AS TO THE ADMISSIBILITY OF

Application No. 23181/94
by Halit SAHIN
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 20 December 1993 by Halit SAHIN against Turkey and registered on 7 January 1994 under file No. 23181/94;

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 27 February 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen of Kurdish origin, born in 1962, lives in the village of Cagdas in the Lice district, the province of Diyarbakir.

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

The application was introduced on behalf of Ali Sahin. The applicant's representatives informed the Commission on 14 July 1994 that the name Ali arose from a mistake made by the person in Turkey who recorded the original statement of the applicant, and that the applicant's first name is in fact Halit.

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.

On 25 June 1993 the applicant, who is a lorry driver, went to the village of Pecar to load poplar wood. At around 10 a.m., soldiers and commandos connected to the Lice Gendarme Station organised a raid on the village. The applicant was accompanied by his partner, B.A., and two villagers, A.P. and S.T.. There were also about 40 women in the village. As soon as the soldiers entered the village, they started to fire indiscriminately and set light to and demolish the houses. The applicant and his companions wanted to flee but could not as there was nowhere they could flee to. When the soldiers saw them, they started to beat them, hitting them with their rifle butts.

The soldiers then set light to the applicant's lorry and burnt it despite his pleas. A week later the applicant went back to the village to fetch his vehicle which was completely burnt out. He has suffered about 120,000,000 Turkish Liras in material damages.

The applicant's account is corroborated by witnesses, his partner and one of the villagers accompanying him on 25 June 1993. They state that the person who assaulted the applicant and themselves the most was the commander of the soldiers, who is named in the applicant's statement as Captain Nevzat Arik.

In other submissions, the applicant's representatives have indicated 24 June 1993 as being the date of these events.

The respondent Government state that no armed clash took place between the security forces and the PKK on 24 June 1993.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was assaulted by soldiers with their rifle butts without any justification, such as self defence, or any suggestion that they were purporting to arrest him. He claims to be the innocent victim of inexcusable brutality by the Turkish security forces and considers that such behaviour as described in his statement constitutes inhuman and degrading treatment contrary to Article 3 of the Convention.

The applicant submits that he was assaulted by the soldiers for no reason or motive other than that he was a Kurd. He alleges that the assaults are also a violation of Article 14 of the Convention on grounds of race or ethnic origin.

The applicant further complains that the deliberate burning of his lorry constitutes a violation of his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 of the Convention.

He also complains that he has been a victim of discrimination in the enjoyment of his rights under Article 1 of Protocol No. 1 on grounds of his Kurdish origin. He submits that he is a victim of such

discrimination on grounds of race or ethnic origin.

As to the exhaustion of domestic remedies under Article 26 of the Convention, the applicant considers that he is released from any obligation to pursue a domestic remedy for the assaults and beatings he suffered, because no remedy in the circumstances could possibly prove adequate or effective. The applicant's partner has however started proceedings with an application to the Lice court on 1 July 1993 for a determination of the value of their lorry. This attempt to achieve compensation is still pending.

In this respect the applicant also refers to arguments presented to the Commission in two other applications (No. 21893/93, Akdivar v. Turkey, and No. 21895/93, Cagirga v. Turkey, both declared admissible on 19 October 1994).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 December 1993 and registered on 7 January 1994.

On 5 April 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 8 July 1994. At the Government's request, this time-limit was subsequently extended until 8 August 1994.

By letter of 24 October 1994, the Commission's Secretary informed the Government that their request for a further extension had been refused by the President of the Commission on the ground that six 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 27 February 1995.

THE LAW

The applicant complains of violations of Article 3 (Art. 3) of the Convention (the prohibition on inhuman and degrading treatment) and Article 14 (Art. 14) (the prohibition on discrimination), as well as Article 1 of Protocol No. 1 (P1-1) (the right to property) in connection with an alleged assault on him by soldiers during a raid on a village, in the course of which his lorry was destroyed.

1. The Government submit in the first place that the application is inadmissible since the applicant has failed to exhaust domestic remedies as required by Article 26 (Art. 26) of the Convention before lodging an application with the Commission. They contend that there has been no formal complaint or any notice made to the competent public prosecutor.

In respect of damage alleged to have been caused by the State, the Government submit that the applicant had the possibility of introducing an action for compensation before the administrative courts. They refer to the material submitted to the Commission in the applications of Akdivar and others v. Turkey (No. 21893/93, Dec. 19.10.94) and Cagirga v. Turkey (No. 21895/93, Dec. 19.10.94) which indicated, in their view, that the administrative courts issue judgments on the basis of "absolute" or objective liability of the administration or on the basis of faults or negligence of administrative agents. They refer in particular to a judgment of the Administrative Court of Van (file no. 1992/407, decision no. 1994/171) which concerns the granting of compensation to a person whose truck had been damaged in an air-raid.

The Government contend that the application to the Lice court by the applicant's partner for a determination of the value of their lorry does not constitute an action for damages, but is only a first step which has to be followed by an action for damages relying on the determined and preserved evidence. In this respect, however, the Government consider that since the petition submitted by the applicant bears no sign or stamp, it cannot be considered authentic.

The applicant maintains that there are no domestic remedies operating in South-East Turkey which could prove adequate or effective, and that he is therefore released from any obligation to pursue them.

The applicant submits that, even if he were to receive compensation for the loss of his lorry, there is still no remedy for the beatings which he sustained or for the discrimination which he alleges. In this respect the applicant points to the present denials by the Government of the alleged events as further evidence of the official attitude to complaints made about the destruction of property by Government troops.

The Commission recalls that Article 26 (Art. 26) of the Convention only requires the exhaustion of such remedies which relate to the breaches of the Convention alleged and at the same time can provide effective and sufficient redress. An applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach. It is furthermore established that the burden of proving the existence of available and sufficient domestic remedies lies upon the State invoking the rule (cf. Eur. Court H.R., De Jong, Baljet and Van den Brink judgment of 22 May 1984, Series A no. 77, p. 18, para. 36, and Nos. 14116/88 and 14117/88, Sargin and Yagci v. Turkey, Dec. 11.05.89, D.R. 61 p. 250, 262).

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 agrees with the applicant that it has not been established that he had at his disposal adequate remedies to deal effectively with his complaints.

The Commission refers to its findings in Application No. 21893/93, Akdivar and others v. Turkey (Dec. 19.10.94), which also concerned complaints under Article 3 (Art. 3) of the Convention and Article 1 of Protocol No. 1. In that case, the Commission noted that it was a known fact that there has been destruction of villages in South-East Turkey with many people displaced as a result. While the Government had outlined a general scheme of remedies that would normally be available for complaints against security forces, the Commission found it significant that, although the destruction of houses and property has been a frequent occurrence in South-East Turkey, the Government had not provided a single example of compensation being awarded to villagers for damage comparable to that suffered by the applicants. Nor had relevant examples been given of successful prosecutions against members of the security forces for the destruction of villages and the expulsion of villagers.

The Commission considered that it seemed unlikely that such prosecutions could follow from acts committed pursuant to the orders of the Regional Governor under the state of emergency to effect the permanent or temporary evacuation of villages, to impose residence prohibitions or to enforce the transfer of people to other areas. It further had regard to the vulnerability of dispossessed applicants, under pressure from both the security forces and the terrorist activities of the PKK, and held that it could not be said at this stage that their fear of reprisal if they complained about acts of the security forces was wholly without foundation.

The Commission concluded that, in the absence of clear examples that the remedies put forward by the Government would be effective in the circumstances of the case, the applicants were absolved from the obligation to pursue them.

In the present case, the Government have not provided any additional information which might lead the Commission to depart from the above conclusions, which it finds apply equally to the applicant's complaints of the destruction of his lorry and assault by soldiers during an alleged operation by security forces to destroy and evacuate a village. The Commission considers that the judgment of the Administrative Court of Van, also submitted by the Government in the application of Akdivar and others v. Turkey mentioned above, cannot be regarded as an example of an effective remedy since the circumstances of the case cited by the Government do not appear comparable to that of the present case, the former being concerned with an incident related to aircraft outside the context of an alleged forcible village evacuation.

This application cannot, therefore, be rejected for non-exhaustion of domestic remedies under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention.

2. As regards the merits of the application, the Government state that no armed clash took place between the security forces and the PKK in the village of Pecar on 24 June 1993. They cast doubt on the credibility of the applicant's allegations in that the applicant has not presented any evidence to show that the allegedly burnt lorry belonged to him, that no knowledge about its destruction has reached them and that no medical evidence has been adduced in respect of the alleged beating of the applicant by the security forces.

The Government further consider that the change of the applicant's name from Ali to Halit renders the application inadmissible.

The applicant maintains his account of the attack by security forces on the village, and refers to statements made by the applicants in other applications concerning the same incident (eg. No. 23182/93, Dündar v. Turkey, Dec. 28.11.94). He submits that the Government's claim that no clash took place on 24 June 1993 between the security forces and the PKK in Pecar is irrelevant, since he has not claimed that the destruction of his lorry and the assault on him took place as a result of such a clash.

The applicant denies that his name has been changed, and recalls that the use of the name Ali at the time of the introduction of his application arose from a mistake made by the person in Turkey who recorded his original statement.

The Commission accepts that the application was in reality introduced on behalf of Halit Sahin and 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.

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)