AS TO THE ADMISSIBILITY OF

Application No. 23655/94
by Mehmet Can ÇELiK
against Turkey

The European Commission of Human Rights sitting in private on 15 May 1995, the following members being present:

MM. C.A. NØRGAARD, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN

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 2 March 1994 by Mehmet Can ÇELiK against Turkey and registered on 10 March 1995 under file No. 23655/94;

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 5 December 1994 and the observations in reply submitted by the applicant on 13 March 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen of Kurdish origin, born in 1964, resides at the village of Tepecik in the Kocaköy district of

Diyarbakir province. He is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

The facts of the present case, which are in dispute between the parties, may be summarised as follows.

The applicant states that the following occurred.

The applicant first refers to two previous applications (No. 22280/93, Demir v. Turkey, and No. 22281/93 Yasar v. Turkey, both communicated to the Turkish Government on 11 October 1993, the latter was declared admissible on 3 April 1995), and to an application lodged at the same time as the present one (No. 23654/94, Laçin v. Turkey). All these applications concern complaints arising from substantially the same incidents as in the present case.

The applicant resided at the village of Tepecik, in the Kocaköy district of Diyarbakir province. On or about 19 December 1992, following the death of a "village protector" during a clash between fighters of the PKK (Kurdish Workers' Party - an armed separatist movement) and "village protectors", a force composed of regular soldiers and "village protectors" from the Kirmatas and Mesebaglari villages entered Tepecik and started firing weapons indiscriminately, seeking to avenge the dead "protector". The firing continued for a period of between one and two hours. During that time several persons were killed or wounded and property was destroyed.

In the early hours of the morning of 22 December 1992, the "protectors" and the soldiers who were with them said, "Evacuate the village: we are going to burn the village." All the villagers, including the applicant, then left Tepecik and, carrying their children on their backs, walked to neighbouring villages.

Four persons who had remained in the village were injured. Forty of the seventy houses in the village, including the applicant's house, were set alight and demolished. In addition to the applicant's property, namely 20 sheep, 1.5 tons of wheat, a ton of barley, 30 chickens and 30 turkeys, everything in the homes of the applicant and the other villagers was destroyed. Because the applicant and his fellow villagers have been unable to return to the village, some 3,500 poplar trees, 100 walnut trees, 40 plum trees and the vineyard (5 dunums in extent) will have dried up.

By letter dated 20 May 1993 the applicant applied to the Chief Public Prosecutor of Diyarbakir, requesting that a solution be found by the State for the matters referred to above, that proceedings be commenced against those responsible, and that the applicant and the other villagers receive proper compensation. No reply to this application has been received.

In this respect the applicant also submits a statement of 20 May 1993 of the Area Representative of the Diyarbakir branch of the Human Rights Association. It says that the villagers had filed a complaint and a written petition to the Diyarbakir State Prosecution, but that the petition has not been processed and no inquiry has been opened. It further states that almost all applications made to judicial and administrative offices by those suffering damage by State forces in the State of Emergency Area remain unanswered. It concludes that as long as this situation persists it is meaningless to pursue domestic legal remedies.

The respondent Government state the following.

On 17 December 1992, a rural minibus shuttling between Tepecik and Arkabasi was waylaid by PKK terrorists who required the passengers to identify themselves and then shot one who was a "village protector".

On 19 and 20 December 1992 a clash took place between security forces and the PKK in Tepecik, following the shooting of another "village protector" who was driving through Tepecik accompanied by other "protectors". In the course of the clash 10 to 12 houses were burnt. The intervention of the security forces permitted the withdrawal of the "village protectors", and at the same time the PKK began fleeing the village and setting it alight, upon which the inhabitants left.

The applicant's house was however not damaged following the above events, but he set fire to it himself in order to claim compensation for damages from the Government at a later date.

COMPLAINTS

The applicant complains of violations of Articles 3, 5, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1.

As to Article 3, he complains of the collective punishment of the applicant together with the other villagers of Tepecik and also of discrimination on grounds of race.

As to Article 5, he complains of a various breaches of his right to liberty and security of the person by virtue of his arbitrary expulsion from his village through a procedure not sanctioned by Article 5 para. 1 and by means not prescribed by law.

As to Article 6, he complains of the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the killings, injuries and destruction of property, as a result of which he cannot bring civil proceedings arising out of those events and he is denied effective access to a court.

As to Article 8, he complains of a violation of his right to respect for his family life and home by reason of his arbitrary expulsion from his village and the destruction of his home. Alternatively, he submits that the expulsion did not pursue a legitimate aim for the purposes of Article 8 para. 2.

As to Article 13, he complains of a lack of any independent national authority before which his complaints can be brought with any prospect of success.

As to Article 14, he complains of an administrative practice of discrimination on grounds of race, and he refers in particular to discrimination in the enjoyment of his rights under Articles 5, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1, as he was denied these rights on account of his Kurdish origin.

As to Article 18, he refers to an authorised practice by the State according to which the destruction of his and the other villagers' homes and livestock and their forced abandonment of their village, home and livelihood were effected for purposes incompatible with the Convention.

As to Article 1 of Protocol No. 1, he complains of the destruction of his home and property.

As to the exhaustion of domestic remedies, the applicant states that no remedies are effective in South-East Turkey against the acts of the security forces. He also refers to the fact that he petitioned the Chief Public Prosecutor without receiving a reply, as well as to arguments made in application No. 21895/93, Cagirga v. Turkey (declared admissible on 19 October 1994).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 March 1994 and registered on 10 March 1994.

On 9 May 1994 the Commission decided to communicate the application to the Turkish Government, who were invited to submit their observations on its admissibility and merits before 19 August 1994. The time-limit was extended at the Government's request until 30 September 1994.

By letter of 24 October 1994, the Commission's Secretary informed the Government that their request of 11 October 1994 for a further extension had been refused by the President of the Commission on the ground that more than five months had elapsed since the application had been communicated. It was added that the application would be considered by the Commission at its session commencing on 9 January 1995.

Observations were submitted by the Turkish Government on 5 December 1994. Observations in reply were submitted on behalf of the applicant on 13 March 1995 after one extension of the time-limit fixed for this purpose.

THE LAW

The applicant alleges that a military raid took place on his village, in the course of which his house and possessions were destroyed. He invokes Article 3 (Art. 3) (the prohibition on inhuman and degrading treatment), Article 5 (Art. 5) (the right to liberty and security of person), Article 6 (Art. 6) (the right of access to court), Article 8 (Art. 8) (the right to respect for family life and the home), Article 13 (Art. 13) (the right to effective national remedies for Convention breaches), Article 14 (Art. 14) (the prohibition on discrimination) and Article 18 (Art. 18) (the prohibition on using authorised Convention restrictions for ulterior purposes) of the Convention, as well as Article 1 of Protocol No. 1 (P1-1) (the right to property).

The Government argue that, if as the applicant submits there were no effective remedies, the application should have been introduced within six months from the events in December 1992 and since it was not introduced until 2 March 1994, the applicant has not complied with the requirement imposed by Article 26 (Art. 26) of the Convention.

They furthermore dispute that the applicant applied to the Chief Public Prosecutor of Diyarbakir on 20 May 1993, but even if that was the case, the application should have been introduced within six months following that appeal.

The applicant argues that he did not appeal to the Chief Public Prosecutor until five months after the events as he assumed an investigation had already commenced. He submits that failure to acknowledge receipt of such communications is not uncommon in South-East Turkey. Moreover, the suggestion from the Government that he burnt down his own house is logically inconsistent with the allegation that he never made a complaint. In any event, the applicant relies upon the non-existence of domestic remedies, referring to the Commission's findings in this respect in Application No. 22280/93, Demir v. Turkey (Dec. 9.1.95).

The Commission recalls in the first place that the purpose of the six months' rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (cf. No. 10626/83, Dec. 7.5.85, D.R. 42 p. 205).

The Commission notes that, in the applicant's opinion, there is

no effective domestic remedy in respect of the violations of the Convention of which he complains. In this respect, the Commission recalls that in other cases regarding destruction in villages in South-East Turkey the Commission has found that applicants were not in the circumstances of those cases required under Article 26 (Art. 26) of the Convention to pursue domestic remedies before complaining to the Commission (see, for instance, No. 21893/93, Akdivar and others, Dec. 19.10.94).

However, the Commission has repeatedly held that, in the absence of domestic remedies, the six months' period runs from the act complained of in the application (cf. No. 10530/83, Dec. 16.5.85, D.R. 42 p. 171, and No. 10389/83, Dec. 17.7.86, D.R. 47 p. 72). In the instant case, the acts complained of took place in December 1992.

Special considerations could apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six months period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances.

In the present case, the applicant states that he sent a letter of complaint to the Chief Public Prosecutor on 20 May 1993. However, already before that date he had apparently taken steps to prepare an application to the Commission, which appears from the fact that his power of attorney to his representatives before the Commission is dated already 27 March 1993. Moreover, on 20 May 1993, a lawyer in Turkey, who assisted the applicant, stated in a written comment on the case that applications made to the authorities in circumstances such as those of the applicant almost invariably remain unanswered and that it is meaningless in such cases to use domestic legal remedies.

In view of these various elements, the Commission considers that, assuming that there were no effective remedies in the present case, the applicant or those representing him must be considered to have been aware, not later than in May 1993, of this situation. The application should therefore in any event have been introduced not later than November 1993.

The Commission finds, therefore, that the application has been introduced out of time and is inadmissible under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)