AS TO THE ADMISSIBILITY OF

Application No. 30452/96
by Yüksel TAKAK
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 15 November 1995 by Yüksel Takak against Turkey and registered on 14 March 1996 under file No. 30452/96;

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, born in 1966, is a Turkish citizen resident in Izmir. She is represented before the Commission by Mrs Bengül Ekler Kavak and Mr Ismail Kavak, lawyers practising in Izmir.

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

On 11 March 1994 the applicant was arrested by members of the Anti-Terror branch of the Izmir Security Directorate on the ground that she had assisted and given shelter to members of the PKK terrorist organisation.

On 17 March 1994 she was brought before the judge at the Izmir State Security Court who ordered her release on account of insufficient evidence to remand her in custody.

On 7 April 1994 the Public Prosecutor attached to the Izmir State

Security Court filed an indictment with the court accusing the applicant of having assisted and given shelter to members of the PKK. He requested that she be punished under Article 169 of the Turkish Penal Code and Article 5 of Law No. 3713, which is known as the Anti-Terror Law.

On 24 November 1994 the Izmir State Security Court convicted the applicant and sentenced her to three years and nine months' imprisonment and to being debarred from public service for three years.

On 25 September 1995 the judgment delivered by the Izmir State Security Court was upheld by the Court of Cassation.

On 1 November 1995 the Chief Public Prosecutor of Izmir suspended the execution of the applicant's sentence until 28 April 1996 as she had given birth.

COMPLAINTS

1. The applicant complains under Article 5 para. 3 of the Convention that she was held in police custody for six days without being brought promptly before a judge.

2. She complains under Article 6 para. 1 of the Convention that she was not tried by an impartial and independent tribunal as the jurisdiction of the State Security Court is limited to political offences and organised crime and one of its members is a military judge.

3. The applicant also complains under the same provision that her right to a fair trial was breached in the procedure before the State Security Court. In particular, she alleges that the court based its judgment on her confessions which she had withdrawn, and that there was no other evidence sufficient to convict her.

4. The applicant finally complains under Article 6 para. 3 (d) of the Convention that she was not allowed to question the witness against her, A.A., whose statements were taken into account in convicting her, although she had requested permission to be confronted with him.

THE LAW

1. The applicant complains under Article 5 para. 3 (Art. 5-3) of the Convention that she was held in police custody for six days without being 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. In this context the Commission refers to its established case-law (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's police custody which lasted six days was in conformity with the Law on the Procedures of State Security Courts and that no effective domestic remedy was thus available to her in order to challenge its length. The situation complained of ended on 17 March 1994, whereas the application was submitted to the Commission on 15 November 1995, that is more than six months later.

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 complains under Article 6 para. 1 (Art. 6-1) of the Convention that she was not tried by an impartial and independent tribunal as the jurisdiction of the State Security Court is limited to political offences and organised crime and as one of its members is a military judge.

The applicant also complains that she did not have a fair trial before the State Security Court. In particular, she alleges that the court based its judgment on her confessions, which she had withdrawn, and that there was no other evidence sufficient to convict her.

The applicant finally complains under Article 6 para. 3 (d) (Art. 6-3-d) of the Convention that she was not allowed to question a witness against her whose statements were taken into account for her conviction.

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.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicant's complaints related to the independence and impartiality of the State Security Court, the fairness of the procedure before that court and the refusal of the applicant's request to examine a witness against her;

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber