AS TO THE ADMISSIBILITY OF

Application No. 28518/95
by M.D.
against Turkey

The European Commission of Human Rights sitting in private on 30 June 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs. M. HION
MM. R. NICOLINI
A. ARABADJIEV

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 August 1995 by M. D. against Turkey and registered on 12 September 1995 under file No. 28518/95;

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, was born in 1959 and resides in Diyarbakir. He is represented before the Commission by Mehmet Arif

Altinkalem, a lawyer practising in Diyarbakir.

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

On 11 October 1994 the applicant and his co-activist were taken into police custody in Diyarbakir on suspicion of being members of an armed organisation, the PKK. During the questioning they confessed that they had hidden some guns and explosives in a cave close to the Çukurca village. They also stated that the explosives in question had been used to destroy the Education Centre in the village.

On 13 October 1994, as a result of their confession, the police asked to be shown the place in question and took the two activists to Çukurca village. When they approached the place in question the police team realised that they were very close to the Northern Iraqi border. Being afraid of the existence of possible land mines, they decided to take the necessary precautions. While the police team were searching for mines, the applicant suddenly started to run and tried to escape to the Iraqi side of the border. The police called on the applicant to surrender but the applicant continued to run and the police shot at him. At the same time the other activist also started to run but the police captured him immediately.

When the police found the applicant, he was lying on the ground as he had fallen from a high rock and was not able to move. The police team asked for an ambulance and a doctor from Narlidere village. After the village doctor had examined the applicant he was taken to the Van State Hospital. The diagnosis showed that the bones in his left foot were broken due to a bullet wound and that he would have to undergo an operation. The applicant was eventually operated on in June 1995.

In the meantime, criminal proceedings were brought against the applicant. On 16 May 1995 the applicant's lawyer stated in the first hearing that his client had signed his statement before the police under duress and requested that his client be released pending trial. The court refused to release the applicant, taking account of the state of the evidence, the date of the applicant's remand in detention and the nature and contents of the charges against him.

The criminal proceedings against the applicant are still pending and he continues to be detained on remand.

COMPLAINTS

As regards Article 3 of the Convention, the applicant alleges that during his interrogation by the police he was subjected to various forms of ill-treatment.

As regards Article 5 para. 1 of the Convention, he complains that the police by shooting and injuring him while he was in their custody, violated his right to security of person.

As regards the exhaustion of domestic remedies, the applicant states that he did not bring any criminal and civil proceedings against the perpetrators of the alleged ill-treatment. According to the applicant, domestic remedies are ineffective in this case, as the provisions of the Anti-Terror Law fail to provide adequate redress.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention that during his interrogation by the police he was subjected to various forms of ill-treatment.

The Commission notes that the applicant, during the criminal proceedings which were instituted against him, merely stated that he

had signed the statement before the police under duress, without specifying the alleged ill-treatment.

The Commission may leave open the question whether the applicant has exhausted domestic remedies in this respect as his complaint must in any event be rejected for the following reasons.

The Commission recalls that under certain circumstances it can be difficult to prove ill-treatment during imprisonment, but that the applicant must at least indicate in precise terms the treatment of which he complains and the circumstances in which he was exposed to this treatment. No such indication have been provided in this case.

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.

2. The applicant also complains that the police by shooting and injuring him while he was in their custody, violated his right to security of person. In this respect he invokes Article 5 para. 1 (Art. 5-1) of the Convention.

However the Commission considers this complaint under Article 2 para. 2 (b) (Art. 2-2-b) of the Convention which states as follows:

> "2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
>
> b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained...;"

The Commission notes that in this respect, too, the applicant has not had recourse to any domestic remedy. He claims that no effective remedy was available to him. However, the Commission may leave open the question whether the condition under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies has been complied with, as in any event the applicant's complaint must be rejected for the following reasons:

The Commission refers to its case-law according to which shooting by the relevant authorities may not be regarded as arbitrary or unreasonable in certain circumstances, and the use of reasonable force may be justified (Application No. 28955/95, Laginha De Matos v. Portugal, Dec. 7.4.97, unpublished).

In the present case the Commission notes that while the applicant was trying to escape, the police called on him to surrender but the applicant continued to run and the police shot at him. It is undisputed that according to the domestic law, the police have the right to open fire on a detainee who tries to escape.

In the circumstances of the present case, the Commission is of the opinion that shooting at the applicant by the police has not been shown to be arbitrary or unreasonable.

In particular, the Commission notes, that the applicant was apparently shot at without an intention to kill him, and immediately after the incident he was provided with adequate medical care.

The Commission considers that in these circumstances it must reject this complaint as 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.

| | |
|---|---|
| H.C. KRÜGER | S. TRECHSEL |
| Secretary | President |
| to the Commission | of the Commission |