AS TO THE ADMISSIBILITY OF

Application No. 34481/97
by Melahat FiLiZ and Nadir KALKAN
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 22 November 1996 by Melahat Filiz and Nadir Kalkan against Turkey and registered on 14 January 1997 under file No. 34481/97;

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 applicants, born in 1976 and 1957 respectively, are Turkish citizens who are currently held in prison. They are represented before the Commission by Mr. Mustafa iseri and Mr. Suat Çetinkaya, lawyers practising in izmir.

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

On 28 July 1996, following an investigation carried out by the Public Prosecutor at the izmir State Security Court, the applicants were arrested by members of the Anti-Terror branch of izmir Security Directorate.

On 5 August 1996 the applicants were brought before the izmir State Security Court which ordered their detention on remand.

On 28 August 1996 the Public Prosecutor at the izmir State

Security Court filed an indictment with the court against the applicants charging them, under Article 168 para. 2 of the Turkish Penal Code, with being members of an illegal armed organisation, namely the PRK-Rizgari.

The criminal proceedings against the applicants are still pending before the Izmir State Security Court.

COMPLAINTS

1. The applicants complain that they were held in police custody for eight days without being brought before a judge. In this regard, the applicants contend that Article 5 para. 3 of the Convention was violated due to the excessive length of their detention in police custody without being brought before a judge.

2. The applicants submit under Article 14 in conjunction with Article 5 para. 3 of the Convention that the length of their police custody constituted discrimination as compared to the rights of persons suspected of having committed an offence falling within the jurisdiction of the ordinary courts.

3. The applicants maintain under Article 6 of the Convention that their right to a fair trial was breached, as the criminal proceedings brought against them were based on their confessions obtained in the course of the police custody.

The applicants contend that they were informed of the accusations against them when the Public Prosecutor filed an indictment with the State Security Court and thus not "promptly" when they were arrested. They also submit that they did not have adequate time and facilities for the preparation of their defence and that they were deprived of legal assistance during their police custody.

4. The applicants submit under Article 14 in conjunction with Article 6 of the Convention that they were subjected to discrimination on the basis of domestic law as Law No. 3842, containing amendments to the Code of Criminal Procedure, does not apply to crimes falling within the jurisdiction of the State Security Courts. In particular, they complain that individuals suspected of ordinary crimes 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 not brought promptly before a judge since they were held in police custody for eight days.

The applicants submit under Article 14 in conjunction with Article 5 para. 3 (Art. 14+5-3) of the Convention that the length of their police custody constituted discrimination as compared to the rights of persons suspected of having committed an offence falling within the jurisdiction of the ordinary courts.

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 under Article 6 (Art. 6) of the Convention that they were deprived of their right to a fair trial since the criminal

proceedings brought against them were based on their confessions obtained during police custody, that they were not promptly informed of the accusations against them, that they did not have adequate time and facilities for the preparation of their defence and that they were deprived of their right to legal assistance during their police custody.

The applicants complain under Article 14 in conjunction with Article 6 (Art. 14+6) of the Convention that they were subjected to discrimination on the basis of domestic law as Law No. 3842, containing amendments to the Code of Criminal Procedure, does not apply to crimes falling within the jurisdiction of the State Security Courts. In particular, they complain that Law No. 3842, which provides for the right to legal assistance during police custody in respect of the crimes falling within the jurisdiction of the ordinary criminal courts, does not provide for the same right in respect of the crimes falling within the jurisdiction of the State Security Courts.

However, according to its established case-law, the Commission must take into consideration the entire criminal proceedings brought 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 notes that the criminal proceedings brought against the applicants are still pending before the State Security Court. As the criminal charges against them have not yet been determined the applicants still have at their disposal the possibility of submitting their complaints to the criminal courts. After the final ruling is given in domestic law, the applicants can apply to the Commission if they then still consider themselves victims of violations in the above respects. In this regard, the applicants' above complaints under Articles 6 and 14 (Art. 6, 14) appear to be premature.

It follows that this part of the application must 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 applicants' complaints that they were held in police custody for eight days without being brought before a judge, and that they were discriminated against as regards the length of their police custody.

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER	G. H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber