AS TO THE ADMISSIBILITY OF

Application No. 32983/96
by Özgür ÇAVUSOGLU
against Turkey

The European Commission of Human Rights sitting in private on 8 September 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
Mrs. M. HION
MM. R. NICOLINI
A. ARABADJIEV

Mr. M. de SALVIA, Deputy Secretary to the Commission

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

Having regard to the application introduced on 26 August 1996 by Özgür Çavusoglu against Turkey and registered on 17 September 1996 under file No. 32983/96;

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, a Turkish citizen, was born in 1975 and lives in Izmir. He is represented before the Commission by ilhan Gül Kireçkaya, a lawyer practising in izmir.

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

On 16 November 1995 the applicant was taken into police custody in izmir on suspicion of being a member of a leftist terrorist organisation.

On 27 November 1995 he was questioned by the Public Prosecutor attached to the izmir State Security Court. He was also brought before the judge of the izmir State Security Court. The judge having regard to the nature of the offence, placed the applicant in detention on remand. On the same day he was examined by a doctor from the izmir Forensic Medicine Institute who noted in his report that there had been no signs of beating, force or violence.

On 28 November 1995 the applicant requested a medical examination concerning his allegations of ill-treatment and underwent a medical examination in the above mentioned institution. In his report, the doctor noted the presence of some bruises on the nose, lips and on the left foot caused by a blunt instrument and concluded that these findings did not constitute a danger to life but would prevent the applicant from working for 2 days.

In an indictment dated 18 December 1995 the Public Prosecutor at the izmir State Security Court charged the applicant together with 16 accused with being members of an illegal organisation whose aim was to undermine the Turkish Constitution and replace it with a Marxist-Leninist regime.

On 31 January 1996 the applicant lodged a complaint with the Public Prosecutor of izmir and alleged that he had been ill-treated while in police-custody.

On 18 February 1996 the Public Prosecutor of izmir dismissed the complaint, pointing out that according to the medical report of 27 November 1995 there was no sign of beating, force or violence. The Public Prosecutor also pointed out that the second report had been obtained after the first one and there was no evidence substantiating that the findings in the latter were due to ill-treatment by the police.

On 26 February 1996 the applicant applied to the Assize Court of Karsiyaka to set aside the order dismissing his complaint.

On 4 March 1996 the Assize Court of Karsiyaka rejected the application. It held that in the absence of sufficient evidence against the accused the decision taken by the Public Prosecutor was in line with the law and procedure.

The criminal proceedings instituted against the applicant are still pending and he is still in detention.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention that during his police custody he was hung by his arms. In this context he explains that he suffers from pain in the heart as well as in the muscles of the shoulder and breast area. He also complains that he suffers from incontinence as a result of torture by forced entry of a truncheon into the anus.

2. The applicant further complains that he was held in police custody for 11 days without being brought before a judge, contrary to the requirements of Article 5 para. 3 of the Convention.

THE LAW

1. The applicant complains that he was held in police custody for 11 days without being brought before a judge, contrary to the requirements of Article 5 para. 3 (Art. 5-3) of the Convention.

However, concerning the above complaint, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions, as Article 26 (Art. 26) of the Convention provides that the Commission may only deal with the matter within a period of six months from the date on which the final decision was taken.

The Commission refers to its case-law according to which when an act of a public authority is not open to any effective remedy, the six-month period runs from the date on which the act took place (No. 8007/77, Dec. 10.7.78, D.R. 13 p. 85, at p. 153).

The Commission observes that in the present case the applicant's police custody was effected pursuant to the Law on the Procedures of State Security Courts and that he had no domestic remedy in respect of his detention in custody.

The Commission notes that the situation complained of ended on 27 November 1995 whereas the application was submitted to the Commission on 26 August 1996, that is more than six months after that date.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also complains under Article 3 (Art. 3) of the Convention that during his police custody he was hung by his arms. In this context he explains that he suffers from pain in the heart as well as in the muscles of the shoulder and breast area. He also complains that he suffers from incontinence as a result of torture by forced entry of a truncheon into the anus.

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

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaint that during his police custody he was subjected to torture;

unanimously,
DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

M. de SALVIA	S. TRECHSEL
Deputy Secretary	President
to the Commission	of the Commission