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. 16608/02
by Fatma TUNC
against Turkey

The European Court of Human Rights (Third Section), sitting on 2 September 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 M. VILLIGER, *Deputy Section Registrar,*

Having regard to the above application lodged on 29 March 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Fatma Tunc, is a Turkish national, who was born in 1980. At the time of the events giving rise to her application, she was living in Istanbul. She is currently in prison in Gebze. She is represented before the Court by Mrs F. Karakaş, a lawyer practising in Istanbul.

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

On 10 October 2001 the applicant was at a bus stop in İçerenkoy in Istanbul when she was arrested by plain-clothes police officers on suspicion

of being a member of the PKK. She was taken to the Anti-Terror Branch of the Istanbul State Security Directorate. On the same day, the police officers drafted an arrest protocol stating that the applicant had been arrested on account of her involvement in PKK-related activities. The applicant signed this protocol.

Following the arrest, the applicant's lawyer challenged it with the investigating judge of the State Security Court and requested that the applicant be released from detention. Her request was dismissed.

On 11 October 2001 the public prosecutor at the State Security Court extended the detention period until 14 October 2001.

On 14 October 2001 the applicant could see her lawyer for a short period of time with the permission of the public prosecutor.

On 15 October 2001 a police officer from the Anti-Terrorist Branch requested that the applicant's custody period be extended for three more days. The single judge of the State Security Court granted the request and extended the custody period until 17 October 2001. The applicant's lawyer challenged this decision and requested that the applicant be brought before the judge. Her request was dismissed.

On 16 October 2001 the applicant was brought before the public prosecutor at the State Security Court. She was also examined by a doctor who noted in his medical report that there existed no bruises on the applicant's body. On the same day, the investigating judge of the State Security Court detained the applicant on remand.

On 23 November 2001 the public prosecutor filed a bill of indictment with the State Security Court, accusing the applicant of being a member of an illegal armed organisation and requested that she be punished pursuant to Article 168 § 2 of the Criminal Code.

At the time of the application the criminal proceedings brought against the applicant were still pending before the State Security Court.

COMPLAINTS

The applicant complains under Article 5 § 1 (c) of the Convention that her arrest contradicted the Convention provisions as she was arrested whilst waiting at a bus stop and had nothing illegal on her possession.

The applicant contends that she was not informed of the reasons for her arrest and of the charges against her as required by Article 5 § 2 of the Convention.

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

The applicant claims under Article 5 § 4 of the Convention that she was denied the right to challenge the lawfulness of her detention since she was not brought before the public prosecutor or the judge, where she could challenge the lawfulness of her detention.

The applicant alleges under Article 5 § 5 of the Convention that Turkish Law does not provide any remedy to redress the damage caused to her by her unlawful detention.

Finally she invokes Articles 3, 13 and 14 of the Convention arguing that the length of her detention constituted a breach of Article 3 and that she was exposed to such treatment since the offence she was charged with was within the jurisdiction of the State Security Courts.

THE LAW

1. The applicant complains under Article 5 § 1 (c) of the Convention that her arrest and detention was unlawful. She further alleges under Article 5 § 2 that she was not informed of the reasons for her arrest.

The Court observes that the applicant has been taken into police custody in the course of an operation conducted against the members of an illegal organisation and that she was later charged with an offence which fell under Article 168 § 2 of the Criminal Code, that provides punishment for members of illegal armed organisations.

The Court considers that the applicant's arrest and detention in police custody can be considered to be "in accordance with a procedure prescribed by law" on the basis of a "reasonable suspicion" that she had committed an offence within the meaning of Article 5 § 1 (c) of the Convention.

As regards the second complaint, the Court notes that the arrest protocol of 10 October 2001, which was signed by the police officers and the applicant, states that the applicant was arrested in the course of an operation conducted against the members of the illegal organisation. It concludes therefrom that the applicant must be deemed to have been aware of the reasons for her arrest.

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 complains under Article 5 §§ 3, 4 and 5 of the Convention that she was kept in detention in police custody for six days without being brought before a judge or other officer authorised by law to exercise judicial power and that she had no effective remedy under Turkish Law to challenge the lawfulness and the length of her detention in police custody.

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.

3. The applicant finally complains under Articles 3, 13 and 14 of the Convention that the length of her detention constituted a breach of Article 3 and that she was exposed to such treatment since she was charged with an offence that is within the jurisdiction of the State Security Courts.

The Court has examined the applicant's above allegations in the light of the evidence submitted to it, and considers that these complaints are unsubstantiated.

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 complaints under Article 5 §§ 3, 4 and 5 of the Convention;

Declares the remainder of the application inadmissible.

Mark VILLIGER
Deputy Registrar

Georg RESS
President