AS TO THE ADMISSIBILITY OF

Application No. 30495/96
by Abdullah MUTLU and Necmettin YILDIZ
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 9 February 1996 by Abdullah Mutlu and Necmettin Yildiz against Turkey and registered on 19 March 1996 under file No. 30495/96;

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 first applicant, born in 1960, and the second applicant, born in 1964, are Turkish citizens who are currently detained at Buca Prison in izmir. They are represented before the Commission by Mr. Kemal Bilgiç, a lawyer practising in izmir.

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

On 21 October 1995 the applicants were arrested by policemen from the Anti-Terrorist branch of Manisa Security Directorate. They were accused of being members of and assisting the PKK terrorist organisation.

On 30 October 1995 the applicants were brought before a judge in Manisa who ordered their detention on remand.

On 31 October 1991 the Public Prosecutor of Manisa declined jurisdiction due to the nature of the crimes, which are against the security of the State, and referred the case to the Public Prosecutor attached to izmir State Security Court.

On 22 November 1995 the latter filed an indictment against the applicants charging them with being members of and assisting the PKK terrorist organisation.

The case is still pending before the izmir State Security Court.

COMPLAINTS

1. The applicants complain that they were held in police custody for ten days as they were accused of crimes that fall within the jurisdiction of the State Security Courts. 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. They also allege 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 contend under Article 6 of the Convention that their right to a fair trial was breached as they were deprived of their right to defend themselves through legal assistance during the 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 promptly brought before a judge since they were held in police custody for ten days.

They also allege 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 complain under Article 6 (Art. 6) of the Convention that they could not enjoy their right to a fair trial since 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, which has made amendments to the Code of Criminal Law, did 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 ten 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