AS TO THE ADMISSIBILITY OF

Application No. 29296/95
by Yüksel iGDELi
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 2 July 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 26 October 1995 by Yüksel igdeli against Turkey and registered on 16 November 1995 under file No. 29296/95;

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 born in 1968, resides in Istanbul. He is represented before the Commission by Messrs Naciye Kaplan, Bedia Buran and Filiz Kostak, lawyers practising in Istanbul.

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

The police carried out some operations against PKK activists in Istanbul during which A.Y. was taken into police custody. During his questioning A.Y. confessed that he had participated in activities with the applicant.

As a result of A.Y.'s confession, the police obtained the applicant's address through his former records at the police station and arrested him on 5 June 1995. When they searched him, they found a note explaining the explosive chemicals used in making a bomb. The applicant was taken into police custody on the same day.

In the course of the inquiry the police found that the applicant had been previously charged with being a member of the PKK and had been released pending trial on 21 December 1994.

On 5 June 1995 the Public Prosecutor at the Istanbul State Security Court extended the applicant's detention in police custody to 12 June 1995.

On 12 June 1995, after having interviewed the applicant, the assessor of the State Security Court at Istanbul ordered him to be remanded in custody.

In an indictment dated 29 June 1995 the Public Prosecutor at the Istanbul State Security Court charged the applicant under Article 168 of the Turkish Criminal Code with being a member of an armed organisation with the aim of committing the offence of attempting to modify the constitution of the Turkish Republic in part or entirely. The indictment stated that the note found on him had been given to him by one of the PKK supervisors in prison at the time of his release, in order to be passed on to other activists. It was also established by an expert that the explosive chemicals mentioned in the note were in fact used in hand made bombs.

The criminal proceedings before the State Security Court are still pending and the applicant is still in detention.

COMPLAINTS

Under Article 5 of the Convention, the applicant alleges violations of:

- para. 1 in that there was no reasonable suspicion when the police arrested him and the police used its authority in an arbitrary manner;

- para. 2 in that he was not informed promptly of the reasons for his arrest or of any charge against him;

- para. 3 in that he was kept in police custody for seven days without being brought before a judge;

- para. 4 in that Turkish law does not afford any effective remedy by which the lawfulness of his police custody could be decided speedily by a court.

The applicant also alleges discrimination under Article 14 in conjunction with Article 5 para. 3 of the Convention in that, in accordance with the provisions of the Code of Criminal Procedure, persons taken into police custody must be brought before a judge within a maximum period of four days, whereas in relation to offences which fall within the jurisdiction of the State Security Courts this period may be extended to fifteen days.

THE LAW

1. The applicant alleges that his arrest by the police infringed his right under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention as there was no reasonable suspicion that he had committed a criminal offence when they arrested him.

Article 5 para. 1 (c) (Art. 5-1-c) of the Convention provides that a person may be arrested or detained in the following case:

> "...the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;"

With regard to the level of suspicion, the Commission recalls that the object of questioning during detention under sub-paragraph (c) of Article 5 para. 1 (Art. 5-1) is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest (see, inter alia, Eur. Court HR, Murray judgment of 28 October 1994, Series A no. 300-A, p. 27, para. 55). Having a reasonable suspicion presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will however depend upon all the circumstances (see Eur. Court HR, Fox, Campbell and Hartley judgment of Series A no. 182, p. 16, para. 32).

As regards the instant case, the Commission notes at the outset that the applicant was arrested following the statement of A.Y., the other accused, in which the latter confessed that he had participated in activities with the applicant. When the police searched the applicant they found a note explaining the explosive chemicals used in making a bomb. It also notes that the applicant had been previously charged with being a member of the PKK and had been released pending trial. Accordingly, the Commission is of the opinion that there were specific grounds for the police to suspect the applicant of being involved in illegal activities related to the armed organisation PKK.

On the particular facts of the present case, the Commission is satisfied that the applicant can be said to have been arrested on "reasonable suspicion" of the commission of a criminal offence, within the meaning of Article 5 para. 1 (c) (Art. 5-1-c).

Consequently, this part of the application must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further alleges that he was not informed promptly of the reasons for his arrest or of any charge against him.

Article 5 para. 2 (Art. 5-2) of the Convention reads as follows:

> "...Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

The Commission notes that when the policemen arrested the applicant they found a note aimed for the illegal armed organisation, the PKK, in which there were some explanations about the explosive chemicals used in making a bomb. The applicant was then placed in detention on remand by a judge and the public prosecutor charged him with being a member of an armed organisation, the PKK. The Commission finds that the note in question had a direct link with the applicant's suspected activities and the police questioned him merely about that subject. Therefore, the applicant was aware of the matter at least in broad terms. Bearing all this in mind the Commission finds that the facts of the case do not disclose any appearance of a violation of Article 5 para. 2 (Art. 5-2) of the Convention (mutandis mutandis No. 8828/79, Dec. 5.10. 1982, D.R. 30 p. 93).

It follows that this part of the application must also be dismissed as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains that he was not brought promptly before a judge following his arrest, which is contrary to Article 5 para. 3 (Art. 5-3) of the Convention.

He also complains 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 his police custody could be decided speedily by a court.

The applicant lastly alleges discrimination under Article 14 in conjunction with Article 5 para. 3 (Art. 14+5-3) of the Convention in that, in accordance with the provisions of the Code of Criminal Procedure, persons taken into police custody must be brought before a judge within a maximum period of four days, whereas in relation to offences which fall within the jurisdiction of the State Security Courts this period may be extended to fifteen days.

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,

DECIDES TO ADJOURN the examination of the applicant's complaints that he was not promptly brought before a judge nor entitled to take proceedings by which the lawfulness of his detention could be decided speedily by a court and his complaint of discrimination with regard to the length of the police custody;

unanimously,
DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber