AS TO THE ADMISSIBILITY OF

Application No. 36760/97
by Hasan Sanli and Fatma Erol
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 1 July 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
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 May 1997 by Hasan Sanli and Fatma Erol against Turkey and registered on 1 July 1997 under file No. 36760/97;

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. The first applicant, Hasan Sanli, was born in 1971 in istanbul and the second applicant, Fatma Erol, was born in 1972 in Tunceli. They both reside in istanbul. They are represented before the Commission by Mr Özcan Kiliç who is a lawyer practising in istanbul.

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

On 14 November 1996 the applicants were taken into custody by the anti-terrorism department of the istanbul security forces on the ground that they had participated in the activities of a terrorist organisation.

On 15 November 1996 statements from the applicants were taken at the police headquarters.

On 27 November 1996 the applicants were brought before the Public Prosecutor attached to istanbul State Security Court. The Public

Prosecutor took statements from the applicants and released them.

On 12 December 1996 the Public Prosecutor decided not to start criminal proceedings against the applicants.

COMPLAINTS

1. The applicants complain under Article 5 para. 3 of the Convention that, when arrested, they were not brought promptly before a judge.

They also allege under Article 14 of the Convention, in conjunction with Article 5 para. 3, that there was a difference between the length of time for which persons may lawfully be held in police custody in State Security Court proceedings and in ordinary criminal proceedings.

2. The applicants further submit under Article 3 of the Convention that they were subjected to verbal abuse while in police custody.

3. The applicants allege under Article 6 of the Convention that their right to a fair trial was violated in that they were not assisted by lawyers during their police custody and that they were described as "terrorists" by the police.

THE LAW

1. The applicants complain that the length of their police custody was excessive. They invoke in this regard Article 5 (Art. 5) of the Convention. They submit that they were taken into custody on 14 November 1996 and were released on 27 November 1996. They allege that after their arrest they were not brought promptly before a judge.

The applicants also complain under Article 14 of the Convention in conjunction with Article 5 (Art. 14+5) that there is a discriminatory difference between proceedings in State Security Courts and in the ordinary criminal courts as regards the length of permissible police custody.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of the 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 Government.

2. The applicants further allege under Article 3 (Art. 3) of the Convention that they were subjected to verbal abuse by the police during their detention.

The Commission may leave open the question whether the applicants have exhausted domestic remedies in this respect as their complaint must in any event be rejected for the following reasons.

The Commission notes that, to fall within the scope of the provision, ill-treatment must attain a minimum level of severity, taking into account all the circumstances. The Commission also notes that the facts alleged to constitute a violation of Article 3 (Art. 3) must be proved beyond reasonable doubt (D.R. 79, No.18764/91, p. 23).

The Commission recalls that under certain circumstances it can be difficult to prove verbal abuse during police custody, but that the applicants must at least indicate in precise terms the treatment of which they complain and the circumstances in which they were exposed to this treatment. No such indication has been provided in this case.
(No. 28518/95, Dec. 30.6.1997, unpublished)

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicants complain under Article 6 (Art. 6) of the Convention that their right to a fair trial was violated in that they were not assisted by lawyers during their police custody and that they were described as "terrorists" by the police.

It is true that Article 6 (Art. 6) of the Convention secures to everyone charged with a criminal offence the right to a fair and public hearing by an independent and impartial tribunal.

The Commission notes, however, that the Public Prosecutor did not start any criminal proceedings against the applicants. Therefore, the applicants cannot claim to be victims of the alleged violation according to Article 25 (Art. 25) of the Convention.

Furthermore the Commission has not found any evidence in the file to show that the authorities made any statements concerning the applicants' guilt.

It follows that this part of the application must be rejected as being 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 applicants' complaints relating to the length of their police custody,

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber