CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 73033/01
by Şendoğan YAZICI
against Turkey

The European Court of Human Rights (First Section), sitting on 8 September 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mr R. TÜRMEN,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 30 January 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Şendoğan Yazıcı, is a Turkish national who was born in 1975 and lives in Istanbul. He is represented before the Court by Mr K.T. Sürek, a lawyer practising in Istanbul.

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

On 8 March 1995 the applicant was taken into police custody by police officers from the Eminönü District Security Directorate. He was kept in police custody for twenty four hours. The applicant was allegedly subjected to various forms of ill-treatment with a view to extracting confession statements during his detention in police custody.

On 9 March 1995 the applicant was taken to the Haseki Hospital and Istanbul Forensic Medicine Institute. The doctor in the Haseki Hospital examined the applicant and drafted a provisional medical report where he noted that there was a slight protuberance and sensitivity both on and under the skin, on the right side of the mandibula. He opined that the injuries had occurred as a result of a hit. The doctor further noted that the applicant complained about a broken tooth. He thus advised a dental consultation. The dentist who examined the applicant noted in the provisional report that the applicant was suffering from a profound caries.

On the same day, the applicant was taken to the Istanbul Forensic Medicine Institute. The forensic doctor examined the applicant and observed the following in the final medical report:

> "The provisional medical report of the Haseki Hospital has been examined. In the report, it was noted that there was a slight scratch and protuberance, both on and under the skin, on the right side of Mr Şendoğan Yazıcı's mandibula which had occurred as a result of a hit. The applicant complained about a broken tooth. In his dental examination, the dentist noted that the Mr Yazıcı was suffering a profound caries.
>
> As to Mr Yazıcı's final medical examination, a protuberance of 2x2 cm is observed on the right side of his mandibula. There is no other traumatic symptom.
>
> The traumatic injury, which caused a broken tooth, is not life threatening but renders Mr Yazıcı unfit for work for ten days".

On 15 May 1995 the applicant filed a petition with the public prosecutor's office in Istanbul. He complained that five police officers in the Eminönü District Security Directorate had beaten, kicked and verbally abused him during his detention in police custody. He further stated that the forensic doctor had recommended his rest for ten days. He requested that the police officers be tried and convicted for inflicting ill-treatment on him.

On 17 March 1995 the Istanbul public prosecutor, pursuant to the provisions of the Law on the Prosecution of Civil Servants (*Memurin Muhakematı Kanunu),* sent the file to the Eminönü Administrative Council attached to the District Governor's office in Eminönü in order to seek authorisation to prosecute the police officers who had allegedly ill-treated the applicant.

On 28 November 1996 the Eminönü Administrative Council decided to authorise the prosecution of the police officers and sent back the case-file to the Public Prosecutor's office in Istanbul for the latter to initiate criminal proceedings.

On 30 April 1997 the Istanbul Regional Administrative Court dismissed the police officers' objection against the decision of the Eminönü Administrative Council and sent the case-file to the Istanbul Criminal Court of First Instance.

On an unspecified date, criminal proceedings were initiated against the five police officers in the Istanbul Criminal Court. They were charged under Article 245 of the Criminal Code with inflicting ill-treatment on the applicant.

On 30 November 2000 the applicant filed a petition with the Istanbul Criminal Court of First Instance and requested the latter to accelerate the criminal proceedings against the police officers. Referring to the jurisprudence of the European Court of Human Rights, the applicant claimed that the length of the criminal proceedings at issue was already excessive. He further asked the court to reach a final decision before the entry into force of the new conditional amnesty law.

On 21 December 2000 Law No. 4616 ("Amnesty Law") came into force. It provided for the suspension of proceedings and execution of sentences regarding the offences committed before 23 April 1999.

On 26 March 2001 the Istanbul Criminal Court suspended the criminal proceedings against the police officers pursuant to the Amnesty Law.

COMPLAINTS

The applicant submits under Article 3 of the Convention that he was subjected to various forms of ill-treatment during his detention in police custody.

He maintains under Article 5 of the Convention that he was unlawfully deprived of his liberty since there were no grounds for reasonable suspicion that he had committed a criminal offence.

He complains under Article 6 § 1 of the Convention that the length of the criminal proceedings against the police officers was excessive. He also contends under the same heading that the judges sitting on the bench of the Istanbul Criminal Court cannot be considered as independent and impartial as they are attached to the Supreme Council of Judges and Public Prosecutors.

THE LAW

1. The applicant complains that he was subjected to various forms of ill-treatment during his detention in the police custody in violation of Article 3 of the Convention.

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 these parts of the application to the respondent Government.

2. The applicant complains under Article 5 of the Convention that he was unlawfully deprived of his liberty since there was no reasonable suspicion of him having committed a crime.

The Court reiterates that, according to the established case-law of the Convention organs, in cases where no domestic remedy is available the six-month period runs from the date of the act alleged to constitute a violation of the Convention; however, where it concerns a continuing situation, the period of six-month runs from the end of the situation concerned (see, among other authorities, *Ege v. Turkey* (dec.), no. 47117/99, 10 February 2004).

The Court notes that the applicant's detention in police custody ended on 9 March 1995, when he was released. The applicant introduced his application to the Court on 30 January 2001, i.e. more than six months later.

It follows that this part of the application is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. The applicant submits under Article 6 of the Convention that the length of the criminal proceedings against the police officers was excessive. He further alleges that the judges sitting on the bench of the Istanbul Criminal Court cannot be considered as independent and impartial as they are attached to the Supreme Council of Judges and Public Prosecutors.

a) As to the applicant's complaint concerning the length of the criminal proceedings against the police officers the Court observes that the criminal proceedings lasted almost four years and three months before the first-instance court until the decision for suspension of the criminal proceedings. The Court considers that this complaint should be examined under Article 13 of the Convention as it concerns the ineffectiveness of the criminal proceedings against the accused police officers.

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.

b) As to the applicant's complaint that the judges sitting on the bench of the Istanbul Criminal Court cannot be considered as independent and impartial since they are attached to the Supreme Council of Judges and Public Prosecutors, the Court reiterates that it has already rejected similar complaints concerning the issue of the independence and the impartiality of the civil judges on account of their attachment to the Supreme Council of Judges and Public Prosecutors (see, among many others, *Imrek v. Turkey* (dec.), no. 57175/00, 28 January 2003). The Court finds no particular

circumstances in the instant case which would require it to depart from its findings in the above-mentioned case.

Consequently, 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 complaints concerning the alleged ill-treatment inflicted on the applicant and his right to an effective remedy in domestic law;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President