AS TO THE ADMISSIBILITY OF

Application No.32578/96
by Abdullah ÇOLAK
against Turkey

Application No. 32579/96
by Ömer FiLiZER
against Turkey

The European Commission of Human Rights sitting in private on 30 June 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
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
M. VILA AMIGÓ
Mrs. M. HION
MM. R. NICOLINI
A. ARABADJIEV

Mr. H.C. KRÜGER, 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 applications introduced on 28 December 1995 by Abdullah Çolak and Ömer Filizer against Turkey and registered on 8 August 1996 under file Nos. 32578/96 and 32579/96;

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 applicants are Turkish citizens, born in 1969 and 1964

respectively, who reside in Istanbul. They are represented before the Commission by Bedia Buran, Naciye Kaplan and Filiz Kostak, lawyers practising in Istanbul.

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

On 28 April 1995 the first applicant and on 29 April 1995 the second applicant were taken into police custody in Istanbul on suspicion of being members of the PKK.

On 29 April 1995 the Public Prosecutor at the Istanbul State Security Court ordered the applicants' detention in custody until 9 May 1995.

On 2 May 1995 the applicants signed statements which referred to their activities in the PKK and their connections with other PKK members.

On 5 May 1995 they were questioned by the Public Prosecutor at the Istanbul State Security Court. In their questioning they denied their statements made to the police.

On 6 May 1995 they were brought before a judge of the State Security Court. They reiterated before the judge their statements to the Public Prosecutor. The judge, having regard to the nature of the accusations and the evidence already available, placed them in detention on remand.

In an indictment dated 22 June 1995, the Public Prosecutor at the Istanbul State Security Court charged the applicants with carrying out acts aimed at the separation of a part of the State territories. Twelve other persons, who had all been taken into police custody during the operations carried out by the Istanbul police against the PKK in April 1995, were charged along with the applicants. The Public Prosecutor gave a detailed account of the acts in which the accused were allegedly involved. The Public Prosecutor requested that the applicants be convicted and sentenced under Article 168 of the Turkish Criminal Code and Article 5 of the Anti-Terror Law.

On 5 May 1995 the first applicant was examined by the Istanbul Forensic Medicine Institute. In a report to the Public Prosecutor of Istanbul, the institute's doctor noted that there was no sign of beating, force or violence.

The first applicant later underwent a medical examination in the prison. On 22 May 1995 the prison doctor, in his report, noted the presence of fading bruises and ecchymosis on the left foot.

In the meantime, on 18 May 1995, the second applicant was examined by the prison doctor who, in his report, noted the presence of abrasions on the penis, pain in the chest and ecchymosis under the left eye. He also observed that the applicant felt pain while chewing and pain in both his shoulders.

On 1 June 1995 the applicants filed a complaint with the Public Prosecutor of Fatih alleging that they had been ill-treated while in police custody.

On 21 September 1995 the Public Prosecutor of Fatih dismissed the allegations, pointing out that there was insufficient evidence in order to bring any criminal proceedings against the Istanbul Security Directorate Security officers.

On 13 October 1995 the applicants applied to the Assize Court of Beyoglu to have the dismissal order by the Public Prosecutor of Fatih set aside.

On 14 December 1995 the Assize Court of Beyoglu, ruling on the evidence submitted to the court, rejected the applications.

The criminal proceedings against the applicants before the State Security Court are still pending and they are still in detention.

COMPLAINTS

1. The applicants complain under Article 3 of the Convention that they were ill-treated in police custody.

They allege that during their detention by the police, they were physically abused.

The applicant Abdullah Çolak claims that he was kept blindfolded, seriously beaten up and that in the course of such treatment he was repeatedly forced to confess to criminal conduct.

The applicant Ömer Filizer also claims that he was kept blindfolded, seriously beaten up and that in the course of such treatment he was repeatedly forced to confess to criminal conduct. He further alleges that he was subjected to various forms of ill-treatment such as electric shocks and hanging by the arms.

2. The applicants further complain under Article 5 para. 3 of the Convention that they were kept in police custody for seven days without being brought before a judge.

3. They also complain under Article 5 para. 4 of the Convention that Turkish law does not afford any effective remedy by which the lawfulness of their police custody could be decided speedily by a court.

The applicants allege under the same paragraph that they were not kept in police custody in order to be brought before the judicial authorities or because there were reasonable suspicions against them, but for the purpose of extracting information and confessions from them by force.

4. The applicants also complain under Article 6 paras. 1 and 3 (c) of the Convention that they were not permitted the assistance of a lawyer during their questioning by the police and later by the public prosecutor.

5. The applicants lastly allege discrimination under Article 14 in conjunction with Article 6 paras 1 and 3 (c) of the Convention in that, according to the Code of Criminal Procedure, individuals have the right to the assistance of a lawyer during questioning by the police and the public prosecutor, whereas those suspected of offences which fall within the jurisdiction of the State Security Courts are prevented from enjoying this right.

THE LAW

1. The applicants complain under Article 5 para. 3 (Art. 5-3) of the Convention that they were kept in police custody for seven days without being brought before a judge.

They also complain under Article 5 para. 4 (Art. 5-4) of the Convention that Turkish law does not afford any effective remedy by which the lawfulness of their police custody could be decided speedily by a court. They further allege that they were not kept in police custody in order to be brought before the judicial authorities or because there were reasonable suspicions against them, but for the

purpose of extracting information and confessions from them by force.

However, concerning the above complaints, the Commission is not required to decide whether or not the facts alleged by the applicants 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 notes that the situation complained of occurred on 28 and 29 April 1995 whereas the applications were submitted to the Commission on 28 December 1995, 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 applicants further complain under Article 6 paras. 1 and 3 (c) (Art. 6-1, 6-3-c) of the Convention that they were not permitted the assistance of a lawyer during their questioning by the police and later by the public prosecutor.

They also allege discrimination under Article 14 in conjunction with Article 6 paras 1 and 3 (c) (Art. 14+6-1+6-3-c) of the Convention in that, according to the Code of Criminal Procedure, individuals have the right to the assistance of a lawyer during questioning by the police and the public prosecutor, whereas those suspected of offences which fall within the jurisdiction of the State Security Courts are prevented from enjoying this right.

However the Commission notes that the criminal proceedings against the applicants are still pending before the State Security Court.

According to its case-law, the Commission must take into consideration the entire criminal proceedings brought against the applicants in order to express an opinion as to whether they comply with the requirements of Article 6 (Art. 6) of the Convention (cf. 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 introduction of the above complaints therefore appears premature given the current stage of the proceedings before the first instance courts. The applicants cannot complain at this stage of any violation of the Convention during the early phase of the proceedings concerned. They may re-submit the case to the Commission if, following the outcome of the criminal proceedings against them, they still consider themselves victims of violations of the Convention in the above respects. The present complaints on this point must therefore be rejected as manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicants complain under Article 3 (Art. 3) of the Convention that they were ill-treated in police custody. They allege that during their detention by the police they were physically abused.

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.

For these reasons, the Commission, unanimously,

1. DECIDES TO JOIN THE APPLICATIONS,

2. DECIDES TO ADJOURN the examination of the applicants' complaints related to the alleged ill-treatment during their police custody,

3. DECLARES THE REMAINDER OF THE APPLICATIONS INADMISSIBLE.

H.C. KRÜGER Secretary to the Commission	S. TRECHSEL President of the Commission