AS TO THE ADMISSIBILITY OF

Application No. 24209/94
by Y.F.
against Turkey

The European Commission of Human Rights sitting in private on 7 December 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
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 13 May 1994 by Y.F. against and registered on 26 May 1994 under file No. 24209/94;

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, born in 1951 in Kulp district of Diyarbakir. He lives in Bingol. He is represented before the Commission by Mustafa Sezgin Tanrikulu, a lawyer practising in Diyarbakir.

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

On 15 October 1993 the applicant was taken into police custody in Bingol, on suspicion of being linked to an illegal organisation.

Two days later, the applicant's wife was also taken into police custody.

On 18 October 1993 the applicant was interrogated by the police. His statements were placed on record and the applicant signed the document. According to his statement, the applicant's son, Yetisen, was a member of the PKK (Labour Party of Kurdistan - a separatist armed movement). After Yetisen had been wounded during clashes with soldiers, the applicant took him home, where, for 10 days, he and his wife took care of him. During and after Yetisen's treatment, the applicant and his wife met other members of the PKK and assisted them.

On 20 October 1993,

- the applicant was brought before the Public Prosecutor of Bingol. The same day, he was questioned by the Public Prosecutor and by the local Justice of Peace (Sulh Ceza Hakimi). The latter placed him in detention on remand.

- he was examined at the 1st Division of Bingol/Central Infirmary. The presence of a superficial bruise covering a surface of 3 x 5 cm. on the applicant's wrist was mentioned in the Medical Examination Report.

- he signed a statement prepared by the police according to which, he had bruised himself in the course of police detention.

- his wife was taken to a medical doctor for a gynaecological examination. The police requested that the report should indicate whether she had had sexual intercourse by way of coitus or sodomy. A medical report was drawn up on the results of the examination.

On 28 October 1993 the Chief Public Prosecutor of the State Security Court of Diyarbakir issued an indictment against the applicant and his wife and charged them both with assisting the PKK and acting as their accomplices. Criminal proceedings were initiated against the applicant and his wife before the 1st Chamber of the State Security Court of Diyarbakir under file number 1993/727.

On 9 November 1993 the applicant's legal representative submitted a petition to the Court, asserting that the applicant's statement to the police had been given under pressure. He also stressed that before the Public Prosecutor and the local Justice of Peace, the applicant had only admitted having taken care of his injured son. He also submitted that the applicant risked losing his job if his detention continued.

He requested the applicant's release. The Court dismissed this request.

On 15 December 1993 the first hearing took place before the State Security Court of Diyarbakir in the absence of the applicant. The applicant's legal representative asserted that the applicant had been subjected to ill-treatment while he was in police custody and once again requested the applicant's release. The Court granted the request and released the applicant.

On 23 March 1994 the applicant was acquitted for lack of evidence.

COMPLAINTS

The applicant complains of violations of Articles 3, 5 and 8 of the Convention.

As to Article 3, he claims that he was tortured for 5 days while he was in police custody. In particular he asserts that he was subjected to "suspension". He maintains that he was under pressure when

he signed the statements taken by the police.

As to Article 5, he points out that his first request for release was rejected although he was later released and acquitted on the basis of the evidence available already from the beginning.

As to Article 8, he alleges that his wife was forced to undergo a gynaecological examination, the results of which were indicated in a medical report.

THE LAW

1. The applicant alleges a violation of Article 3 (Art. 3) of the Convention which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

To the extent that the applicant complains that he was subjected to torture while he was in police custody, the Commission considers that this complaint raises issues as to the exhaustion of domestic remedies and as to facts and law. It cannot, on the basis of the file, determine at this stage the admissibility of this complaint and it is therefore necessary, in accordance with rule 48 para. 2(b) of the Rules of Procedure, to give notice of this part of the application to the Respondent Government.

2. The applicant further alleges a violation of Article 8 (Art. 8) of the Convention which, so far as relevant, ensures the right to respect for private and family life.

To the extent that the applicant complains that the medical examination which his wife was allegedly forced to undergo constituted an interference with his private and family life, the Commission considers that this complaint at this stage raises complicated questions of fact and law and it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with rule 48 para 2(b) of the Rules of Procedure, to give notice of this part of application to the Respondent Government.

3. The applicant complains under Article 5 (Art. 5) of the Convention that the Court had no valid reason to reject his first demand for release and to keep him in detention on remand. Article 5 (Art. 5), so far as relevant, provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> ...
>
> c. the lawful ... detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ...
> ...
>
> 3. Everyone ... detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge ... and shall be entitled to trial within a reasonable time or to release pending trial...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful". ...

As regards the reasons for the applicant's detention, the Commission notes that the applicant does not seem to question that he was initially detained on suspicion of having committed an offence. The fact that he was subsequently acquitted does not make his initial detention unlawful (cf. No. 8083/77, Dec. 13.3.80, D.R. 19 p. 223). It follows that the detention was justified under Article 5 para. 1 (c) (Art. 5-1-c).

As to the length of his detention on remand, the Commission observes that the applicant was detained from 15 October 1993 until 15 December 1993. His detention lasted for two months. Such a period cannot be considered as being contrary to the reasonable time requirement of Article 5 para. 3 (Art. 5-3).

The Commission notes that, in the present case, a court decided on the lawfulness of the applicant's detention and ordered release. The applicant's first demand for the applicant's release was dismissed by the Court on the same day. The Court, at the first hearing which took place about five weeks after the dismissal of the first demand, granted the more recent request of the applicant and released him. Therefore, there was no breach of Article 5 para. 4 (Art. 5-4).

In light of the above, the Commission considers that this complaint, as it has been submitted, does not disclose any appearance of a violation of the rights and freedoms set out in the Convention and, in particular, in Article 5 (Art. 5) thereof.

It follows that this part of the application in this respect is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The Commission further notes that implicit in the applicant's Article 5 (Art. 5) complaint, there is also a question whether the applicant was brought promptly before a judge as required by Article 5 para. 3 (Art. 5-3) of the Convention.

However, the Commission recalls that under Article 26 (Art. 26) of the Convention, it may only deal with a matter within a period of six months from the date on which the final decision was taken. It notes that in provinces of Turkey which are ruled under the State of Emergency Regime the duration of police custody may be extended up to thirty days. In the present case, the place where the applicant was detained by the police is under this Regime and therefore the police custody of five days is in conformity with the domestic law. Therefore, the applicant did not have any remedy against the length of his police custody. The period of six months, thus, started to run from the date on which the police custody ended (c.f. No. 17126/90, Oner v Turkey, Dec. 30.08.94 unpublished), i.e. on 20 October 1993, whereas the applicant lodged his application with the Commission on 13 May 1994 which is after the expiry of the period of six months. Therefore, this aspect of the applicant's Article 5 (Art. 5) complaint is out of time.

It follows that this part of the application in this respect must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission by a majority,

DECIDES TO ADJOURN its examination of the complaint under Articles 3 and 8 (Art. 3, 8) of the Convention;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)