AS TO THE ADMISSIBILITY OF

Application No. 29920/96
by Mehmet YASAK
against Turkey

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

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 October 1995 by Mehmet YASAK against Turkey and registered on 23 January 1996 under file No. 29920/96;

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 of Kurdish origin, was born in 1956 and resides in Batman. He is represented before the Commission by Naciye Kaplan and Filiz Köstak, both lawyers practising in istanbul.

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

On 7 May 1994 the applicant was taken into police custody in istanbul 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 in an illegal organisation.

On 17 May 1994 he was questioned by the Public Prosecutor at the istanbul State Security Court. In his replies 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 he was brought before a judge of the State Security Court and a doctor from the istanbul Forensic Medicine Institution. The institution noted in its certificate the presence of a lesion on the right scapula and concluded that the above-mentioned finding did not constitute a danger to life but would prevent the applicant from working for three days. Before the judge the applicant denied all the charges and denied his interrogation statement, saying that it had been signed under duress. The judge, having regard to the

nature of the accusations, placed him in detention on remand.

On 15 July 1994 the applicant requested a medical examination by an expert concerning his allegations of ill-treatment. He applied to the Public Prosecutor of istanbul and underwent a medical examination in the Eyüp Forensic Medicine Institution (EFMI). In a report to the Public Prosecutor of istanbul, the EFMI doctor noted the prison doctor's findings and recorded the presence of a lesion on the right scapula. He also observed lesions on the patient's arms and referred to the applicant's statement in which he stated that he had suffered a relapse of his epidermic disease during his detention. The Report concluded that these findings did not constitute a danger to life but would prevent the applicant from working for five days.

On 27 March 1995 the applicant lodged a complaint with the Public Prosecutor of istanbul and alleged that he had been ill-treated while in police custody.

On 8 June 1995 the Public Prosecutor of istanbul charged three police officers under Article 243 of the Turkish Criminal Code which prohibits the maltreatment of individuals by public officers and terminated the proceedings against another person, R.A.

On 29 June 1995 the applicant applied to the Assize Court of Beyoglu to have the order by the Public Prosecutor of istanbul terminating the proceedings against the R.A set aside. On 4 August 1995 the Assize Court of Beyoglu, ruling on the evidence submitted to it, rejected the application. It held that in the absence of sufficient evidence against the accused, the measures taken by the Public Prosecutor were in keeping with the law and procedure.

The criminal proceedings against the three accused police officers are still pending before the Assize Court.

The criminal proceedings against the applicant before the State Security Court are also still pending and the applicant is still in detention.

COMPLAINTS

1. Under Article 5 of the Convention, the applicant alleges violations of:

- para. 1 in that his detention was unlawful;

- para. 2 in that he was not informed promptly of the reasons for his arrest and of any charge against him;

- para. 3 in that he was kept in police custody for ten days without being brought before a judge;

- para. 4 in that Turkish law does not afford any effective remedy by which the lawfulness of his police custody could be decided speedily by a court.

2. The applicant also complains of a violation of Article 14, in conjunction with Article 5 of the Convention. In this connection he claims that he was treated in a discriminatory manner as regards the enjoyment of his rights under Article 5 of the Convention. He observes that the provisions in the Code of Criminal Procedure regulating the procedure and the period of police custody on remand are different from those contained in the special legislation under which he was tried before the State Security Court. He was therefore unable to use the remedies available to accused persons under the above-mentioned Code. The applicant maintains that his differential treatment was completely unjustified and constituted discrimination within the meaning of Article 14.

3. Under Article 6 of the Convention the applicant alleges violations of:

- para. 1 in that he did not have a fair and public trial;

- para. 3 (c) in that he was deprived of any possibility to contact a lawyer and did not have a chance to defend himself through legal assistance during the ten days in which he was in police custody.

THE LAW

1. The applicant complains under Article 5 para. 1 and para. 3 (Art. 5-1, 5-3) of the Convention that his detention was unlawful and that he was not brought promptly before a judge. He also complains under para. 2 and para. 4 of the same article (Art. 5-2, 5-4) that he was not informed promptly of the reasons for his arrest or of any charge against him and that Turkish law does not afford any effective remedy by which the lawfulness of his police custody could be decided speedily by a court. The applicant also complains of a violation of Article 14, in conjunction with Article 5 (Art. 14+5) of the Convention.

The Commission recalls that according to Article 26 (Art. 26) of the Convention, it may only deal 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 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 17 May 1994, whereas the application was submitted to the Commission on 3 October 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 complains under Article 6 paras. 1 and 3 (c) (Art. 6-1, 6-3-c) of the Convention that he did not have a fair trial and was deprived of his right to have a contact with a lawyer during the ten days in which he was in police custody.

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

The Commission considers it necessary to take into consideration the entire criminal proceedings brought against the applicant in order to express an opinion as to whether they comply with the requirements of Article 6 (Art. 6) of the Convention. It notes further that, under Turkish law, the applicant can submit to the first instance court and the Court of Cassation the complaints which he now raises before the Commission.

The introduction of these complaints therefore appears premature, given the current stage of the proceedings before the domestic courts. The applicant cannot therefore complain at this stage of any violation of the Convention. He may re-submit the case to the Commission if, following the outcome of the criminal proceedings against him, he still considers himself a victim of the alleged violations. The application must therefore be rejected on this point as 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).

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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber