AS TO THE ADMISSIBILITY OF

Application No. 28632/95
by Mahmut SÜNNETÇi
against Turkey

The European Commission of Human Rights sitting in private on 13 January 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs. M. HION

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 July 1995 by Mahmut Sünnetçi against Turkey and registered on 21 September 1995 under file No. 28632/95;

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, was born in 1967 and resides in Diyarbakir. He is represented before the Commission by Mustafa Sezgin Tanrikulu, a lawyer practising in Diyarbakir.

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

On 22 August 1994 the applicant was taken into police custody in Diyarbakir on suspicion of being a member of an armed organisation, the PKK. During his interrogation the applicant signed a statement which referred to his activities within the PKK.

On 30 August 1994 he was suddenly taken ill while in custody and was taken to the Diyarbakir State Hospital. His illness was diagnosed as chronic kidney disease and he was kept in hospital for treatment. On 2 September 1994 he was questioned by the Public Prosecutor at the Diyarbakir State Security Court. In his questioning he denied the statement he had made to the police. He alleged that he had been ill-treated in police custody. On the same day the State Security Court decided that the applicant should be placed in detention on remand.

On 13 September 1994 the Public Prosecutor at the Diyarbakir State Security Court charged the applicant with carrying out acts aiming at the separation of part of the State Territories, undertaking special missions in a separatist terrorist organisation, being a member of the PKK and assisting and acting as a PKK accomplice. Criminal proceedings were brought against the applicant in the Diyarbakir State Security Court. At a hearing on 6 July 1995 the applicant invited the Court to examine his complaint concerning the ill-treatment. The Court refused to institute a separate proceedings and did not inform the Public Prosecutor of this issue at this stage of the proceedings. The Court held that it would examine this issue at the same time as the merits.

The criminal proceedings against the applicant in the Diyarbakir State Security Court are still pending.

COMPLAINTS

As regards Article 3 of the Convention, the applicant alleges that during his interrogation by the police he was subjected to various forms of ill-treatment.

As regards Article 5 para. 1 of the Convention, he complains that his detention was unlawful.

As regards Article 5 para. 3 of the Convention, he alleges that he was not brought before a judicial authority within a reasonable time.

THE LAW

1. The applicant complains under Article 5 paras. 1 and 3 (Art. 5-1, 5-3) of the Convention that his detention was unlawful and that he was not brought promptly before a judge.

The Commission recalls that according to Article 26 (Art. 26) of the Convention, it may deal only with applications introduced within a period of six months after the final domestic decision.

When an act of a public authority is not open to any effective remedy, the six-month period runs from the date on which the act took place (No. 8007/77, Dec. 10.7.78, D.R. 13 p. 85, at p. 153).

In the present case the Commission observes that the applicant was arrested pursuant to the Law on the Procedures of State Security Courts and that no domestic remedy was available in order to challenge the lawfulness and the length of his police custody. The situation complained of ended on 2 September 1994, whereas the application was submitted to the Commission on 18 July 1995, that is more than six months after the date of the incident.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also complains under Article 3 (Art. 3) of the Convention that during his interrogation by the police he was subjected to various forms of ill-treatment.

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, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint under Article 3 (Art. 3);

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission