APPLICATIONS/REQUÊTES N° 15530/89 and/et N° 15531/89

Nasuh MITAP and Abdullah Oguzhan MUFTUOGLU v/TURKEY

Nasuh MITAP et Abdullah Oguzhan MUFTUOGLU c/TURQUIE

DECISION of 10 October 1991 on the admissibility of the application

DÉCISION du 10 octobre 1991 sur la recevabilité de la requête

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Article 5, paragraph 3 of the Convention *In order to assess the reasonableness of the duration of a period of detention on remand the Commission may even take into account a part thereof which in itself is outside its competence ratione temporis*

The reasonableness of the length of detention on remand must be assessed essentially on the basis of the reasons given in the decisions on applications for release and of the true facts mentioned by the applicant in his appeals

Detention on remand lasting almost eight and a half years (Complaint declared admissible)

Article 6, paragraph 1 of the Convention

a) Where the Commission, by reason of its competence ratione temporis, can only examine part of the proceedings, it can take into account, in order to assess the length, the stage reached in the proceedings at the beginning of the period under consideration

b) The length of criminal proceedings is calculated from the time when the applicant's situation is affected by the proceedings against him until the time when the charges are finally determined

Relevant factors complexity of the case conduct of the applicant and of the judicial authorities

Criminal proceedings of over ten years, still pending (Complaint declared admissible)

c) *Question whether the martial law court which convicted the applicants is a tribunal established by law, independent and impartial, and whether the applicants had a fair trial (Complaints declared admissible)*

Article 26 of the Convention

a) *The exhaustion of domestic remedies may take place after the introduction of an application, but must have taken place before the Commission is called upon to decide on the admissibility In this case, length of time taken for examination of a complaint taken into account by the Commission*

b) *With regard to the excessive length of detention on remand ordered in military criminal proceedings (Turkey) an applicant who has requested conditional release has satisfied the requirement of exhaustion of domestic remedies*

c) *With regard to the excessive length of military criminal proceedings (Turkey) an applicant does not have a remedy available , in particular, an appeal to the Military Court of Cassation is not such a remedy*

d) *National legislation giving no prospect of success In this case, concerning complaints about the legality, independence and impartiality of a martial law court (Turkey), the applicants did not have an effective remedy available*

e) *Circumstances in which the speed with which a remedy can be exercised may be a relevant element in assessing its effectiveness In this case, concerning a complaint about the fairness of proceedings before a martial law court (Turkey) the applicants did not have an effective remedy available*

Competence *ratione temporis* *When a judgment has been given after the entry into force of a declaration accepting the right of individual petition, the Commission is competent to examine whether the proceedings following which the judgment was given were in conformity with the Convention, even in respect of the part preceding the relevant date*

(TRANSLATION)

THE FACTS

The first applicant, Nasuh Mitap, a Turkish national, was born in 1947. He is an economist resident in Ankara.

The second applicant, Abdullah Oguzhan Muftuoglu, a Turkish national, was born in 1944. He is a lawyer resident in Anamur (Mersin). At the time when their applications were introduced the applicants were detained in Ankara.

In the proceedings before the Commission the applicants are represented by Mr Halit Çelenk, Mr Veli Devecioglu, Mr Ibrahim Tezan and Mr Ahmet Atak, lawyers practising in Ankara.

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

The Ankara police took the first applicant into custody on 22 January 1981 and the second applicant on 23 January 1981. They were accused of being members of the central committee of the organisation "Dev Yol" (Revolutionary Way) The applicants were held in police custody for three months

The first applicant's lawyer lodged a criminal complaint with the military prosecutor attached to the Martial Law Court, complaining of the torture he had suffered at the hands of the Ankara police officer in charge of his interrogation, B.P

The second applicant's lawyer lodged a criminal complaint with the same military prosecutor, likewise complaining of the torture B P had inflicted on him while he was in police custody.

On 8 March 1982 the military prosecutor preferred criminal charges against the police officer B.P. in the 2nd Ankara Martial Law Court for torturing the accused with a view to extracting information. In a judgment dated 13 April 1983 the 2nd Ankara Martial Law Court acquitted B P It based its judgment on the lack of sufficient evidence against B.P., whereas it had found that the applicants had suffered ill-treatment In a judgment dated 7 January 1983 the Military Court of Cassation upheld the above judgment.

In the meantime, on 23 April 1981, the Ankara Martial Law Court had remanded the two applicants in custody. The military prosecutor filed the bill of indictment on 26 February 1982 in the 2nd Martial Law Court

In this bill of indictment, which set out charges against 574 defendants according to the applicants and 723 defendants according to the Government, the applicants were accused of founding and taking a leading role in an organisation whose aim was to destroy the constitutional order and replace it with a Marxist-Leninist regime; of publishing the magazine "Dev Yol" (Revolutionary Way) and the newspaper "Demokrat" , of engaging in activities designed to obtain funds for their organisation; of arguing the need to set up committees to organise resistance against attacks by extreme right militants and, lastly, of organising meetings, thus instigating a number of acts of violence. The prosecution called for the applicants to be sentenced to death, pursuant to Article 164 para 1 of the Turkish Criminal Code (1)

(1) "It shall be an offence, punishable by the death penalty, to attempt to change or modify entirely or partially the Constitution of the Turkish Republic or to carry out a coup d'état against the Grand National Assembly instituted by the Constitution or to prevent it by force from exercising its functions."

The applicants made a number of applications to the Martial Law Court requesting their conditional release, but these were rejected

In all these decisions refusing release the Martial Law Court took into account 'the nature of the evidence, the date of remand in custody and the nature and content of the charges"

At a hearing on 11 May 1988 the applicants and their lawyers, relying on Article 15 of the United Nations Convention for the Prevention of Torture, asked the court to remove from the file the statements they had made to the police under duress

The Martial Law Court rejected this application on the ground that the provisions of the above-mentioned Convention had not yet been incorporated into Turkish law It further held that the statements taken by the police and the prosecution did not, taken alone, constitute conclusive evidence

At a hearing on 14 September 1988 the applicants' lawyers challenged the judges of the Martial Law Court on the ground that they had shown themselves to be partial

The court dismissed the challenge, ruling that in a state of siege challenges to judges were admissible only in those cases where judges ought to stand down on their own initiative

On 6 July 1989 the applicants' lawyers again applied to the Martial Law Court requesting their clients' conditional release, arguing that a period of detention on remand lasting eight years and five months exceeded the reasonable time referred to in Article 5 para 3 of the Convention

In a judgment dated 19 July 1989 the Martial Law Court found the applicants guilty of the offences as charged and sentenced them to life imprisonment (i e eighteen years in prison assuming good conduct) for contravening Article 146/1 of the Turkish Criminal Code, permanently disbarred them from employment in the civil service and ordered their placement under legal guardianship during their detention It also decided to deduct from the sentence imposed the time spent in detention on remand

The operative part of the Martial Law Court's judgment was read out at a hearing on 19 July 1989, but the text of the reasoned decision was not yet available by the date of adoption of the present decision on admissibility

On 23 July 1991 the applicants were granted conditional release

COMPLAINTS

1 The applicants complain in the first place of a violation of Article 5 para 3 of the Convention, in that their detention on remand was prolonged beyond the reasonable

time referred to in that provision Because of the excessive length of their detention the applicants consider that it could no longer be regarded as a provisional measure, but was rather the execution of a sentence in advance and rely in this connection on Article 6 para 2

2 The applicants further allege that their case was not heard within a reasonable time, as required by Article 6 para 1 of the Convention They claim that the preparatory investigation lasted nearly two years, given that they were arrested on 22 and 23 January 1981 and appeared for the first time before the Martial Law Court on 18 October 1982

3 The applicants also claim that their case was not heard by a tribunal established by law, within the meaning of Article 6 para 1 of the Convention Although the state of siege was lifted in Ankara on 19 July 1985, the martial law courts continued to deal with the cases pending before them, in accordance with Article 23 of Law No 1402 (the State of Siege Act), under which in the event of the state of siege being lifted the martial law courts shall retain jurisdiction until they have dealt with the cases set down on their lists A similar provision had been declared unconstitutional in a judgment of the Constitutional Court dated 15 and 16 February 1972 In an amendment to Law No 1402 (the State of Siege Act) adopted on 19 September 1982 this provision was re established by the National Security Council (military government)

4 The applicants also consider that their case was not heard by an independent and impartial tribunal, as required by Article 6 para 1 of the Convention The Martial Law Court was composed of five members, comprising two military judges, two civilian judges and an army officer with no legal training who was entirely under the authority of the officer commanding the state of siege operations

The two military judges were not totally independent of the officer commanding the state of siege operations, since in order to obtain promotion such judges need favourable reports both from their administrative superiors (army officers) and from the members of the Military Court of Cassation In addition, they can be dismissed for disciplinary reasons following proceedings which can be brought by the officer commanding the state of siege operations

Furthermore, the Defence Minister has power to establish and dissolve martial law courts

Lastly, the military judges attached to martial law courts are chosen from a list of candidates drawn up by a committee on the advice of the Chief of Staff and subsequently appointed by decrees signed by the President of the Republic the Prime Minister and the Defence Minister

The applicants refer in this connection to the relevant provisions of the Constitution, Law No. 1402 (the State of Siege Act), Law No 353 (the Code of Military Criminal Procedure) and Law No 357 on the powers and duties of military judges

5. Lastly, the applicants complain that they did not have a fair hearing, contrary to Article 6 para 1 of the Convention. Although the fact that they had been tortured while in police custody had been established in the criminal proceedings brought as a result of their complaint, the Martial Law Court nevertheless took into account the statements taken during that period

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THE LAW

Before the Commission the applicants complain of the excessive length of their detention (Article 5 para 3 of the Convention), the excessive length of the criminal proceedings against them, the Martial Law Court's failure to meet the requirements of lawfulness, independence and impartiality, and infringement of the principle of a fair trial (Article 6 para 1 of the Convention)

A. As to compatibility *ratione temporis* with the provisions of the Convention

The respondent Government raise, in respect of all the applicants' complaints, a preliminary objection pleading inadmissibility on the grounds that the Commission lacks competence *ratione temporis* They point out that the declaration deposited on 28 January 1987, in accordance with Article 25 of the Convention, in which Turkey recognised the Commission's competence to examine individual petitions, concerns only events after that date or judgments based on such events They consider that the applicants' allegations concern a period before 28 January 1987 and that the applications must accordingly be declared inadmissible

The applicants contest this argument. They maintain that the criminal proceedings instituted against them, and their detention, were facts which continued after the date of the Turkish Government's declaration They submit that these facts constitute a continuing situation which thus comes within the competence of the Commission

It is true that under the terms of the declaration in which Turkey recognised the right of individual petition the Commission is not competent to look into events which occurred before the date on which that declaration took effect, i e 28 January 1987

However, when examining the length of detention on remand, the Commission may even have regard to a part of such detention which in itself is outside its competence (cf No 7438/76, Ventura v Italy, Dec. 15.12 80, D R. 23 p. 5, Eur Court H R , Neumeister judgment of 27 June 1968, Series A no 8, "As to the law", para. 6).

Similarly, with regard to the length of the criminal proceedings concerning the charges against the applicants, the Commission notes that the applicants' complaints mainly concern the alleged irregularities of the proceedings rather than the events on account of which they were instituted Consequently, the Commission can take into account the state of the proceedings on 28 January 1987 in order to assess the reasonableness of the period of time which elapsed after that date (cf Eur Court H R judgment of Foti and Others of 10 December 1982, Series A no 56, pp 18 19, para 53)

With regard to the applicants' other complaints concerning some of the principles enunciated in Article 6 para 1 of the Convention, namely the lawfulness independence and impartiality of the court and the fairness of the proceedings before that court, the Commission observes that the Turkish court concerned, the Ankara Martial Law Court, gave judgment convicting the applicants on 19 July 1989, i e after the date of the Turkish Government's declaration made under Article 25 of the Convention The Commission is therefore competent *ratione temporis* to examine the complaints relating to the status of that court and the fairness of the proceedings before it

B As to the exhaustion of domestic remedies

The respondent Government raise, in respect of all the applicants' complaints, a preliminary objection pleading inadmissibility on the grounds of failure to exhaust domestic remedies Their main contention is that the criminal proceedings against the applicants are still pending in the military criminal courts and that no final, binding judgment has been given in those proceedings

Given that Article 207 of the Code of Military Criminal Procedure establishes the possibility of an appeal on points of law to the Military Court of Cassation in respect of any failure to comply with, *inter alia*, the law, procedural requirements or the rights of the defence and that the Convention is applicable in Turkey, the Government consider that it is for the applicants to raise in that court, which rules at last instance, the complaints they have placed before the Commission

The Government further assert with regard to the lawfulness of the applicants' detention, that the provisions of Article 19 para 6 of the Turkish Constitution are similar to the provisions of Article 5 para 3 of the Convention and provide that 'everyone detained shall be tried within a reasonable time' The applicants could have relied on that provision as grounds for an appeal on points of law

The Government also maintain that the applicants should have appealed to the nearest military court under Article 75 of the Code of Military Criminal Procedure against the Martial Law Court's decisions to continue their detention on remand

The applicants contest this plea of inadmissibility They point out that for the time being they are not complaining to the Commission about the final result of the

criminal proceedings against them but about the length of those proceedings and that of their detention on remand They have also complained that the Martial Law Court before which the proceedings were conducted failed to meet the requirements of lawfulness, impartiality and independence They note that on a number of occasions the Convention institutions have dealt with allegations concerning the length of detention and judicial proceedings separately from other complaints The applicants maintain that the violations of the Convention's provisions stem from the status of the martial law courts, as laid down by domestic legislation (see above) Moreover there is no judicial body which could remedy this situation, since the Constitution itself rules out appeals to the Constitutional Court on this question With regard, more particularly, to the possibility of an appeal against orders to continue detention on remand, the applicants assert that Article 75 of the Code of Military Criminal Procedure provides for such appeal only during the preparatory investigation conducted by the prosecuting authorities, i e until the time when the bill of indictment is preferred

The Commission has examined the parties' submissions on the subject of the exhaustion of domestic remedies and has reached the following conclusions

With regard to the length of detention, for the purposes of Article 5 of the Convention, the Commission notes that on a number of occasions the Martial Law Court considered whether to continue the applicants' detention on remand and refused their conditional release It follows that the judicial authorities had the opportunity to put an end to the applicants allegedly excessive detention The Commission further notes that no appeal lies against decisions refusing to grant conditional release given by a martial law court after a bill of indictment has been preferred In that connection it again points out that in Turkish law there is a distinction between an order remanding the accused in custody and an order to continue detention on remand, the latter being issued at final instance by the court dealing with the case (see, *mutatis mutandis* No 16419/90 and No 16426/90, Yagci and Sargin v Turkey Dec 10 7 91 D R 71 p 253)

With regard to the length of the criminal proceedings, for the purposes of Article 6 para 1 of the Convention, the Commission refers to previous decisions in which it has held that, having regard to the relatively protracted duration of proceedings, it is not bound to reject a complaint for failure to exhaust domestic remedies because appeals are still pending at the time when an application is introduced (see, *inter alia* No 12850/87, Tomasi v France Dec 13 3 90, D R 64 p 128) The Commission further observes that the respondent Government have not established that the applicants had an effective remedy in Turkish law to expedite the proceedings whose length they complain of The judgment to be given by the Military Court of Cassation to which the Government allude is not as such a remedy capable of affording the applicants redress for the situation they complain of (cf No 16026/90, Dec 10 7 91 p 7 Nos 16419/90 and 16426/90, previously cited decision)

With regard to the complaints concerning the lawfulness of the Martial Law Court the Commission notes that its competence to continue to sit even after the

lifting of the state of siege, in order to conclude its examination of the cases pending before it, was provided for in Law No 1402 (the State of Siege Act), as amended on 19 September 1982 Under Article 15 of the Turkish Constitution's "Transitional provisions", no challenge on the ground of unconstitutionality lies against legislation promulgated during the period from 12 September 1980 to 20 November 1982

With regard to the complaint that the Martial Law Court is not an independent and impartial tribunal, the Commission observes that the powers and duties of its members are laid down by legislative texts which include the Constitution, Law No 1402 (the State of Siege Act), Law No 353 (the Code of Military Criminal Procedure) and Law No 357 on the powers and duties of military judges

With regard to the question of the court's lawfulness, independence and impartiality, the Commission notes that the complaint is based on the very content of the law In that connection, the Government have not established that there are remedies which, in the light of the national legislation in force, can be considered effective (cf , *mutatis mutandis*, No 7705/76, Dec 5 7 77, D R 9 p 196)

With regard to the fairness of the proceedings before the Martial Law Court, the Commission takes into account the applicants' submissions regarding the effectiveness of appeals, which could take some considerable time The Commission admits that regard must be had in this case to the time factor which seems to be of crucial importance for the applicants' complaints (cf , *mutatis mutandis*, No 7990/77, Dec 11 5 81, D R 24 p 57) Indeed, although the judgment at first instance was given on 19 July 1989, the text of the reasoned decision was not available by the date of adoption of the present decision, i e 10 October 1991 In the circumstances of the proceedings in question, whose scale is one of their most significant features, the Commission considers that it has not been established that an appeal would be effective, given the time it would take to hear it

That being the case, the Commission takes the view that the objection raised by the Government cannot be upheld It follows that the applicants have satisfied the condition that they exhaust domestic remedies (Article 26 of the Convention)

C As to the merits of the applications

a The length of detention on remand (Article 5 para 3 of the Convention)

The respondent Government maintain that the period of detention on remand relevant to the present applications began on 28 January 1987, the date of the Turkish Government's declaration under Article 25 of the Convention, and ended on 19 July 1989, the date of the judgment at first instance, i e a period of two years and five months

The Government refer to the case law of the Commission (Ventura v Italy, Comm Report 15 12 80, and No 9559/81, De Varga-Hirsch v France, Dec 9 5 83

D R 33 p 158), which took into account the complexity of the case when rejecting complaints relating to a period of detention lasting five years They further submit that the criminal proceedings in connection with which the applicants were detained were conducted at a sustained pace

The respondent Government observe that the Martial Law Court looked into the need for the applicants' continued detention every thirty days, in accordance with Turkish law The court's decision to refuse release was essentially based on the seriousness of the sentence to which the applicants would become liable in the event of their conviction

The applicants observe that they were detained from 22 23 January 1981 until 23 July 1991, that is for ten years and six months, without there being any final decision convicting them They consider that an accused cannot be held to have been convicted until the Court of Cassation has given judgment They also maintain that the reasons given by the Martial Law Court for keeping them in detention were repeated unchanged until their release, which shows that the "reasonable time" requirement laid down by Article 19 of the Turkish Constitution was never taken into consideration The applicants further submit that the danger that evidence might be destroyed did not exist, given that all the evidence had already been taken In addition, the applicants deny the existence of a danger of their absconding or evading execution of a sentence, given that they had already served the equivalent of nearly two-thirds of a life sentence They maintain that detention on remand, which in law is intended to be a provisional measure, was applied in this case as a penalty

The Commission notes that the applicants were arrested on 22 and 23 January 1981 and convicted by the Martial Law Court in a judgment dated 19 July 1989 That means that they were held in detention on remand for nearly eight and a half years

The Commission recalls that its competence *ratione temporis* began on 28 January 1987 However, it can have regard even to a part of the proceedings before that date

The Commission recalls that the reasonableness of the length of detention on remand must be assessed in the light of the principles established by the Convention institutions (see, *inter alia*, Eur Court H R , Wemhoff judgment of 27 June 1968, Series A no 7, pp 22, 25 and 26, paras 5 and 16 , Neumeister judgment of 27 June 1968, Series A no 8, p 37, para 5 , Matznetter judgment of 10 November 1969, Series A no 10, p 34, para 12 , and more recently the Letellier judgment of 26 June 1991, Series A no 207)

Consequently, in the light of the fact that the applicants' detention began on 22-23 January 1981, the Commission considers that even if only the period of detention after 28 January 1987 is taken into account, in connection with this complaint the applications raise serious factual and legal problems which cannot be resolved at this stage of the examination but require an examination of the merits

b The length of the criminal proceedings (Article 6 para 1 of the Convention)

The respondent Government submit that the length of the proceedings can be explained by the extreme complexity of the case, and especially by the large number of defendants and the seriousness of the charges against them

In reply, the applicants point out that they were arrested on 22 and 23 January 1981 and that in more than ten years the courts have been unable to give a reasoned judgment in writing Moreover, the court took no steps to take evidence against them and the only evidence it has in the file consists of statements made to the police under duress more than ten years ago while they were in police custody

The Commission refers to its established case-law to the effect that the length of criminal proceedings must be calculated from the time when the applicant's situation is affected by the proceedings against him until the time when the charges are finally determined (see, for example, No 7438/76, Ventura v Italy, Dec 15 12 80, D R 23 p 5 , No 9559/81, De Varga Hirsch v France, Dec 9 5 83, D R 33 p 158)

The Commission recalls that its competence *ratione temporis* began on 28 January 1987 However, it will also take into account the state of the proceedings on that date

The Commission recalls that in assessing the reasonableness of the length of the proceedings regard must be had, in particular, to the complexity of the case, the applicant's conduct and that of the judicial authorities (see, for example, Eur Court H R , Neumeister judgment of 27 June 1968, Series A no 8, pp 42 43, para 21)

The Commission considers that this aspect of the application also raises serious factual and legal problems which cannot be resolved at this stage of the examination but require an examination of the merits

c The concept of a tribunal established by law (Article 6 para 1 of the Convention)

The Government observe that the competence of the martial law courts to continue to sit after the lifting of the state of siege until they have concluded their examination of the cases pending before them is explicitly provided for by Law No 353 (the Code of Military Criminal Procedure) and by Law No 1402 (the State of Siege Act) Under Article 15 of the Turkish Constitution's Transitional provisions , no challenge on the ground of unconstitutionality lies against the above provisions The Government point out that the present case was referred to the Martial Law Court during the state of siege and assert that because of the complexity of the case and the continued questioning of the 723 defendants it was in the interests of the proper administration of justice that the court continued to sit, even after the lifting of the state of siege On the other hand, the applicants draw a distinction between the ordinary military courts and the martial law courts, the latter being military courts with

jurisdiction to try civilians. Whereas the former were established before the offences they were meant to pass judgment on had been committed, martial law courts were established by the Ministry of Defence after proclamation of the state of siege to try cases concerning offences committed before the state of siege The applicants further assert that the legislation does not give any explicit indication of the date on which the martial law courts will cease to function They maintain that under Law No 1402 these courts are competent to sit even after the lifting of the state of siege in order to conclude their examination of the cases pending before them. A similar provision of the same law was declared unconstitutional in a judgment given by the Turkish Constitutional Court on 15 and 16 February 1972 for failure to comply with the principle that a court must be "established by law"

The applicants maintain that in the new Turkish Constitution adopted in 1982 there was no provision giving martial law courts such competence They stress that the provision declared unconstitutional in 1972 was reinserted in Law No 1402 by the military government in power from September to November 1982. Under Article 15 of the Constitution's "Transitional provisions", the laws adopted by that government may not be challenged in the Constitutional Court on the ground of unconstitutionality

After examining the parties' observations, the Commission takes the view that this complaint raises complex factual and legal issues under the Convention which require an examination of the merits

d. The independence and impartiality of the martial law courts (Article 6 para. 1 of the Convention)

The respondent Government observe that martial law courts have five members, comprising two military judges, two civilian judges and an officer of the armed forces. The judges, both military and civilian, enjoy the guarantees of independence and immunity set forth in the Constitution The main duty of the military officer is to ensure order at the trial. In addition, the Military Criminal Code lays down severe penalties for those who attempt to exert influence over military court judges Since the lifting of the state of siege in 1985 the post of officer commanding state of siege operations has been abolished

The applicants maintain, however, that several factors undermine the independence of martial law courts vis à vis the executive and compromise their impartiality In the first place, the Defence Minister has power to establish and dissolve martial law courts The military judges sitting in these courts are chosen from a list of candidates drawn up by a committee on the advice of the Chief of Staff and subsequently appointed by decrees signed by the President of the Republic, the Prime Minister and the Defence Minister The officer member, generally a soldier with no legal training, is entirely under the authority of the officer commanding the state of siege operations Moreover, the status of the court's two military judges gives reason to doubt their independence vis-à-vis the officer commanding the state of siege operations. According to the applicants, in order to obtain promotion military judges

need favourable reports both from their administrative superiors (army officers) and from the judges of the Military Court of Cassation In addition, they can be dismissed for disciplinary reasons following proceedings which can be brought by the officer commanding the state of siege operations The applicants further assert that after the lifting of the state of siege the Ankara Martial Law Court took the name of Martial Law Court attached to the 4th Army Corps The commanding officer of that corps had commanded the state of siege operations before 1985

The Commission has conducted a preliminary examination of the parties' submissions It considers that in this respect the applications raise legal and factual problems of such complexity that their solution requires an examination of the merits

e Compliance with the principle of a 'fair trial" (Article 6 para 1 of the Convention)

The respondent Government maintain that the proceedings before the Martial Law Court satisfy all the requirements of Article 6 of the Convention including a public hearing and the public pronouncement of judgment

In reply, the applicants assert that the principle of a fair trial is also applicable to the preliminary investigation preceding criminal proceedings They maintain that none of the rights of the defence provided for by law were afforded to them during the preparatory investigation In particular, the court gave full consideration to the statements they allege were taken under police torture during that initial stage of the proceedings when delivering its judgment convicting them In addition, the disciplinary measures taken by the court at the hearings, namely expelling their lawyers from the courtroom, had prevented the latter from conducting a proper defence of their clients

The Commission has conducted a preliminary examination of the parties' submissions in the light of the case-law of the Convention institutions It considers that in this respect the applications raise legal and factual problems of such complexity that their solution requires an examination of the merits

Consequently, the application cannot be rejected as manifestly ill founded

For these reasons, by a majority, the Commission

DECLARES THE APPLICATION ADMISSIBLE