AS TO THE ADMISSIBILITY OF

Application No. 30492/96
by Esma ERAT and Metin SAGLAM
against Turkey

The European Commission of Human Rights sitting in private on 1 December 1997, the following members being present:

Mr S. TRECHSEL, President
Mrs G.H. THUNE
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
B. MARXER
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 M. de SALVIA, 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 19 December 1995 by Esma Erat and Metin Saglam against Turkey and registered on 19 March 1996 under file No. 30492/96;

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 1965. They are represented before the Commission by Naciye Kaplan, a lawyer practising

in istanbul.

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

The applicants were taken into police custody in istanbul on suspicion of being members of the PKK on 27 February 1995 in the case of the first applicant and on 8 March 1995 in the case of the second applicant.

On 6 March 1995 the first applicant, and on 16 March 1995 the second applicant, signed statements before the police which referred to their activities in the PKK and their connections with other PKK members.

The applicants were questioned by the Public Prosecutor at the istanbul State Security Court on 13 March 1995 in the case of the first applicant and on 20 March 1995 in the case of the second applicant. In the course of questioning they denied their statements made to the police.

The applicants were brought before a judge of the State Security Court on 13 March 1995 in the case of the first applicant and on 20 March 1995 in the case of the second applicant. Before the judge they reiterated 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 24 April 1995, the Public Prosecutor at the istanbul State Security Court charged the applicants with being members of an armed organisation (PKK) and carrying out acts aimed at the separation of a part of the territory of the State. The Public Prosecutor gave a detailed account of the acts in which the accused were allegedly involved. He 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 13 March 1995 the first applicant was examined by the Istanbul Institute of Forensic Medicine. In a report to the Public Prosecutor of istanbul, a doctor from the institute noted briefly that there were some bruises and ecchymosis on different parts of her body, particularly on the right arm. The report also mentioned that these injuries could have occurred seven to ten days previously and were not life threatening. On 14 March 1995 the first applicant was again, upon her request, examined by the prison doctor, who, in his provisional report, identified haematomas 2 cm in diameter on both legs, ecchymoses 2 cm in diameter on her breast and bruising to both armpits. The prison doctor however concluded that the detailed medical report should be given by the istanbul Forensic Medicine Institute.

On 20 March 1995, the second applicant was examined by the prison doctor who, in his report, noted the presence of some bruises on the left arm biceps and right leg, and pain in the penis. He also observed that the applicant felt pain when breathing. The prison doctor, however, concluded that the detailed medical report should be given by the Istanbul Forensic Medicine Institute.

On 1 June 1995 the first applicant, and on 25 May 1995 the second applicant, filed complaints 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 first applicant's allegations, pointing out that there was insufficient evidence to bring any criminal proceedings against the istanbul Security Directorate officers.

On 14 September 1995 the Public Prosecutor of Fatih dismissed the

second applicant's allegations, pointing out that there was insufficient evidence to bring any criminal proceedings against the istanbul Security Directorate 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.

The first applicant alleges that during her detention by the police, she was stripped naked and sexually assaulted, that she was subject to Palestinian hanging and given several electric shocks, seriously beaten up and threatened with being shot dead, deprived of adequate food and not allowed to use toilet facilities.

The second applicant alleges that during his detention by the police, he was physically and mentally abused. He claims that he was stripped naked and on many occasions high pressure water-hoses, discharging cold water, were turned on him, particularly onto his genitalia, that he was subject to Palestinian hanging and given several electric shocks, that his genitalia were squeezed during interrogations, that he was threatened with being shot dead and that in the course of such treatment he was repeatedly forced to confess to criminal conduct while he was kept blindfolded.

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

The applicants also complain of a violation of Article 14 in conjunction with Article 5 of the Convention since they were unable to use before the State Security Court the remedies available to detained persons under the Code of Criminal Procedure.

3. The applicants lastly 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.

THE LAW

1. 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.

2. The applicants further complain under Article 5 para. 3 (Art. 5-3) of the Convention that they were not brought promptly before a judge. They also complain of a violation of Article 14, in conjunction with Article 5 (Art. 14+5) of the Convention.

The Commission recalls that according to Article 26 (Art. 26) of the Convention, it may deal only with applications introduced within a period of six months after the final domestic decision.

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. In this context the Commission refers to its established case-law (No. 8007/77, Dec. 10.7.78, D.R. 13 p. 85, at p. 153).

In the present case the Commission observes that the applicants were arrested pursuant to the Law on the Procedures of State Security Courts and that no domestic remedy was available in order to challenge the lawfulness and the length of their police custody (Sakik and others v. Turkey, Comm. Report 23.5.1996, para. 73, p. 14, to be published in Reports of Judgments and Decisions). The situation complained of ended on 13 and 20 March 1995 respectively, whereas the application was submitted to the Commission on 19 December 1995, that is more than six months later.

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.

3. The applicants lastly complain under Article 6 paras. 1 and 3 (c) (Art. 6-1, 6-3-c) of the Convention that they did not have a fair trial and were deprived of their right to have contact with a lawyer during their police custody and during their interrogation by the Public Prosecutor.

The Commission notes, however, that the criminal proceedings against the applicants are still pending.

The Commission recalls its constant case-law according to which it is necessary to take into consideration the criminal proceedings in their entirety in order to express an opinion as to whether or not they comply with the requirements of Article 6 (Art. 6) of the Convention. It further notes that, under Turkish law, the applicants can submit to the first instance court and the Court of Cassation the complaints which they now raise before the Commission.

The introduction of these complaints accordingly appears premature, given the current stage of the proceedings before the domestic courts. The applicants cannot therefore complain at this stage of any violation of the Convention. 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 the alleged violations. The application must therefore be rejected on this point as manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention (Nos. 23878/94, 23879/94, 23880/94, 23881/94, 23882/94, 23883/94, Dec. 25.5.95, D.R. 81-B p. 94).

For these reasons, the Commission,

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

by a majority,
DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

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