AS TO THE ADMISSIBILITY OF

Application No. 34688/97
by Abdullah AKIN
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 11 September 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 21 August 1996 by Abdullah Akin against Turkey and registered on 30 January 1997 under file No. 34688/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1967, is a Turkish citizen of Kurdish origin and resident in Diyarbakir. He is represented before the Commission by Mr. Mahmut Vefa, a lawyer practising in Diyarbakir.

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

The applicant is the provincial president of the political party, HADEP, in Diyarbakir.

On 23 June 1996 the applicant went to Ankara to participate in the second party congress of HADEP. During the congress the Turkish flag was taken down by some of the party militants who had participated in the congress.

On 24 June 1996, at 3 a.m., the applicant was arrested by policemen on the ground that the Turkish flag was taken down during the congress. He was taken to the Anti-Terror branch of Ankara Security Directorate to be questioned. During custody he was not allowed to

consult his legal representative and was subjected to insults, such as being called a "traitor".

On 4 July 1996, after 11 days of police custody, the applicant was brought before a judge at the Ankara State Security Court and was remanded in detention by the court. The applicant filed an objection with the court and he has been released pending trial on 12 July 1996.

On 23 August 1996 the Public Prosecutor attached to Ankara State Security Court instituted criminal proceedings against the applicant and other members of the HADEP. The applicant was accused under Article 168 para. 1 of the Turkish Penal Code of being a member of the terrorist organisation, the PKK. The proceedings are still pending before the Ankara State Security Court.

COMPLAINTS

1. The applicant complains under Article 5 paras. 1(c), 2, 3 of the Convention that he was held in police custody for an excessive length of time without being brought before a judge and that he was not informed of the nature of the accusations against him. In conjunction with Article 14 of the Convention, the applicant also complains that he was deprived of his above-mentioned rights because he was Kurdish and affiliated to the HADEP.

2. He complains under Article 6 para. 3(a), (b), (c), (d) of the Convention that he was not informed in detail of the nature of the accusation against him, that he was deprived of his right to legal assistance and that he was deprived of facilities for the preparation of his defence. In conjunction with Article 14 of the Convention, the applicant also complains that he was deprived of his above-mentioned rights because he was Kurdish and affiliated to the HADEP.

THE LAW

1. The applicant complains under Article 5 paras. 1(c), 2, 3 (Art. 5-1-c, 5-2, 5-3) of the Convention that he was held in police custody for an excessive length of time without being brought before a judge and that he was not informed of the nature of the accusations brought against him. The applicant also alleges a violation of Article 5 in conjunction with Article 14 (Art. 5+14) of the Convention that he was deprived of his above-mentioned rights since he was Kurdish and affiliated to HADEP.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of these complaints to the respondent Government.

2. The applicant complains under Article 6 para. 3(a), (b), (c), (d) (Art. 6-3-a, 6-3-b, 6-3-c, 6-3-d) of the Convention that he was not informed in detail of the nature of the accusation against him, that he was deprived of his right to legal assistance and that he was deprived of facilities for the preparation of his defence. In conjunction with Article 14 (Art. 14) of the Convention, the applicant also complains that he was deprived of his above-mentioned rights since he was Kurdish and affiliated to the HADEP.

The Commission notes that the criminal proceedings brought against the applicant are still pending before the State Security Court.

However, according to its established case-law, the Commission deems it necessary to take into consideration the entire criminal proceedings brought against the applicant in order to decide whether they conform to the requirements of Article 6 (Art. 6) of the

Convention (e.g. Nos. 23878/94, 23879/94, 23880/94, 23881/94, 23882/94, 23883/94, Dec. 25.5.95, D.R. 81-B, p. 94). The Commission therefore notes that as the applicant has not yet been convicted he still has at his disposal the possibility of submitting his complaints before the domestic courts. In this regard, the applicant's complaints under Article 6 (Art. 6) appear to be premature. Besides, the Commission recalls that, after the final ruling is given in domestic law, the applicant may re-submit his complaints to the Commission if he still considers himself victim of the alleged violations.

It follows that this part of the application should be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaints concerning the length of his detention without being brought before a judge and his complaints that he was not informed of the accusations brought against him and that he was discriminated against on the ground of his Kurdish origin.

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G. H. THUNE
President
of the Second Chamber