AS TO THE ADMISSIBILITY OF

Application No. 31851/96
by Oguzhan MÜFTÜOGLU
against Turkey

Application No. 31852/96
by Nasuh MiTAP
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 21 May 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 31 May 1996 by Oguzhan MÜFTÜOGLU and Nasuh MiTAP against Turkey and registered on 12 June 1996 under file Nos. 31851/96 and 31852/96;

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. Oguzhan Müftüoglu, born in 1944, resides in Istanbul and Nasuh Mitap, born in 1947, resides in izmir. They are represented before the Commission by Ahmet Atak, a lawyer practising in Ankara.

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

The applicants, accused of being members of the organisation Dev - Yol (Revolutionary Way), were taken into police custody in Ankara on 23 January 1981 and 22 January 1981 respectively, and were subsequently detained on remand upon decision of the Ankara Court-Martial on 23 April 1981.

The applicants lodged a criminal complaint with the military prosecutor attached to the Court-Martial, complaining of acts of torture that they had suffered at the hands of the Ankara police.

On 8 March 1982, the military prosecutor preferred criminal

charges against the police officer B.P. in the Ankara Court-Martial. In a judgment of 13 April 1983, the court acquitted B.P., on the ground that there was insufficient evidence against him.

On 26 February 1982, the military prosecutor filed a bill of indictment in the Court-Martial against altogether 723 defendants including the present applicants.

It was alleged that the applicants were members of an illegal organisation in which they also played a leading role, the aim of which was to undermine the constitutional order and replace it with a Marxist-Leninist regime, that they had advocated the need to set up resistance committees against attacks by extreme right-wing militants, and that they had instigated a number of violent acts. The prosecution called for the applicants to be sentenced pursuant to Article 146 of the Turkish Criminal Code.

In a judgment of 19 July 1989, the Court-Martial in Ankara found the applicants guilty of the offences as charged, and sentenced them to life imprisonment.

COMPLAINTS

The applicants complain that they did not have a fair trial as the courts based their reasoning on statements which they made to the police under duress, which is contrary to Article 6 para. 1 of the Convention.

THE LAW

The applicants complain under Article 6 para. 1 (Art. 6-1) of the Convention that they did not have a fair trial as their statements made to the police under duress constituted the grounds of the court's decisions.

However, the Commission recalls that, by virtue of Article 27 para. 1 (b) (Art. 27-1-b) of the Convention, the Commission may not deal with an application if it contains "substantially the same facts and complaints" (No. 8206/78, Dec. 10.7.81, D.R. 25, p. 150) as a former application.

The Commission notes that the applicants, in their previous applications (Nos. 15530/89 and 15531/89), have presented substantially the same facts and complaints, supported moreover by copies of the same decisions. These applications have already been examined by the Commission and the Court.

It follows that the applications must be rejected in accordance with Article 27 para. 1 (b) (Art. 27-1-b) of the Convention.

For these reasons, the Commission,

DECIDES TO JOIN APLLICATIONS No. 31851/96 and 31852/96;

unanimously,
DECLARES THE APPLICATIONS INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber