AS TO THE ADMISSIBILITY OF

Application No. 29295/95
by Abdulaziz ECER
against Turkey

Application No. 29363/95
by Mehmet ZEYREK
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 3 December 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 applications introduced on 18 July 1995 by Abdulaziz Ecer and Mehmet Zeyrek against Turkey and registered on 16 November 1995 under file No. 29295/95 and 23 November 1995 under file No. 29363/95, respectively;

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, born in 1952 and 1939 respectively, are Turkish citizens resident in Geçitboyu village, province of Sirnak. They are represented before the Commission by Mr. Mustafa Sezgin Tanrikulu, a lawyer practising in Diyarbakir.

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

On 2 September 1993 the applicants were arrested by security forces in Sirnak and placed in custody. They were held in custody for 22 days.

On 23 September 1993 they were brought before the Sirnak Criminal Court and placed in detention on remand by a judge of that court.

On 19 October 1993 the Public Prosecutor attached to the Diyarbakir State Security Court filed an indictment with the court accusing the applicants of having assisted and given shelter to members

of the PKK terrorist organisation between 1988 and 1989. He requested that the applicants be punished in accordance with Article 169 of the Turkish Penal Code and Article 5 of the Anti-Terror Law, No. 3713 of 12 April 1991.

On 6 December 1993 the Diyarbakir State Security Court convicted the applicants on account of their assistance to the PKK terrorist organisation in 1988 and 1989 and sentenced them to 3 years and 9 months' imprisonment and debarment from public service for three years. In assessing the penalty to be imposed, the court first found that a sentence of three years' imprisonment would be appropriate under Article 169 of the Turkish Penal Code; it then applied Article 5 of the Anti-Terror Law No. 3713, according to which this sentence had to be increased by half of its length, i.e. to 4 years and 6 months' imprisonment; finally the court applied Article 59 of the Turkish Penal Code, mitigating the sentence by one-sixth of its length and thus reducing it to 3 years and 9 months' imprisonment.

On 11 July 1994 the applicants lodged an appeal with the Court of Cassation, challenging the judgment of Diyarbakir State Security Court on points of law. In particular they alleged that the State Security Court had violated the principle of non-retrospective application of the criminal law because it had applied Article 5 of Law No. 3713 of 12 April 1991 to increase the basic penalty under Article 169 of the Turkish Penal Code by half of its length, although they had been convicted for acts committed in 1988 and 1989.

On 21 February 1995 the Court of Cassation rejected the appeal. It upheld the cogency of the State Security Court's reasoning and its assessment of the evidence. The Court of Cassation did not deal specifically with the applicants' complaint relating to the retroactive application of the Anti-Terror Law to their case.

On 22 May 1995 the applicants applied to the Public Prosecutor attached to the Court of Cassation, requesting the rectification of the decision of 21 February 1995. However, their request was dismissed by the Court of Cassation.

COMPLAINTS

1. The applicants allege a violation of Article 3 of the Convention in that they were subjected to torture and degrading treatment during their detention in police custody. In particular, they submit that they were held blindfold in unhealthy conditions in a small cell, that they were not given any bed to sleep on, that they were permitted neither to see their relatives nor to consult their lawyer and that they were given only bread and water. They consider that there is no need for them to exhaust domestic remedies as there were no effective remedies.

2. The applicants complain under Article 5 para. 3 of the Convention that they were held in police custody for 22 days without being brought before a judge.

3. The applicants finally complain that Law No. 3713, dated 12 April 1991, was applied retrospectively to acts which they committed in 1988 and 1989 in that the Diyarbakir State Security Court increased their basic penalty by half of its length pursuant to Article 5 of this law.

THE LAW

1. The Commission notes that the two applicants have submitted separate complaints in relation to facts by which they were both affected in the same or a similar way. In particular the domestic proceedings complained of were conducted jointly in respect of both applicants. In the circumstances the Commission considers it appropriate to order the joinder of the applications pursuant to Rule 35 of its Rules of Procedure.

2. The applicants complain under Article 3 (Art. 3) of the Convention that they were subjected to torture and degrading treatment during their police custody which lasted from 2 to 23 September 1993. They further complain under Article 5 para. 3 (Art. 5-3) of the Convention that during this period of 22 days they were held in police custody without being brought before a judge.

The Commission recalls that, according to Article 26 (Art. 26) of the Convention, it may deal only with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken. Where no domestic remedy is available, the six month period runs from the date of the act which is itself alleged to be in violation of the Convention (cf. No. 8007/77, Dec. 10.7.78, D.R. 13, pp. 85, 153; No. 8440/78, Dec. 16.7.80, D.R. 21, pp. 138, 147).

In the present case the Commission notes that the applicants have declared that they did not make use of any domestic remedies because they considered the existing remedies to be ineffective. The Commission does not find it necessary to determine whether the applicants were dispensed from the obligation to exhaust remedies, since, even assuming this to be the case, the applicants would then have been required to submit their complaints to the Commission within six months from the date when the facts complained of occured.

The events of which the applicants complain occurred during their police custody, which lasted from 2 to 23 September 1993, whereas the applications were submitted to the Commission on 18 July 1995. It is clear, therefore, that the applicants' above complaints under Articles 3 and 5 (Art. 3, 5) of the Convention were not lodged within six months after the end of the situation complained of and in relation to which no domestic remedies were either available or taken. The Commission furthermore finds no indication of the existence of specific circumstances which might have prevented the applicants from observing the time-limit laid down in Article 26 (Art. 26) of the Convention.

It follows that the applicants' above complaints have been introduced out of time and must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicants complain that Law No. 3713, enacted on 12 April 1991, was applied retrospectively to acts which they had committed in 1988 and 1989 in that the Diyarbakir State Security Court increased the basic penalty by half of its length pursuant to Article 5 of this law.

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 JOIN APPLICATIONS No. 29295/95 and 29363/95;

DECIDES TO ADJOURN the examination of the applicants' complaint that a heavier penalty was imposed on them than the one that was applicable at the time when they committed the criminal offence of which they were convicted;

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary

G.H. THUNE
President

to the Second Chamber of the Second Chamber