AS TO THE ADMISSIBILITY OF

Application No. 26974/95
by Hatun Dirlik
against Turkey

The European Commission of Human Rights sitting in private on 16 October 1995 , the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
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
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

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 25 January 1994 by Hatun Dirlik against Turkey and registered on 4 April 1995 under file No. 26974/95;

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 of Kurdish origin, born in 1935, resides in Switzerland. She 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 case, as submitted by the applicant, may be summarised as follows.

On the evening of 30 July 1993, the press, television and radio accounts carried an official press release that the military had engaged that day in an operation in the Nurhak mountains. Nineteen PKK

members were reported to have been killed in a clash between the security forces and terrorists. The applicant's claim is that the PKK group were incinerated by napalm dropped from aircraft.

Following the incident of 30 July 1993 the bodies of the nineteen PKK members were taken off the mountain on a tractor by the military and brought to Mardin state hospital. The bodies were photographed clothed, either at the scene of the incident or at the hospital. They were placed naked one on top of the other in a cellar and later in the hospital morgue. Persons who saw the bodies in the cellar or in the morgue of the hospital, describe them as being so badly burned as to be unrecognisable from their facial features, even to relatives. The applicant was unable to recognise her son's body when it was disinterred from a mass grave along with another body, although she was informed by the authorities that one was the body of her son Sexo. She is, however, certain that her son was one of the group killed. Another mother could only recognise her daughter by the feature whereby her right toes had been crossed over from birth. One relative recognised his brother by a broken lower front tooth. No autopsies were carried out on the bodies.

Bodies which were not claimed within a few days were buried in a mass grave in Kahramanmaras cemetery by the municipal council. Male and female bodies were said to have been buried together. The applicant, who heard about the incident through the media, came to Maras on 2 August and found that her son had been buried. She was brought to the graveyard and shown a freshly created grave and told that it was where her son was buried. The officials disinterred two bodies from the grave. She states that it was impossible to recognise either of them. She and other villagers nevertheless took them away and gave them proper burial at her village of Kuracay.

On 3 September 1993 the then MP for Adiyaman, joined by other colleagues from the DEP political party, called for an enquiry into the Nurhak mountain incident on 30 July, to determine if chemical or biological weapons had been used as was widely believed. The MP invoked Articles 98 and 102 of the Constitution as well as the internal rules of the assembly in his call for an inquiry. He is no longer a member of parliament following the closure of the DEP party and has fled Turkey. The Grand Assembly did not institute an enquiry, as requested by the DEP members.

COMPLAINTS

The applicant complains, in her own name and on behalf of her son, of violations of Articles 2, 3, 9, 13 and 14 of the Convention.

As to Article 2, she claims that the manner of the death of her son violated the Convention. The use of intentional force under Article 2 was more than absolutely necessary for a legitimate purpose under its paragraph 2.

As to Article 3, she submits that the burning to death of human beings through the use of a chemical weapon such as napalm constitutes a form of torture.

As to Article 9, she argues that the burial of her son in a mass grave was a violation of her right to manifest her religious beliefs and customs as a Moslem.

As to Article 13, she submits that there was no effective remedy for her complaints of violations of the Convention.

As to Article 14, she complains of discrimination on grounds of race and/or ethnic origin in the enjoyment of the rights guaranteed by Articles 2, 3 and 9 of the Convention.

The applicant maintains that there is no requirement that she pursue domestic remedies because the actions of civil and military authorities (refusal of an autopsy, the hasty burial of most of the victims, etc.) taken together show that the possibility of challenging their actions before any domestic forum would be a futile step.

PROCEDURE BEFORE THE COMMISSION

The first complaint relating to the incident referred to above was submitted to the Commission in a letter of 25 January 1994. In that letter the applicant was indicated as being Ms. Hatice Gezer, mother of one of the persons killed during the armed encounter on 30 July 1993.

However, Hatice Gezer's complaint was not pursued, and no power of attorney signed by her was submitted to the Commission. Instead, the application submitted on 6 March 1995 mentioned as applicant Ms. Hatun Dirlik. The application was registered on 4 April 1995.

THE LAW

The applicant complains, in her own name and on behalf of her son, of the killing of him by napalm in an armed encounter with the security forces. She invokes Article 2 (Art. 2) (the right to life), Article 3 (Art. 3) (the prohibition on inhuman and degrading treatment), Article 9 (Art. 9) (the freedom to manifest a person's religion), Article 13 (Art. 13) (the right to effective national remedies for Convention breaches) and Article 14 (Art. 14) (the prohibition of discrimination) of the Convention.

The Commission recalls however that the purposes of the six months rule imposed by Article 26 (Art. 26) of the Convention 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 she complains. It also observes that the public authorities were aware of the incident at latest on 30 July 1993, and they did not carry out any investigation with regard to this matter.

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 July and August 1993.

The Commission considers furthermore that an MP's request to the Turkish Grand Assembly for an investigation does not constitute an effective remedy.

In view of these various elements, and assuming that there were no effective domestic remedies which the applicant was required to exhaust, the Commission considers that the application should have been introduced not later than January - February 1994. However, the application in the name of Hatun Dirlik was introduced on March 1995 and is therefore inadmissible under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (S. TRECHSEL)