AS TO THE ADMISSIBILITY OF

Application No. 31960/96
by Ali ihsan PEKDAS
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 7 June 1996 by Ali ihsan Pekdas against Turkey and registered on 18 June 1996 under file No. 31960/96;

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 applicant, a Turkish citizen born in 1953, resides in izmir. He is represented before the Commission by Mehdi Bektas, a lawyer practising in Ankara.

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

The applicant, accused of being a member of the organisation Dev-Yol (Revolutionary Way), was taken into police custody in Ankara on 25 November 1980 and was subsequently detained on remand following a decision of the Ankara Court-Martial on 6 February 1981. He was released on 21 March 1984.

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

It was alleged that the applicant was a member of an illegal

organisation whose aim was to undermine the constitutional order and replace it with a Marxist-Leninist regime. In addition it was alleged that he had acted on behalf of the organisation and hidden two weapons together with some explosives. The prosecution called for the applicant to be sentenced pursuant to Article 146 of the Turkish Criminal Code.

After martial law was lifted, the Ankara Court-Martial took the name of Court-Martial attached to the 4th army corps. It continued to deal with this case until 27 December 1993, pursuant to a provision in Article 23 of the Martial Law Act (no. 1402) of May 1971, amended on 19 September 1982.

In a judgment of 19 July 1989, the Court-Martial found the applicant guilty of the offences as charged, and sentenced him to eight years' imprisonment.

Following the applicant's appeal, the case was referred to the Military Court of Cassation.

Pursuant to the law promulgated on 27 December 1993, the case-file was transferred to the non-military court, the Court of Cassation, by Act No. 3953. On 27 December 1995 the Court of Cassation held that regarding the applicant the prosecution was time-barred in accordance with the principles of prescription. The judgment concerning the applicant was based on the following reasons:

> "...it has been decided to quash the decision of the first instance court pursuant to Article 301 of Code of Criminal Procedure as it is apparent that the lapse of time prescribed in Articles 102 para. 3, 104 para. 2 of the Turkish Criminal Code has expired, and there is no need for retrial of this matter in accordance with Article 322 of the Code of Criminal Procedure. Therefore it has been decided to terminate the public prosecution against the above-mentioned defendants..."

COMPLAINTS

1. The applicant complains that the criminal proceedings brought against him were not dealt with within a "reasonable time" as required by Article 6 para. 1 of the Convention.

He also complains that he did not have a fair trial as the courts based their reasoning on statements which he had made to the police under duress, which is contrary to Article 6 para. 1 of the Convention.

2. He lastly complains that his case was not heard by a tribunal established by law within the meaning of Article 6 para. 1 of the Convention. Although martial law was lifted in Ankara on 19 July 1985, Courts-Martial continued to try cases pending before them.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that he did not have a fair trial as his statements made to the police under duress constituted the grounds of the court's decision.

The applicant further complains that his case was not heard by a tribunal established by law within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. In this context he explains that although martial law was lifted in Ankara on 19 July 1985, the Court-Martial continued to try cases pending before it.

However the Commission notes that the charges against the applicant were withdrawn on the ground of prescription.

The Commission recalls that the withdrawal of the criminal proceedings instituted against the applicant constitutes redress of the violations which would have infringed their rights under the Convention (No. 5575/72, Dec. 8.7.74, D.R. 1, p. 44). It also recalls that on 24 October 1995 the Commission declared the applications Cankocak against Turkey (Nos. 25182/94 and 26956/95) partly inadmissible on the same ground.

Accordingly, the applicant can no longer claim to be a victim of a violation in respect of these matters. Therefore this complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant lastly complains that the criminal proceedings brought against him were not concluded within a "reasonable time" as required by Article 6 para. 1 (Art. 6-1) of the Convention.

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 applicant's complaint related to the length of the criminal proceedings instituted against him,

unanimously,
DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber