where he was allegedly subjected to verbal abuse and his statement was taken under duress.

On 23 March 2001 the applicant was brought before the Ankara State Security Court where he only denied the accusations against him, but he did not declare that his statement had been taken under duress or complain about the ill-treatment he had allegedly suffered in police custody. Moreover, he did not file any complaints with the Office of the Public Prosecutor against the police officers who had allegedly mistreated him. On the same day he was placed in detention on remand.

On 8 February 2001 the public prosecutor at the Ankara State Security Court filed an indictment with the court charging the applicant under Article 169 of the Criminal Code. The public prosecutor relied on documents and propaganda material related to the TDP which were seized during the search of the applicant's house. He further took into consideration that the applicant had participated in a number of events aiming at protesting against the establishment of the F-type prisons, especially the fact that he had got into a fight with the police and participated in the destruction of a police car during the demonstration of 19 December 2000.

On 9 July 2001 the Ankara State Security Court, relying on the documents and materials seized in the applicant's house, convicted the applicant of aiding the members of an illegal organisation, namely the TDP and sentenced him to 3 years and 9 months of imprisonment.

On 5 December 2001 the Court of Cassation, in a public hearing, upheld the decision of the State Security Court.

B. Relevant domestic law and practice

The relevant domestic law and practice are set out in *Göç v. Turkey* ([GC], no. 36590/97, §§ 29-34, ECHR 2002-V).

COMPLAINTS

1. The applicant maintains under Article 3 of the Convention that he was subjected to inhuman treatment in police custody. In this connection, he alleges that his statement in police custody was taken under duress and he was subjected to verbal abuse.

2. Invoking Article 6 § 1 of the Convention the applicant complains that he did not receive a fair hearing on the ground that he was tried and convicted by the Ankara State Security Court which is not impartial or independent and the rights of the accused and the trial procedure are much more restricted as compared to the other civil courts in Turkey.

3. The applicant complains under Article 6 § 3 (b) that the Principal Public Prosecutor's written submissions to the Court of Cassation were not communicated to him.

4. Invoking Article 9 and 10 of the Convention the applicant complains that the domestic courts considered that he was aiding and abetting the members of an illegal organisation through being the chief editor of a periodical, which breached his right to freedom of thought and expression respectively.

THE LAW

1. The applicant alleges that during his police custody he was subjected to treatment which constituted a breach of Article 3 of the Convention. He submitted in this connection that his statement was taken under duress and he had been verbally insulted.

The Court notes that during the proceedings before the domestic courts the applicant's defence was confined to the denial of the charges that had been brought against him. At no stage of the proceedings did he give any indication to the national courts about the sort of ill-treatment he had allegedly suffered in custody. Furthermore, the applicant has not filed any complaints with the domestic authorities against the officers who allegedly mistreated him.

The Court further observes that the applicant has not produced any concrete evidence in support of his allegations and has thus failed to substantiate his claim that he was subjected to ill-treatment 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. Invoking Article 6 § 1 of the Convention the applicant complains that he did not receive a fair hearing on the ground that he was tried and

convicted by Ankara State Security Court which is not impartial and independent and where the rights of the accused and the trial procedure are much more restricted as compared to the other civil courts in Turkey.

The Court notes that the applicant failed to substantiate his allegation as to the lack of independence and impartiality of Ankara State Security Court. The Court observes that the applicant had legal representation throughout the legal proceedings and was able to state his case fully and to challenge the evidence. Furthermore, the applicant was convicted on 9 July 2001 which is two years after the constitutional amendment of 18 June 1999 with a view to the exclusion of military members from state security courts. Therefore, the proceedings were conducted and the final judgment was pronounced by a state security court composed of three civilian judges who carried out a full examination of the facts of the case and assessment of the evidence and law presented before it (see, *mutadis mutandis*, *Imrek v. Turkey* (dec.), no. 57175/00, 28 January 2003). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant complains under Article 6 § 3 (b) that the Principal Public Prosecutor's written submissions on the merits of his claim to the Court of Cassation were not communicated to him.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints 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. Invoking Articles 9 and 10 of the Convention the applicant complains that the domestic courts considered that he was aiding and abetting the members of an illegal organisation through being the chief editor of a periodical, which breached his right to freedom of thought and expression respectively.

The Court notes that the applicant was not convicted because of his position as the chief editor of a periodical or on account of having expressed opinions therein. The court found the applicant guilty on the basis of incriminating evidence, namely the propaganda material related to the TDP, discovered during a search of his house. He was tried and convicted on account of aiding and abetting an armed terrorist organisation by his participation in certain activities, which involved propaganda for the organisation such as the demonstration of 19 December 2000 wherein he got into a fight with the police and participated in the destruction of a police car in contravention of Article 169 of the Criminal Code.

In light of the foregoing, the Court considers that the conviction of the applicant cannot be viewed in terms of an interference with his rights under Articles 9 and 10 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the non-communication to the applicant of the Principal Public Prosecutor's submissions on the merits of his claim before the Court of Cassation;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President