AS TO THE ADMISSIBILITY OF

Application No. 23179/94
by Emine YILMAZ
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 Emine YILMAZ against Turkey and registered on 11 January 1994 under file No. 23179/94;

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 is a Turkish citizen of Kurdish origin, born in 1935 and residing at Diyarbakir. She is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both of

the University of Essex, England. The applicant brings the application on her own behalf, on behalf of three of her children, her daughter Senay and her sons Taha and Abdullah, as well as on behalf of her spouse, Mehmet Yilmaz.

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 10 December 1992 the village of Mastak in the province of Diyarbakir where the applicant lived was destroyed by the security forces. Two days earlier, on 8 December 1992, the village had been visited by security units from Kulp who had ordered the villagers to leave the village under threat of force. All but twenty of the villagers fled, including the applicant and her family. The twenty who remained were arrested.

The destruction of the village on 10 December 1992 was effected through aerial bombardment. It was carried out by four military planes and a number of helicopters.

After the operation the villagers returned to the village to attempt to salvage their possessions. They were, however, unable to save any of their winter food stocks (wheat, lentils, flour, etc.) and the houses were set on fire with inflammable liquids by soldiers under the command of the Kulp Gendarme Station Commander.

One month after the applicant and her family had settled in the Pecar village, security forces came from the Lice Gendarme Station, commanded by Nevzat Arik, in search of guerillas. They arrested the applicant's two sons, Taha and Abdullah, and when they were released after five days, they showed the most obvious signs of torture. The sons could not afford to receive medical treatment for their injuries and did not receive any.

On the morning of 24 June 1993 around 500-600 soldiers from the Lice district and Diyarbakir province gendarme stations effected an operation on the 200 household village of Pecar. They first went to the house of the village mayor, set fire to the house and burned it down. They sent 100-150 soldiers to each of the four neighbourhoods in the village of Pecar and burned down and destroyed the houses. When they came to the applicant's and her family's house, they took the applicant's spouse and beat him and threatened him for some time in front of the house. They collected all the goods in the three roomed house into one room without allowing the family to take anything out, poured petrol over the property and set it alight. After they had burned the whole house, the Lice Gendarme Station Commander, Nevzat Arik, turned to them, i.e. the applicant, her spouse and her daughter Senay, and said that this time they had only burned their house down and that next time they would kill all of them.

In the meantime the soldiers were forcing the old men in the village to lie face down on the ground and were beating them with rifle butts. They made the applicant's spouse lie down on the ground and beat him in the same way in front of the house. The soldiers installed themselves in the village for two or three days. Those of the villagers who were able to flee did so. The applicant, her husband and her daughter Senay walked to another village and, after staying there for a few days, continued to Diyarbakir where they settled in the house of the applicant's married daughter.

The respondent Government, referring to a statement of the present mayor of the village of Güldiken (Pecar), state that no armed clash took place between the security forces and the PKK on 24 June 1993 in the village of Pecar. Furthermore, the applicant's sons were not taken into custody in January 1993.

COMPLAINTS

The applicant complains of violations of Articles 3, 8, 14 and 18 of the Convention and Article 1 of Protocol No. 1.

As to Article 3, she submits that her treatment in the destruction of her home and the expulsion from her village constitutes a form of collective punishment in violation of that Article.

As to Article 8, she submits that the military operation on Pecar village constituted direct, deliberate and violent interference with her and her family's right to respect for their home and private and family life, for which there is no justification under paragraph 2 of Article 8.

As to Article 14 in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1, she complains that she and her family were victims of discrimination in the enjoyment of their rights under these Articles on grounds of race or ethnic origin.

As to Article 18, she alleges that her and her family's rights were interfered with for purposes incompatible with the Convention.

As to Article 1 of Protocol No. 1, she complains of the deliberate destruction of her and her family's house and property.

As to the exhaustion of domestic remedies, the applicant considers that no remedy could in the circumstances be regarded as adequate or effective and that she is therefore released from any obligation to pursue a domestic remedy under Article 26 of the Convention.

As to the six months time-limit laid down in Article 26 of the Convention, the applicant states that she is aware that the Commission can examine the sequence of complaints only from a date which is no more than six months from the date of the application, but that she nevertheless has made a full account of her experiences and those of her family in order to explain the extraordinary context of suffering and abuse of State power which her family has suffered from the official policy of the destruction of villages and the expulsion of populations.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 December 1993 and registered on 11 January 1994.

On 9 May 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 August 1994. At the Government's request, this time-limit was subsequently extended until 30 September 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 five 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), Article 8 (Art. 8) (the right to respect for family life and the home), Article 14 (Art. 14) (the prohibition on discrimination) and Article 18 (Art. 18) (the prohibition on using authorised Convention restrictions for ulterior purposes), as well as Article 1 of Protocol No. 1 (P1-1) to the Convention (the right to property) in connection with a military raid on her village, in the course of which her home and possessions were destroyed.

1. The Government, while maintaining that the application is defamatory and composed of hollow calumnies, argue in the first place that the application is inadmissible since it is an abuse of the right of petition.

The Commission considers that the Government's argument could only be accepted if it were clear that the application was based on untrue facts. However, this is far from clear at the present stage of the proceedings, and it is therefore impossible to reject the application on this ground.

2. The Government further submit that some of the alleged events occurred more than six months before the introduction of the application, and that this part of the application is therefore inadmissible.

The Commission notes in this respect that it appears from the application that these events are not the subject of the applicant's complaints to the Commission, but are mentioned as a general background in order to show the sufferings to which the applicant and her family have allegedly been exposed.

3. The Commission notes that the Government in their observations on the admissibility and merits of the application have not raised the issue of exhaustion of domestic remedies.

The Government contend that the alleged events did not take place, inter alia, since they were not reported to the competent authorities (see below). Even assuming that this assertion by the Government is to be considered as a submission of non-exhaustion of domestic remedies, the Commission recalls its findings in No. 21893/93, Akdivar and others v. Turkey (Dec. 19.10.94), where it held that, although the destruction of houses and property has been a frequent occurrence in South-East Turkey, the Government had failed to provide clear examples of effective remedies in the circumstances of the case and the applicants were, therefore, 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.

It follows that the application cannot be rejected on the ground that the domestic remedies have not been exhausted.

4. As regards the merits, the Government state that no armed clash took place between the security forces and the PKK in the village of Pecar on 23-24 June 1993. They cast doubt on the credibility of the applicant's allegations in that the alleged incident has not been brought to the attention of the competent judicial authorities, no corroborating evidence has been adduced by the applicant and neither the applicant nor any of the persons named in the application can be found to shed light on the alleged events.

In this respect the Government refer to the mayor of the village of Güldiken (Pecar), Mr. Sala, who has stated that no air raids took place in 1992 and that there were no clashes between security forces

and the PKK in June 1993.

The Government reject as defamatory the allegation that security forces destroyed inhabited areas. They state that such kinds of violence would constitute a breach of the Turkish Constitution as well as of the Convention, and that they are well aware that public security cannot be restored by having recourse to violence directed against innocent people who suffer from terrorist intimidation.

The applicant maintains her 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. 23182/94, Dündar v. Turkey, Dec. 28.11.94, unpublished). She 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 she has not claimed that the destruction of the village was caused as a result of such a clash.

The applicant further refutes the Government's claim that no inhabited areas are destroyed by security forces. She claims that the forced evacuation of villages has been well-documented by human rights organisations eg. the Helsinki Watch report October 1994, vol. 6, no. 12 "Forced Displacement of ethnic Kurds from south-eastern Turkey".

The Commission 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)