AS TO THE ADMISSIBILITY OF

Application No. 24257/94
by Nulifer KOC
against Turkey

The European Commission of Human Rights sitting in private on 2 March 1995, the following members being present:

MM. C.A. NØRGAARD, President
H. DANELIUS
C.L. ROZAKIS
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
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. ŠVÁBY
E. KONSTANTINOV
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 28 March 1994 by Nulifer KOC against Turkey and registered on 2 June 1994 under file No. 24257/94;

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 is a Turkish citizen of Kurdish origin, born in 1969 and residing in Bremen (Germany). She is a student at the Bremen University and member of the student's association (ASTA). She has been the chairwoman of this association and works occasionally as an interpreter.

She is represented before the Commission by Mr. Hans-Eberhard Schultz, a lawyer practising in Bremen.

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

In September 1993 the applicant accompanied five members of an Oldenburg human rights group to South-East Turkey in order to assist them as an interpreter.

On 29 September 1993 the group was arrested by Turkish security forces in Şкrnak. While the members of the group were released after an interrogation, the applicant was taken into custody first in a military station in Şкrnak. Thereafter she was taken, blindfolded, to other, to her unknown, places. She remained seven days in the custody of the security forces.

The applicant was asked in particular to give information about the purpose of the German group's journey and the activities of Kurdish associations in Bremen, their structure and the way they are financed.

She alleges that during the interrogations by the security forces, she was subjected to severe physical and psychological ill-treatment, including a medical examination of her virginity and twice so-called "Palestinian hanging". On one occasion a fire-arm was put at her sleeve and she was asked to state her last wish. Several times she was stripped naked, sprayed with cold water, threatened with sexual violence, beaten up, called a Kurdish whore, torn by her hair and her head pushed violently against the wall. Particularly during the first three days she feared for her life.

During her custody she claims that she was not allowed to see a lawyer, consult a doctor, or contact her family.

Before being released, she was interrogated by the public prosecutor in Şкrnak and informed that there were no grounds to institute criminal proceedings against her.

Thereafter the applicant went by taxi to Cizre where she was again interrogated for an hour by a German speaking member of the Turkish army. From Cizre she went by bus to Diyarbakкr.

On 7 October 1993 at 9 p.m. the applicant arrived in Bremen.

In the meantime, on 1 October 1993, the Turkish Honorary Consul in Bremen issued a press statement containing, inter alia, the following:

- the applicant had been in one of the principal areas of terrorist PKK (the Kurdish Workers' Party - an armed separatist organisation) actions;

- the PKK committed terrorist acts in Germany, dealt with drugs and extorted money; in Turkey this terrorist organisation had murdered hundreds of Kurds and kidnapped German tourists;

- there was evidence that the students' association at Bremen University had made financial contributions to and had continuously been in contact with the PKK;

- persons having rendered assistance to the PKK were prosecuted in the Republic of Turkey in the same way as were persons in Germany having rendered assistance to the terrorist organisation RAF (Rote Armee Fraktion);

- independent Turkish courts might examine whether the applicant had violated Turkish law.

The contents of this press statement were published in several German newspapers.

The applicant's application for an injunction restraining further publication of this information was dismissed on 3 November 1993 by the Bremen Regional Court (Landgericht) on the ground that the Turkish Honorary Consul, while exercising his functions, enjoyed immunity from suit. The applicant's appeal against this decision was dismissed on 23 December 1993 by the Bremen Court of Appeal (Hanseatisches Oberlandesgericht).

Criminal proceedings instituted by the applicant against the Honorary Consul for defamation were discontinued by a decision of the Bremen public prosecutor of 9 February 1994 on the same ground.

COMPLAINTS

The applicant complains of having been subjected to torture during her custody.

As regards exhaustion of domestic remedies, the applicant refers to her fear of consequences if she had pursued a complaint in Turkey, and states that she is not required to exhaust any domestic remedies since there are no effective remedies in South-East Turkey. According to the applicant, complaints to the Turkish authorities give rise to further persecution and there has never been a case in which a Kurdish citizen had successfully introduced criminal proceedings or a compensation claim complaining of having been subjected to torture.

The applicant also complains that the Turkish Honorary Consul in Bremen is allowed to repeat the allegations made in his press release of 1 October 1993 and that she has no possibility of defending herself against his erroneous statements.

The applicant alleges violations of various Articles of the Convention: Articles 3 (prohibition of torture or inhuman and degrading treatment), 5 (right to liberty), 6 (right of access to court and a fair hearing), 9 (freedom of religion) and 10 (right to receive and impart information).

THE LAW

1. The applicant complains of having been subjected to torture whilst in the custody of the security forces, contrary to Article 3 of the Convention.

However, the Commission finds that it is not required to determine whether this complaint discloses a violation of the Convention as it is inadmissible for the following reason:

The Commission recalls that, according to Article 26 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. The Commission also oserves that Article 26 of the Convention is intended to provide national authorities with the opportunity of remedying violations alleged by an applicant (Eur. Court H.R., López Ostra judgment of 9 December 1994, to be published in Series A no. 303-C, para. 38).

In the present case the Commission notes that the applicant has failed to lodge a criminal complaint, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities, or to submit to the domestic courts the complaint which is now made before the Commission (see mutatis mutandis No. 19092/91, Yagis v. Turkey, Dec. 11.10.93, to be published in D.R. 75).

Moreover, the applicant failed to take any steps to secure a medical examination to certify the alleged ill-treatment.

The Commission finds, therefore, that, in the present case, the domestic authorities were not afforded the opportunity to rectify the violation of the Convention alleged by the applicant.

Furthermore, an examination of the application by the Commission does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at her disposal.

In this regard, the Commission notes that the applicant's submission that she was under no obligation to exhaust domestic remedies since any alleged remedy would in the circumstances of the case be inadequate and ineffective. However, the Commission considers that such sweeping submission is unsubstantiated, and that mere doubt as to the prospect of success of a particular remedy does not absolve an applicant from trying it (cf. No. 12268/86, Dec. 7.9.88, D.R. 57 p. 136). Moreover, the Commission notes that the applicant is now residing in Germany and could therefore pursue without fear of persecution a complaint against the competent Turkish authorities from there.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies, and this part of the application must therefore be rejected under Article 27 para. 3 of the Convention.

2. The applicant also complains under Articles 5, 6, 9 and 10 of the Convention, but does not specify the nature of the alleged violation of these provisions.

The Commission has examined the matters raised by the applicant, but finds no evidence in the case-file which might disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols and in particular in the above Articles.

It follows that the remainder of the application is manifestly ill-founded within the meaning of Article 27 para. 2 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)