AS TO THE ADMISSIBILITY OF

Application No. 35981/97
by Bülent TOLUK
against Turkey

The European Commission of Human Rights (First Chamber) sitting in private on 1 July 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 10 January 1997 by Bülent TOLUK against Turkey and registered on 7 May 1997 under file No. 35981/97;

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, born in 1955, is a Turkish citizen and resident in izmir. He is represented before the Commission by Mrs Zeynep Sedef Özdogan, Mr Suat Çetinkaya and Mr Akin Zeybek, lawyers practising in izmir.

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

The first incident:

On 16 March 1995 neighbours found the applicant's father lying on the steps close to his house. He was injured. The neighbours informed the police of the incident. Policemen from izmir Kadifekale Police Station took the applicant's father to hospital.

The same day, he was treated at the hospital and thereafter taken to the Kadifekale Police Station for an identity check. At the police station he told the policemen that he had fallen down the steps and injured himself and that no one else was to blame. Then he was

released.

The second incident:

The next day, on 17 March 1995, a train crashed into the applicant's father while he was lying on the tracks of a railway line in izmir. Thereafter, he was taken to hospital by policemen from Basmane Police Station.

On 18 March 1995 the applicant's father died in hospital.

Criminal proceedings were subsequently brought against the driver of the train.

On 24 May 1995 the izmir Criminal Court acquitted the driver holding that he was not at fault as the applicant's father had been lying on the railway line in a state of alcoholic intoxication.

Proceedings against the policemen:

The applicant filed criminal complaints against the policemen both from the Kadifekale Police Station and from the Basmane Police Station. He alleged that the former had taken his father into custody and had beaten him. He also alleged that his father had died because the policemen from the Basmane Police Station had been late in taking his father to the hospital following the accident.

On 4 June 1996 the izmir Public Prosecutor decided not to commit the policemen for trial. The Prosecutor first stated that the applicant's father had not been taken into custody by the policemen from the Kadifekale Police Station; he had only been brought to the station for an identity check after his treatment in hospital. The Prosecutor further stated that the policemen at the Basmane Police Station had taken the applicant's father to the hospital immediately after the accident and therefore the policemen could not be considered to have acted negligently. In this regard he referred to the judgment of 24 May 1995 which had acquitted the train driver.

The applicant filed an objection against the Prosecutor's decision. On 19 July 1996 the Karsiyaka Assize Court dismissed this objection.

COMPLAINTS

1. The applicant complains under Article 2 of the Convention that his criminal complaints against the policemen from the Basmane Police Station failed despite the fact that they had acted negligently as a result of which his father had died.

2. The applicant complains under Articles 6 and 13, in conjunction with Article 2, of the Convention that there were no effective remedies as the Prosecutor decided not to commit the policemen for trial.

THE LAW

1. The applicant complains under Article 2 (Art. 2) of the Convention that his criminal complaints against the policemen from the Basmane Police Station failed despite the fact that they had acted negligently as a result of which his father had died.

The Commission considers that the applicant, as a son affected by the death of his father, may claim to be a victim within the meaning of Article 25 (Art. 25) of the Convention.

The Commission further recalls that the first sentence of Article 2 (Art. 2) obliges the State not merely to refrain from "intentionally"

causing death, but also to take adequate measures to protect life (see No. 7154/75, Dec. 12.7.78, D.R. 14, p. 31; and No. 9343/81, Dec. 28.2.83, D.R. 32, p. 190). In particular, in cases where death is intentionally caused, the obligation to protect the right to life may require that there should be an effective official investigation into the circumstances of the death (No. 23452/94, Osman and Osman v. United Kingdom, Dec. 1.7.1997, unpublished).

The precise scope of the positive obligation of the State in the circumstances of the present case may be left open, since the applicant's complaint must in any case be rejected for the following reasons.

The Commission notes that the applicant disputes the conclusion reached by the Turkish authorities. In this regard, the Commission notes that the applicant's criminal complaints against the policemen were examined by the izmir Public Prosecutor, who, after carrying out an investigation, ruled that no prosecution should be brought. The applicant's objection to this ruling was examined by the Karsiyaka Assize Court which agreed with the decision of the Prosecutor.

The Commission notes that the Public Prosecutor found no negligence on the part of the policemen who had taken the applicant's father to hospital immediately after the train accident.

Given that no evidence putting in doubt the national authorities' findings has been submitted to the Commission and that there is no indication that these authorities assessed the evidence submitted to them in an arbitrary manner, the Commission must base its assessment on the facts found by them.

The mere fact that the policemen took the applicant's father to hospital and that he subsequently died is not sufficient in itself and on the particular facts of the case to found the conclusion that the obligation to protect life within the meaning of Article 2 (Art. 2) of the Convention has been breached.

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 complains under Articles 6 and 13, in conjunction with Article 2 (Art. 6+13+2), of the Convention that there were no effective remedies as the Prosecutor decided not to commit the policemen for trial.

The Commission first notes that the applicant chose to use only the remedies provided by the criminal law against the policemen in question. The resulting proceedings do not relate to the applicant's civil rights and obligations, nor to the determination of a criminal charge against him.

Consequently, Article 6 (Art. 6) of the Convention is not applicable to the proceedings in question. The complaint under this Article must therefore be rejected pursuant to Article 27 para. 2 (Art. 27-2) as being ratione materiae incompatible with the provisions of the Convention.

As regards the applicant's complaint under Article 13 (Art. 13) of the Convention that there were no effective remedies, even assuming that the applicant had an arguable claim under Article 2 (Art. 2) of the Convention, the Commission recalls that the word "remedy", within the meaning of Article 13 (Art. 13) does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (cf. No. 11468/85, Dec. 15.10.86, D.R. 50, p. 199).

In the present case, the Commission notes that the applicant had

an opportunity for his allegations to be examined by a national authority. In particular the Public Prosecutor of izmir examined the merits of his complaint and the applicant could and did use a further remedy in a court. The Commission therefore considers that the applicant had an effective remedy before the national authorities.

It follows that this part of the application must be rejected as being 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber