AS TO THE ADMISSIBILITY OF

Application No. 25801/94
by Z.D.
against Turkey

The European Commission of Human Rights sitting in private on 23 May 1996, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN

Mr. M. DE SALVIA, Deputy 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 2 May 1994 by Z.D. against Turkey and registered on 29 November 1994 under file No. 25801/94;

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 11 August 1995 and the observations in reply submitted by the applicant on 3 November 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1931, is a Turkish national of Kurdish origin. She is a housewife and lives in Diyarbakir. She is represented before the Commission by Professor Kevin Boyle and Ms Françoise Hampson, both university teachers at the University of Essex.

The facts as submitted by the parties may be summarised as follows.

Particular circumstances of the case

The applicant gives the following account.

The applicant was resident in Çiftlibahçe village, Hazro district, Diyarbakir province. On the morning of 8 November 1993, at 7.30 hours, a raid was carried out on the village by soldiers from Hazro District Gendarme Station and protectors attached to that Station. The applicant knows the names of six of the protectors involved: Haki, Chief Protector of Kirmatas village, Faki, Chief Protector of Sarierik village, Ali, Chief Protector of Mesebaglar village, and Haci Hüseyin, Haci Galip Ramazan and Muharrem from Kavaklibogaz village. There were about 300-350 attackers. Before reaching the village, the group had stopped a minibus and taken the people and their possessions out.

The security forces rounded up the people of the village (about 500 people or 120 households) and took them about 1 km away from the village. They made the 60-70 men walk in pairs. Some of the women and children were left in front of their homes and others were in the open, away from the village. The applicant was in the open. Smoke started to come from the village. The Hazro Gendarme Unit Commander said "We came in July and left your tobacco fields with no produce. You went off and engaged advocates for money and made complaints against us. You gave your money to advocates and you'll keep doing that. I will say this to you. Here, the State is mine; the Government is mine; the advocates are mine. No one can do anything to me at all. You have given the money in your possession to advocates so you can be poverty-stricken. I am very happy. If you don't empty this village within seven days, I will kill you and pass everyone off as terrorists." (In the operation they had organised in July, the security forces had made the villagers pull up their tobacco at gunpoint and left them with no produce. The villagers wrote petitions about the incident before going to advocates but they tore up the petitions for determination of damages for fear of the threats from the security forces.)

As the Unit Commander was speaking, the soldiers and protectors in the village were pouring petrol over the houses and setting fire to them, in some cases with the household goods inside and, in other cases, after having removed the contents. They burned 40-50 houses. They burned the applicant's house with everything in it: tobacco, wheat, barley, lentils, winter provisions, household goods, a refrigerator, television set etc. The men were kept lying face down on the ground for 11/2-2 hours. The security forces took Ahmet Çakici off with them and, telling the villagers to go and put out the fires, they left the village.

The applicant identified 47 people whose homes were destroyed. The applicant's home was in ruins. The applicant's son had left the village six weeks earlier and rented a house in Diyarbakir. The applicant, together with her eleven year old granddaughter who was staying with her at the time of the incident, joined her son in Diyarbakir. Twelve of them live in a four-roomed house. The applicant and her son were farmers in the village. Neither she nor her son knew any other work. They cannot obtain work.

No inquiry has been opened into the incident. Neither the applicant nor any other villager has made any application to an institution because they were threatened. The applicant wanted to go back to the village one more time after leaving it and wanted to take photographs of the burnt houses. The villagers were not allowed into the village. They were told "If you don't want us to kill you, don't come back here again".

The respondent Government state that the information obtained from the Turkish authorities contradict the applicant's allegations. A security operation was carried out in the applicant's village on 8 November 1993 but the houses of the village were not damaged at all.

As regarded the alleged taking into custody of Ahmet Çakici, he was pursued by the security forces on account of his activities as a member of the mountains branch of the PKK, but was neither captured not taken into custody. An identity card belonging to him was found on the hill "Killibogan" where an intense armed clash between terrorists and the security forces took place on 17-19 February 1995.

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 5, 6, 8, 13, 14 and 18 of the Convention and Article 1 of the Protocol No. 1 to the Convention.

As to Article 2 she claims that she was the victim of life-threats by the Hazro gendarme commander unit. She alleges that the State, in failing to exercise the requisite control over the security forces, did not respect its obligation to protect her right to life.

As to Article 3 she maintains that clearing the villages is a form of collective punishment, amounting to inhuman and degrading treatment. She also alleges that the discrimination on grounds of race is of such a nature and severity as to constitute independent violations of Article 3.

As to Article 5 she refers to complete lack of security of the person.

As to Article 6 she complains of the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the destruction of her village as a result of which she cannot bring civil proceedings arising out of the deprivation of her property.

As to Article 8 she refers to the destruction of her home.

As to Article 13 she complains of the lack of any authority before which her complaints can be brought with any prospect of success.

As to Article 14 she complains of discrimination in the enjoyment of her rights under Articles 2, 3, 5, 6, and 8 of the Convention and Article 1 of the Protocol No 1. She refers to an administrative practice of discrimination on account of race or ethnic origin.

As to Article 18 she alleges that the restrictions on all the rights she has complained of have been imposed for purposes incompatible with the Convention.

As to Article 1 of the Protocol No. 1 she complains of the destruction of her home and possessions.

As to the exhaustion of domestic remedies she submits that no remedies are effective in South-East Turkey against the acts of the security forces.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 May 1994 and registered on 29 November 1994.

On 27 February 1995, the Commission decided to communicate the application to the Government and to ask for written observations on the admissibility and merits of the case.

The Government's observations were submitted on 11 August 1995, after the expiry of the extension in the time-limit on 23 July 1995. The applicant submitted observations in reply on 3 November 1995 after

an extension of the time-limit.

THE LAW

The applicant complains that the security forces carried out a raid on her village during which her home and property were destroyed. She invokes Article 2 (Art. 2) of the Convention (respect for the right to life), Article 3 (Art. 3) (the prohibition on inhuman and degrading treatment), Article 5 (Art. 5) (the right to liberty and security of person), Article 6 (the right of access to court), Article 8 (Art. 8) (the right to respect for family life and the home), Article 13 (Art. 13) (the right to effective national remedies for Convention breaches), Article 14 (Art. 14) (the prohibition on discrimination in the enjoyment of Convention rights) 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 (peaceful enjoyment of possessions).

The Government have objected to the admissibility of this application:

1. they challenge the authenticity of the application;

2. they submit that the applicant's complaints have not been submitted to the national authorities.

1. Authenticity of the application

The Government submit that there is serious doubt as to the credibility of the statement put forward as the basis of the applicant's complaints. They allege that Rozan Alicioglu who took the purported statement from the applicant is working for the PKK in Switzerland and that other members of her family are known to be involved in the PKK. The Government point out that the statement allegedly taken from the applicant is neither signed nor thumbprinted.

The applicant's representatives refute the allegations. They submit that Rozan Alicioglu took down the applicant's statement when she came to the Human Rights Association in Diyarbakir and while it is not thumbprinted, the original statement was accompanied by a thumbprinted form setting out the applicant's personal information (name, age, address etc) and also by a thumbprinted letter of authority.

The Commission does not consider that the absence of a signature or thumbprint from the applicant on the statement of facts and complaints submitted at the same time as a thumbprinted letter of authority and a thumbprinted form of personal information is sufficient ground to cast doubt on the authenticity of the application introduced in the name of the applicant. Nor are the other allegations made by the Government supported at this time by any material which would substantiate any claim as to the falsity of the application. The Commission will therefore proceed with its examination of the application.

2. Exhaustion of domestic remedies

The Government submit that the applicant has failed to submit her complaints to the national judicial authorities. The Commission has treated this as a submission that the applicant has failed to comply with the requirement under Article 26 (Art. 26) of the Convention to exhaust domestic remedies before lodging an application with the Commission.

The applicant maintains that there is no requirement that she pursue domestic remedies. Any purported remedy is illusory, inadequate and ineffective since, inter alia, the operation in question in this

case was officially organised, planned and executed by the agents of the State. She refers to the situation in South-East Turkey which is such that remedies are theoretical and illusory and alleges a lack of genuine investigations by public prosecutors and other competent authorities; an absence of any cases showing the payment of adequate compensation to villagers for the destruction of their homes and villages, or for their expulsion; and the lack of any prosecutions against members of the security forces for the alleged offences connected with the destruction of villages and forcible expulsions. There is, in the applicant's submission, an administrative practice of non-respect of the rule which requires the provision of effective domestic remedies.

The applicant also submits that she had a well-founded fear of making complaint to the authorities. She refers to a previous incident in July 1993, when the security forces set fire to their tobacco crop and the villagers, under intimidation, tore up the petitions which they had intended to submit. She states in addition that when she and other villagers tried to return to the village to take photographs of the damage they were not allowed into the village and were warned that if they did not want to be killed they should not come back.

The Commission recalls that Article 26 (Art. 26) of the Convention only requires the exhaustion of such remedies as 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 of the kind alleged by the applicant, because it agrees with the applicant that it has not been established that she had at her disposal adequate remedies under the state of emergency to deal effectively with her complaints.

The Commission refers to its findings in Akdivar and others v. Turkey (No. 21893/93, dec. 19.10.94) which concerned similar allegations by the applicants of destruction of their village and forcible expulsion. 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 the 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. The 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.

3. As regards the merits

The Government state that the information obtained from the Turkish authorities contradict the applicant's allegations. While there was an operation on 8 November 1993, the Government deny that the village has been destroyed as alleged.

The applicant maintains her account.

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.

Deputy Secretary to the Commission — President of the Commission

(M. DE SALVIA) — (S. TRECHSEL)