AS TO THE ADMISSIBILITY OF

Application No. 30453/96
by Güven ÖZATA and others
against Turkey

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The European Commission of Human Rights (Second Chamber) sitting in private on 22 October 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 3 February 1996 by Güven ÖZATA, Sait KIZAR, Ali ÖZMEN, ibrahim TEKiN, Sabri ÖNER and Enver SÖNMEZ against Turkey and registered on 14 March 1996 under file No. 30453/96;

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, Güven Özata, Sait Kizar, Ali Özmen, ibrahim Tekin, Sabri Öner and Enver Sönmez, are all Turkish citizens, born in 1945, 1952, 1968, 1958, 1963 and 1959 respectively, who reside in Antalya. They are represented before the Commission by Mehmet Nur Terzi and Kemal Bilgiç, lawyers practising in izmir.

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

Following a number of investigations carried out by the Antalya police, the applicants were taken into police custody on various dates between 16 and 21 November 1995 on suspicion of being members of an illegal armed organisation, the PKK.

The details are as follows:

The applicant	Period of police custody
Güven Özata	21.11.1995
	29.11.1995
Sait Kizar	16.11.1995
	29.11.1995
Ali Özmen	16.11.1995
	29.11.1995
ibrahim Tekin	16.11.1995
	29.11.1995
Sabri Öner	16.11.1995
	29.11.1995
Enver Sönmez	16.11.1995
	29.11.1995

As the Antalya Public Prosecutor found that he had no jurisdiction to examine the case, the file was sent to the Izmir Public Prosecutor's office. On 29 November 1995 the applicants were brought before a judge of the izmir State Security Court. 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 27 December 1995, the Public Prosecutor at the izmir State Security Court charged the applicants with being members of an illegal organisation, the PKK, and carrying out acts aimed at the separation of part of the State territories.

The criminal proceedings against the applicants are still pending before the State Security Court and the applicants remain in detention.

COMPLAINTS

1. The applicants complain under Article 5 para. 3 of the Convention that they were kept in police custody without being brought before a judge for periods between 9 and 14 days.

2. The applicants further complain under Article 6 para. 3 (b) of the Convention that during their police custody they were deprived of any possibility of contacting a lawyer and did not have a chance to defend themselves through legal assistance.

3. They complain lastly under Article 14 in conjunction with Article 6 para. 3 (b) of the Convention that they were treated in a discriminatory manner as regards the enjoyment of their rights under Article 6 para. 3 (b) of the Convention. They observe that, according to the Code of Criminal Procedure, persons charged with offences to be tried by the ordinary courts 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. They maintain that this difference of treatment is completely unjustified and constitutes discrimination within the meaning of Article 14.

THE LAW

1. The applicants complain under Article 6 para. 3 (b) (Art. 6-3-b) of the Convention that during their police custody they were deprived of any possibility of contacting a lawyer and did not have a chance to defend themselves through legal assistance.

They also complain under Article 14 in conjunction with Article 6 para. 3 (b) (Art. 14+6-3-b) of the Convention that they were treated in a discriminatory manner as they were suspected of offences which fall within the jurisdiction of the State Security Courts.

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

The Commission must take into consideration the entire criminal proceedings before it can express an opinion as to whether they comply with the requirements of Article 6 (Art. 6) of the Convention. It 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 the above complaints therefore 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 Articles of the Convention which they invoke. 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. This part of the application must therefore be rejected as being 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).

2. The applicants also complain under Article 5 para. 3 (Art. 5-3) of the Convention that they were kept in police custody without being brought before a judge for periods between 9 and 14 days.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of this complaint to the respondent Government.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicants' complaint related to the length of their 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