AS TO THE ADMISSIBILITY OF

Application No. 21987/93
by Zeki AKSOY
against Turkey

The European Commission of Human Rights sitting in private on 19 October 1994, the following members being present:

MM. C.A. NØRGAARD, President
A. WEITZEL
F. ERMACORA
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS

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 20 May 1993 by Zeki Aksoy against Turkey and registered on 7 June 1993 under file No. 21987/93;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 21 February 1994 and the observations in reply submitted by the applicant on 15 April 1994;

- information submitted by the applicant's representatives on 20 April 1994, and additional material submitted on 15 August, 20 September and 4 October 1994;

- information submitted by the Government on 20 September 1994 and additional material submitted on 4 and 7 October 1994;

- the parties' oral submissions at the hearing on 18 October 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish national born in 1963, was a welder by profession. He died on 16 April 1994. His legal representatives before the Commission are Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

A. The particular circumstances of the case

The facts of the present case are in dispute.

It is claimed on behalf of the applicant that the following events occurred:

On 24 November 1992, the applicant was at home with his family. At around 23.00 to 24.00 hours, about twenty policemen arrived, some in uniform and some in plain clothes. They searched the house. They were accompanied by someone who had shown them the house. The applicant's father, mother and five brothers were also at home that night. The applicant was taken, together with one of his brothers, to Kiziltepe Security Headquarters. His brother was released after 11 days. The applicant's house was raided throughout the week following his incarceration. On the ninth day of his detention, his father was taken into custody.

The applicant spent the first night in Kiziltepe Security Headquarters and was then transferred to Mardin Political Branch Headquarters. He was held there for 16 days. He was asked whether he knew someone called Metin. On the second day the applicant was taken to the interrogation room where the blindfold which had been over his eyes was removed. He was shown a person called Metin who had accompanied the police when the applicant was arrested.

The applicant was then stripped naked and his hands were tied behind his back. He was strung up. This kind of torture is known as "Palestinian hanging". While he was strung up, the police connected electrodes to his genitals. He was kicked, slapped and verbally abused in every imaginable way. As they electrocuted him, the police threw water over him. He was again blindfolded during this torture. As far as he could tell, it continued for about 35 minutes. During the next two days, he was repeatedly beaten at intervals of two hours or half an hour, without being suspended. The torture continued for four days, the first two being very intensive. He lost the movement of his arms and hands as a result. His interrogators ordered him to make movements to restore the control of his hands.

The applicant asked to see a doctor, but was refused. Before people were released they were seen by a doctor. When the applicant knew that the doctor was in the building, he unsuccessfully banged on his door to get attention.

The applicant was kept in a cell with two others. The cell measured about 1,5 x 3 metres. There was one bed and one blanket between them. There was no pillow.

Two days before his release, the police took the applicant to see an official forensic doctor, but the doctor gave him no medicine and wrote no report or prescription. When the doctor asked how the applicant's arms had been injured, the accompanying police officers intervened and said that the applicant had had an accident. It is alleged that the doctor commented, mockingly, that everyone who went to those police headquarters suffered an accident.

On 10 December 1992, the applicant was released. He had been brought previously before the public prosecutor. He was presented with a statement to sign, but the applicant said that its contents were untrue and that he had been tortured. The prosecutor insisted he sign it. When he told the prosecutor that he could not sign because he could not move his hands, the prosecutor bowed his head and said, "You are free to go". The prosecutor did not ask any questions about the applicant's condition or its causes. Rather his energies were directed at determining whether the applicant should be prosecuted.

The applicant was released on a Thursday and saw a doctor on the Friday. The following Tuesday, he completed the hospital paperwork and was admitted to Dicle University Medical Faculty. The applicant's account of his treatment in custody is consistent with a medical report from this Faculty, but the doctor whom he consulted was too frightened to record an explicit explanation of the cause of the applicant's injuries. A medical report from a surgeon at St. George's Hospital, London, based on photographs of the applicant's injuries, supports the applicant's claims of his torture in custody. The applicant remained in hospital until 31 December 1992.

On 21 December 1992, the public prosecutor decided that there were no grounds to institute criminal proceedings against the applicant.

By telefax of 20 April 1994, the applicant's representatives informed the Commission that the applicant had been killed four days before. It was alleged that he had been killed as a direct result of his application to the Commission. He had been threatened with death in order to make him withdraw his application, the last threat being made by telephone 14 April 1994. Two days later, on the evening of 16 April 1994, he was shot and killed by two people as he was on his way home.

The Government submit the following different account of events:

On 26 November 1992 at around 8.30 hours, the applicant was arrested at his home and placed in police custody at the Mardin Security Directorate, along with 13 other people, on suspicion of aiding and abetting the terrorist wing of the PKK, of being a member of the Kiziltepe PKK branch and of distributing PKK tracts.

On 8 December 1992, after questioning, he was brought before the Mardin public prosecutor and released on 10 December 1992. The applicant did not complain of torture or ill-treatment, which is why no ex officio investigation was made. (If he made any mention of such treatment the prosecutor would have been obliged to open a judicial inquiry under Articles 243 and 245 of the Criminal Code [p. 6 below]). That same day the applicant was examined by a doctor in the medical service of the sub-prefecture. He found no evidence of injury to the applicant.

On 21 December 1992, the principal public prosecutor at the Diyarbakir State Security Court ordered that no proceedings be brought against the applicant and two other people. Proceedings were instituted, however, against the eleven other people who had been detained with the applicant.

On 15 December 1992 the applicant was admitted to the Diyarbakir State Hospital as a first examination had diagnosed a bilateral radial paralysis. He left the hospital without discharging himself properly on 31 December 1992, taking his medical file with him. He was formally discharged on 8 January 1993.

As regards the circumstances of the applicant's death, the Government state that a person has been arrested and charged with the applicant's murder, and is presently remanded in custody awaiting trial. This person is a member of the PKK and is suspected of several acts of murder and bombing. The applicant's murder was apparently a settlement of scores between quarrelling PKK factions.

According to the applicant's representatives, the person in question was originally charged in May 1994 with the unlawful possession of weapons. It was only in September 1994 that the murder charge was added.

B. The relevant domestic law and practice

The Government have submitted that the following domestic law is relevant to the case:

Article 125 of the Turkish Constitution provides as follows:

(translation)

"All acts or decisions of the Administration are subject to judicial review ...

The Administration shall be liable for damage caused by its own acts and measures."

This provision is not subject to any restrictions even in a state of emergency or war. The latter requirement of the provision does not necessarily require proof of the existence of any fault on the part of the Administration, whose liability is of an absolute, objective nature, based on a theory of "social risk". Thus the Administration may indemnify people who have suffered damage from acts committed by unidentified persons when the State may be said to have failed in its duty to safeguard individual life and property.

The principle of administrative liability is reflected in the additional Article 1 of Law 2935 of 25 October 1983 on the State of Emergency, which provides:

(translation)

"... actions for compensation in relation to the exercise of the powers conferred by this law are to be brought against the Administration before the administrative courts."

The Turkish Criminal Code makes it a criminal offence to subject someone to torture or ill-treatment (Article 243 in respect of torture, and Article 245 in respect of ill-treatment, inflicted by civil servants).

Complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. The public prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings.

If the alleged author of a crime is a State official or civil servant, permission to prosecute must be obtained from local administrative councils (the Executive Committee of the Provincial Assembly). The local council decisions may be appealed to the State Council; a refusal to prosecute is subject to an automatic appeal of this kind. There is case-law showing the overturn by the State Council of decisions of the Executive Committee not to prosecute cases of torture and ill-treatment of people in the custody of security officials.

Pursuant to Article 1 of Law 466, a person who has been unjustly held in police custody may apply to the local assize court for compensation within three months of the decision not to prosecute.

Furthermore, any illegal act by civil servants, be it a crime or tort, which causes material or moral damage may be the subject of a claim for compensation before the ordinary civil courts.

Proceedings against the Administration may be brought before the administrative courts, whose proceedings are in writing.

Pursuant to Article 128 to the Code of Criminal Procedure, a person arrested and detained shall be brought before a justice of peace within twenty-four hours, or, in the case of collective offences, within four days. In the proceedings before the State Security Courts, these periods are extended, pursuant to Article 30 of Law 3842 of 1 December 1992, to forty-eight hours in the case of individual offences, and to fifteen days in the case of collective offences. Pursuant to the same Article, in cases involving a state of emergency, the custody periods in the proceedings before the State Security Courts are doubled: four days in the case of individual offences, thirty days in the case of collective offences.

The applicant pointed to certain legal provisions which in themselves weaken the protection of the individual which might otherwise have been afforded by the above general scheme:

Articles 13 to 15 of the Constitution provide for fundamental limitations on constitutional safeguards.

Provisional Article 15 of the Constitution provides that there can be no allegation of unconstitutionality in respect of measures taken under laws or decrees having the force of law and enacted between 12 September 1980 and 25 October 1983. That includes Law 2935 on the State of Emergency of 25 October 1983, under which decrees have been issued which are immune from judicial challenge. Extensive powers have been granted to the Regional Governor of the State of Emergency by such decrees.

Decree 285 modifies the application of Law 3713, the Anti-Terror Law (1981), in those areas subject to the state of emergency, with the effect that the decision to prosecute members of the security forces is removed from the public prosecutor and conferred on local administrative councils. These councils are made up of civil servants and have been criticised for their lack of legal knowledge, as well as for being easily influenced by the Regional Governor or Provincial Governors, who also head the security forces.

Article 8 of Decree 430 of 16 December 1990 provides as follows:

(translation)

> "No criminal, financial or legal responsibility may be claimed against the State of Emergency Regional Governor or a Provincial Governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this decree, and no application shall be made to any judicial authority to this end. This is without prejudice to the rights of an individual to claim indemnity from the State for damages suffered by them without justification."

According to the applicant, this Article grants impunity to the Governors.

COMPLAINTS

The applicant alleged that he had been the victim of a violation of Article 3 of the Convention on account of the infliction of torture and the conditions of his detention.

The applicant complained under Article 5 para. 3 of the Convention of not having been brought before the public prosecutor until 16 days after his arrest.

The applicant claimed that there was a breach of Article 6 of the Convention on account of the failure to institute court proceedings against those responsible for the torture, as a result of which he

could bring the civil proceedings which should ensue.

The applicant alleged a violation of Article 13 of the Convention on account of the lack of an independent authority before which a complaint can be brought with any prospect of success.

After the applicant's death on 16 April 1994, his representatives have alleged that he was killed because of his application to the Commission.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 May 1993 and registered on 7 June 1993.

After a preliminary examination of the case by the Rapporteur, the Commission considered the admissibility of the application on 30 August 1993. It decided, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written observations on admissibility and merits. The Government's observations were submitted on 21 February 1994, after an extension of the time limit fixed for that purpose, to which the applicant replied on 15 April 1994.

On 20 April 1994 the applicant's representatives informed the Commission that the applicant had been shot and killed on 16 April 1994. It was alleged that the killing was a direct result of the application to the Commission. This information was transmitted to the Government with a request for comment as to the allegation. The Government failed to respond within the time-limit fixed for this purpose.

On 27 June 1994 the Commission decided to invite the parties to make oral submissions on the admissibility of the application at a hearing. For the purposes of the hearing the application was joined to two others: No. 21893/93, Akduvar and Others v. Turkey, and No. 21894/93, Akkum and Others v. Turkey. The hearing was fixed for 18 October 1994. Prior to the hearing the parties submitted additional material: for the applicant on 15 August, 20 September and 4 October 1994, and for the Government on 4 and 7 October 1994.

The Government commented on the circumstances of the applicant's death by letter of 20 September 1994, in which the allegations of the applicant's representatives were denied.

At the hearing on 18 October 1994, the Government were represented by Mr. B. Çaglar, Agent, Mr. S. Alpaslan, Mr. M. Özmen, Ms. D. Akçay and Mr. H. Golsong, all counsel, and Ms. i. Boivin, Mr. i. Kovar, Mr. A. Kurudal, Mr. F. Erdogan, Mr. Y. Kizilkaya, Mr. C. Duatepe and Ms. S.B. Ersöz, all experts. The applicants was represented by Professor K. Boyle and Ms. F. Hampson, both counsel, Mr. S. Aslantas, legal adviser from the Diyarbakir Bar, and Mr. M. Yildiz, assistant.

THE LAW

1. The applicant, who had been arrested by the Turkish police, complained of having been subjected to torture (Article 3 (Art. 3) of the Convention) and of not having been brought promptly before a judicial officer (Article 5 para. 3 (Art. 5-3) of the Convention). He also complained of violations of Articles 6 and 13 (Art. 6, 13) of the Convention, by reason of allegedly inadequate remedies. His representatives have asserted that the applicant was killed because of his application to the Commission.

2. The Government have questioned whether it is justified for the Commission to continue these proceedings after the applicant's death. They have stated that his heirs have not indicated whether they wish

to pursue the case and that, in any event, heirs have no right to complain of the duration and allegedly inequitable character of proceedings.

The Commission notes the declaration by the applicant's representatives that the applicant's father wishes to pursue proceedings before the Commission. Moreover, it finds that, in view of the serious nature of the complaints and their connection with the general situation in South-East Turkey, the application is of such general interest that it would not be justified to strike it off the list of cases.

3. The Government deny that there is any evidence that the applicant had been subjected to torture or other treatment contrary to Article 3 (Art. 3) of the Convention, or that his death involved any State responsibility.

The Government argue that the application is inadmissible for the following reasons:

i. the applicant failed to exhaust domestic remedies;

ii. alternatively, the applicant did not observe the six months' time-limit;

iii. the application is an abuse of the right of petition;

iv. the derogation which Turkey has made under Article 15 (Art. 15) of the Convention legitimised the applicant's detention for 14 days under Article 5 para. 3 (Art. 5-3) of the Convention; and

v. the application is anyway manifestly ill-founded.

4. Exhaustion of domestic remedies

The Government submit that the applicant failed to comply with the requirement under Article 26 (Art. 26) of the Convention to exhaust domestic remedies, particularly in regard to his complaint under Article 3 (Art. 3) of the Convention, before lodging an application with the Commission. They contend that the applicant had several remedies at his disposal which he did not try:

i. By way of the administrative and civil courts

According to the applicant's version of the facts, which is anyway denied, security officers unjustifiably detained and severely ill-treated him. However, he had the possibility of introducing an administrative action before the administrative courts for compensation in accordance with Article 125 of the Turkish Constitution (pp. 5-6 above). Claims for compensation could also have been lodged before the local assize court, pursuant to Article 1 of Law 466, or before the ordinary civil courts (p. 6 above).

ii. By way of criminal proceedings

The acts alleged by the applicant have no lawful authority either under ordinary domestic law or under emergency legislation or decrees. They would constitute punishable criminal offences under the criminal law. The applicant therefore had the possibility of lodging a criminal complaint with the public prosecutor or the local administrative authorities (see p. 6 above).

The Government assert that there is no administrative practice or official tolerance of the type of acts alleged by the applicant. The aforementioned remedies represent nothing extraordinary and are accessible and effective before independent judicial authorities. Any

suggestion that people expose themselves to risk if they pursue these normal remedies can only be qualified as abusive, fallacious and wholly devoid of credibility.

In order to demonstrate that the available remedies were not ineffective, the Government have referred to a number of judgments by the administrative and criminal courts. Some of these decisions concern cases in which the State Council has ordered the prosecution of public officials for ill-treating people in custody, despite the initial view of the local administrative council that the cases were unsuitable for criminal proceedings.

The applicant maintained that there was no requirement that he pursue domestic remedies further than he did by telling the public prosecutor that he had been tortured by his custodians. The public prosecutor is deemed to be under a duty to prosecute all reported crimes, but did nothing in the applicant's case.

The applicant submitted that any purported remedy is illusory, inadequate and ineffective. He did not deny that the procedures identified by the Government are formally part of the Turkish legal structure, but he contended that the Government have not shown how such procedures could conceivably be effective for the specific circumstances of the present case.

The applicant considered that none of the remedies suggested by the Government could be regarded as effective because the scale of torture committed with impunity by agents of the State in detention centres is such that this must be considered high-level Government policy - an administrative practice - in regard to which all remedies are theoretical and irrelevant. This has been confirmed by such bodies as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which, in its public statement of 15 December 1992, concluded that the practice of torture and other forms of severe ill-treatment of persons in police custody remains widespread in Turkey, and that such methods are applied to both ordinary criminal suspects and persons held under anti-terrorist provisions (p. 6 para. 21). The Committee singled out "cases of motor paralysis of the arms and severe sensory loss consistent with allegations of suspension", being an especially widespread torture method in Turkey, particularly in the South-East (p. 5 para. 19). It called on Public Prosecutors in Turkey "to react expeditiously and effectively when confronted with complaints of torture and ill-treatment" (p.7 para. 26), which, according to the applicant, implies that they were failing to do so at the material time.

The purported remedies were thus ineffective for the following reasons:

- the limitations on rights and remedies created by the state of emergency;

- an administrative practice of torture in Turkish detention centres;

- the lack of genuine investigations by public prosecutors and other competent authorities, who ignore the evidence of their own eyes, as in this case, and either do nothing or simply take evidence from the members of the police or security forces;

- even if an investigation is made, the lack of effective action being taken afterwards;

- an official attitude of legal unaccountability towards the security forces;

- the positive discouragement of those who do wish to seek

remedies, as has been demonstrated so tragically in the present case;

- an administrative practice of not respecting the rule under Article 13 (Art. 13) of the Convention which requires the provision of effective domestic remedies; and

- whether or not there is an administrative practice, domestic remedies were ineffective in this case, owing to the failure of the legal system to provide redress.

The applicant added that, in order to be able to use a remedy, the individual needs to be able to seek and obtain legal advice and the lawyers need to be able to pursue appropriate remedies without fear of the consequences. He alleged, however, that several lawyers who have dealt with cases of this kind have been subjected to detention and ill-treatment. At present 16 lawyers are facing criminal charges, which include drawing up documents belittling the Turkish State and faxing them to human rights organisations in Europe. This is demonstrated in other cases pending before the Commission.

Another key group in guaranteeing effective investigation and protection is the medical profession. Doctors must be free to give honest accounts of what they have found in their investigations. However, the applicant alleged that doctors have been intimidated, as was the case of the doctor whom he consulted at the Dicle Medical Faculty.

The Commission has noted the range of remedies put forward by the Government, the case-law provided to demonstrate the efficacy of those remedies and the remarks of the applicant as to their theoretical and illusory nature.

The Commission does not deem it necessary to determine whether there exists an administrative practice on the part of Turkish authorities tolerating abuses of human rights of the kind alleged by the applicant, because it anyway finds that the applicant has done all that could be expected in the circumstances. The Commission has formed this view for the following reasons:

The Commission notes the applicant's declaration that he had told the public prosecutor that he had been tortured. Moreover, when asked to sign a statement, he had answered that he could not sign because he could not move his hands. It is not possible to establish in detail what happened during the applicant's meeting with the public prosecutor, but the Commission finds no reason to doubt that during their conversation there were elements which should have made the public prosecutor initiate an investigation or, at the very least, try to obtain further information from the applicant about his state of health or about the treatment to which he had been subjected.

The Commission further notes that, after his detention, the applicant was in a vulnerable position, if he had, as he stated, been subjected to torture during his detention. Moreover, his family had also been affected by the actions of the authorities insofar as his father and one of his brothers had been detained for short periods at about the same time, and the applicant himself was hospitalised for two weeks after his release. The threats to which the applicant claimed to have been exposed after he had complained to the Commission, as well as his tragic death in circumstances which have so far not been fully clarified, are further elements which may at least support the view that the pursuance of remedies may not be devoid of serious risks.

The Commission is, therefore, satisfied that the applicant did avail himself of a proper remedy when appearing before the public prosecutor prior to his release and that he was not obliged to pursue in the circumstances further remedies indicated by the Government (cf.

Nos. 16311/90, 16312/90 and 16313/90, N.H., G.H. and R.A. v. Turkey, Dec. 11.10.91, unpublished; No. 17126/90, S.Ö. v. Turkey, Dec. 30.08.94, unpublished, and mutatis mutandis No. 19092/91, Yagiz v. Turkey, Dec. 11.10.93, to be published in D.R. 75). The Commission concludes that the applicant may be said to have complied with the domestic remedies' rule laid down in Article 26 (Art. 26) of the Convention and, consequently, the application cannot be rejected under Article 27 para. 3 (Art. 27-3).

5. The six months' rule

The Government contend that, even assuming that the applicant exhausted domestic remedies, he failed to comply with the second requirement of Article 26 (Art. 26) of the Convention, namely that of lodging the application within six months of the final effective decision or, if none, within six months of the events of which complaints are made.

The applicant pointed out that the events complained of took place between 24 November and 10 December 1992. The present application was lodged on 3 May 1993, i.e. within the six month period.

The Commission agrees with the applicant. He did indeed comply with the six months' rule laid down in Article 26 (Art. 26) of the Convention.

6. Abuse of the right of petition

The Government maintain that the application, being devoid of any sound judicial basis, has been lodged for the purposes of political propaganda against the Turkish Government. Accordingly the application constitutes an abuse of the right of petition which discredits the legal nature of the Convention control mechanism.

The applicant rejected the Government's submission and responded that his complaints related exclusively to violations of the Convention which he suffered.

The Commission considers that the Government's argument could only be accepted if it were clear that the application was based on untrue facts. However, this is far from clear at the present stage of the proceedings, and it is therefore impossible to reject the application on this ground.

7. As regards the merits

The Government submit that it is generally accepted in the comparative and international law on terrorism, authorising "certain adaptations of the liberal model", that restrictions on Convention rights will be deemed necessary in a democratic society threatened by terrorist violence, as being proportionate to the aim of protecting public order.

The threat posed to Turkey by the PKK and its affiliations is internationally recognised, as is the need to react firmly to it. Terrorism strikes at the heart of democracy, its fundamental rights and the judicial and political systems. This has been acknowledged by the Convention organs (Eur. Court H.R., Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, and Nos. 11209/84, 11234/84, 11266/84 and 11386/85, Brogan and Others v. the United Kingdom, Comm. Report 14.5.87 para. 106). It is not for the Convention organs to substitute their view on how a State should conduct the necessary fight against terrorism. In this respect the Government assert that the powers exercised by the police while the applicant was in their custody did not exceed the margin of appreciation conferred on States by the Convention.

The Government maintain that there is no evidence to substantiate the applicant's allegations against the police under Article 3 (Art. 3) of the Convention. They add that his death was not the work of any State agent but that of terrorist in-fighting.

In respect of the applicant's allegation under Article 5 para. 3 (Art. 5-3) of the Convention, the Government refer to their derogation under Article 15 (Art. 15) of the Convention since 6 August 1990 suspending the former Article's applicability. As to Articles 6 and 13 (Art. 6, 13) of the Convention, the Government submit that Turkish law guarantees several remedies (as described above at pp. 5-6) without discrimination.

Accordingly, the Government consider that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The applicant maintained that his account of events was accurate and that his Convention claims were substantiated. He contended that the Government's submissions on the restrictions which necessarily flow from the fight against terrorism are immaterial to the facts of the present case. The application principally concerns torture and inhuman conditions of detention. It involves rights under Article 3 (Art. 3) of the Convention which is absolute, unqualified and non-derogable. There is, therefore, no scope to take into account the political situation in the region concerned.

As regards the complaint under Article 5 para. 3 (Art. 5-3) of the Convention and the derogation under Article 15 (Art. 15), the applicant contested the necessity of a measure permitting detention for as long as 30 days without any of the basic safeguards against abuse, which were deemed to be essential by the Convention organs (Eur. Court H.R., Brannigan and McBride judgment of 26 May 1993, Series A no. 258-B, pp. 55-56, paras. 62-66). The applicant submitted that the length of his detention was excessive even by derogation standards.

The Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application as a whole. The Commission concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for declaring it inadmissible have been established.

The Commission also considers that, since it has been claimed that the applicant was killed as a result of his complaints to the Commission, it has the task, in the ensuing proceedings, to examine further the circumstances of the applicant's death.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)