KHRP

Kurdish Human Rights Project

CASES AGAINST TURKEY DECLARED INADMISSIBLE BY THE EUROPEAN COMMISSION OF HUMAN RIGHTS

Part of a series of cases brought by Kurds

Volume 1

September 1998

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KHRP Cases against Turkey declared Inadmissible By the European Commission of Human Rights

Volume I
September 1998

Contents

Decision No.

1. FOREWORD

This report is a compilation of cases assisted by the Kurdish Human Rights Project (KHRP) which have been declared inadmissible by the European Commission of Human Rights (the Commission). This publication is part of a series of cases brought by Kurds against Turkey. KHRP admissible decisions have already been collected in six Volumes but this is the first report dealing with inadmissible decisions. We hope that this report will give the reader a fuller picture of the type of applications introduced before the European Commission on behalf of Kurdish people. Readers may also be interested in further examining the Commission's criteria for declaring cases admissible, or inadmissible.

So far, 61 cases have been declared fully admissible by the Commission and 4 cases have been declared partly admissible and partly inadmissible. This Volume is a compilation of 12 inadmissible applications and 3 partly adjourned/ partly inadmissible applications. The European Court of Human Rights (the Court) have now delivered judgments in 11 cases assisted by the KHRP[1], finding a breach of the Convention in all cases except that of Gündem v Turkey. One of the important results produced by such a large number of admissible applications and findings of violations by the Court has been to generate greater awareness about the overall human rights situation in Turkey and to stimulate a debate both within and outside Turkey regarding the issues raised by the applicants in their complaints.

Since very few applications actually lodged with the Commission ever pass the admissibility stage[2], KHRP's record in this respect remains outstanding. Although some cases are clearly stronger than others, it is sometimes difficult to predict the outcome of an application. The following analysis aims at shedding light on the reasons why these applications were declared inadmissible by comparing them and drawing factual and legal conclusions as to the weaknesses of these cases.

[1] See cases of Akdivar v Turkey (16 September 1996 (merits) and 1 April 1998 (article 50)); Aksoy v Turkey (18 December 1996); Aydin v Turkey (25 September 1997); Menteş v Turkey (28 November 1997 (merits) and 24 July 1998 (article 50)); Kaya v Turkey (19 February 1998); Selçuk and Asker v Turkey (24 April 1998); Gündem v Turkey (25 May 1998); Kurt v Turkey (25 May 1998); Tekin v Turkey (9 June 1998); Ergi (28 July 1998); Yaşa (2 September 1998);

[2] For instance, a survey of activities and statistics published by the Commission in 1995 shows that in that year, 2093 applications were declared **inadmissible**, 89 were struck off the list and 807 were declared **admissible**. (European Commission of Human Rights, *Survey of activities and Statistics*, 1995).

Inadmissibility rules under the Convention: law and practice

Cases can be declared inadmissible under different heads, as explained below.

I. Firstly, the Commission will decide whether it is competent to examine a particular complaint.

(a) The question of 'who is entitled to bring a claim against who?' is dealt with under the head of 'admissibility **ratione personae**'.

The rule is that complaints under the European Convention of Human Rights (the Convention) can only be brought by "a person, non-governmental organisation or group of individuals claiming to be a victim of a violation" of a Convention right. (article 25(1) of the Convention)[3]. Moreover, complaints can only be brought against the State itself or state bodies such as courts, security forces or local government.

Individual complaints against states which have not ratified the Convention or accepted the right of individual petition in accordance with article 25 will also be rejected on this ground. Furthermore, an applicant must claim to be a victim of the alleged violation and must therefore be affected by the matter complained of.

In the case of *Zengin v Turkey*[4], the complaint concerned the right of a trade-union (Egit-Sen) of which the applicant was an active member. Unfortunately, the applicant failed to submit a power enabling her to represent the Union before the Commission. The Commission was of the opinion that the applicant could not therefore be considered to be a victim within the meaning of article 25(1) and rejected this part of the application as incompatible ratione personae.

(b) The question of the subject matter of a complaint is dealt with under the head of 'admissibility **ratione materiae**'.

The competence of the Commission only extends to examining complaints concerning rights and freedoms contained in the Convention. For example, in the cases of *N.A. v Turkey* and *Sevtap Yokus v Turkey*[5], the applicants claimed that they did not have a fair trial, as required by article 6 of the Convention. However, the Commission noted that the proceedings brought against the applicants in these cases were of a disciplinary character and could not therefore be considered to have concerned either 'civil rights or obligations' or 'the determination of a criminal charge' within the meaning of article 6.

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[3] Article 25 of the Convention states, so far as relevant:

(1) The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

(2) Such declarations may be made for a specific period.

(...)

[4] See decision 12 in this report

[5] See decisions 13 and 14 in this report.

Similarly in the case of *Bilgin v Turkey*[6], the Commission declared the application inadmissible ratione materiae because the rights recognised in article 6 of the Convention are those of an accused in a criminal trial. In this case, the applicant had intervened in the criminal trial of an individual in support of a particular sentence against him.

(c) The question of time and place is dealt with under the heads of 'admissibility **ratione temporis** and **ratione loci**'.

The Commission has no competence to examine matters which took place before the entry into force of the Convention or before the date of ratification by the state in question. The temporal effect will often depend on the declaration by States accepting the right of individual petition, pursuant to article 25. In most cases, the Commission will limit its competence to acts or events which occurred subsequent to the declaration. Turkey ratified the Convention on 18 May 1954 and recognised the right of individual petition on 28 January 1987.

In the cases of *Bilgin v Turkey* and *Selahattin Simşek v Turkey*[7], the Commission declared parts of the applicants' complaint inadmissible ratione temporis because the events complained of had occurred in July 1985 in the case of *Bilgin* and between May 1980 and May 1983 in the case of *Simşek*, that is to say at a time Turkey had not yet accepted the right of individual petition.

II. The six month rule

The time limit for lodging an application with the Commission is 6 months. This period starts running from the final decision in domestic proceedings, provided the applicant is aware of it. If there are no domestic remedies, an application should be lodged within 6 months of the events complained of. In case of doubt about the effectiveness of a remedy, it is recommended to lodge an application at the same time as pursuing the remedy at national level. In cases of continuing breaches, the time limit may not start to run until the breaches cease to have continuing effect.

The Commission is known to be very strict as regards the application of this time limit. In fact, a majority of the cases contained in this report were declared inadmissible on this ground. In the cases of *Sevtap Yokus v Turkey* and *N.A. v Turkey*, the applicant argued that the time limit ought to be suspended as they alleged they were under constant threats by the authorities so that the situation of violation was continuing. However, the Commission was unable to find on the facts of the case that there existed a continuing violation of the Convention. In other cases, such as that of *Dirlik v Turkey*[8], the Commission reiterated that, in the absence of domestic remedies, the 6 months' period starts running from the date of the act complained of in the application. In the cases of *Simşek v Turkey*, *Danis v Turkey* and *Necip Odabasi v Turkey*[9], the Commission decided that the case did not disclose the existence of any special circumstances which might have interrupted or suspended the 6 month period.

[6] See decision 10 in this report.
[7] See decision 1 in this report.
[8] See decision 8 in this report.
[9] See decisions 1, 11 and 3 in this report.

In cases such as *Ayse Nur Zarakolu v Turkey, Celik v Turkey* and *Ozkan Kiliç v Turkey*[10], the Commission simply stated that the applicant had failed to comply with the time limit.

The problem with the six month time limit is that every case will turn on its own facts and in this respect, it is sometimes difficult to assess the evidence without a thorough examination and exchange of observations between the parties. Whilst some cases obviously stand better chances than others for the purpose of admissibility, this is no reason for not bringing cases which may appear weaker since their weakness and strength can sometimes only be really assessed upon thorough examination.

III. Exhaustion of domestic remedies.

Article 26 of the Convention provides: " the Commission may only deal with the matter after all domestic remedies have been exhausted according to the generally recognised rules of international law (...) "

This rule is founded on the principle of international law that the state must first have the opportunity to redress the wrong alleged. However, the obligation to exhaust domestic remedies does not apply where the available remedies are ineffective and inadequate. In case of doubt about the effectiveness of a domestic remedy, the remedy should be pursued . While the state must prove the existence of domestic remedies, the burden shifts on the applicant to show that they are inadequate and ineffective. There may also be special circumstances which absolve the applicant from the obligation to exhaust domestic remedies. Finally, an applicant should raise in domestic proceedings the substance of the complaint to be made to the Commission.

In the case of *Burhan Karadeniz v Turkey*[11], the Commission was not satisfied that the investigation carried out by the authorities could be discounted as ineffective because at the time of the admissibility decision, a trial was still pending against the victim's assailant. The Commission concluded that it could not " be " said with any certainty that the proceedings will fail to provide an effective mechanism for establishing the facts or attributing responsibility for the attack of the applicant".

In the case of *Zengin v Turkey,* the Commission noted that the applicant had not raised his complaints before the national courts, nor had he lodged an appeal against the decision. The Commission accordingly dismissed this part of the complaint on the ground of non exhaustion of domestic remedies. In *K.O.S v Turkey*[12], the applicant alleged he feared reprisals and this is why he did not complain to the national authorities. However, the Commission found that the applicant did not substantiate this claim and it rejected it.

Many applications against Turkey have been declared admissible despite the fact that the applicant failed to exhaust domestic remedies. Applicants often argue that there are no effective domestic remedies. In some cases, depending on the nature of the violation as well as the surrounding circumstances, the Commission is quite prepared to find 'special circumstances' which absolve the applicant from exhausting domestic

[10] See decisions 2, 6 and 15 in this report.
[11] See decision 4 in this report.
[12] See decision 9 in this report.

remedies. In cases against Turkey, investigations are not always thoroughly and seriously carried out by the authorities and in such cases, the Commission finds that the applicant is not required to exhaust domestic remedies. [13]

Again, it is difficult to assess whether a domestic remedy will be effective. Complaints and appeals in Turkey take a very long time to be processed. Applicants should lodge their application more or less at the same time as they are waiting for the outcome of the proceedings undertaken but in the event that a domestic route turns out to be an adequate remedy for the purpose of the applicant's complaint, the Commission will dismiss the application.

IV. Manifestly ill founded application under article 27(2).

The provision requires the Commission to examine the merits of an application and decide whether it deserves further examination. In practice, applications are declared manifestly ill-founded if the facts about which a complaint is lodged evidently do not constitute a violation of the Convention, or if those facts have not been proved or are manifestly incorrect. As to the latter, the Commission requires the applicant to give prima facie evidence of the facts put forward by him.

In the case of *Kiliç v Turkey,* the applicant failed to show that she was denied the peaceful enjoyment of her possessions or that she was deprived of any property and the Commission declared this part of the complaint manifestly ill founded. Similarly, in *N.A. v Turkey,* the applicant failed to show that she was indeed exposed to such threats to her life as she alleged and it rejected this part of her complaint.

In *Simşek v Turkey,* the applicant alleged a violation of articles 8 and 14 in that his right to respect for family life had been breached because of his prolonged detention in custody. The Commission held that this type of situation did not constitute a breach of a provision of the Convention and rejected the complaint as manifestly ill founded.

There are many reasons for bringing applications which, prima facie, are unlikely to be successful. As explained above, it may be that an application has to be lodged in order for all the facts to be known, through exchange of observations and disclosing of evidence. An applicant whose rights have been violated may sometimes find it difficult to believe that his case is unlikely to be successful and he may want to bring the application anyway. Bringing new applications may also give the opportunity to lawyers and the Commission to encourage the jurisprudence to evolve in accordance with new standards as developed by an ever changing society.

Kerim Yildiz
Executive Director

[13] See, for instance, the case of *Aksoy v Turkey*, and in particular, the report drafted by the KHRP entitled: "Aksoy v Turkey, Aydin v Turkey -a case report on the practice of torture in Turkey", December 1997 at page 10.

Selahattin SIMŞEK v. Turkey
Application No. 22490/93

Declared inadmissible on 2 March 1994

THE FACTS (according to the applicant)

The applicant was arrested on 31 May 1981. By judgment of 24 May 1983 the State Security Court of Diyarbakır found the applicant guilty of being a member of an illegal organisation, murdering a policeman and committing an armed robbery. These offences had all been committed as part of a campaign of violence aimed at obtaining the transfer of a part of the national territory. The applicant was sentenced to capital punishment according to Article 125 of the Turkish Penal Code. On 17 February 1987 the Military Court of Cassation confirmed this judgment.

Pursuant to law No. 3713 which was passed in April 1991, individuals who had previously been sentenced to capital punishment and who had spent at least 10 years in custody, had to be released on parole. However, where individuals had been sentenced in respect of particularly serious offences, they had to have spent at least 20 years in custody in order to be released on parole. This particularly grave offence include the murder of civil servants and acts committed with the aim of obtaining the transfer of a part of the national territory (within the meaning of Article 125 of the Penal code).

THE COMPLAINTS The applicant complains of violations of Articles 3, 5, 6, 8, 13, and 14 of the Convention.

• **Article 3:** On account of the fact that the applicant was subjected to torture and ill-treatment from 31 May 1980, date of his arrest, until 24 May 1983, date of his conviction.

• **Article 6 and 13:** On account of the fact that his trial before the criminal jurisdictions was unfair insofar as his conviction was exclusively based on the accusations of his co-defendants who testified under duress; on account of the lack of any effective national remedy to challenge the credibility of these testimonies and on account of the fact that his lawyer was prevented from assisting him in an effective way during his trial.

• **Article 5 in conjunction with Article 14:** On account of discrimination embodied in law No. 3713 pursuant to which individuals who were found guilty of particularly serious crimes, such as the applicant, had to serve 20 years to be released on parole whereas individuals found guilty of other crimes can be released after 10 years only in prison; On account of discrimination on grounds of ethnic origin as all the people convicted under Article 125 are of Kurdish origin or are members of separatist Kurdish organisations.

• **Article 8 in conjunction with Article 14:** On account of his prolonged detention which violated his right to respect for his private and family life.

THE COMMISSION'S DECISION

As regards the applicant's complaint for violation of Article 3 of the Convention, the Commission noted that the alleged ill-treatment and torture of the applicant were committed between May 1980 and May 1983, that is before 28 January 1987, date of the acceptance by Turkey of the right to individual petitions. This part of the complaint was therefore declared inadmissible as it was incompatible ratione temporis with the provisions of the Commission.

As regards the applicant's complaint regarding the violation of Articles 6 and 13 of the Convention, the Commission noted that the application was submitted more than 6 months after the date of the decision of the Military Court of Cassation, which constituted the final decision in this case. It further found that an examination of the case did not disclose the existence of any special circumstances which might have interrupted or suspended the 6 months period provided for under Article 26 of the Convention. Therefore, the Commission concluded that the application had been introduced out of time and had to be rejected in accordance with Article 27 para. 3 of the Convention.

As regards the applicant's complaint regarding the violation of Articles 5 and 14 of the Convention, the Commission considered that this part of the application was out of time and had to be rejected as it was introduced more than 6 months after the promulgation of the law No. 3713, which constituted the final act.

As regards the applicant's alleged violation of Article 8 in conjunction with Article 14 of the Convention, the Commission considered that it was manifestly ill-founded and had to be rejected pursuant to Article 27 para. 3 of the Convention.

The Commission declared the application inadmissible.

COUNCIL OF EUROPE — CONSEIL DE L'EUROPE

COMMISSION EUROPÉENNE DES DROITS DE L'HOMME

L'IDENTITÉ DU REQUÉRANT PEUT ÊTRE DIVULGUÉE

PREMIÈRE CHAMBRE

DÉCISION DE LA COMMISSION

SUR LA RECEVABILITÉ

de la requête No 22490/93
présentée par Selahattin ŞIMŞEK
contre la Turquie

La Commission européenne des Droits de l'Homme (Première Chambre), siégeant en chambre du conseil le 2 mars 1994 en présence de

MM. A. WEITZEL, Président
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mme J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

Mme M.F. BUQUICCHIO, Secrétaire de la Chambre

Vu l'article 25 de la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales ;

Vu la requête introduite le 26 juin 1993 par Selahattin ŞIMŞEK contre la Turquie et enregistrée le 20 août 1993 sous le No de dossier 22490/93 ;

Vu le rapport prévu à l'article 47 du Règlement intérieur de la Commission ;

Après avoir délibéré,

Rend la décision suivante :

EN FAIT

Le requérant, ressortissant turc, né en 1954, est instituteur et réside à Diyarbakır (Turquie). Il est actuellement détenu.

Devant la Commission, le requérant est représenté par M. Tony Fisher, solicitor à Colchester (Royaume-Uni).

Les faits, tels qu'ils ont été exposés par le requérant, peuvent se résumer comme suit.

Le requérant fut arrêté le 31 mai 1980.

Par arrêt du 24 mai 1983, la cour martiale de Diyarbakir déclara le requérant coupable d'avoir milité au sein d'une association illégale et du meurtre d'un agent de police ainsi que de vol à main armée, infractions commises dans le cadre d'une campagne de violence menée en vue de conduire à la cession d'une partie du territoire national. Elle le condamna à la peine capitale, en application de l'article 125 du Code pénal turc.

Le 17 février 1987, cet arrêt fut confirmé par la Cour de cassation militaire.

La loi n° 3713 promulguée le 12 avril 1991 ordonna la mise en liberté conditionnelle, entre autres, des condamnés à la peine capitale ayant purgé au moins 10 ans de détention. Cependant, en ce qui concerne certaines infractions considérées comme particulièrement graves, la loi n° 3713 exige que les condamnés à la peine capitale aient purgé au moins 20 ans de leur peine d'emprisonnement avant d'être mis en liberté conditionnelle. Ces infractions consistaient notamment dans le meurtre ou la tentative de meurtre d'un fonctionnaire public, les actes commis en vue de conduire à la cession d'une partie du territoire national (au sens de l'article 125 du Code pénal), le trafic de stupéfiants, le viol des mineurs, les délits financiers et douaniers et enfin les infractions au Code pénal militaire. La loi n° 3713 était directement applicable sans qu'il y ait besoin d'une décision supplémentaire d'une quelconque autorité et indépendamment de savoir si le condamné s'était bien conduit en prison.

Le 10 mai 1991, le principal parti politique d'opposition de l'époque (SHP, parti social-démocrate populaire), introduisit devant la Cour constitutionnelle un recours en annulation de certaines dispositions de la loi n° 3713.

Par arrêt rendu le 31 mars 1992 et publié dans le Journal officiel le 27 janvier 1993, la Cour constitutionnelle déclara que la distinction établie par l'Assemblée nationale entre les infractions "ordinaires" et les trois types d'infractions particulièrement graves, à savoir celles prévues par l'article 125 du Code pénal turc, celles financières et douanières et celles prévues par le Code pénal militaire, relevait de la compétence du législateur en matière de fixation des peines, se justifiait par le besoin de garantir l'ordre social et le salut public et était donc constitutionnelle. La Cour estima en revanche que la distinction faite par le législateur entre les infractions de trafic de stupéfiants et les infractions ordinaires ne saurait être justifiée et était dès lors inconstitutionnelle. Elle rappela que les autres exceptions aux conditions posées à la mise en liberté conditionnelle prévues par la loi n° 3713 avaient déjà été déclarées inconstitutionnelles dans ses arrêts précédents.

GRIEFS

1. Invoquant l'article 3 de la Convention, le requérant se plaint d'avoir été, dès son arrestation le 31 mai 1980 jusqu'au mai 1983, date de sa condamnation, soumis à la torture et à des mauvais traitements.

2. Le requérant se plaint, en outre, de ce sa cause n'aurait pas été entendue équitablement par les juridictions pénales, dans la mesure où elles auraient fondé leurs jugements exclusivement sur les accusations des co-défendeurs qui auraient témoigné sous la contrainte. Il prétend également ne pas avoir disposé d'un recours effectif pour mettre en cause la crédibilité de ces témoignages. Par ailleurs, il prétend que son avocat fut empêché de l'assister effectivement lors du procès.

Le requérant allègue, à ces égards, une violation de l'article 6 de la Convention et de l'article 13.

3. Invoquant l'article 5, combiné avec l'article 14 de la Convention, le requérant se plaint d'être victime d'une discrimination en vertu de la loi n° 3713. Il fait observer que, ayant été condamné pour infraction à l'article 125 du Code pénal turc, il doit purger 20 ans de détention effective avant d'être mis en liberté conditionnelle alors que les personnes condamnées à la peine capitale pour d'autres crimes ne sont tenues de purger que 10 ans de détention effective pour pouvoir bénéficier des mêmes facilités.

Le requérant prétend avoir subi cette discrimination en raison de son origine ethnique kurde étant donné que toutes les personnes condamnées pour avoir enfreint l'article 125 du Code pénal sont d'origine kurde ou font partie de groupes séparatistes kurdes.

4. Enfin, le requérant allègue, se basant sur les mêmes faits, une violation de l'article 8 de la Convention combiné avec l'article 14, en ce que son droit au respect de sa vie privée et familiale a été enfreint du fait de sa détention prolongée.

EN DROIT

1. Le requérant se plaint en premier lieu de ce qu'il a été régulièrement soumis, entre mai 1980 et mai 1983, à des traitements qui seraient contraires à l'article 3 de la Convention. Cette disposition est ainsi libellée : "Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants".

Toutefois, la Commission rappelle qu'aux termes de la déclaration faite par la Turquie en application de l'article 25 de la Convention, "cette déclaration s'étend aux allégations relatives à des faits, y compris les jugements fondés sur les dits faits intervenus après la date de dépôt de la présente déclaration" (dernier alinéa de la déclaration datée du 28 janvier 1987 et déposé au Conseil de l'Europe le même jour).

La Commission constate que les faits allégués par le requérant se sont déroulés du 1980 au 1983 et remontent à une époque antérieure au 28 janvier 1987, date du dépôt par la Turquie de la déclaration reconnaissant la compétence de la Commission en matière de requêtes individuelles.

Il s'ensuit que cette partie de la requête est incompatible *ratione temporis* avec les dispositions de la Convention.

2. Le requérant se plaint en outre de ce que sa condamnation était exclusivement fondée sur des témoignages faits sous la contrainte par d'autres co-accusés. Il prétend aussi qu'il ne disposait pas d'une voie de recours pour s'y opposer. Le requérant invoque, à ces égards, une violation des articles 6 et 13 de la Convention.

Toutefois, la Commission n'est pas appelée à se prononcer sur le point de savoir si les faits allégués par le requérant révèlent l'apparence d'une violation de cette disposition. En effet, l'article 26 in fine de la Convention prévoit que la Commission ne peut être saisie que "dans le délai de six mois, à partir de la date de la décision interne définitive".

Dans la présente affaire, l'arrêt de la Cour de cassation militaire qui constitue, quant à ce grief particulier, la décision interne définitive, a été rendu le 17 février 1987 alors que la requête a été soumise à la Commission le 26 juin 1993, soit plus de six mois après la date de cette décision. En outre, l'examen de l'affaire ne permet de discerner aucune circonstance particulière qui aurait pu interrompre ou suspendre le cours dudit délai.

Il s'ensuit que cette partie de la requête est tardive et doit être rejetée, conformément à l'article 27 par. 3 de la Convention.

3. Le requérant se plaint, en outre, de ce qu'il a fait l'objet, du fait de son origine ethnique kurde, d'une discrimination quant à sa mise en liberté conditionnelle anticipée. Il allègue à cet égard une violation des articles 5 et 14 de la Convention.

La Commission constate que la détention du requérant repose sur une condamnation prononcée légalement par un tribunal compétent et que dès lors sa détention doit être considérée comme remplissant les conditions de l'article 5 par 1 a) de la Convention.

La Commission rappelle en outre que l'article 5 par 1 a) de la Convention ne reconnaît pas, en tant que tel, à un condamné le droit d'être mis en liberté conditionnelle (cf. No 7648/76, X. c/ Suisse, déc. 6.12.77, D.R. 11 p. 175).

Il est vrai que l'article 14 de la Convention prohibe toute discrimination dans l'exercice des droits garantis par la Convention, y compris le droit à la liberté énoncé à l'article 5 de celle-ci (cf. mutatis mutandis, 11077/84, déc. 13.10.86, D.R. 49 p. 170).

La question pourrait donc se poser si la distinction opérée par le législateur entre les différentes catégories de personnes détenues susceptibles de bénéficier d'un régime de libération conditionnelle constitue une atteinte à ces dispositions lues conjointement.

Toutefois, la Commission n'est pas appelée à se prononcer sur le point de savoir si les faits allégués par le requérant révèlent l'apparence d'une violation desdites dispositions. En effet, l'article 26 *in fine* de la Convention prévoit que la Commission ne peut être saisie que "dans le délai de six mois, à partir de la date de la décision interne définitive".

La Commission rappelle à cet égard sa jurisprudence selon laquelle lorsqu'un acte d'une autorité publique, par exemple une loi, n'est susceptible d'aucun recours, le délai de six mois court à partir du moment où l'acte prend effet (cf. *inter alia*, N° 8206/78,

X. c/Royaume-Uni, déc. 10.7.81, D.R. 25, p. 147). La Commission rappelle par ailleurs que ne peut être prise en considération, quant au point de départ du délai de six mois, l'issue d'un recours extraordinaire pour lequel le requérant n'est pas en mesure de déclencher lui-même la procédure (cf. *inter alia*, N° 9136/80, X. c/ Irlande, déc. 10.7.81, D.R. 26, p. 242 ; N° 8950/80, H. c/ Belgique, déc. 16.5.84, D.R. 37, p. 5).

En l'espèce, la Commission constate que la durée de la détention effective ainsi que les conditions de la mise en liberté conditionnelle du requérant ont été établies définitivement par la loi n° 3713 promulguée le 12 avril 1991 et directement applicable sans qu'il y ait besoin d'une décision supplémentaire d'une quelconque autorité et indépendamment de savoir si le condamné s'était bien conduit en prison. La Commission observe également que le requérant ne dispose d'aucune autre voie de recours en droit turc lui permettant d'attaquer directement les dispositions de cette loi.

La Commission estime en outre que la situation du requérant ne saurait être comparée à celle d'une personne soumise à une restriction continue des droits que lui reconnaît la Convention. Il ne subit pas d'autre préjudice que celui qui a prétendument découlé directement et immédiatement de la loi mise en cause, promulguée et appliquée au requérant en date du 12 avril 1991. Il est inévitable que le requérant purge sa peine conformément aux modalités fixées par la loi n° 3713 tant que celle-ci demeurera la même.

Le requérant laisse entendre que le délai de six mois commence à courir à partir de la date de l'arrêt de la Cour constitutionnelle rendu le 31 mars 1992 et publié dans le Journal officiel du 27 janvier 1993. Toutefois, il s'agit d'une procédure qui ne peut être déclenchée par les individus et qui, dès lors, ne constitue point une voie de recours à épuiser au sens de l'article 26 de la Convention (cf. N° 14116/88 et 14117/88, Sargin et Yağci c/ Turquie, déc. 11.5.89). En conséquence, l'arrêt mentionné de la Cour constitutionnelle ne saurait être pris en considération pour fixer la date de la décision définitive et appliquer la règle de six mois posée par cette disposition de la Convention. Pour ce qui est des griefs du requérant, l'acte définitif est donc la loi n° 3713 datée du 12 avril 1991. Or, la présente requête a été introduite devant la Commission le 26 juin 1993, soit plus de six mois après la promulgation de cette loi. En outre, l'examen de l'affaire ne permet de discerner aucune circonstance particulière qui ait pu interrompre ou suspendre le cours dudit délai (cf. dans le même sens, N° 22259/93, Gündoğan c/Turquie, déc. 1.12.93).

Il s'ensuit que cette partie de la requête est également tardive et doit donc être rejetée, conformément à l'article 27, par. 3 de la Convention.

4. Le requérant allègue enfin une violation de l'article 8 de la Convention combiné avec l'article 14 de celle-ci, dans la mesure où son droit au respect de sa vie privée et familiale a été atteint du fait de sa détention prolongée.

Toutefois, la Commission rappelle sa jurisprudence selon laquelle, une détention impliquant la séparation de l'intéressé de sa famille, ne saurait être qualifiée d'ingérence dans les droits garantis

par ces dispositions, pour autant qu'elle est la conséquence de l'exécution d'un jugement de condamnation (N° 2676/65, déc. 3.4.1967, Rec. No. 23 p. 31). La Commission rappelle, qu'en l'espèce, la détention du requérant repose sur sa condamnation prononcée le 24 mai 1983 par un tribunal compétent.

Il en résulte que ce grief est manifestement mal fondé et doit être rejeté en application de l'article 27 par. 3 de la Convention.

Par ce motif, la Commission, à l'unanimité,

DECLARE LA REQUETE IRRECEVABLE.

Le Secrétaire
de la Première Chambre

(M.F. BUQUICCHIO)

Le Président
de la Première Chambre

(A. WEITZEL)

Ayse Nur ZARAKOLU v. Turkey
Application No. 24761/94

Declared inadmissible on 11 October 1994

THE FACTS (according to the applicant)

The applicant is the director and owner of a publishing house in Istanbul. In July 1991 her publishing house published a book written by the Turkish sociologist Dr. Ismail Besikci. On 8 August 1991 the applicant and the author were both indicted by the Public Prosecutor of Istanbul State Security Court and charged with making propaganda against the indivisibility of the State. On 1 July 1993 the State Security Court of Istanbul held that they were both guilty. The applicant was sentenced to five months' imprisonment and a fine. On 5 November 1993 the Supreme Court dismissed the appeal lodged by the applicant's lawyer. The applicant requested that the case be brought before the Supreme Court for rectification of the judgment. On 31 January 1994 this request was rejected. At the time the application was presented to the Commission, the applicant was in Bayrampasa prison to serve her sentence.

THE COMPLAINTS The applicant complains of violations of Articles 7 and 10 of the Convention.

• **Article 7:** On account of the fact that she was found guilty of committing an act which did not constitute a criminal offence under Turkish law at the time of its accomplishment.

• **Article 10:** On account of the fact that her right to impart information and ideas has been undermined by her conviction for publishing a book.

THE COMMISSION'S DECISION

The Commission found that the application was submitted more than 6 months after the date of the decision of the Supreme Court, which constituted the final decision in this case. It further considered that an examination of the case did not disclose the existence of any special circumstances which might have interrupted or suspended the 6 months period provided for under Article 26 of the Convention. Therefore it concluded that the application had been introduced out of time and had to be declared **inadmissible** pursuant to Article 27 para. 3 of the Convention.

COUNCIL OF EUROPE — CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 24761/94
introduced on 29 July 1994
by Ayse Nur ZARAKOLU
against Turkey
registered on 3 August 1994

The European Commission of Human Rights sitting in private on 11 October 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
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. ŠVÁBY
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 29 July 1994 by Ayşe Nur Zarakolu against Turkey and registered on 3 August 1994 under file No. 24761/94;

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 Antalya. She is the director and owner of a publishing house in Istanbul. She is represented before the Commission by Professor Kevin Boyle and Ms. Francoise Hampson, both university teachers at the University of Essex, England.

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

In July 1991 the publishing house owned by the applicant published a book by the Turkish sociologist Dr. Ismail Besikci, entitled "The Republican Popular Party's Program (1931) and the Kurdish-Problem".

On 8 August 1991 the Public Prosecutor of Istanbul State Security Court issued an indictment against both Ismail Besikci and the applicant and charged them, as the author and the publisher of the book, with making propaganda against the indivisibility of the State. The Public Prosecutor referred to the provisions of the Anti-Terror Law. Pursuant to the indictment, criminal proceedings were initiated before the State Security Court of Istanbul against the applicant and the author.

On 1 July 1993 the Court held that the applicant and the author were guilty of the offences with which they were charged. The applicant was sentenced to five months' imprisonment and fined 41,666,666 Turkish Lira.

The applicant's legal representative challenged the judgment of the State Security Court before the Supreme Court. On 5 November 1993 the Supreme Court dismissed the appeal. This decision was communicated to the applicant's legal representative on 10 November 1993.

On 3 January 1994 the applicant applied to the Chief Public Prosecutor of the Supreme Court, through the Chief Public Prosecutor of the Istanbul State Security Court, and requested that the case be brought before the Supreme Court for rectification of the judgment (tashihi karar). On 31 January 1994 the Chief Public Prosecutor of the Supreme Court rejected this request.

At the time the application was presented to the Commission, the applicant was in Bayrampasa prison to serve her sentence.

COMPLAINTS

The applicant complains, under Article 7 of the Convention, that she was held guilty of a criminal offence on account of an act which did not constitute a criminal offence under Turkish law at the time when it was committed. She asserts that until her case it had always been understood that a publication as in her case, would not fall within the definition of "a periodical", for the dissemination of which the law foresees the imprisonment of the owner or the director of the publishing house.

The applicant further complains that there has been an interference with her right to freedom of expression by public authority in that her right to impart information and ideas as guaranteed by Article 10 has been undermined by her conviction for publishing a book.

THE LAW

The applicant complains that she was convicted of a criminal offence on account of an act which did not constitute a criminal offence under Turkish law at the time when it was committed (Article 7 of the Convention). She further complains that there has been an interference by a public authority with her right of freedom of expression (Article 10 of the Convention).

The Commission considers that the applicant's petition to the Chief Public Prosecutor of the Supreme Court requesting him to bring the case before the Supreme Court for the rectification of the judgment does not constitute an effective remedy under domestic law (e.g. No 18549/91, Sever v. Turkey, Dec.12.2.92; No. 22273/93, Varli v. Turkey, Dec. 20.1.94).

The final decision regarding the applicant's conviction and sentence is accordingly the decision of the Supreme Court which was given on 5 November 1993 and communicated to the applicant on 10 November 1993. The present application was submitted to the Commission on 29 July 1994, that is more than six months after the date of this decision.

Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the six months period provided for in Article 26 of the Convention.

It follows that the application has been introduced out of time and must be rejected under Article 27 para. 3 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)

Necip ODABASI v. Turkey
Application No. 23183/94

Declared inadmissible on 28 November 1994

THE FACTS

According to the applicant
On 21 June 1992, while he was in Cermik for business, the applicant was first taken by security forces to the Security Headquarters and then to the Gendarme station. In both places, he was accused of supporting members of an illegal organisation. At the Gendarme station he was threatened that he would be killed if he did not co-operate with the authorities. The applicant agreed to become a spy and thereupon was released. On 29 June 1992 the applicant submitted a petition to the State Minister responsible for Human Rights, whom he also met, asking him to guarantee his safety because of the threats to his life in Cermik. At about the same time he petitioned the Grand National Assembly of Turkey and others bodies. However, no results were obtained from these actions. On 9 February 1993 the applicant was arrested and charged with assisting and sheltering the illegal PKK organisation. On 16 March 1994 the applicant was released.

According to the government
An investigation was carried out as a result of the applicant's petition of 29 June 1992. A decision taken by the Ministry of Justice dated 4 February 1993 stated that there was no evidence supporting the applicant's allegations and, consequently, no need to proceed further.

THE COMPLAINTS The applicant complains of violations of Articles 2, 3, 4, 5, 13, 14 and 18 of the Convention.

• **Article 2:** On account of the threat to his life, the State's failure in its obligation to protect his right to life, the lack of any effective system for ensuring protection of the right to life and the inadequate protection of the right to life in domestic law.

• **Article 3:** On account of the inhuman and degrading treatment to which he was subjected by having to choose between becoming a spy and being killed, thus living under constant fear of being killed.

• **Article 4:** On account of his obligation to undertake life-threatening work (spying) upon fear of death.

• **Article 5***:* On account of the complete lack of security of person.

• **Article 13***:* On account of the lack of any independent national authority before which his complaints could be brought with any prospect of success.

• **Article 14:** On account of an administrative practice of discrimination on grounds of race or ethnic origin, which lead to violations of his rights under Articles 2, 3 and 5.

• **Article 18:** On account of the interference in the exercise of the Convention rights, which were not designed to secure the ends permitted under the Convention.

THE COMMISSION'S DECISION

The Commission found that the application was not lodged within 6 months from the events or from the end of the investigation referred to by the Government. It also noted that the basis of the complaint was a specific incident and could not find that the complaint concerned a continuing violation of the Convention. Nor had it been established that there were other circumstances which prevented the applicant from observing the time limit laid down in Article 26 of the Convention. Therefore, the application was declared **inadmissible** by the Commission according to Article 27 para. 3 of the Convention.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 23183/94
introduced on 20 December 1993
by Necip ODABASI
against Turkey
registered on 7 January 1994

The European Commission of Human Rights sitting in private on 28 November 1994 , the following members being present:

MM. C.A. NØRGAARD, President
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. ŠVÁBY
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 20 December 1993 by Necip Odabaşı against Turkey and registered on 5 January 1994 under file No. 23183/94;

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 22 July 1994 and the observations in reply submitted by the applicant on 30 August 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish citizen of Kurdish origin, born in 1951 and resident at Basari Köyü Cermik, Diyarbakir. He is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both of the University of Essex, England.

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

The applicant went from his home to Cermik on the morning of 21 June 1992. He completed his business and was sitting in a café waiting for transport back to his village. At about 11 am, soldiers and police arrived at the café and took him to Security Headquarters. There, a first lieutenant said: "I saw you on Gelincik mountain this morning. You were taking food to the PKK." He said that at that time he was on his way to Cermik, in the car of the watchman, Y.Y. He added: "If you like, we can go and ask him." At that point, the Security Chief intervened and said: "OK, First Lieutenant, your job is done. You may go." The Security Chief then turned to the applicant and said: "I believe you are not guilty. You are free."

After being released, he went back to the café where he was sitting waiting when a sergeant major came up to him and asked: "Are you Necip Odabasi ?" He replied affirmatively and was then told: "You will come with me to the station." Then he was taken to the Gendarmes Station. A captain said to him: "Don't you know that the followers of Apo are Armenian? Why do you support and shelter them? Since, thanks to your support, they have organised three raids on Cermik, you are a murderer." The captain then said: "Do you know that the State kills people ? Do you read the papers?" The applicant replied: "Yes, I know that the State kills people." The captain said: "In that case make your decision. You have two choices: either you will die or you will work together with us." Out of fear the applicant agreed to become a spy. Thereupon they released him.

The applicant went secretly to Diyarbakir and from there to Ankara. In Ankara, he met and explained his problem to a number of authorities, starting with the State Minister responsible for Human Rights. He submitted a petition to the Ministry on 29 June 1992. At about the same time, the applicant also petitioned the Grand National Assembly of Turkey and other bodies.

The applicant went to the office of the Human Rights Minister for a meeting. The applicant asked the Minister to guarantee his safety because of the threats to his life in Cermik. The Minister knew him from earlier times. The Minister said: "Be quiet. Do not talk this way in my room. A microphone may have been planted in my room. So come to the Assembly with my assistant ... and we shall meet at a suitable place there." Towards the evening of the same day, the applicant went with the assistant to the Assembly. In the grounds of the Assembly, he had an interview with the Minister. The applicant explained the details of the threats against his life and the situation in which he found himself. The applicant asked the Minister to protect him. The Minister said: "Look Necip, I cannot guarantee your safety in Cermik. It is very difficult. I am saying these things to you because I already know you. Many of the incidents in the area are

above our heads. We have no opportunity to intervene. But for you, in order to publicise it, I shall accept your application and put it into the system. I hope something will come of it. But there is nothing else I can do." It appears from the documents that the Minister entered into correspondence with the Minister of the Interior and the Justice Minister for the subject to be investigated. No results have been obtained from this correspondence.

On 9 February 1993 the applicant was arrested and charged, with others, with assisting and sheltering the illegal PKK organisation. The trial was to take place at Diyarbakir State Security Court. The indictment was issued on 16 February 1993. At the first hearing on 7 April 1993, the applicant said that a statement he had made had been made under duress and that it was not true. The proceedings were deferred until 20 May 1993 and the applicant was remanded in custody. A second trial started on 30 June 1993. This trial was deferred until 4 August 1993. The two cases were joined, and hearings were held on 22 December 1993, 9 February 1994 and 16 March 1994. On that last date the applicant was released, without bail.

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 4, 5, 13, 14 and 18 of the Convention in regard to the threat that he would be killed if he did not co-operate with the authorities and the resultant risk to his life to which this gave rise.

As to Article 2, the applicant refers to the threat to his life, to the failure in the State's obligation to protect his right to life, to the lack of any effective system for ensuring protection of the right to life and to the inadequate protection of the right to life in domestic law.

As to Article 3, he refers to the inhuman and degrading treatment to which he was subjected by having to choose between spying and being killed, leading to his terrorisation as he lives under the shadow of being killed.

As to Article 4, he complains of being made to undertake life-threatening work (spying) upon fear of death.

As to Article 5, he complains of the complete lack of security of the person.

As to Article 13, he complains of the lack of any independent national authority before which his complaints can be brought with any prospect of success.

As to Article 14, he alleges that his rights under Articles 2, 3 and 5 have been violated on account of an administrative practice of discrimination on account of race or ethnic origin.

As to Article 18, he considers that the interferences in the exercise of the Convention rights are not designed to secure the ends permitted under the Convention.

As to exhaustion of domestic remedies, the applicant considers

that there is no requirement that he pursue alleged domestic remedies. In his opinion, any alleged remedy is illusory, inadequate and ineffective because

(a) the threat made against him was delivered by a State official during the performance of his duties;

(b) there is an administrative practice of non-respect of the rule which requires the provision of effective domestic remedies (Article 13);

(c) whether or not there is an administrative practice, domestic remedies are ineffective in this case, owing to the failure of the legal system to provide redress;

(d) alternatively, the applicant has done everything he can do to exhaust domestic remedies by submitting petitions to various authorities and getting others to do so on his behalf; the fact that they have yielded no result confirms the ineffectiveness of any alleged remedy.

PROCEEDINGS BEFORE THE COMMISSION

The present application was lodged with the Commission on 20 December 1993 and registered on 7 January 1994. The applicant submitted certain further information relating to the case by letters of 5 May and 4 August 1994.

On 5 April 1994, the Commission decided to communicate the application to the Turkish Government, which were invited to submit their observations on its admissibility and merits before 8 July 1994.

The Government's observations were submitted by letter of 22 July 1994 and the applicant's reply on 30 August 1994.

THE LAW

The applicant complains of violations of Articles 2, 3, 4, 5, 13, 14 and 18 of the Convention in relation to a threat that he would be killed if he did not co-operate with the authorities and the resultant risk to his life to which this gave rise. He admits that he did not exhaust any domestic remedies but states that he was under no obligation to do so, since any alleged remedy would in the circumstances of the case be illusory, inadequate and ineffective.

The Government submit that the application is inadmissible on the ground that the applicant did not exhaust the domestic remedies.

The Government also state that an investigation was carried out as a result of the applicant's petition of 29 June 1992 and that this investigation ended by a decision of 4 February 1993 by the Ministry of Justice. According to this decision, there was no evidence supporting the applicant's allegations and, consequently no need to proceed further. The Government point out that the application was lodged 18 months after the date on which the applicant claims to have suffered the alleged threat and 8 months after the date on which the

Ministry of Justice resolved that there was no basis for further action.

As regards the latter remark, the applicant states that the threat to which he was exposed gave rise to a situation of continuing violation or, alternatively, that he did not apply earlier through fear. The six months time-limit laid down in Article 26 of the Convention therefore did not apply in his case.

The Commission recalls that, according to Article 26 of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

The applicant has declared that he did not exhaust the domestic remedies because he considered any existing remedies to be ineffective and inadequate. The Commission does not find it necessary to determine whether the applicant was dispensed from the obligation to exhaust remedies, since, even assuming this to be the case, the Commission considers that the application must be rejected for the following reasons.

The events of which the applicant complains occurred in June 1992, and the applicant's petitions to the authorities were submitted shortly after these events. The Government have stated that one of these petitions gave rise to an investigation which, however, was concluded in February 1993.

It is clear, therefore, that the application was not lodged within six months from the events or from the end of the investigation referred to by the Government.

The Commission notes that the basis of the complaint is a specific incident and cannot find that the complaint can be considered to concern a continuing violation of the Convention. Nor has it been established that there were other circumstances which prevented the applicant from observing the time-limit laid down in Article 26 of the Convention.

It follows that the application is inadmissible according to Article 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission
(H.C. KRÜGER)

President of the Commission
(C.A. NØRGAARD)

Burhan KARADENIZ v. Turkey
Application No. 22276/93

Declared inadmissible on 3 April 1995

THE FACTS

According to the applicant
The applicant was at the time of the events a journalist working in the Diyarbakır office of the daily newspaper "Özgür Gündem". The applicant and his work colleagues were subjected to continuous harassment. Furthermore, the applicant was also under surveillance. On 5 August 1992 a person shot at the applicant, who was on his way to his office. Since this incident, the applicant has been paralysed from his chest down and has to move round in a wheel chair. The applicant's statements were taken by policemen the day following the shooting and in or about December 1993/January 1994.

According to the Government

The investigation of the crime which had been committed was completed on 17 December 1993 with the arrest of Mustafa Gezer who is alleged to be a member of an illegal terrorist organisation called 'Hizbullah'. In April 1995, he was awaiting trial in the Diyarbakır State Security Court on criminal charges.

The applicant did not introduce any claims for compensation in the civil or administrative courts.

THE COMPLAINTS The applicant complains of violations of Articles 2, 3, 6, 10, 13 and 14 of the Convention.

• **Article 2:** On account of the life-threatening attack perpetrated against him by agents of the State, or of the State's failure in its obligation to protect his right to life and on account of the lack of any effective system for ensuring protection of the right to life and of the inadequate protection of the right to life in domestic law.

• **Article 3:** On account of discrimination on grounds of race or ethnic origin, as the risk of life-threatening attack, particularly against Kurdish journalists, is greater in south-east Turkey than elsewhere in Turkey.

• **Article 6:** On account of the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the life-threatening attack, as a result of which he cannot bring civil proceedings arising out of the attack.

• **Article 10:** On account of the threats and attack designed to deter the lawful exercise of freedom of expression and of the administrative practice in this respect.

• **Article 13:** On account of the lack of any authority before which his complaints could be brought with any prospect of success.

• **Article 14:** On account of discrimination in the enjoyment of his rights under Articles 2, 6, 10 and 13 of the Convention and of the administrative practice of discrimination on grounds of race or ethnic origin

THE COMMISSION'S DECISION

The Commission found that in the circumstances of the case the applicant could not be considered as having complied with the exhaustion of domestic remedies rule laid down in Article 26 of the Convention. The application was therefore declared **inadmissible**.

DECISION 4

COUNCIL OF EUROPE — CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 22276/93
by Burhan KARADENIZ
against Turkey

The European Commission of Human Rights sitting in private on 3 April 1995, the following members being present:

MM. C. A. NØRGAARD, President
H. DANELIUS
C.L. ROZAKIS
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. ŠVÁBY

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 6 July 1993 by Burhan KARADENIZ against Turkey and registered on 19 July 1993 under file No. 22276/93;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations and information submitted by the respondent Government on 10 March 1994 and 12 January 1995 and the information and observations in reply submitted by the applicant on 15 November 1993, 13 April 1994, 11 and 24 May 1994, 2 June 1994 and 29 July 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen of Kurdish origin, was born in 1973 and lives in Istanbul. He 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.

A. The particular circumstances of the case

The applicant started working as a journalist in İstanbul in 1990 for the weekly newspaper "Yeni Ülke". He then joined a daily newspaper "Özgür Gündem" (Free Agenda), which started publishing on 31 May 1992. The applicant was assigned a temporary post in the Diyarbakır office of this paper. He covered both general news and news concerning the State Security Court.

The applicant claims that the following events occurred.

When he was living in Diyarbakır, the applicant and his colleagues (eight persons working in the Diyarbakır office) were subjected to continuous harassment. The applicant, for example, was taken into police custody four times, and his camera smashed on two occasions, but has never been charged with any offence. His colleagues working in the office were frequently threatened by letter and by telephone. People associated with the newspaper as distributors or vendors were also subject to attacks.

The applicant states that he was under surveillance. For a period of about three weeks before the attack, he was followed and there was a car parked in front of the bakery across the road from his house. That car was not there for three days before the attack. The applicant recognised those following him as plainclothes police officers.

On 5 August 1992 before going to work, at about 8.30h, the applicant looked out over the balcony of his home. He noticed three people outside the teashop diagonally opposite his house, on the left. He did not notice what they looked like. The applicant set off on foot to go the 300 metres to the newspaper office. He had walked about 50 metres and was stepping onto the pavement at the side of the road, when he heard the sound of a pistol behind him. The teashop was behind him at that point. He turned round and, as he did so, he fell on the ground. He could not see the person shooting at him.

The street was busy at the time of the shooting, with civil servants going to work, street traders and children. Many people saw the incident. The applicant was subsequently told by local residents, who witnessed the attack, that one person fired at him. His assailant was estimated to be 19-20 years of age and was wearing a denim suit.

The applicant was conscious at this time. He was on the ground for some time. During this period, no security forces came. The people who gathered round put the applicant in a taxi. He was taken to the Diyarbakır hospital. The police wanted to take his statement before he received medical attention. The applicant refused.

The bullet had entered the applicant's spine and came out of the front of his neck membrane. His wounds were stitched up and dressed. He did not require surgery.

The applicant alleges that he was aware of policemen attempting to interfere with him as he lay half-conscious in the hospital but his own effort to gain attention and the hospital staff interrupted them. S.Y., a lawyer who arrived at the hospital on news of the shooting noted a heavy presence of police at intensive care and witnessed their threatening behaviour to medical staff and the applicant's relatives. S.Y. alleges that a doctor stated that they would be unable to ensure the applicant's safety at the hospital and on another occasion referred to a patient wounded by unknown assailants who died following tampering with the serum being administered.

On 6 August 1992 a policeman came to the hospital and took a cursory statement.

It was intended due to the severity of the applicant's condition to transfer him for treatment to Ankara. The transfer was obstructed by the police and airport authorities for three days and it appears that on one occasion the applicant was removed from the plane and returned to the hospital.

In September 1992 a month after the incident, the applicant went to Germany for medical treatment. He stayed there for about three months. He is still paralysed from his chest down and has to move round in a wheelchair.

After his return to Turkey, the applicant's statement was taken by two policemen at his home in or about December 1993/January 1994. During the taking of the statement, the police made the leading suggestions and claimed, for example, that the PKK had shot the applicant.

The applicant has referred to a Helsinki Watch report according to which 12 journalists were assassinated in Turkey in 1992 while a further 4 were killed in the first seven months of 1993. These included 6 journalists from the "Özgür Gündem": Musa Anter killed in 1992, Hafiz Akdemir who was shot on 8 June 1992 in Diyarbakir, Yahya Orhan who was shot and killed in the street in Gerçus near Batman on 31 July 1992, Hüseyin Deniz shot on 9 August 1992 in Ceylanpinar and died from injuries, Kemal Kilic ambushed and killed on 18 February 1993 and Ferhat Tepe, kidnapped by persons unknown and his body found on 3 August 1993 (Helsinki Watch "Free Expression in Turkey 1993: Killings, Convictions, Confiscations", August 1993, Vol. 5 Issue 17 and see also Amnesty International report "Turkey: walls of glass" November 1992, AI Index Eur 44/75/92).

The respondent Government state that pursuant to Art. 156 of the Code of Criminal Procedure, the police investigated the crime which had been committed. The investigation was completed on 17 December 1993 when Mustafa Gezer was arrested in respect of the shooting of Abdurrahman Bakir and his gun was found from ballistic examination to have been used in 9 other incidents including that of the applicant. Gezer and 16 others who are alleged to be members of an illegal terrorist organisation Hizbullah were included in a written indictment made by the public prosecutor on 3 February 1994. The accused are awaiting trial in the Diyarbakir State Security Court. The indictment charges the accused with the offence of being a member of the illegal Hizbullah organisation and being involved in activities aimed at separating part of the territory of the country from state sovereignty. The indictment includes a list of 10 attacks and killings carried out by Mustafa Gezer, one of which is stated to be the armed attack on the applicant.

The applicant has not introduced any claims for compensation in the civil or administrative courts.

The applicant refers to the doubts as to the independence of Hizbullah as an armed force. He cites the report of Amnesty International which states:

> "there have been persistent doubts about the independence of Hizbullah as an armed force - doubts which have been fuelled by the striking degree of coincidence between the targets of killings attributed to Hizbullah, and the targets of police harassment, arbitrary detention, ill-treatment and torture."

The Hizbullah are described by Amnesty International as "a shadowy organisation which was established in 1987 in Batman and belongs to the Sunni branch of the Islamic faith... The group is committed to the establishment of a fundamentalist Islamic state in Turkey." (Disappearances and Political Killings, 1994, Chapter 5 p. 60)

On 10 November 1993, the applicant was granted refugee status by the relevant authorities in Germany.

B. Relevant domestic law and practice

Pursuant to Art. 41 of the Civil Code, an injured person may file a claim for compensation against the alleged perpetrator:

> "Every person who causes damage to another in an unlawful manner, be it wilfully or be it negligently or imprudently, is liable for compensation."

Pursuant to Art. 46, any victim of an assault may claim material damages:

> "The person who has been injured is entitled to compensation for the expenses as well as for the losses resulting from total or partial disability to work due regard being had to the detriment inflicted on the economic future of the injured party."

Moral damages may also be claimed under Art. 47:

> "...the court may, taking into consideration the particular circumstances, award adequate general damages to the injured..."

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 6, 10, 13 and 14 of the Convention.

As to Article 2 he claims that he was the victim of a life-threatening attack by agents of the State, or that the State failed in its obligation to protect his right to life. He complains of the lack of any effective system for ensuring protection of the right to life and of the inadequate protection of the right to life in domestic law.

As to Article 3 he maintains that the risk of life-threatening attack, particularly against Kurdish journalists, is very much greater in South East Turkey than elsewhere in Turkey and that such discrimination on grounds of race or ethnic origin violates Article 3.

As to Article 6 he complains of the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the life-threatening attack, as a result of which the applicant cannot bring civil proceedings arising out of the attack.

As to Article 10 he maintains that he was attacked because he is a journalist of a specific paper, Özgür Gündem. He claims a violation of this Article on acccunt of threats and an attack designed to deter the lawful exercise of freedom of expression. He alleges that there is an administrative practice in this respect, referring to the attacks made on journalists, distributors and sellers as well as raids and arson attacks on newspaper kiosks and editorial offices.

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

As to Article 14 he complains of discrimination in the enjoyment of his rights under Articles 2, 6, 10 and 13 of the Convention. He refers to an administrative practice of discrimination on account of race or ethnic origin.

The applicant refers also to the submissions made on behalf of the applicant in Cagirga v. Turkey No. 21895/93 (Dec. 19.10.94).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 July 1993 and registered on 19 July 1993.

On 11 October 1993, the Commission decided to communicate the application to the Government and to ask for written observations on the admissibility and merits of the application.

The Government's observations were submitted on 10 March 1994 after one extension in the time-limit. The applicant submitted further information and observations in reply on 15 November 1993, 13 April 1994, 11 and 24 May 1994, 2 June 1994 and 29 July 1994 respectively.

The Government provided further information on 12 January 1995.

THE LAW

The applicant alleges that on 5 August 1992 he was shot and seriously injured in circumstances for which the State bears responsibility. The applicant invokes Article 2 (the right to life), Article 3 (prohibition on inhuman and degrading treatment), Article 6 (the right of access to court), Article 10 (freedom of expression), Article 13 (the right to effective national remedies for Convention breaches) and Article 14 (prohibition on discrimination).

Exhaustion of domestic remedies

The Government submit that the applicant has failed to comply with the requirement under Article 26 of the Convention to exhaust domestic remedies before lodging an application with the Commission. They contend that the applicant's assailant has been identified and is now facing trial on criminal charges.

In respect of the injuries suffered by the applicant and the loss contingent upon those, the Government submit that the applicant has the possibility of introducing a claim for compensation against the person responsible in the civil courts.

The applicant contends that there are no effective or realistic remedies in respect of his complaints. He points out that the alleged assailant is not in fact charged with the attempted murder of himself. The applicant maintains his claim that the attack was carried out by or with the complicity of State agents, referring to the strong suspicion of connection between the Hizbullah and State authorities and to the circumstances of the incident. The remedy identified by the Government is not a remedy against the Government and cannot, in the applicant's submission, address the applicant's complaints. He also asserts that he has no effective remedies against the violations of the Convention for which the State is responsible on account of an administrative practice of ineffective remedies.

The Commission recalls that Article 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). However, a mere doubt as to the prospect of success however is not sufficient to exempt an applicant from submitting a complaint to the competent court (see eg. No. 20357/92, Dec. 7.3.94, D.R. 76-A p.80).

The Commission notes that an investigation was carried out by the police pursuant to Art. 156 of the Code of Criminal Procedure and that this investigation was concluded on 17 December 1993 when a suspect Mustafa Gezer was apprehended and a gun was found in his possession, which ballistics tests allegedly indicated had been used in number of shootings including the attack on the applicant. While as pointed out by the applicant, the pending criminal proceedings which subsequently indicted the alleged assailant, Mustafa Gezer, charged him with general offences of membership of the illegal Hizbullah group and of being involved in separatist activities, the Commission notes that the indictment lists as part of these offences the various assaults and shootings alleged to have been carried out by the suspect including the attack on the applicant.

The Commission notes that the trial of the suspect on the indictment described above is still pending before the Diyarbakır State Security Court. The domestic courts have therefore yet to be afforded an opportunity of examining the factual and legal issues arising in the case. In these circumstances, the Commission finds that it cannot be said with any certainty that the proceedings will fail to provide an effective mechanism for establishing the facts or attributing responsibility for the attack on the applicant.

As regards the applicant's argument that he was not required to pursue any remedies since there is an administrative practice in South-East Turkey which makes any remedies illusory, inadequate and ineffective, the Commission notes that the authorities have pursued an investigation to a conclusion and that criminal proceedings are now pending. Given that action has been taken and the courts now have jurisdiction over the results of the investigation, the Commission is not satisfied that the proceedings can be discounted as ineffective. Moreover, if there were no effective remedies, the applicant would have been required under Article 26 of the Convention to lodge his application within six months from the date on which he was injured ie. on 5 August 1992. He did not do this, and the Commission will therefore proceed from the assumption that the investigation and its consequences constitute part of the process of exhaustion of domestic remedies.

Consequently, the Commission finds that in the circumstances of this case the applicant cannot be considered as having complied with the exhaustion of domestic remedies rule laid down in Article 26 of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)

I.S. v. Turkey
Application No. 22680/93

Declared inadmissible on 3 April 1995

THE FACTS

According to the applicant
At the time of the events, the applicant's father was the mayor of the village of Sugeldi in south east Turkey. The village refused the so-called "protection" system, and was thus constantly harassed. The applicant's father was also persecuted. In 1990 and 1991, the applicant's father was taken into custody and allegedly subjected to torture while in detention. He was each time tried at Diyarbakir State Security Court and acquitted. As a result of the pressure put on villagers to induce them to accept the "protection" system, 2 villagers agreed to become "protectors". As a consequence of their decision, PKK guerillas organised an armed attack on those villagers. 8 people from their families and 2 PKK activists were killed in the attack. The families of the "protectors" claimed that the applicant's father and brother were involved in the incident. The applicant's father left his village and went to Catak town. On 20 October 1992, the applicant's father was asked to report to the Regiment's Headquarters where he was examined and was allegedly tortured. On 25 October 1992 soldiers handed over the body of the applicant's father to the applicant's uncle. On 26 October 1992 the applicant applied to the office of the Public Prosecutor to discover the cause of his father's death. The applicant was never informed of the cause of death. He believes that his father was killed under torture.

According to the Government
Following the receipt of anonymous letters and complaints to the effect that the applicant's father and others had been involved in the terrorist attack on the Sugeldi village, the applicant's father was detained and interrogated on 20 October 1992. On 25 October 1992 the applicant's father died at the military hospital emergency service. The autopsy, which was conducted in the presence of a relative, led to the conclusion that the cause of death was "possible heart attack" or "cerebral bleeding". The investigation into the death of the applicant's father commenced on 26 October 1992. The Public Prosecutor, inter alia, questioned gendarmes from the Regiment's Headquarters and took the step of exhuming the body of the applicant's father and sending samples for further forensic examination. In its report dated 21 July 1993, the Forensic Medicine Directorate found the applicant's father could have died of a brain haemorrhage due to a blood vessel disorder. It found no traumatic traces. On 18 August 1993 the Prosecutor dismissed the investigation with a decision not to prosecute.

THE COMPLAINTS

The applicant complains of violations of Articles 2, 3, 6, 13 and 14 of the Convention.

• **Article 2:** On account of the death of his father in custody and, alternatively, on account of the violation of the State's obligation to protect his father's right to life. On account , as well, of the lack of any effective system for ensuring protection of the right to life and of the inadequate protection of the right to life in domestic law.

• **Article 3:** On account of the torture to which his father was subjected and of his own inability to discover what had happened to his father. On account, as well, of his departure from his village, as a result of threats and intimidation. On account of discrimination on grounds of race or ethnic origin.

• **Article 6:** On account of the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the torture and killing of his father, as a result of which he could not bring civil proceedings arising out of his father's killing, and of the denial of an effective access to a court.

• **Article 13:** On account of the lack of any independent national authority before which his complaints could be brought with any prospect of success.

• **Article 14:** On account of discrimination on grounds of race and/or ethnic origin in the enjoyment of the rights under Articles 2, 3, 6 and 13 of the Convention.

THE COMMISSION'S DECISION

The Commission found that in the circumstances of the case the applicant could not be considered as having complied with the exhaustion of domestic remedies rule laid down in Article 26 of the Convention. Therefore the application was declared **inadmissible** under Article 27 para. 3 of the Convention for non-exhaustion of domestic remedies.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 22680/93
by I.S.
against Turkey

The European Commission of Human Rights sitting in private on 3 April 1995, the following members being present:

MM. C.A. NØRGAARD, President
H. DANELIUS
C.L. ROZAKIS
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. ŠVÁBY

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 27 August 1993 by I.S. against Turkey and registered on 23 September 1993 under file No. 22680/93;

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 1 June 1994 and the observations in reply submitted by the applicant on 19 July 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen of Kurdish origin, was born in 1970 and resides at Cizre, Inci Koyu. He is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

A. The particular circumstances of the case

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

The applicant's father had been the mayor of the village of Sugeldi in Çatak for 23-24 years. Since the village did not want to accept the so-called "protection" system, there was harassment and persecution of the village generally and of the applicant's father in particular. Security officers repeatedly threatened the mayor with "Either you become a protector or you leave the village". In the summer of 1990, the applicant's father was taken into custody and subjected to torture for 14 days at Van Province Gendarme Headquarters. He was tried at Diyarbakır State Security Court and acquitted. The persecution of the village and of the mayor continued. In August 1991, the applicant's father was taken into custody and subjected to torture for 8 days at Van Province Gendarme Headquarters. A case was again opened against the applicant's father at Diyarbakır State Security Court and, again, he was acquitted.

After the acquittal, the applicant's father and the village were again subject to intense pressure to make them accept "protection". About once a month, village meetings were held in which the mayor of Çatak district and the Gendarme Commander participated. As a result of the pressure put on villagers at these meetings, two villagers (Idris Sancar and Suphi Isnas) agreed to become "protectors". As a consequence of their decision, PKK guerrillas organised an armed attack on those villagers who had agreed to become "protectors". Eight people from the families of the two "protectors" and two PKK activists were killed in the attack.

The families of the "protectors" claimed that the applicant's father collaborated in the attack and that Semsettin Saday, the applicant's brother who lived in Cizre, was actually involved in the incident. In fact, the applicant's father was in Çatak town on business that night and his brother was able to prove that he had been in an examination for his primary school certificate at the time.

The day after the attack, the applicant's father returned from Çatak to take part in the funerals of the families of the "protectors". The "protectors", however, held him responsible for the incident and threatened him. During the funeral ceremony, Idris Sancar gave his son a firearm and told him to kill the mayor. The weapon was taken from the child by force by a captain. Thereupon the applicant's father left the village and returned to Çatak. He stayed there for nearly two weeks. Whilst there, he went to the office of the prosecutor every day to tell them that he had not left the town because he was under surveillance.

The applicant's father received word from Major Murat (the applicant does not know his surname), serving in the intelligence service at Van Province Gendarme Headquarters, asking him to report to the Regiment's Headquarters. On 20 October 1992, the applicant's father went to the Headquarters, together with Musa (the applicant does

not know his surname), the mayor of Dalbasti village. A co-villager by the name of Selim Kiyag and ten youths from Karabogaz village were also there being interrogated. They report that the applicant's father was tortured more intensively than they were.

On 25 October 1992, soldiers went to the applicant's village and took his uncle, Ekrem Bilban, to Van Province Gendarme Headquarters and handed over the body of the applicant's father to him. On 26 October 1992, the applicant applied to the office of the Public Prosecutor in Van to discover the cause of his father's death. The Public Prosecutor stated that he had taken samples of the blood of the applicant's father and sent them to the Forensic Institute and that, until he had received the results, the cause of death was not clear. From then until now, the applicant has been unable to learn anything about the cause of death.

The applicant states that his father had had no serious disease. He believes that his father was killed under torture. When he applied to the Van Province Gendarme Headquarters, he was told orally that his father had died of a heart attack. The applicant did not see the body of his father but relatives who saw it said that there were bruises on various parts of his body and blood coming out of his mouth. The dead man was buried in Çatak district cemetery. His family informed the press but the security forces did not allow representatives of the press to see his body.

The newspaper Özgür Gündem reported on 25 November 1992 that the Van Doctors' Society and the Human Rights Association were investigating the death. The Van Branch Secretary of the Human Rights Association, Nazmi Gür, was reported as saying that "We have come to the conclusion from the statements of eye-witnesses and villagers and the burial certificate obtained that Saday died under torture". The Turkish Doctors' Association asked the Van Branch of the Turkish Doctors' Society and the Human Rights Association to investigate the death.

The report of the Human Rights Association cites the applicant as stating that the autopsy did not reflect the facts. Eye-witnesses had seen the marks of torture on the mayor's body. His back was black and blue and covered in bruises. The report contains the statement of the villager who received the body. He was taken to Major Murat, who told him that he was to collect a body. They took him to the body of the mayor. All he had on were his pyjamas. The Prosecutor said to him, "There are no wounds or bruises. Look well". The relative saw that there was blood in the nose and mouth. The Prosecutor answered, "This man was ill". The relative, who had known the mayor for many years, said that he had no illness. He saw bruises on his back and arms. The Prosecutor said to the taxi driver who was with the relative, "Come and look too". The taxi driver said the same thing. The Prosecutor then called two doctors. They "opened the chest" and carried out the autopsy. They wrote a report and made the relative sign it, even though he is illiterate. When he said to the Prosecutor that the mayor had been killed as a result of torture, the Prosecutor said to him, "Don't talk too much or I'll put you inside. Get out". The relative believes that the intention behind the killing of the mayor was either to force the remaining three hamlets in the village, that did not accept "protection", to take arms or else to evacuate the village. On the basis of the statements of a variety of people, the Human Rights Association concluded that the applicant's father died as a result of torture.

After the death of his father, most of the one hundred or so households in the village, other than those of the "protectors", left the village. The applicant's family left the village too. They now live in the district of Cizre in Sirnak. The villagers report that 32 villages and hamlets in the area have been forcibly evacuated or deserted as a result of the type of pressure to which they were subjected.

The respondent Government state as follows.

Following the receipt of anonymous letters and complaints to the effect that the applicant's father and others had been involved in the terrorist attack on the Sugeldi village, the Çatak gendarmes on 16 October 1992 requested permission from the Çatak Public Prosecutor to interrogate persons from the village who were suspected of being supporters of the PKK. The Prosecutor granted permission on 19 October 1992 for a ten day period of interrogation in respect of three persons including the applicant's father.

On 20 October 1992, the gendarmes sent the applicant's father to Van Gendarme headquarters. Notice was sent from the headquarters to the State of Emergency Headquarters that the applicant's father was held in detention for interrogation. On the same day the applicant's father was sent to Van state hospital for a medical examination. Dr. Sari reported at 14.15 that there were no traces of bodily injury or beatings.

On 24 October 1992, the applicant's father was taken to the Headquarters doctor complaining of nausea. He was examined and treated with medicine by the doctor who recommended that he be sent to the state hospital.

On 25 October 1992, the applicant's father was admitted to the military hospital emergency service. The report of Dr. Onat indicated that his blood pressure was very low and his heart beat also very low. He received a heart massage but did not revive.

The autopsy was conducted by a military doctor and a doctor from the state hospital in the presence of a relative. The report referred to blood accumulation in the mouth but found no traces of mistreatment or torture. The cause of death reported to the Ministry of Justice by the Van Public Prosecutor was "possible heart attack" or "cerebral bleeding". The body was released for burial.

The investigation into the death of the applicant's father commenced on 26 October 1992 on which date the Public Prosecutor signed the applicant's complaint. A preliminary investigation file was opened on 27 October 1992 the complainant being stated as the applicant and the suspects as the personnel at the Van Gendarme Headquarters.

The Public Prosecutor summoned and questioned Major Murat Çakmak and other personnel from the headquarters. They testified to the effect that the applicant's father's health deteriorated on the Sunday when the detainees were in a cell waiting for interrogation and that no cases of torture were authorised.

Body parts extracted from the appplicant's father were examined by the Forensic Medicine Directorate in Istanbul. The first report of 23 December 1992 was inconclusive, stating that the exact cause of death had not been determined. The Director of Forensic Medicine requested the Van Public Prosecutor for permission to re-open the grave

and to remove the the skullbones for further investigation into the cause of death. Permission was granted and on 13 June 1993 the grave was an exhumation of the applicant's father's body and body samples sent for forensic examination.

In its report dated 21 July 1993, the Forensic Medicine Directorate found the applicant's father could have died of bleeding in the brain due to a bloodvessel disorder. It found no traumatic traces.

The Prosecutor dismissed the investigation on 18 August 1993 with a decision not to prosecute under Article 164 of the Code of Criminal Procedure.

B. Relevant domestic law and practice

Criminal procedures

The Turkish Criminal Code makes it a criminal offence to subject someone to torture or ill-treatment (Article 243 in respect of torture and Article 245 in respect of ill-treatment, inflicted by civil servants).

For criminal offences, complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the Public Prosecutor or the local administrative authorities. The Public Prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the Public Prosecutor not to institute criminal proceedings within fifteen days of being notified (Article 165 of the Code of Criminal Procedure).

Where a court is satisfied that an appeal is well-founded, it will order the opening of a public prosecution, which will be executed by the Public Prosecutor pursuant to Article 168 para. 2 of the Code of Criminal Procedure.

Civil action for damages

Pursuant to Article 41 of the Civil Code, an injured person may file a claim for compensation against the alleged perpetrator:

> "every person who causes damage to another in an unlawful manner, be it wilfully or be it negligently or imprudently, is liable for compensation."

Pursuant to Article 46, any victim of an assault may claim material damages:

> "The person who has been injured is entitled to compensation for the expenses as well as for the losses resulting from total or partial disability to work due regard being had to the detriment inflicted on the economic future of the injured party."

Moral damages may also be claimed under Article 47:

> "...the court may, taking into consideration the particular circumstances, award adequate general damages to the injured..."

COMPLAINTS

The applicant complains of violations of Articles 2, 3, 6, 13 and 14 of the Convention.

As to Article 2, he complains of the death of his father in custody, in circumstances suggesting that he died under or as a result of torture. Alternatively he complains of the killing of his father in violation of the State's obligation to protect his right to life. He also complains of the lack of any effective system for ensuring protection of the right to life and of the inadequate protection of the right to life in domestic law.

As to Article 3, he complains of the torture to which his father was subjected and of the applicant's own inability to discover what had happened to his father. He further complains of having been forced to leave his home and livelihood, as a result of threats and intimidation by the "protectors" and security forces and of discrimination on grounds of race or ethnic origin.

As to Article 6, he complains of the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the torture and killing, as a result of which he cannot bring civil proceedings arising out of the killing. He is therefore denied effective access to court.

As to Article 13, he complains of the lack of any independent national authority before which his complaints can be brought with any prospect of success.

As to Article 14, he complains of discrimination on the grounds of race and/or ethnic origin in the enjoyment of the rights under Articles 2, 3, 6, 10 and 13 of the Convention.

As regards the exhaustion of domestic remedies, the applicant states that he is not required to exhaust any such remedy, since they are all illusory, inadequate and ineffective. He states that

(a) there is an administrative practice of non-respect of the rule which requires the provision of effective domestic remedies (Article 13);

(b) there is an administrative practice of torture in custody, which not infrequently results in death, at the hands of the Turkish Gendarmerie in South-East Turkey;

(c) whether or not there is an administrative practice, domestic remedies are ineffective in this case, owing to the failure of the legal system to provide redress;

(d) whether or not there is an administrative practice, the situation in South-East Turkey is such that potential applicants have a well-founded fear of the consequences, should they pursue alleged remedies.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 27 August 1993 and registered on 23 September 1993.

On 29 November 1993, the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 1 June 1994, after an extension of the time-limit fixed for that purpose which expired on 11 April 1994. The applicant replied on 17 July 1994.

THE LAW

The applicant alleges that his father was tortured and killed in circumstances for which the State is responsible. He invokes Article 2 (the right to life), Article 3 (prohibition on inhuman and degrading treatment), Article 6 (the right of access to court), Article 13 (the right to effective national remedies for Convention breaches) and Article 14 (prohibition on discrimination).

Exhaustion of domestic remedies

The Government argue that the application is inadmissible since the applicant has failed to exhaust domestic remedies as required by Article 26 of the Convention before lodging an application with the Commission. They contend that the applicant had a number of remedies at his disposal which he did not try.

The Government refer to the applicant's failure to appeal against the Public Prosecutor's decision not to prosecute pursuant to Article 165 of the Code of Criminal Procedure. They also submit that he has not pursued the remedy of damages pursuant to Articles 41, 46 and 47 of the Turkish Civil Code.

The applicant maintains that there is no requirement that he pursue domestic remedies. He refers to the widespread practice of torture of persons in police and the existence of an administrative practice of ineffective remedies. He makes reference in this regard to the Public Statement of the European Commission for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (15 December 1992) and the 1993 and 1994 Reports of the United Nations Special Rapporteur on Extra-judicial Summary or Arbitrary Executions (E/CN.4/1993/46 and E/CN.41994/7). He contends that the investigation into his father's death was inadequate given the lack of independence and effectiveness of public prosecutors and states that to prove the effectiveness of the alleged remedies, the Government would have to point to more than the occasional prosecution and give examples of convictions and compensation being obtained on a regular basis. He refers also to the intimidation faced by lawyers who seek to pursue such cases. It would, in the applicant's view, have been pointless to appeal the Public Prosecutor's decision not to prosecute since in any event the failure to institute proper independent investigation or to initiate a prosecution discloses a violation of the Convention.

The Commission recalls that Article 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. A mere doubt as to the prospect of success however is not sufficient to exempt an applicant from submitting a complaint to the competent court (see eg. No. 20357/92, Dec. 7.3.94, D.R. 76-A p.80). 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 notes that the acts of which the applicant complains, the alleged torture of his father which resulted in his death, are prohibited by the Turkish Criminal Code and that it is not in dispute that if such acts took place, it would have been in contravention of the criminal law to which the gendarmes are subject. The Turkish legal system provides in such instances for investigation to be carried out by the Public Prosecutor who takes the decision whether or not to initiate a prosecution against the alleged perpetrators. In the event, as in this case, a decision not to prosecute is issued, there is the possibility under Article 165 of the Code of Criminal Procedure of appealing to a court.

As regards the applicant's argument that he was not required to pursue any remedies since there is an administrative practice in South-East Turkey which makes any remedies illusory, inadequate and ineffective, the Commission notes that the applicant did in fact pursue a remedy by requesting the office of the Public Prosecutor to make an investigation to establish the cause of his father's death. Moreover, if there were no effective remedies, the applicant would have been required under Article 26 of the Convention to lodge his application within six months from the date on which he learnt of his father's death. He did not do this, and the Commission will therefore proceed from the assumption that the application to the Public Prosecutor was a relevant domestic remedy.

The Commission has had regard to the applicant's arguments as to the insufficiency of the Public Prosecutor's investigation and as to why he did not pursue an appeal. It recalls however that the Public Prosecutor questioned the gendarmes, including Major Murat Çakmak, and that the step was taken of exhuming the body of the applicant's father and sending samples for further forensic examination. In these circumstances, the Commission is not satisfied that there was any suspicious omission in the investigation which could call into question its genuineness or support the applicant's contention that the investigation was a merely formal exercise. To the extent that the Public Prosecutor's decision could be argued as not being justified by the available evidence, it was open to the applicant to appeal to a court which could on examination of the evidence, including witness statements and medical reports, have directed that a prosecution or other investigatory measures be carried out. The Commission cannot find it established that such an appeal would have been devoid of any chance of success.

Further, the applicant has not given any indication that he has been subject to intimidation or referred to any specific facts indicating that he would have risked reprisals or intimidation if he had taken the step of appealing.

Consequently, the Commission finds that in the circumstances of this case the applicant cannot be considered as having complied with the exhaustion of domestic remedies rule laid down in Article 26 of the Convention.

The application must therefore be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)

Mehmet Can ÇELIK v. Turkey
Application No. 23655/94

Declared inadmissible on 15 May 1995

THE FACTS

According to the applicant
On or about 19 December 1992, following the death of a "village protector" during a clash between fighters of the PKK and "village protectors", security forces and "village protectors" from neighbouring villages carried out a raid on the village of the applicant, Tepecik village. During that raid, several persons were killed or wounded and property was destroyed. On 22 December 1992 in the morning, the soldiers and "village protectors" said that they were going to burn the village. Following this announcement, all the villagers, including the applicant, left the village and walked to neighbouring villages. Forty of the seventy houses in the village, including the applicant's house, were set alight and demolished. In addition to the applicant's own property, everything in his home was destroyed. On 20 May 1993 the applicant applied to the Chief Public Prosecutor of Diyarbakır requesting that proceedings be commenced against those responsible and claiming proper compensation. No reply was ever received.

According to the Government
On 19 and 20 December 1992 a clash took place between security forces and the PKK in the village of Tepecik, following the shooting of 2 "village protectors" in and around this village. In the course of the clash, 10 to 12 houses were burnt. The PKK fled the village and set it alight, upon which the inhabitants left. The applicant set fire to his house himself in order to claim compensation for damages.

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

• **Article 3:** On account of the collective punishment of the applicant together with the other villagers and of discrimination on grounds of race.

• **Article 5:** On account of his arbitrary expulsion from his village through a procedure not sanctioned by Article 5 para.1 and by means not prescribed by law.

• **Article 6:** On account of the failure to initiate proceedings before an independent and impartial tribunal against those responsible, as a result of which he cannot bring civil proceedings arising out of those events and he is denied effective access to a court.

• **Article 8:** On account of his arbitrary expulsion from his village and the destruction of his home. Alternatively, on account of the fact that the expulsion did not pursue a legitimate aim for the purpose of Article 8 para. 2.

• **Article 13:** On account of the lack of any independent national authority before which his complaints can be brought with any prospect of success.

• **Article 14:** On account of an administrative practice of discrimination on grounds of race and, in particular, of discrimination on grounds of his Kurdish origin in the enjoyment of his rights under Articles 5, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1.

• **Article 18:** On account of the fact that the destruction of his home and livestock and his forced abandonment of his village, home and livelihood were effected for purposes incompatible with the Convention.

• **Article 1 of Protocol No. 1:** On account of the destruction of his home and property.

THE COMMISSION'S DECISION

The Commission considered that, assuming that there were no effective remedies in the present case, the applicant or those representing him had to be considered to have been aware of the situation by May 1993 at the latest. The application should therefore in any event have been introduced no later than November 1993. The Commission accordingly found that the application had been introduced out of time and was **inadmissible** under Articles 26 and 27 para. 3 of the Convention.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 23655/94
by Mehmet Can ÇELİK
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. ŠVÁBY
G. RESS
A. PERENIČ
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 2 March 1994 by Mehmet Can ÇELIK against Turkey and registered on 10 March 1995 under file No. 23655/94;

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 13 March 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen of Kurdish origin, born in 1964, resides at the village of Tepecik in the Kocaköy district of Diyarbakır province. He is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

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.

The applicant first refers to two previous applications (No. 22280/93, Demir v. Turkey, and No. 22281/93 Yaşar v. Turkey, both communicated to the Turkish Government on 11 October 1993, the latter was declared admissible on 3 April 1995), and to an application lodged at the same time as the present one (No. 23654/94, Laçin v. Turkey). All these applications concern complaints arising from substantially the same incidents as in the present case.

The applicant resided at the village of Tepecik, in the Kocaköy district of Diyarbakır province. On or about 19 December 1992, following the death of a "village protector" during a clash between fighters of the PKK (Kurdish Workers' Party - an armed separatist movement) and "village protectors", a force composed of regular soldiers and "village protectors" from the Kırmataş and Meşebağları villages entered Tepecik and started firing weapons indiscriminately, seeking to avenge the dead "protector". The firing continued for a period of between one and two hours. During that time several persons were killed or wounded and property was destroyed.

In the early hours of the morning of 22 December 1992, the "protectors" and the soldiers who were with them said, "Evacuate the village: we are going to burn the village." All the villagers, including the applicant, then left Tepecik and, carrying their children on their backs, walked to neighbouring villages.

Four persons who had remained in the village were injured. Forty of the seventy houses in the village, including the applicant's house, were set alight and demolished. In addition to the applicant's property, namely 20 sheep, 1.5 tons of wheat, a ton of barley, 30 chickens and 30 turkeys, everything in the homes of the applicant and the other villagers was destroyed. Because the applicant and his fellow villagers have been unable to return to the village, some 3,500 poplar trees, 100 walnut trees, 40 plum trees and the vineyard (5 dunums in extent) will have dried up.

By letter dated 20 May 1993 the applicant applied to the Chief Public Prosecutor of Diyarbakır, requesting that a solution be found by the State for the matters referred to above, that proceedings be commenced against those responsible, and that the applicant and the other villagers receive proper compensation. No reply to this application has been received.

In this respect the applicant also submits a statement of 20 May 1993 of the Area Representative of the Diyarbakır branch of the Human Rights Association. It says that the villagers had filed a complaint and a written petition to the Diyarbakır State Prosecution, but that the petition has not been processed and no inquiry has been opened. It further states that almost all applications made to judicial and.

administrative offices by those suffering damage by State forces in the State of Emergency Area remain unanswered. It concludes that as long as this situation persists it is meaningless to pursue domestic legal remedies.

The respondent Government state the following.

On 17 December 1992, a rural minibus shuttling between Tepecik and Arkabasi was waylaid by PKK terrorists who required the passengers to identify themselves and then shot one who was a "village protector".

On 19 and 20 December 1992 a clash took place between security forces and the PKK in Tepecik, following the shooting of another "village protector" who was driving through Tepecik accompanied by other "protectors". In the course of the clash 10 to 12 houses were burnt. The intervention of the security forces permitted the withdrawal of the "village protectors", and at the same time the PKK began fleeing the village and setting it alight, upon which the inhabitants left.

The applicant's house was however not damaged following the above events, but he set fire to it himself in order to claim compensation for damages from the Government at a later date.

COMPLAINTS

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

As to Article 3, he complains of the collective punishment of the applicant together with the other villagers of Tepecik and also of discrimination on grounds of race.

As to Article 5, he complains of a various breaches of his right to liberty and security of the person by virtue of his arbitrary expulsion from his village through a procedure not sanctioned by Article 5 para. 1 and by means not prescribed by law.

As to Article 6, he complains of the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the killings, injuries and destruction of property, as a result of which he cannot bring civil proceedings arising out of those events and he is denied effective access to a court.

As to Article 8, he complains of a violation of his right to respect for his family life and home by reason of his arbitrary expulsion from his village and the destruction of his home. Alternatively, he submits that the expulsion did not pursue a legitimate aim for the purposes of Article 8 para. 2.

As to Article 13, he complains of a lack of any independent national authority before which his complaints can be brought with any prospect of success.

As to Article 14, he complains of an administrative practice of discrimination on grounds of race, and he refers in particular to discrimination in the enjoyment of his rights under Articles 5, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1, as he was denied these rights on account of his Kurdish origin.

As to Article 18, he refers to an authorised practice by the State according to which the destruction of his and the other villagers' homes and livestock and their forced abandonment of their village, home and livelihood were effected for purposes incompatible with the Convention.

As to Article 1 of Protocol No. 1, he complains of the destruction of his home and property.

As to the exhaustion of domestic remedies, the applicant states that no remedies are effective in South-East Turkey against the acts of the security forces. He also refers to the fact that he petitioned the Chief Public Prosecutor without receiving a reply, as well as to arguments made in application No. 21895/93, Cağirga v. Turkey (declared admissible on 19 October 1994).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 March 1994 and registered on 10 March 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 19 August 1994. The time-limit was extended at the Government's request until 30 September 1994.

By letter of 24 October 1994, the Commission's Secretary informed the Government that their request of 11 October 1994 for a further extension had been refused by the President of the Commission on the ground that more than 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 13 March 1995 after one extension of the time-limit fixed for this purpose.

THE LAW

The applicant alleges that a military raid took place on his village, in the course of which his house and possessions were destroyed. He invokes Article 3 (the prohibition on inhuman and degrading treatment), Article 5 (the right to liberty and security of person), Article 6 (the right of access to court), Article 8 (the right to respect for family life and the home), Article 13 (the right to effective national remedies for Convention breaches), Article 14 (the prohibition on discrimination) and Article 18 (the prohibition on using authorised Convention restrictions for ulterior purposes) of the Convention, as well as Article 1 of Protocol No. 1 (the right to property).

The Government argue that, if as the applicant submits there were no effective remedies, the application should have been introduced within six months from the events in December 1992 and since it was not introduced until 2 March 1994, the applicant has not complied with the requirement imposed by Article 26 of the Convention.

They furthermore dispute that the applicant applied to the Chief Public Prosecutor of Diyarbakır on 20 May 1993, but even if that was the case, the application should have been introduced within six months following that appeal.

The applicant argues that he did not appeal to the Chief Public Prosecutor until five months after the events as he assumed an investigation had already commenced. He submits that failure to acknowledge receipt of such communications is not uncommon in South-East Turkey. Moreover, the suggestion from the Government that he burnt down his own house is logically inconsistent with the allegation that he never made a complaint. In any event, the applicant relies upon the non-existence of domestic remedies, referring to the Commission's findings in this respect in Application No. 22280/93, Demir v. Turkey (Dec. 9.1.95).

The Commission recalls in the first place that the purpose of the six months' rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (cf. No. 10626/83, Dec. 7.5.85, D.R. 42 p. 205).

The Commission notes that, in the applicant's opinion, there is no effective domestic remedy in respect of the violations of the Convention of which he complains. In this respect, the Commission recalls that in other cases regarding destruction in villages in South-East Turkey the Commission has found that applicants were not in the circumstances of those cases required under Article 26 of the Convention to pursue domestic remedies before complaining to the Commission (see, for instance, No. 21893/93, Akdivar and others, Dec. 19.10.94).

However, the Commission has repeatedly held that, in the absence of domestic remedies, the six months' period runs from the act complained of in the application (cf. No. 10530/83, Dec. 16.5.85, D.R. 42 p. 171, and No. 10389/83, Dec. 17.7.86, D.R. 47 p. 72). In the instant case, the acts complained of took place in December 1992.

Special considerations could apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six months period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances.

In the present case, the applicant states that he sent a letter of complaint to the Chief Public Prosecutor on 20 May 1993. However, already before that date he had apparently taken steps to prepare an application to the Commission, which appears from the fact that his power of attorney to his representatives before the Commission is dated already 27 March 1993. Moreover, on 20 May 1993, a lawyer in Turkey, who assisted the applicant, stated in a written comment on the case

that applications made to the authorities in circumstances such as those of the applicant almost invariably remain unanswered and that it is meaningless in such cases to use domestic legal remedies.

In view of these various elements, the Commission considers that, assuming that there were no effective remedies in the present case, the applicant or those representing him must be considered to have been aware, not later than in May 1993, of this situation. The application should therefore in any event have been introduced not later than November 1993.

The Commission finds, therefore, that the application has been introduced out of time and is inadmissible under Articles 26 and 27 para. 3 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)

Mehmet LAÇIN v. Turkey
Application No. 23654/94

Declared inadmissible on 15 May 1995

THE FACTS

According to the applicant (who brings the application in his own name and in that of his brother Ibrahim LAÇIN)
On or about 19 December 1992, following the death of a "village protector" during a clash between fighters of the PKK and "village protectors", security forces and "village protectors" from neighbouring villages carried out a raid on the village of the applicant, Tepecik village. During that raid, several persons were killed or wounded and property was destroyed. On 22 December 1992 in the morning, the soldiers and "village protectors" said that they were going to burn the village. Following this announcement, all the villagers, including the applicant, left the village and walked to neighbouring villages. Forty of the seventy houses in the village, including the house of the applicant's brother, were set alight and demolished. The applicant's own property and everything in his home were destroyed. On 20 May 1993 the applicant applied to the Chief Public Prosecutor of Diyarbakır requesting that proceedings be commenced against those responsible and claiming proper compensation. No reply was received.

According to the Government
On 19 and 20 December 1992 a clash took place between security forces and the PKK in the village of Tepecik, following the shooting of 2 "village protectors" in and around this village. In the course of the clash 10 to 12 houses were burnt. The PKK fled the village and set it alight, upon which the inhabitants left. Furthermore, it appears from an investigation carried out by the authorities, that Ibrahim LACIN was taken into custody and considered a suspect in the incident during which the second "village protector" was killed. Moreover, the Government states that the applicant set fire to his house himself in order to claim compensation for damages. In addition, following the communication of this application to the Government, an investigation had been opened by the Public Prosecutor of Diyarbakır, but, as the applicant left his village, no further information or evidence could have been obtained.

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

• **Article 3:** On account of the collective punishment of the applicant together with the other villagers and of discrimination on grounds of race.

• **Article 5:** On account of his arbitrary expulsion from his village through a procedure not sanctioned by Article 5 para.1 and by means not prescribed by law.

• **Article 6:** On account of the failure to initiate proceedings before an independent and impartial tribunal against those responsible, as a result of which he could not bring civil proceedings arising out of those events and was denied effective access to a court.

• **Article 8:** On account of his arbitrary expulsion from his village and the destruction of his home. Alternatively, on account of the fact that the expulsion did not pursue a legitimate aim for the purpose of Article 8 para. 2.

• **Article 13:** On account of the lack of any independent national authority before which his complaints could be brought with any prospect of success.

• **Article 14:** On account of an administrative practice of discrimination on grounds of race and, in particular, of discrimination on grounds of his Kurdish origin in the enjoyment of his rights under Articles 5, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1.

• **Article 18 :** On account of the fact that the destruction of his home and livestock and his forced abandonment of his village, home and livelihood were effected for purposes incompatible with the Convention.

• **Article 1 of Protocol No. 1:** On account of the destruction of his and his brother's home and property.

THE COMMISSION'S DECISION

In view of various elements, the Commission considered that, assuming that there were no effective remedies in the present case, the applicant or those representing him had to be considered to have been aware of this situation not later than in May 1993. The application should therefore in any event have been introduced no later than November 1993. The Commission found, therefore, that the application had been introduced out of time and was **inadmissible** under Articles 26 and 27 para. 3 of the Convention.

COUNCIL OF EUROPE — CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 23654/94
by Mehmet LAÇİN
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. ŠVÁBY
G. RESS
A. PERENIČ
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 1 March 1995 by Mehmet LAÇİN against Turkey and registered on 10 March 1994 under file No. 23654/94;

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 25 January 1995 and the observations in reply submitted by the applicant on 13 March 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Turkish citizen of Kurdish origin, born in 1960, resides at the Yolalti village in Diyarbakır province. He is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

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.

The applicant first refers to two previous applications (No. 22280/93, Demir v. Turkey, and No. 22281/93 Yaşar v. Turkey, both communicated to the Turkish Government on 11 October 1993, the latter was declared admissible on 3 April 1995), and to an application lodged at the same time as the present one (No. 23655/94, Çelik v. Turkey). All these applications concern complaints arising from substantially the same incidents as in the present case. The applicant further states that he brings the application in his own name and in that of his brother İbrahim Laçin.

The applicant and his brother were both resident at the village of Tepecik, in the Kocakoy district of Diyarbakır province. On or about 19 December 1992, following the death of a "village protector" during a clash between fighters of the PKK (Kurdish Workers' Party - an armed separatist movement) and "village protectors", a force composed of regular soldiers and "village protectors" from the Kırmataş and Meşebağları villages entered Tepecik and started firing weapons indiscriminately, seeking to avenge the dead "protector". The firing continued for a period of between one and two hours. During that time several persons were killed or wounded and property was destroyed.

In the early hours of the morning of 22 December 1992 the "protectors" and the soldiers who were with them said, "Evacuate the village: we are going to burn the village." All the villagers, including the applicant, left Tepecik and, carrying their children on their backs, walked to neighbouring villages.

Four persons who had remained in the village were injured. Forty of the seventy houses in the village were set alight and demolished. The house of the applicant's brother, İbrahim Laçin, was burnt down. In addition, the applicant's own property, namely 20 sheep, 1.5 tons of tobacco, 2 tons of lentils, 3 tons of wheat, and everything in the homes of the applicant and the other villagers were destroyed. Because the applicant and his fellow villagers have been unable to return to the village, some 3,500 poplar trees, 100 walnut trees, 40 plum trees and the vineyard (5 dunums in extent) will have dried up.

By letter dated 20 May 1993 the applicant applied to the Chief Public Prosecutor of Diyarbakır, requesting that a solution be found by the State for the matters referred to above, that proceedings be commenced against those responsible, and that the applicant and the other villagers receive proper compensation. No reply to this application has been received.

In this respect the applicant also submits a statement of 20 May 1993 of the Area Representative of the Diyarbakır branch of the Human Rights Association. It says that the villagers had filed a complaint and a written petition to the Diyarbakır State Prosecution, but that the petition had not been processed and no inquiry had been opened. It further states that almost all applications made to judicial and administrative offices by those suffering damage by State forces in the State of Emergency Area are rendered "ineffectual". It concludes that in this situation it is meaningless to pursue domestic legal remedies.

The respondent Government state the following.

On 17 December 1992 a rural minibus shuttling between Tepecik and Arkabasi was waylaid by PKK terrorists who required the passengers to identify themselves and then shot one who was a "village protector".

On 19 and 20 December 1992 a clash took place between security forces and the PKK in Tepecik, following the shooting of another "village protector" who was driving through Tepecik accompanied by other "protectors". In the course of the clash 10 to 12 houses were burned. The intervention of the security forces permitted the withdrawal of the "village protectors" and at the same time the PKK began fleeing the village and setting it alight, upon which the inhabitants left.

In respect of the above events the Government refer to statements of villagers and procès-verbaux made in the course of an investigation, from which it appears, inter alia, that Ibrahim Laçin was taken into custody and considered a suspect in the incident during which the second "village protector" was killed.

The Government submit that the applicant's house was, however, not damaged following the events on 19 and 20 December 1992, but that he set fire to it himself in order to claim compensation for damages from the Government at a later date.

Following the communication of the present application to the Government, an investigation by the Public Prosecutor of Diyarbakır under file No. 1994/1556 has been opened. Due to the applicant's departure from his village, it has not so far been possible to obtain further information or evidence in respect of his complaints.

COMPLAINTS

The applicant complains, in his own name and on behalf of his brother, of violations of Articles 3, 5, 6, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No 1.

As to Article 3, he complains of the collective punishment of the applicant together with the other villagers of Tepecik and also of discrimination on grounds of race.

As to Article 5, he complains of various breaches of his right to liberty and security of person by virtue of his arbitrary expulsion from his village through a procedure not sanctioned by Article 5 para. 1 and by means not prescribed by law.

As to Article 6, he complains of the failure to initiate proceedings before an independent and impartial tribunal against those responsible for the killings, injuries and destruction of property, as a result of which he cannot bring civil proceedings arising out of those events and he is denied effective access to a court.

As to Article 8, he complains of a violation of his right to respect for his family life and home by reason of his arbitrary expulsion from his village and by reason of the destruction of his home. Alternatively, he submits that the expulsion did not pursue a legitimate aim for the purpose of Article 8 para. 2.

As to Article 13, he complains of the lack of any independent national authority before which his complaints can be brought with any prospect of success.

As to Article 14, he complains of an administrative practice of discrimination on grounds of race and he refers in particular to discrimination in the enjoyment of his rights under Articles 5, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1, as he was denied these rights on account of his Kurdish origin.

As to Article 18, he submits that the destruction of his own and the other villagers' homes and livestock, and their forced abandonment of their village, home and livelihood were effected for purposes incompatible with the Convention.

As to Article 1 of the Protocol, he complains of the destruction of his and his brother's home and property.

As to the exhaustion of domestic remedies, the applicant states that no remedies are effective in South-East Turkey against the acts of the security forces. He also refers to the fact that he petitioned the Chief Public Prosecutor without receiving a reply as well as to arguments made in application No. 21895/93, Cağirga v. Turkey (declared admissible on 19 October 1994).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 1 March 1994 and registered on 10 March 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 19 August 1994.

On 11 October 1994 the Government requested an extension of the time-limit for the submission of observations.

By letter of 24 October 1994, the Commission's Secretary informed the Government that their request of 11 October 1994, after the expiry of the time-limit, had been refused by the President of the Commission on the ground that more than 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 and 25 January 1995. Observations in reply were submitted on behalf of the applicant on 13 March 1995 after one extension of the time-limit fixed for this purpose.

THE LAW

The applicant complains, in his own name and on behalf of his brother, of a military raid on their village, in the course of which their homes and possessions were destroyed. He invokes Article 3 (the prohibition on inhuman and degrading treatment), Article 5 (the right to liberty and security of person), Article 6 (the right of access to court), Article 8 (the right to respect for family life and the home), Article 13 (the right to effective national remedies for Convention breaches), Article 14 (the prohibition on discrimination) and Article 18 (the prohibition on using authorised Convention restrictions for ulterior purposes) of the Convention, as well as Article 1 of Protocol No. 1 (the right to property).

The Government argue that, since the events complained of took place in December 1992 and the application was introduced on 1 March 1994, the applicant has not complied with the requirement imposed by Article 26 of the Convention that an application must be introduced within six months of the final decision taken in respect of the complaints.

They furthermore dispute that the applicant applied to the Chief Public Prosecutor of Diyarbakır on 20 May 1993, but even if that was the case, the application should have been introduced within six months following that appeal.

The applicant argues that he did not appeal to the Chief Public Prosecutor until five months after the events as he assumed an investigation had already commenced. He submits that failure to acknowledge receipt of such communications is not uncommon in South-East Turkey. Moreover, the suggestion from the Government that he burnt down his own house is logically inconsistent with the allegation that he never made a complaint. In any event, the applicant relies upon the non-existence of domestic remedies, referring to the Commission's findings in this respect in Application No. 22280/93, Demir v. Turkey (Dec. 9.1.95).

The Commission recalls in the first place that the purpose of the six months' rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of tim (cf. No. 10626/83, Dec. 7.5.85, D.R. 42 p. 205).

The Commission notes that, in the applicant's opinion, there is no effective domestic remedy in respect of the violations of the Convention of which he complains. In this respect, the Commission recalls that in other cases regarding destruction in villages in South-East Turkey the Commission has found that applicants were not in the circumstances of those cases required under Article 26 of the

Convention to pursue domestic remedies before complaining to the Commission (see, for instance, No. 21893/93, Akdivar and others, Dec. 19.10.94).

However, the Commission has repeatedly held that in the absence of domestic remedies the six months' period runs from the act complained of in the application (cf. No. 10530/83, Dec. 16.5.85, D.R. 42 p. 171; and No. 10389/83, Dec. 17.7.86, D.R. 47 p. 72). In the instant case, the acts complained of took place in December 1992.

Special considerations could apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation, the six months period might be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances.

In the present case, the applicant states that he sent a letter of complaint to the Chief Public Prosecutor on 20 May 1993. However, already before that date he had apparently taken steps to prepare an application to the Commission, which appears from the fact that his power of attorney to his representatives before the Commission is dated already 27 March 1993. Moreover, on 20 May 1993, a lawyer in Turkey, who assisted the applicant, stated in a written comment on the case that it was meaningless to use domestic legal remedies in cases such as that of the applicant.

In view of these various elements, the Commission considers that, assuming that there were no effective remedies in the present case, the applicant or those representing him must be considered to have been aware, not later than in May 1993, of this situation. The application should therefore in any event have been introduced not later than November 1993.

The Commission finds, therefore, that the application has been introduced out of time and is inadmissible under Articles 26 and 27 para. 3 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)

Hatun DIRLIK v. Turkey
Application No. 26974/95

Declared inadmissible on 16 October 1995

THE FACTS

On 30 July 1993 nineteen PKK members were killed in a clash between the security forces and terrorists in the Nurhak mountains. The applicant alleges that they were incinerated by napalm dropped from aircraft. Following the incident the bodies of the PKK members were brought to Mardin state hospital. Persons who saw the bodies described them as being so badly burned as to be unrecognisable from their facial features. Bodies which were not claimed by relatives within a few days were buried in a mass grave. On 2 August 1993 the applicant came to the town where her son, who was among the victims, had been buried. He was then disinterred and, although she was unable to recognize her son's body, she took him away and gave him a proper burial at her village. On 3 September 1993 the then MP for Adiyaman and DEP members called for an inquiry into the Nurhak mountain incident, to determine whether chemical or biological weapons had been used as was widely believed. The Grand Assembly did not institute an enquiry.

THE COMPLAINTS The applicant complains of violations of Articles 2, 3, 9, 13 and 14 of the Convention

• **Article 2:** On account of the manner in which her son was killed. The use of intentional force was more than absolutely necessary for a legitimate purpose under para. 2 of this Article.

• **Article 3:** On account of the burning to death of her son through the use of a chemical weapon such as napalm, which constitutes a form of torture.

• **Article 9:** On account of the burial of her son in a mass grave, which was a violation of her right to manifest her religious beliefs and customs as a Muslim.

• **Article 13:** On account of the lack of any effective remedy.

• **Article 14:** On account of discrimination on grounds of race and/or ethnic origin in the enjoyment of the rights guaranteed by Articles 2, 3, and 9 of the Convention.

THE COMMISSION'S DECISION

The Commission, in view of various elements and assuming that there were no effective domestic remedies which the applicant was required to exhaust, considered that the application should have been introduced no later than January - February 1994. However, the application in the name of Hatun Dirlik was introduced on March 1995 and was therefore **inadmissible** under Articles 26 and 27 para.3 of the Convention.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 26974/95
by Hatun Dirlik
against Turkey

The European Commission of Human Rights sitting in private on 16 October 1995 , the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
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
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
G. RESS
A. PERENIČ
C. BÎRSAN
P. LORENZEN
K. HERNDL

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 25 January 1994 by Hatun Dirlik against Turkey and registered on 4 April 1995 under file No. 26974/95;

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, a Turkish citizen of Kurdish origin, born in 1935, resides in Switzerland. She is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both university teachers at the University of Essex.

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

On the evening of 30 July 1993, the press, television and radio accounts carried an official press release that the military had engaged that day in an operation in the Nurhak mountains. Nineteen PKK members were reported to have been killed in a clash between the security forces and terrorists. The applicant's claim is that the PKK group were incinerated by napalm dropped from aircraft.

Following the incident of 30 July 1993 the bodies of the nineteen PKK members were taken off the mountain on a tractor by the military and brought to Mardin state hospital. The bodies were photographed clothed, either at the scene of the incident or at the hospital. They were placed naked one on top of the other in a cellar and later in the hospital morgue. Persons who saw the bodies in the cellar or in the morgue of the hospital, describe them as being so badly burned as to be unrecognisable from their facial features, even to relatives. The applicant was unable to recognise her son's body when it was disinterred from a mass grave along with another body, although she was informed by the authorities that one was the body of her son Sexo. She is, however, certain that her son was one of the group killed. Another mother could only recognise her daughter by the feature whereby her right toes had been crossed over from birth. One relative recognised his brother by a broken lower front tooth. No autopsies were carried out on the bodies.

Bodies which were not claimed within a few days were buried in a mass grave in Kahramanmaras cemetery by the municipal council. Male and female bodies were said to have been buried together. The applicant, who heard about the incident through the media, came to Maras on 2 August and found that her son had been buried. She was brought to the graveyard and shown a freshly created grave and told that it was where her son was buried. The officials disinterred two bodies from the grave. She states that it was impossible to recognise either of them. She and other villagers nevertheless took them away and gave them proper burial at her village of Kuracay.

On 3 September 1993 the then MP for Adiyaman, joined by other colleagues from the DEP political party, called for an enquiry into the Nurhak mountain incident on 30 July, to determine if chemical or biological weapons had been used as was widely believed. The MP invoked Articles 98 and 102 of the Constitution as well as the internal rules of the assembly in his call for an inquiry. He is no longer a member of parliament following the closure of the DEP party and has fled Turkey. The Grand Assembly did not institute an enquiry, as requested by the DEP members.

COMPLAINTS

The applicant complains, in her own name and on behalf of her son, of violations of Articles 2, 3, 9, 13 and 14 of the Convention.

As to Article 2, she claims that the manner of the death of her son violated the Convention. The use of intentional force under Article 2 was more than absolutely necessary for a legitimate purpose under its para. 2.

As to Article 3, she submits that the burning to death of human beings through the use of a chemical weapon such as napalm constitutes a form of torture.

As to Article 9, she argues that the burial of her son in a mass grave was a violation of her right to manifest her religious beliefs and customs as a Moslem.

As to Article 13, she submits that there was no effective remedy for her complaints of violations of the Convention.

As to Article 14, she complains of discrimination on grounds of race and/or ethnic origin in the enjoyment of the rights guaranteed by Articles 2, 3 and 9 of the Convention.

The applicant maintains that there is no requirement that she pursue domestic remedies because the actions of civil and military authorities (refusal of an autopsy, the hasty burial of most of the victims, etc.) taken together show that the possibility of challenging their actions before any domestic forum would be a futile step.

PROCEDURE BEFORE THE COMMISSION

The first complaint relating to the incident referred to above was submitted to the Commission in a letter of 25 January 1994. In that letter the applicant was indicated as being Ms. Hatice Gezer, mother of one of the persons killed during the armed encounter on 30 July 1993.

However, Hatice Gezer's complaint was not pursued, and no power of attorney signed by her was submitted to the Commission. Instead, the application submitted on 6 March 1995 mentioned as applicant Ms. Hatun Dirlik. The application was registered on 4 April 1995.

THE LAW

The applicant complains, in her own name and on behalf of her son, of the killing of him by napalm in an armed encounter with the security forces. She invokes Article 2 (the right to life), Article 3 (the prohibition on inhuman and degrading treatment), Article 9 (the freedom to manifest a person's religion), Article 13 (the right to effective national remedies for Convention breaches) and Article 14 (the prohibition of discrimination) of the Convention.

The Commission recalls however that the purposes of the six months rule imposed by Article 26 of the Convention is to promote

security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (cf. No. 10626/83, Dec. 7.5.85, D.R. 42 p. 205).

The Commission notes that, in the applicant's opinion, there is no effective domestic remedy in respect of the violations of the Convention of which she complains. It also observes that the public authorities were aware of the incident at latest on 30 July 1993, and they did not carry out any investigation with regard to this matter.

The Commission has repeatedly held that, in the absence of domestic remedies, the six months' period runs from the act complained of in the application (cf. No. 10530/83, Dec. 16.5.85, D.R. 42 p. 171, and No. 10389/83, Dec. 17.7.86, D.R. 47 p. 72). In the instant case, the acts complained of took place in July and August 1993.

The Commission considers furthermore that an MP's request to the Turkish Grand Assembly for an investigation does not constitute an effective remedy.

In view of these various elements, and assuming that there were no effective domestic remedies which the applicant was required to exhaust, the Commission considers that the application should have been introduced not later than January - February 1994. However, the application in the name of Hatun Dirlik was introduced on March 1995 and is therefore inadmissible under Articles 26 and 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(S. TRECHSEL)

K.O.S. v. Turkey
Application No. 24565/94

Declared inadmissible on 4 December 1995

THE FACTS

According to the applicant
The applicant is a Kurdish born British citizen and resides in England. He can neither read nor speak Turkish. On 29 December 1993 while he was returning from a visit to his family in Northern Iraq and was at Diyarbakir Airport awaiting a flight to England, his passport was taken away by airport security officers and he was rudely escorted to a room in the airport. There he was forced to empty his pockets and to sign a paper in Turkish and was not allowed to telephone the British embassy. That evening, he was taken to a security police station where he was detained from 29 December 1993 to 1 January 1994. During these 3 days he was beaten up and his life threatened. It was not until the second day that the applicant was informed of the reason for his detention, which was suspicion of robbery. He was examined but was unable to understand the questions or to be understood. On 1 January 1994 he was taken to the hospital and saw a doctor but did not complain of any ill-treatment as he had been threatened that his guts would be pulled out if he would do so. On the same day the applicant appeared before a court and was represented by a fee charging lawyer not of his choice. He was then detained in Diyarbakır main prison. He was released on 4 January 1994 and left immediately for the United Kingdom. On 10 January 1994 he consulted a doctor who gave him a medical certificate recommending that he takes 3 weeks sick leave from work in order to allow him to recover from his ordeal.

According to the Government
The applicant was taken into custody on 29 December 1993 following a formal complaint for robbery made by a bank cashier, corroborated by a witness statement. As soon as an interpreter was found, the applicant's statement was taken on 1 January 1994. On the same day the applicant was examined by a doctor who indicated that no sign of violence was found on the applicant's body. Also on that same day the competent judge ordered the continued detention of the applicant. After signing a power of attorney for a lawyer to act as his legal representative, the applicant was released on 4 January 1994. By judgment of 18 May 1994 the applicant was acquitted since there was no sufficient evidence to substantiate the charges against him. Moreover, in the judgment notice was given to the competent public prosecutor to consider initiating an investigation into the bank cashier with a view to criminal proceedings.

THE COMPLAINTS The applicant complains of violations of Articles 2, 3, 5, 6, 13 14 and 18 of the Convention

• **Article 2:** On account of the life-threatening nature of the detention in the hands of the State in south-east Turkey, of the lack of any effective system for ensuring protection of the right to life and of the inadequate protection of the right to life in domestic law.

• **Article 3:** On account of ill-treatment to which he was subjected while in detention and of discrimination on grounds of race or ethnic origin.

• **Article 5:** On account of the fact that his detention, which falls outside the terms of the derogation made by Turkey, was not for any of the authorised purposes specified in this Article.

• **Article 6:** On account of the fact that he was not informed promptly, in a language which he understood and in detail of the nature and cause of the accusation against him (Article 6 para. 3 a). On account of the fact that he was not given facilities or adequate time for the preparation of any defence to the allegations of robbery (Article 6 para. 3 b). On account of the fact that he was not given any opportunity to address the court himself, since no adequate translation facility was provided, and that he did not have access to a lawyer of his own choosing, nor was one provided free of charge (Article 6 para. 3 c). On account of the fact that he was not provided with the services of an interpreter (Article 6 para. 3 e).

• **Article 13:** On account of the lack of any independent national authority before which his complaints can be brought with any prospect of success.

• **Article 14:** On account of discrimination on grounds of race or ethnic origin in the enjoyment of his rights under Articles 2, 3 and 5 of the Convention.

• **Article 18:** On account of the interference in the exercise of his Convention rights, which were not designed to secure the ends permitted under the Convention.

THE COMMISSION'S DECISION

As regards the applicant's complaints for violations of Articles 2, 3, 5, 13, 14 and 18 of the Convention in connection with his detention by the Turkish authorities, the Commission, after considering notably that a doubt as to the effectiveness of a particular remedy is not a sufficient excuse under Article 26 for not trying it, found that the applicant could not be considered to have complied with the exhaustion of domestic remedies laid down in Article 26 of the Convention.

As regards his further complaint for violation of Article 6 in relation to the criminal proceedings which were conducted against him in Turkey, the Commission noted that the applicant was finally acquitted and therefore could no longer be considered a victim of a violation of his Convention rights, within the meaning of Article 25 of the Convention. Therefore, this part of the application was manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

The case was declared inadmissible.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 24565/94
by K.O.S.
against Turkey

The European Commission of Human Rights sitting in private on 4 December 1995, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
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
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. ŠVÁBY
G. RESS
A. PERENIČ
C. BÎRSAN
P. LORENZEN
K. HERNDL

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 29 June 1994 by K.O.S. against Turkey and registered on 7 July 1994 under file No. 24565/94;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the Commission's decision of 11 October 1994 to communicate the application;

- the observations submitted by the respondent Government on 1 March 1995 and the observations in reply submitted by the applicant on 24 April 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Kurdish born British citizen, was born in 1955 and resides at Waterlooville, Hampshire, England. He is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both of the University of Essex, England.

A. Particular circumstances of the case

The facts of the case as presented by the parties may be summarised as follows.

The applicant states that the following occurred.

On 29 December 1993 the applicant was returning from a visit to his family in Northern Iraq and was at Diyarbakır Airport, awaiting a flight to England. While in the control area of the airport, he was approached by airport and security officers, his passport was taken away, and he was rudely escorted to a room in the airport. Five other persons were also thus detained.

The applicant, along with the others, was then forced to empty his pockets of all money, tickets and other valuables. He was refused permission to telephone the British Embassy and was forced to sign a paper in Turkish, a language he can neither read nor speak. That evening the applicant and the five others were taken to a security police station, known as the "Aminiat".

All were detained there from 29 December 1993 to 1 January 1994. During these three days they were called one after the other to a room where they were beaten up. The applicant submits he was handcuffed, punched on the head and stomach, hit in the stomach with the butt of a Kalashnikov rifle and threatened with execution by having a gun put to his head.

The applicant's account is confirmed by the statement of two other detainees, T. A. and Z. B., who state that on the day they were brought to the "Aminiat" they were sworn at in Turkish, verbally abused and hit and kicked, at times with Kalashnikovs. The statement goes on to say that three days later the applicant and in particular N. M. were tortured.

It was not until the second day of his detention that the applicant was informed of the reason why he was being held, which was suspicion of robbery. However, no definite details of the alleged offence were forthcoming, and indeed the allegations by the police kept changing. These ranged from a claim of involvement in a $ 85 million raid on a bank to theft of DM 25,000 from a cashier's hand. No attempt was made to search for a large sum of money in the applicant's luggage until the last day of his detention at that station, i.e. 1 January 1994.

The applicant continually asked for an interpreter as he was unable to understand the questions he was asked in Turkish and his English was not understood either. However, it was not until 1 January 1994 at 11.00 hours that an English translator was brought, but this person spoke very little English. By that time the police had finished asking their questions and all the applicant was asked was his name,

whether he had been to any bank in Diyarbakır and where he wanted to travel to. During the three days of investigation he and the other detainees were forced to sign a number of papers in Turkish.

On the same day, 1 January 1994, the detainees were taken to a hospital to sign a paper that they had not been harmed and had been treated well. On the way to the hospital the police threatened that the detainees' guts would be pulled out by hand if they complained of any ill-treatment before the doctor.

Also on 1 January 1994 the applicant appeared before a court. The detainees had been designated a Turkish lawyer to conduct their defence. However, the lawyer did not know either English or Kurdish and it is not clear how she could represent them. The applicant was merely asked what his name was and whether he had been to a bank. The applicant was then told by his lawyer that he would be released but that the judge was waiting for a fax to come from the border to confirm that he had entered Turkey on 29 December 1993. However, this appeared in any case from a stamp in the applicant's passport and, if confirmation was needed, a fax was only a matter of minutes.

On 1 January 1994 the applicant and the other detainees were detained in Diyarbakır main jail together with convicted criminals. He believes that they were only kept in prison in order for their bruises to disappear before their release.

At no time was the applicant offered access to a lawyer of his own choosing, nor was one offered for free. Instead he was designated a fee charging lawyer with whom he could not communicate and who asked him few relevant questions. The lawyer later demanded a fee of 8,000,000 Turkish Lira for each detainee but was eventually willing to accept an interim payment of 1,500,000 Turkish Lira.

The applicant was released on 4 January 1994 and left immediately for the United Kingdom. Upon his return he was still feeling the effects of the treatment, primarily feeling sick and dizzy and he consulted his doctor on 10 January 1994. Apart from a small bruise on the applicant's chest the doctor found no external marks but he did notice some anxiety and arranged for him to have three weeks off work in order to recover from his ordeal.

For the whole of his detention the applicant was not allowed to communicate with the outside world. As a result, his family had no knowledge of his whereabouts, or whether he was alive or dead. The applicant submits that they had no news from him from the moment on 29 December 1993, when he failed to arrive home, until his release on 4 January 1994, and they suffered anguish as a result. The above-mentioned statement of T. A. and Z. B. reports, however, that two of the detainees were released on 2 January 1994 and that they contacted the relatives of the others who were at that time still detained. Hereupon, the applicant's father in law contacted the British Foreign and Commonwealth Office. While the British Embassy in Ankara were making enquiries into the applicant's situation on 4 January 1995, his father in law was informed that he had been released.

Following written enquiries by the applicant the Foreign Office informed him on 1 February 1994 that the British Embassy in Ankara were awaiting a report concerning the applicant's detention from the Turkish Ministry of Foreign Affairs. The Foreign Office made it clear to the applicant that the British Government could not pursue compensation for him, but it did provide him with a list of Ankara-based lawyers able to correspond in English.

The respondent Government state the following.

Following a formal complaint made by the bank cashier A. B. and a witness statement that the applicant and two other persons had stolen an amount of German Marks from the cashier, the applicant was apprehended on 29 December 1993. He was identified by A. B. and four other bank clerks on 30 December 1993. On that day, an extension of the detention period was requested from the competent public prosecutor in order to complete the investigation. Leave for a further two days of detention was granted.

As soon as an interpreter was found, the applicant's statement was taken on 1 January 1994. Thereupon, a summary report of the police investigation was prepared and submitted to the public prosecutor. On the same day the applicant was transferred to the State Hospital where he was examined by a doctor who put a mark on the referral note indicating that no sign of violence was found on the applicant's body.

Also on 1 January 1994, upon the request of the public prosecutor, the competent judge ordered the continued detention of the applicant and two of the other detainees.

The applicant signed a power of attorney for a lawyer to act as his representative on 3 January 1994. He was released on 4 January 1994.

Criminal proceedings were initiated against the applicant and two others by the public prosecutor on 5 January 1994. The applicant and the two co-defendants were acquitted by judgment of 18 May 1994 since there was not sufficient evidence to substantiate the charge against them. Moreover, in the judgment notice was given to the competent public prosecutor to consider initiating an investigation into the bank cashier A. B. with a view to criminal proceedings.

B. Relevant domestic law and practice

Civil and administrative procedures

Article 125 of the Turkish Constitution provides as follows:

"All acts or decisions of the Administration are subject to judicial review ...

The Administration shall be liable for damage caused by its own acts and measures."

Any illegal act by civil servants, be it a crime or tort, which causes material or moral damage may be the subject of a claim for compensation before the ordinary civil courts and the administrative courts.

Pursuant to Article 41 of the Civil Code, an injured person may file a claim for compensation against the alleged perpetrator:

> "Every person who causes damage to another in an unlawful manner, be it wilfully or be it negligently or imprudently, is liable for compensation."

Pursuant to Article 46, any victim of an assault may claim material damages:

> "The person who has been injured is entitled to compensation for the expenses as well as for the losses resulting from total or partial disability to work due regard being had to the detriment inflicted on the economic future of the injured party."

Moral damages may also be claimed under Article 47:

> "... the court may, taking into consideration the particular circumstances, award adequate general damages to the injured..."

Article 2 of the Administrative Judgment Procedure Code (No. 2577, 6.1.82) stipulates in para. (b) that

> "... Requests for full compensation may be filed by those whose personal rights have directly been damaged by administrative acts and actions."

Proceedings before the administrative courts are in writing. Decisions of administrative courts can be appealed to the Council of State.

Criminal procedures

The Turkish Criminal Code makes it a criminal offence to subject someone to torture or ill-treatment (Article 243 in respect of torture and Article 245 in respect of ill-treatment, inflicted by civil servants), to threaten someone (Article 191) and to deprive someone unlawfully of his liberty (Article 179 in general and Article 181 when committed by civil servants).

In general, in respect of criminal offences, complaints may be lodged, pursuant to Articles 151 and 153 of the Code of Criminal Procedure, with the public prosecutor or the local administrative authorities. The public prosecutor and the police have a duty to investigate crimes reported to them, the former deciding whether a prosecution should be initiated, pursuant to Article 148 of the Code of Criminal Procedure. A complainant may appeal against the decision of the public prosecutor not to institute criminal proceedings within fifteen days of being notified (Article 165 of the Code of Criminal Procedure).

If the alleged author of a crime is a State official or civil servant, permission to prosecute must be obtained from local administrative councils. The local council decisions may be appealed to the State Council; a refusal to prosecute is subject to an automatic appeal of this kind.

COMPLAINTS

The applicant alleges violations of Articles 2, 3, 5, 6, 13, 14 and 18 of the Convention.

As to Article 2, the applicant complains of the life-threatening nature of the detention in the hands of the State in South-East Turkey, of the lack of any effective system for ensuring protection of the right to life and of the inadequate protection of the right to life in domestic law.

As to Article 3, he complains of having been ill-treated while in detention and of discrimination on grounds of race or ethnic origin.

As to Article 5, he complains that his detention was not for any of the authorised purposes specified in Article 5, and he adds that the detention falls outside the terms of the derogation made by Turkey.

As to Article 6, he complains of the nature of the hearing before a local judge on 1 January 1994. He states that he was not informed promptly and in a language which he understood and in detail of the nature and cause of the accusation against him (para. 3 a). Nor was he given facilities or adequate time for the preparation of any defence to the allegations of robbery (para. 3 b). He was given no opportunity to address the court himself, since no adequate translation facility was provided, and he did not have access to a lawyer of his own choosing, nor was one provided free of charge (para. 3 c). Furthermore, he was not provided with the services of an interpreter (para. 3 e).

As to Article 13, he complains of the lack of any independent national authority before which his complaints can be brought with any prospect of success.

As to Article 14, he considers that there has been discrimination on grounds of race or ethnic origin in the enjoyment of his rights under Articles 2, 3 and 5. In regard to Article 3 he considers that he has also been discriminated against on account of his membership of or association with a national minority.

As to Article 18, he states that the interferences in the exercise of his Convention rights were not designed to secure the ends permitted under the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 29 June 1994 and registered on 7 July 1994.

On 11 October 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 6 January 1995.

By letter of 27 January 1995 the Commission's Secretary pointed out to the Government that the period for the submission of the Government's observations had expired and that no extension of that time-limit had been requested. It was added that the application was being considered for inclusion in the list of cases for examination by the Commission at its February session.

Observations were submitted by the Government on 1 March 1995.

On 2 March 1995 the Commission decided to adjourn the examination of the admissibility and to invite the applicant's representatives to respond to the Government's observations before 24 April 1995.

Observations in reply were submitted by the applicant on 24 April 1995.

THE LAW

1. The applicant complains of violations of Article 2 (right to life), Article 3 (the prohibition of inhuman and degrading treatment), Article 5 (the right to liberty and security of person), Article 13 (the right to effective national remedies for Convention breaches), Article 14 (the prohibition of discrimination) and Article 18 (the prohibition against using authorised Convention restrictions for ulterior purposes) of the Convention in connection with his detention by the Turkish authorities.

The Government argue that the applicant has failed to comply with the requirement under Article 26 of the Convention to exhaust domestic remedies before lodging an application with the Commission.

They submit in particular that the applicant could have lodged a complaint concerning his alleged ill-treatment with the public prosecutor through the assistance of the lawyer who represented him at the trial. Furthermore, having regard to the notice given in the judgment of acquittal to the public prosecutor to consider initiating criminal proceedings against the bank cashier A. B., the applicant may pursue these proceedings and claim compensation for damages.

The applicant maintains that there is no requirement that he pursue domestic remedies. He submits that he was unable to pursue remedies while in Turkey, since upon his release from detention he was very frightened of further action that might be taken against him were he to make a complaint to the authorities. His fear should be seen against the background of the fact that while in detention he had been specifically warned not to speak to outsiders about his treatment. He submits that his fear was well-founded given the way in which others of Kurdish origin or affiliation have been treated in South-East

Turkey. In this respect he refers to statements made in certain other cases pending before the Commission and to the report of 6 January 1994 of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1994/31).

Aside from his fear of pursuing domestic remedies, the applicant states that he cannot afford to pay to instruct a lawyer in Turkey directly or indirectly via a lawyer in the United Kingdom. He is not able to have legal aid for such a case, and his own income is not sufficient to pay lawyers' fees. In any event he considers that in this case any alleged remedy is illusory, inadequate and ineffective because there is an administrative practice of non-respect for the rule which requires the provision of effective domestic remedies. This claim is in his opinion strengthened by the fact that there is no indication that the request made by the acquitting court to the public prosecutor to consider a complaint against A.B. has made any progress.

The Commission recalls that Article 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, Sargın and Yağcı v. Turkey, Dec. 11.05.89, D.R. 61 p. 250, 262).

The Commission notes that the acts of which the applicant complains, the alleged unlawful deprivation of his liberty and the ill-treatment he suffered in the course of his detention, are prohibited by the Turkish Criminal Code and that it is not in dispute that, if such acts took place, this would have been in contravention of the criminal law to which the police are subject. The Turkish legal system provides in such instances for an investigation to be carried out by the public prosecutor who takes the decision whether or not to initiate a prosecution against the alleged perpetrators.

In the case of Aksoy v. Turkey (No. 21987/93, Dec. 19.10.94, unpublished), which also concerned allegations of ill-treatment during detention, the Commission noted that prior to the applicant's release from detention, he had a meeting with the public prosecutor, and the Commission found no reason to doubt that during their conversation there had been elements which should have made the public prosecutor initiate an investigation or, at the very least, try to obtain further information from the applicant about his state of health or about the treatment to which he had been subjected. The Commission was therefore satisfied that the applicant had availed himself of a proper remedy when appearing before the public prosecutor prior to his release and that he was not obliged to pursue in the circumstances any further remedies.

In the present case, there is no indication that the alleged ill-treatment has been the subject of any complaint or that information about it has been conveyed to the authorities competent to proceed to an investigation of the matter. Although the fear of reprisal which the

applicant states prevented him upon his release from complaining of the alleged detention and ill-treatment might not at that time have been wholly unfounded, the Commission notes that the applicant has since left Turkey and gone home to the United Kingdom.

Furthermore, the Commission considers that the applicant has not substantiated his claim that he would be unable to afford to instruct a lawyer in Turkey. In this respect the Commission also notes that the applicant was provided with a list of Ankara-based lawyers able to correspond in English. It does not appear that the applicant has contacted one of these lawyers with a view to lodging a complaint and/or a claim for compensation.

The Commission finds that the situation in the present case is therefore to be distinguished from that obtaining in the Aksoy case. Moreover, a doubt as to the effectiveness of a particular remedy is not a sufficient excuse under Article 26 for not trying it.

Furthermore, an examination of the application by the Commission does not disclose the existence of any other special circumstances justifying, according to the generally recognised rules of international law, the failure in the present case to exhaust the available domestic remedies.

Consequently, the Commission finds that in the circumstances of the present case the applicant cannot be considered as having complied with the exhaustion of domestic remedies rule laid down in Article 26 of the Convention.

This part of the application must therefore be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 of the Convention.

2. The applicant further complains of a violation of his rights under Article 6 of the Convention (the right to a fair trial and respect of the rights of defence) in relation to the criminal proceedings which were conducted against him in Turkey.

The Commission notes, however, that the applicant was finally acquitted by judgment of 18 May 1994. In this repect, therefore, the applicant can no longer be considered a victim of a violation of his Convention rights, within the meaning of Article 25 of the Convention.

This part of the application is accordingly manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) (S. TRECHSEL)

Muzaffer BILGIN v. Turkey
Application No. 26147/95

Declared inadmissible on 4 September 1996

THE FACTS (according to the applicant)

The applicant's husband, Siddik Bilgin, had been working as a teacher in the village of Dedebağ since 1983. In July 1985 he was taken into custody. On 31 July 1985, he was killed by 4 gendarmes near the village of Doğanli. The Public Prosecutor brought criminal proceedings against those 4 gendarmes in September 1987. They were found guilty of manslaughter and sentenced to one year imprisonment by the Court of Assizes of Ankara. The court considered that the gendarmes had resorted to an excessive use of force when preventing Siddik Bilgin to run away. The defendants and the applicant appealed (*pourvoi en casssation*). On 17 November 1993, the Court of Cassation quashed the Court of Assizes' judgment on the grounds that the gendarmes had the right to use their arms against Siddik Bilgin, as the latter kept running away despite their order not to do so. By judgment of 21 April 1994 the Court of Assizes of Ankara acquitted the gendarmes. No appeal was lodged against this judgment which became final on 14 June 1994.

THE COMPLAINTS The applicant complains of violations of Articles 2, 3, 6, 13 and 14 of the Convention

• **Article 2:** On account of the killing of her husband by the gendarmes while in custody.

• **Article 3:** On account of torture to which her husband was subjected.

• **Article 6:** On account of the fact that the Court of Cassation did not take into account the statements of the eyewitnesses so that the applicant's cause could not be defended fairly before this court and on account of the denial of the applicant's right to an effective access to a court to vindicate her civil rights.

• **Article 13:** On account of the lack of any effective national remedies before which the applicant could vindicate her husband's rights under Articles 2 and 3 of the Convention.

• **Article 14 in conjunction with Articles 2, 3, 6 and 13:** On account of discrimination against the applicant and her husband on the grounds of their Kurdish origin.

THE COMMISSION'S DECISION

As regards the applicant's complaint for violation of Articles 2 and 3 in conjunction with Article 14 of the Convention, the Commission noted that the death of Siddik Bilgin occurred on 31 July 1985, that is before 28 January 1987, date of acceptance by Turkey of the right to individual petitions. Therefore this part of the complaint was incompatible ratione temporis with the provisions of the Commission and was declared inadmissible in accordance with article 27 para. 2 of the Convention.

As regards the applicant's complaint for violation of Articles 6, 13 and 14 of the Convention, the Commission considered that the proceedings complained of by the applicant concerned neither her civil rights and obligations nor any criminal charges against her within the meaning of Article 6 of the Convention. This part of the complaint was therefore incompatible ratione materiae with the provisions of the Commission and was inadmissible in accordance with article 27 para. 2 of the Convention.

As regards the applicant's complaint for violation of Articles 13 and 14 of the Convention, the Commission concluded that, as for the complaint pertaining to a violation of Articles 2 and 3 of the Convention, this part of the application was incompatible ratione temporis with the provisions of the Convention.
The case was declared inadmissible.

COUNCIL OF EUROPE — CONSEIL DE L'EUROPE

COMMISSION EUROPÉENNE DES DROITS DE L'HOMME

DEUXIÈME CHAMBRE

DÉCISION

SUR LA RECEVABILITÉ

de la requête N° 26147/95
présentée par Muzaffer BILGIN
contre la Turquie

La Commission européenne des Droits de l'Homme (Deuxième Chambre), siégeant en chambre du conseil le 4 septembre 1996 en présence de

Mme G.H. THUNE, Présidente
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
M. VILA AMIGÓ

Mme M.-T. SCHOEPFER, Secrétaire de la Chambre ;

Vu l'article 25 de la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales ;

Vu la requête introduite le 13 décembre 1994 par Muzaffer Bilgin contre la Turquie et enregistrée le 9 janvier 1995 sous le N° de dossier 26147/95 ;

Vu le rapport prévu à l'article 47 du Règlement intérieur de la Commission ;

Après avoir délibéré,

Rend la décision suivante :

EN FAIT

La requérante, ressortissante turque, née en 1955, réside au village de Doğanlı, à Bingöl (Turquie). Elle est la veuve de Sıddık Bilgin, décédé le 31 juillet 1985. Elle est représentée devant la Commission par M. Kevin Boyle et Mme Françoise Hampson, professeurs à l'Université d'Essex.

Les faits de la cause, tels qu'ils ont été présentés par les requérants, peuvent se résumer comme suit.

Le mari de la requérante, Sıddık Bilgin, était instituteur dans le village de Dedebağ depuis 1983.

En juillet 1985, Sıddık Bilgin fut placé en garde à vue au poste de la gendarmerie de Suveren. Le 31 juillet 1985, il décéda à proximité du village de Doğanlı alors qu'il accompagnait les gendarmes pour leur montrer les cachettes utilisées par les militants du PKK.

Dans le cadre de l'action pénale introduite par le parquet le 10 septembre 1987 devant la cour d'assises d'Ankara contre les quatre gendarmes accusés d'avoir provoqué la mort de Sıddık Bilgin, la requérante allégua que son mari avait été tué en fait, dans le village de Doğanlı, par les gendarmes qui lui avaient donné des coups de pieds et de crosse sur la tête. Selon la requérante, les gendarmes avaient par la suite mis au point une mise en scène, selon laquelle Sıddık Bilgin aurait essayé d'échapper aux gendarmes et ceux-ci lui auraient tiré dessus après plusieurs avertissements. La requérante demanda que les gendarmes soient condamnés à la peine capitale pour "avoir tué son mari sous la torture", conformément à l'article 450 du Code pénal turc.

La cour d'assises d'Ankara déclara les quatre gendarmes coupables d'homicide involontaire sur la personne de Sıddık Bilgin et les condamna à un an d'emprisonnement. Elle établit que les gendarmes avaient fait un usage excessif de la force pour arrêter Sıddık Bilgin qui avait tenté de fuir.

Les gendarmes condamnés ainsi que la requérante se pourvurent en cassation.

Par arrêt du 17 novembre 1993, la Cour de cassation cassa le jugement de la cour d'assises d'Ankara au motif qu'en vertu de la loi no 1402 sur l'état de siège, les gendarmes étaient dans leur droit d'utiliser leurs armes à feu contre Sıddık Bilgin, qui ne s'était pas conformé à l'ordre qui lui avait été intimé de s'arrêter.

Par jugement du 21 avril 1994, la cour d'assises d'Ankara, se conformant à l'arrêt du 17 novembre 1993, relaxa les gendarmes en question.

Aucun pourvoi en cassation n'ayant été formé contre ce jugement, celui-ci devint définitif le 14 juin 1994.

GRIEFS

La requérante se plaint de violations des articles 2, 3, 6, 13 et 14 de la Convention.

Quant à l'article 2 de la Convention, la requérante allègue que son mari a été tué par les gendarmes lors de sa détention.

Sur le terrain de l'article 3 de la Convention, la requérante se réfère à la torture infligée à son mari lors de sa détention.

Quant à l'article 6 de la Convention, la requérante se plaint de ce que sa cause n'a pas été entendue équitablement par la Cour de cassation qui n'aurait pas tenu compte des témoignages oculaires. Elle soutint avoir été privée du droit effectif d'accès à un tribunal afin de faire valoir ses droits de caractère civil.

La requérante se plaint de n'avoir pas disposé de recours interne effectif, au sens de l'article 13 de la Convention, pour faire valoir la violation des articles 2 et 3 de la Convention à l'encontre de son mari.

Quant à l'article 14 de la Convention combiné avec les autres articles invoqués, la requérante soutint qu'elle et son mari avaient été victimes d'une discrimination en raison leur origine ethnique kurde.

EN DROIT

1. La requérante se plaint en premier lieu de ce que son mari a été tué par les gendarmes qui l'ont battu et maltraité. Elle invoque à cet égard les articles 2 et 3 de la Convention combinés avec son article 14.

Toutefois, aux termes de la déclaration faite par le Gouvernement turc en application de l'article 25 de la Convention, "cette déclaration s'étend aux allégations relatives à des faits, y compris les jugements fondés sur ledits faits, intervenus après la date de dépôt de la présente déclaration", à savoir le 28 janvier 1987.

La Commission relève qu'en l'espèce, la mort de Sıddık Bilgin a eu lieu le 31 juillet 1985, soit antérieurement à la date de dépôt de ladite déclaration, à savoir le 28 janvier 1987.

Cette partie de la requête échappe dès lors à la compétence *ratione temporis* de la Commission et doit par conséquent être rejetée comme étant incompatible avec les dispositions de la Convention au sens de son article 27 par. 2.

2. La requérante se plaint par ailleurs de ce que la procédure pénale dans laquelle elle s'est constituée "partie intervenante" ne s'est pas déroulée équitablement et de ce qu'elle a été ainsi privée de son droit d'accès à un tribunal. Elle invoque à cet égard les articles 6, 13 et 14 de la Convention.

La Commission rappelle à cet égard sa jurisprudence constante selon laquelle les droits visés par l'article 6 par. 1 de la Convention sont reconnus à l'accusé et non à la victime de l'infraction pénale alléguée ou à celui qui porte plainte contre autrui. Cette disposition ne s'étend donc pas au droit d'engager des poursuites pénales contre des tiers (cf., entre autres, Moreira de Azevedo c/ Portugal, rapport Comm. 10.07.89, par. 88, Cour eur. D.H., série A n° 189, p. 23). Cependant, si la partie plaignante manifeste l'intérêt qu'elle attache non seulement à la condamnation pénale de l'inculpé, mais aussi à la réparation pécuniaire du dommage subi, se constituer partie "intervenante" équivaudrait à introduire au civil une demande d'indemnité et l'article 6 serait alors applicable dans ce contentieux

(cf. mutatis mutandis, Cour eur. D.H., arrêt Moreira de Azevedo du 23 octobre 1990, série A n° 189, p. 17, par. 67).

La Commission relève d'emblée que dans la procédure pénale en question la requérante n'était pas accusée mais victime. Elle est intervenue dans cette procédure en qualité de partie "intervenante". La question qui se pose dès lors est de savoir si la requérante entendait faire valoir, dans les circonstances de l'espèce, des droits et obligations de caractère civil et donc si elle pouvait se prévaloir, dans cette procédure, des dispositions de l'article 6 de la Convention.

La Commission note qu'en droit turc la constitution de partie intervenante peut être accompagnée d'une demande d'indemnisation (cf. N° 16425/90, Hayrullahoğlu c/Turquie, déc. 28.06.93, non publiée).

Or la Commission observe qu'en l'espèce, lors du procès pénal auquel la requérante a participé en qualité de partie intervenante, elle a uniquement sollicité la condamnation des accusés à la peine capitale, mais n'a pas fait de demande en dommages-intérêts. En omettant d'associer une demande d'indemnisation à sa constitution de partie civile, elle s'est bornée à poursuivre les responsables présumés de la mort de son mari uniquement au plan pénal.

La Commission considère par conséquent que, dans les circonstances de l'espèce, la procédure dont se plaint la requérante ne concernait ni une contestation sur ses droits et obligations de caractère civil, ni le bien-fondé d'une accusation en matière pénale dirigée contre elle au sens de l'article 6 de la Convention (cf. N° 16425/90 précitée).

Il en résulte que cette disposition de la Convention n'est pas applicable à la procédure litigieuse. Cette partie de la requête doit donc être rejetée comme étant incompatible *ratione materiae* avec les dispositions de la Convention au sens de son article 27 par. 2.

3. La requérante, invoquant les articles 13 et 14 de la Convention, se plaint en outre de n'avoir pas disposé de recours interne effectif pour se plaindre d'une violation des articles 2 et 3 de la Convention à l'encontre de son mari.

Or la Commission vient de constater que les principaux griefs de la requérante tirés des articles 2 et 3 de la Convention se situent en dehors du champ d'application *ratione temporis* de la Convention. Il s'ensuit qu'il en est de même en ce qui concerne les griefs tirés des articles 13 et 14 de la Convention (cf., par exemple, N° 8782/79, X. et Laboratoire Y. c/Belgique, déc. 10.07.81, D.R. 25 p. 243).

Cette partie de la requête échappe dons également à la compétence de la Commission *ratione temporis*.

Par ces motifs, la Commission, à l'unanimité,

DECLARE LA REQUETE IRRECEVABLE.

M.-T. SCHOEPFER
Secrétaire
de la Deuxième Chambre

G. H. THUNE
Présidente
de la Deuxième Chambre

Ramazan DANIS v. Turkey
Application No. 24564/94

Declared inadmissible on 9 April 1997

THE FACTS (according to the applicant)

On 27 November 1991 the applicant took part in a political demonstration at Dicle University where he had been studying. On the same day, 3 police officers, on duty at the Dicle University campus, stated in a report that they drew up that during the demonstration, the applicant was among demonstrators disseminating separatist propaganda. In an indictment dated 18 February 1992, the Public Prosecutor at the Diyarbakır State Security Court charged the applicant under Article 8 of the Anti-terror Law with disseminating separatist propaganda. On 13 November 1993 the Court sentenced the applicant to one year and eight months' imprisonment and a fine. On 17 February 1993 the Court of Cassation dismissed the appeal lodged by the applicant' s legal representative. On 21 June 1993 the joint criminal chambers of the Court of Cassation examined the case and dismissed the Court of Cassation's public prosecutor's request for rectification of the decision dated 17 February 1993. The applicant tried to obtain the reversal of this decision without any success.

THE COMPLAINTS The applicant complains of violations of Articles 6, 10 and 11 of the Convention

• **Article 6:** On account of the fact that the evidence relied upon by the national courts was so unreliable that his conviction and sentence constituted a violation of his right to a fair trial (article 6 para. 1) and on account of the fact that the decision of the Diyarbakır State Security Court was pronounced during a hearing at which neither he nor his legal representative were present (article 6 para. 1and 3 (c)).

• **Article 10 and 11:** On account of the fact that his conviction constituted an unjustified interference with his freedom of expression and peaceful assembly.

THE COMMISSION'S DECISION

The final decision, as regards the applicant's conviction, was given by the joint criminal chambers of the Court of Cassation on 21 June 1993, which is more than six months before the date on which the application was lodged with the Commission. Moreover, the examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months' period. Therefore, the application was introduced out of time and had to be rejected under Article 27 para. 3 of the Convention.

The case was declared inadmissible.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

FIRST CHAMBER

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 24564/94
by Ramazan DANIS
against Turkey

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIČ
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 26 April 1994 by by Ramazan Danış against Turkey and registered on 7 July 1994 under file No. 24564/94;

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, a Turkish citizen of Turkish origin, born in 1969 and resident in Diyarbakir, is a student. Before the Commission he is represented by Professor Kevin Boyle and Ms. Francoise Hampson, both university lecturers at the University of Essex.

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

On 27 November 1991 the applicant participated in a political demonstration at Dicle University where he had been studying. The demonstration lasted for approximately one hour.

On the same day, a report was drawn up and signed by three police officers on duty at the Dicle University campus. According to the report, during the demonstration, separatist propaganda leaflets were distributed and separatist slogans were shouted. A banner of ERNK (the political branch of the PKK) was displayed on the third floor of the University building. The officers stated that, among the demonstrators, they had identified, among others, the applicant.

In an indictment dated 18 February 1992, the Public Prosecutor at the Diyarbakir State Security Court charged the applicant and four other students under Article 8 of the Anti-Terror Law with disseminating separatist propaganda.

On 13 November 1992 the Court found the applicant guilty of dissemination of separatist propaganda and sentenced him to one year and eight months' imprisonment and a fine.

On 17 February 1993 the ninth Chamber of the Court of Cassation dismissed the appeal lodged by the applicant's legal representative.

On 27 May 1993 the Public Prosecutor at the Court of Cassation requested rectification of the decision dated 17 February 1993.

On 21 June 1993 the joint criminal chambers of the Court of Cassation (Yargitay Ceza Genel Kurulu) examined the case and dismissed the request for rectification. They held that there was no reason to question the reliability or validity of the evidence submitted to the court.

On 23 September 1993 the applicant's legal representative requested the reopening of the proceedings.

On 13 October 1993 the Diyarbakir State Security Court dismissed the request for reopening. It held that the grounds given in this respect had already been examined and rejected by the Court of Cassation and that there were no new facts justifying reopening the trial.

The applicant's legal representative filed an objection against this decision.

On 1 November 1993 the Diyarbakir State Security Court dismissed the applicant's objection and upheld the reasoning given in the decision dated 13 October 1993.

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that the evidence relied upon by the national courts was so unreliable that his conviction and sentence constituted a violation of his right to a fair trial.

2. The applicant also complains under Article 6 paras. 1 and 3 (c) of the Convention that the decision of the Diyarbakir State Security Court concerning his conviction and sentence was pronounced during a hearing at which neither he nor his legal representative were present.

3. The applicant complains that his conviction constituted an unjustified interference with his freedom of expression and peaceful assembly as guaranteed by Articles 10 and 11 of the Convention.

THE LAW

The applicant alleges violations of Articles 6, 10 and 11 of the Convention.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions as Article 26 of the Convention provides that the Commission "may only deal with a matter ... within a period of six months from the date on which the final decision was taken".

The Commission recalls that the term "final decision" within the meaning of Article 26 of the Convention must be considered as referring to the final decision resulting from the exhaustion of all "effective and sufficient" domestic remedies according to the generally recognised rules of international law (No. 10530/83, D.R. 42 p. 171 at p. 172). The Commission also recalls that a final decision given on an application for the reopening of proceedings cannot be regarded as a "final decision" within the meaning of Article 26 of the Convention, unless the proceedings are in fact reopened and a new decision is given on the merits of the complaint which forms the object of the application to the Commission (No. 10431/83, Dec. 16.12.83, D.R. 35, p. 241 at p. 243; No. 23949/94 Dec. 18.5.94, D.R. 77, p. 140 at p. 142; No. 17128/90, Dec. 10.7.91, D.R. 71, p. 275 at p. 281).

In the present case, the Commission notes that, on 21 June 1993, the joint criminal chambers of the Court of Cassation examined the merits of the case and dismissed the request by the Chief Public Prosecutor at the Court of Cassation for rectification of the decision dated 17 February 1993 . The Commission further notes that the applicant's application for the reopening of the proceedings was dismissed by the Diyarbakir State Security Court and that the proceedings were not reopened.

Therefore, the final decision as regards the applicant's conviction was given by the joint criminal chambers of the Court of Cassation on 21 June 1993 which is more than six months before the date on which the application was lodged with the Commission. Moreover, the examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months' period.

It follows that the application has been introduced out of time and must therefore be rejected under Article 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber

Yüksel ZENGIN v. Turkey
Application No. 23143/93

Declared inadmissible on 8 September 1997

THE FACTS

The applicant is both a teacher and a member of the Diyarbakır Branch of the Education and Science Workers Union (Egit-Sen), which was declared illegal by the authorities. On 17 April 1993, during a press conference held by Egit-Sen, the applicant gave a written statement in her capacity of secretary of the union. On 2 July 1993 the Diyarbakır Province National Education Disciplinary Committee examined a proposal to impose a disciplinary sanction on the applicant. This proposal was brought in accordance with Article 125 D (g) of Law No. 657, which prohibits State officials from "giving information and statements to the press, news agencies, radio or television institutions when not authorised to do so". The Committee rejected the proposal and sent the file to the Governor's Office. On 8 July 1993 the Governor of Diyarbakır Province imposed on the applicant a disciplinary sanction of reduction of 1/30 of her salary in accordance with Article 125 C of Law No. 657. The applicant filed an appeal, which was rejected on 12 May 1994 by the Diyarbakır Administrative Court on the ground that the applicant's public statement without authorisation was contrary to Law No. 657. The applicant did not lodge an appeal to the Council of State.

THE COMPLAINTS The applicant complains of violations of Articles 10 and 11 of the Convention.

• **Article 10:** On account of the fact that the penalty, which was imposed upon her on 8 July 1993, constituted an unjustified interference with her freedom of expression.

• **Article 11 :** On account of the fact that the disciplinary penalty, which was imposed upon her, constituted an unjustified interference with her freedom of association and on account of the fact that the trade union Egit-Sen is illegal and has not been recognised by the authorities.

THE COMMISSION'S DECISION

As regards the applicant's complaints for violations of Article 10 and 11 of the Convention, the Commission noted that the applicant had neither raised these complaints before the national courts, nor had she appealed the Diyarbakir Administrative Court's judgment of 12 may 1994. Therefore the applicant did not comply with the condition as to the exhaustion of domestic remedies and this part of the application had to be rejected under Article 27 para. 3 of the European Convention.

As regards the applicant's complaint made in the name of the Union Egit-Sen, the Commission noted that the applicant did not submit a power enabling her to represent the Union before the Commission. Therefore, insofar as this part of the complaint concerned the right of the Union Egit-Sen, the Commission considered that the applicant could not be considered to be a "victim" within the meaning of Article 25 para. 1 of the European Convention and that this part of this application had to be rejected as incompatible *ratione personae* with the provisions of the European Convention, within the meaning of Article 27 para. 2 of the European Convention.

The case was declared inadmissible.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 23143/93
by Yüksel Zengin
against Turkey

The European Commission of Human Rights sitting in private on 8 September 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. ŠVÁBY
G. RESS
A. PERENIČ
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIŪNAS
E.A. ALKEMA
Mrs. M. HION
MM. R. NICOLINI
A. ARABADJIEV

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 7 December 1993 by Yüksel Zengin against Turkey and registered on 21 December 1993 under file No. 23143/93;

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 29 July 1995 and the observations in reply submitted by the applicant on 20 September 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish national of Kurdish origin born in Maden in 1966. She is a teacher and lives in Dyiarbakır. She represented before the Commission by Professor Kevin Boyle, Ms. Françoise Hampson and Ms. Sheldon Leader, all university teachers at the University of Essex.

The facts of the present case as submitted by the parties may be summarised as follows:

The applicant is a member of the Diyarbakır Branch of the Education and Science Workers Union (Egit-Sen). The Union was founded on 13 November 1990, but has never been granted formal legal status. The Diyarbakır Branch was declared illegal by the Office of the Chief of Police and the Mayor of Diyarbakır.

On 17 April 1993 Egit-Sen held a press conference at the issue of which the applicant gave a written statement in her capacity of secretary of the union.

On 2 July 1993 the Diyarbakır Province National Education Disciplinary Committee examined a proposal to impose a disciplinary sanction on the applicant. It was stated in the proposal that the applicant had signed a statement relating to a press conference as the Secretary to Egit-Sen, a trade union whose authorities and responsibilities were not known, i.e. its activities in Diyarbakir Province were unauthorised and therefore illegal. The proposal was brought in accordance with Article 125 D(g) of Law No. 657, which prohibits State officials from "giving information and statements to the press, news agencies, radio or television institutions when not authorised to do so". The proposed sanction was to suspend the applicant's promotion for a period of one year. The Committee, considering that the applicant had a good record and that her defence was partly satisfactory, rejected the proposal and sent the file to the Governor's Office.

On 8 July 1993 the Governor of Diyarbakır Province imposed on the applicant a disciplinary sanction of reduction of 1/30 of her salary in accordance with Article 125 C of Law No. 657.

The applicant filed an appeal, arguing that the Egit-Sen union was not illegal and that at any rate her statement to the press did non concern her activity as a teacher.

On 12 May 1994 the Dyiarbakır Administrative Court rejected her appeal on the ground that the applicant's public statement without authorisation was contrary to Law no. 657.

The applicant did not lodge an appeal to the Council of State.

COMPLAINTS

1. The applicant complains that the penalty which was imposed upon her on 8 July 1993 constituted an unjustified interference with her freedom of expression guaranteed by Article 10 of the Convention.

As regards exhaustion of domestic remedies for the purposes of Article 26 of the Convention, the applicant submits that it was highly unlikely that she would have succeeded in having her conviction overturned on an appeal to the Council of State.

2. The applicant complains under Article 11 of the Convention that the disciplinary penalty imposed on her on 8 July 1993 for signing a press statement in her capacity as a trade union official constituted and unjustified interference with her freedom of association guaranteed by Article 11 of the Convention. She also complains that the trade union Egit-Sen is illegal and has been refused recognition from the authorities.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 7 December 1993 and registered on 21 December 1993.

On 3 April 1995 the Commission decided to communicate the applicant's complaints concerning her disciplinary sanctions to the respondent Government and to declare the remainder of the application inadmissible.

The Government's written observations were submitted on 29 July 1995. The applicant replied on 20 September 1995.

THE LAW

1. The applicant complains that the penalty which was imposed upon her on 8 July 1993 constituted an unjustified interference with her freedom of expression guaranteed by Article 10 of the Convention.

As regards exhaustion of domestic remedies

The Government submit that the applicant has not exhausted domestic remedies, as she did not appeal to the Council of State. They point out that both Article 125 of the Turkish Constitution and Article 135/2 of Law 657 provide for a judiciary remedy against administrative decisions. The Government submits in this respect jurisprudence of the Council of State where a disciplinary sanction of dismissal of a civil servant for having made a political statement had been cancelled, the Council of State considering that the State must recognise the rights and freedoms ensuing from Conventions accepted.

The applicant considers that it was highly unlikely that she would have succeeded in having her conviction overturned on an appeal to the Council of State, as the limitations on the freedom of expression imposed by Law No. 657 are so broadly drawn that they are in violation of the Convention.

Article 10 of the Convention provides, insofar as relevant :

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers [...]

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Commission recalls, however, that under the terms of Article 26 of the Convention, it may only deal with a matter after all domestic remedies have exhausted, according to the generally recognised rules of international law. This condition is not met by the mere fact that an applicant has submitted his case to the various competent courts. It is also necessary for the complaint brought before the Commission to have been raised, at least in substance, during the proceedings in question. On this point the Commission refers to its constant case-law (cf., for example, Nos. 5573/72 and 5670/72, Dec. 16.7.76, D.R 7., p. 8).

The Commission also recalls that the Court emphasised that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it recognised that Article 26 must be applied with some degree of flexibility and without excessive formalism and that it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge decisions already given. Article 26 of the Convention normally requires also that the complaints intended to be made subsequently before the Commission should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see the Cardot v. France judgment of 19 March 1991, Series A no. 200, p. 18, para. 34; Eur. Court H.R., Sadik v. Greece judgment of 15 November 1996, to be published).

In the present case, at no time, however, did the applicant rely on Article 10 of the Convention, or on arguments to the same or like effect based on domestic law, in the courts dealing with her case.

Even assuming that the applicant's arguments before the domestic courts where such that she could be considered as having raised in substance her complaint under Article 10, the Commission notes that the she did not appeal against the judgement of Dyiarbakır Administrative Court.

In that respect the applicant claims that this would have been an ineffective remedy as constant case-law of the Council of State shows that such complaints are rejected. However, the applicant did not submit any case-law supporting her allegations.

On the other hand, the Commission notes that, according to the case-law submitted by the respondent Government, the Council of State has already reversed disciplinary sanctions taken against civil servants for unauthorised public statements, on the ground that such

sanctions were contrary to the rights and freedoms guaranteed by accepted Conventions.

Moreover, the Commission also recalls that it has constantly held that the mere existence of doubts as to the prospects of success does not absolve an applicant from exhausting a given remedy (cf. Nos. 5577-5583, Dec. 15.12.75, D.R. 4, pp. 4-72 with further references).

The Commission accordingly finds that the applicant cannot be considered to have exhausted the effective remedies available under Turkish law.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this part of the application must therefore be rejected under Article 27 para. 3. of the Convention.

2. The applicant complains under Article 11 of the Convention that the disciplinary penalty imposed on her on 8 July 1993 for signing a press statement in her capacity as a trade union official constituted and unjustified interference with her freedom of association guaranteed by Article 11 of the Convention. She also complains that the trade union Egit-Sen is illegal and has been refused recognition from the authorities.

Article 11 of the Convention provides :

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

According to the Government, the applicant was sanctioned not because of her union activities, but for having made statements without authorisation. As to the applicant's freedom of association, the Government point out that the union of civil servants has been recognised by the National Assembly and that a future law will govern this right. On the other hand, Egit-Sen has never been recognised and is therefore illegal.

The applicant states that there is an administrative practice preventing teachers and other civil servants to form and join trade unions and that the existence of this administrative practice renders an appeal to the Council of State ineffective.

However, the Commission notes that this complaint concerns the disciplinary sanction imposed on the applicant on 8 July 1993. The Commission therefore refers to its findings above concerning the

exhaustion of domestic remedies.

Accordingly, the Commission notes that the applicant has neither raised the present complaint before the national courts, nor has she appealed the Dyiarbakır Administrative Court's judgment of 12 May 1994.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies. This part of the application must therefore be rejected under Article 27 para. 3 of the Convention.

The applicant also complains in the name of the union Egit-Sen that the latter is illegal and has been refused recognition from the authorities. However, the Commission notes that the applicant has not submitted a power enabling her to represent Egit-Sen before the Commission.

Insofar as this part of the complaint concerns the rights of the union Egit-Sen, the Commission considers that the applicant cannot be considered as a 'victim' within the meaning of Article 25 par. 1 of the Convention.

This part of the application must, therefore, be rejected as incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

H.C. KRÜGER
Secretary
to the Commission

S. TRECHSEL
President
of the Commission

N. A. v. Turkey
Application No. 22947/93

Declared partly adjourned and partly inadmissible on 28 February 1994

THE FACTS (according to the applicant)

The applicant was both a teacher and the head of the Diyarbakır Branch of the Education and Science Workers Union (Egit-Sen), which was declared illegal in September 1992 by the authorities. On 27 October 1992 a meeting between the applicant, some of her colleagues and the National Education Director took place with the purpose of appealing to the latter to put an end to attacks against members of Egit-Sen. The police, which was present, filmed and verbally abused the persons who had gathered there and some of the educational workers were taken away. The applicant complained of this incident to the City Governor and to the Diyarbakır State Prosecutor without any success. She also made two statements to a newspaper in October and November 1992 referring, in the first one, to the events which took place on 27 October 1992, and, in the second one, to the conditions in which teachers have to work. As a result of these statements, and of her trade union activity, she was the subject of three formal findings by the National Education Ministry on 22 February 1993 (a formal warning), on 5 March 1993 (a reduction in salary) and on 14 May 1993 (suspension of her promotion). Subsequently the applicant was the subject of threats and pressure which obliged her to leave her occupation as a teacher, and hence her position in the trade union. Because of her disciplinary penalties she has not been able to receive her severance pay and obstacles are placed in the way of her collection of her pension.

THE COMPLAINTS The applicant complains of violations of Articles 2, 6, 10, 11, 13 and 14 (in conjunction with Articles 6 and 11) of the Convention and Article 1 of Protocol No.1

• **Article 2:** On account of the fact that the threats against her create a well-founded fear that her life is in jeopardy and of the failure of the Turkish government to take special measures for ensuring protection of her right to life, in her capacity of Kurdish teacher.

• **Article 6 :** On account of the fact that none of the disciplinary decisions taken against her was the product of a fair and public hearing by an independent and impartial tribunal.

• **Article 10:** On account of the penalties imposed upon her as a result of her statements to the newspaper.

• **Article 11:** On account of the disciplinary penalties as well as the threats and intimidation to which she was subjected because of her trade union activities. On account of the violation of her right to peaceful assembly on 27 October 1992.

• **Article 13:** On account of the lack of any effective remedy against the violations which occurred on 27 October 1992.

• **Article 14 in conjunction with Articles 6 and 11:** On account of the situation in southeast Turkey which is such as to constitute discrimination against her in the enjoyment of her rights under the latter provisions.

• **Article 1 of Protocol No. 1:** On account of the refusal to make pension and severance payments after the termination of her employment.

THE COMMISSION'S DECISION

As regards the applicant's complaint pertaining to a violation of Article 2 of the Convention, the Commission considered that the applicant did not show that she was exposed to such threats to her life as would make it necessary for the authorities to take specific protective measures. This complaint was therefore rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

As regards the alleged violation of Article 6 of the Convention, the Commission found that this Article was not applicable to the disciplinary proceedings. It followed that this complaint was incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2 of the Convention.

As regards the complaints pertaining to violations of Article 10 of the Convention, the Commission found that the complaint regarding the decision of 5 March 1993 was out of time and had to be rejected in accordance with Articles 26 and 27 para. 3 of the Convention. With respect to the complaint regarding the decision of 14 May 1993, the Commission found it necessary to obtain the observations of the respondent Government before taking a decision on its admissibility.

As regards the complaints for violations of Article 11 of the Convention, the Commission rejected them pursuant to Article 27 para. 2 as well as Articles 26 and 27 para. 3 of the Convention, as one of these complaints was manifestly ill-founded and the other ones were introduced out of time.
As regards the applicant's complaint for violation of Article 13 of the Convention, the Commission rejected it for non-observance of the six months' time limit.

As regards the complaints for violations of Article 14 in conjunction with Articles 6 and 11 of the Convention, the Commission rejected them on the same grounds that it rejected the complaints under the latter provisions, that is pursuant to Article 27 para. 2 and Articles 26 and 27 para. 3 of the Convention.

Finally, as regards the alleged violation of Article 1 of Protocol No. 1 of the Convention, the applicant's complaint was rejected as it was manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

Consequently, the complaint regarding the decision on 14 May 1993 was **adjourned**, but the remainder of the application was declared **inadmissible**.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

THE APPLICANT'S IDENTITY IS NOT PUBLIC.

PARTIAL DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY OF

Application No. 22947/93
by N. A.
against Turkey

The European Commission of Human Rights sitting in private on 28 February 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. ŠVÁBY

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 1st November 1993 by N. A. against Turkey and registered on 22 November 1993 under file No. 22947/93;

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 of Kurdish origin, born in 1953 and resident at Diyarbakir. She is represented before the Commission by Professor Kevin Boyle and Ms. Françoise Hampson, both of the University of Essex.

The facts as presented by the applicant may be summarised as follows.

The applicant has been, until recently, Head of the Diyarbakir Branch of the Education and Science Workers Union (Egit-Sen). The Union was founded in 1990, but the applicant's branch was declared illegal on 28 September 1992 by the Office of the Chief of Police and the Mayor of Diyarbakir.

Because of her activities on behalf of the members of Egit-Sen, the applicant has been the object of persistent threats and other forms of pressure which eventually forced her to leave her occupation as a teacher, to cease to function as a trade union official, and to be deprived of compensation otherwise due to her under Turkish law. She now lives alone with two children and remains in fear for her life and those of her children.

On 26 October 1992 a meeting between the applicant, some of her colleagues and the National Education Director had been arranged for the following day. The purpose was to appeal to the Director to put an end to attacks against members of Egit-Sen, since in October 1992 four members had been attacked, one of them had died, others were undergoing treatment, and about 40 members had been exiled in other regions.

When the applicant arrived at the meeting on 27 October 1992, she saw the building surrounded by plain clothes police and cameras made ready to film those arriving for the meeting. The Director said he could only receive a small group. The applicant organised a group of seven persons and told the others to leave, but the police did not allow anybody to leave and filmed and verbally abused the persons who had gathered there. Everybody's identity was checked. A woman who did not wish to show her identity papers was pulled by the hair and bundled into a waiting police car. Another thirteen educational workers were also taken away.

After the meeting the applicant went to the City Governor to complain of their treatment. The Governor's reply was that they had been told not to go to the National Education Directorate and that they had bad motives. He further said: "You don't raise your voices when the State's soldiers or police die. Why do you want to meet when teachers die?"

The day after these events the applicant received a telephone call and was told: "You are also going to die. It is now your turn. We are going to kill you off."

In November 1992 the applicant applied to the Diyarbakir State Prosecutor about the incident on 27 October 1992. After initial delays the case was dismissed in February 1993.

After the events on 27 October 1992 the applicant made a statement to the newspaper Diyarbakir Soz on 31 October 1992 under the headline "Eleven teachers detained in Diyarbakir". In that article she gave an account of the events prior to and including the meeting at the Directorate, focusing on the fact that the meeting had been by prior arrangement.

On 23 November 1992 she made another statement to the same newspapaper in an open letter bearing the headline "24 November is not Teachers' Day". Referring to the fact that 24 November is a day designated to honour teachers, she stated in that open letter that teachers had little cause to celebrate such a day, and proceeded to indicate the ways in which education workers suffered. She listed, inter alia, the lack of trade union rights, the hours of work of teachers and their clothing allowance, the fact that students feel pressured to give a gift to their teacher which they often cannot afford. She then focused on her region and pointed to the exiles and attacks on teachers in the region, to the fact that classes were too large and to the fact that police interfere with the functioning of secondary schools by arresting students in class and insulting teachers.

As a result of these statements to the press, and of her trade union activity, the applicant was the subject of three formal findings by the National Education Ministry:

1. On 22 February 1993 the Diyarbakir National Education Directorate declared that the applicant had violated Article 26 of Law No. 657, which prohibits statutory applications or complaints to be made jointly by two or more State officials and which also bans collective action by civil servants. The Directorate concluded that this was behaviour not suited to the dignity of a civil servant, which required the issue of a formal warning according to Article 125 of the said Law.

2. On 5 March 1993 the Diyarbakir Provincial National Education Disciplinary Committee found that the applicant had taken part in the activity of a trade union whose authorities and responsibilities were not known, i.e. was an unauthorised and therefore illegal trade union. The applicant was also found to be in violation of Section 4 of Law No. 657 insofar as it prohibits "involvement in collective action and behaviour unsuitable to the dignity of a State official" as well as Article 26 of the same Law, which prohibits State officials from associating in groups of two or more in order to make an application or a complaint to their employer. Because of her statement to the newspaper on 23 November 1992 the applicant was also found to be in violation of Article 125 D(g) of the same Law, which prohibits State officials from "giving information and statements to the press, news agencies, radio or television institutions when not authorised to do so". As a result of these findings, the Committee sanctioned the applicant by a reduction in salary, in accordance with Article 125 C.

3. On 14 May 1993 the Diyarbakir Provincial National Education Disciplinary Committee found that the applicant's statement to the newspaper on 31 October 1992 had been a violation of Article 125 D(g) of Law No. 657. Her case was then referred to the Provincial Office of National Education for consideration of blockage of her promotion, as authorised by Article 126 of the same Law.

Subsequently the applicant has been the subject of threats and pressure which have obliged her to leave her occupation as a teacher, and hence her position in the trade union. Because of the disciplinary penalties she has not been able to receive her severance pay and obstacles are placed in the way of her collection of her pension. She is also continuously being exposed to threats.

COMPLAINTS

The applicant complains of violations of Articles 2, 6, 10, 11, 13 and 14 (in conjunction with Articles 6 and 11) of the Convention and Article 1 of Protocol No 1.

As to Article 2, the applicant alleges that the threats against her create a well-founded fear that her life is in jeopardy. In view of the high incidence and systematic pattern of killings of Kurdish teachers in the Diyarbakir area, particularly of those prominent in the affairs of the Kurdish people, it would be reasonable to expect that the Turkish Government should take special measures to protect her right to life. By failing to do so, the Government is in violation of Article 2.

As to Article 6, the applicant states that none of the disciplinary decisions taken against her was the product of a fair and public hearing by an independent and impartial tribunal.

As to Article 10, the applicant submits that the penalties imposed upon her as a result of her statements to the newspaper are in conflict with her right to freedom of expression, for which there is no justification under para. 2 of Article 10.

As to Article 11, the applicant complains that she was subject to disciplinary penalties because of her trade union activities. She has also been exposed to threats and intimidation with a view to making her relinquish her functions as a trade unionist and to reprisals thereafter. Her right to peaceful assembly was also violated in connection with the meeting on 27 October 1992.

As to Article 13, the applicant complains of the lack of an effective remedy against the violations which occurred on 27 October 1992. She complained to the Diyarbakir State Prosecutor who, without any investigation and on the basis of statements by the police, dismissed the complaint.

As to Article 14 in conjunction with Articles 6 and 11, the applicant states that the violation of Article 6 in her case is the result of a breakdown in the system of justice to a degree that occurs on a systematic basis only in South-East Turkey, and that as a trade unionist she was subjected to legal disabilities and penalties which are not applied to trade union officials in other parts of Turkey.

As to Article 1 of Protocol No 1, the applicant considers that there has been a violation of her right to peaceful enjoyment of her possessions as a result of the refusal to make pension and severance payments after the termination of her employment.

As regards the exhaustion of domestic remedies, the applicant points out that, in regard to the incident on 27 October 1992, she applied to the Diyarbakir State Prosecutor who dismised the complaint in February 1993. She has not taken the matter further, since this would serve no purpose. There is also a fear of reprisal, which should be seen as a legitimate reason for not exhausting remedies. In any case remedies are not effective. There is a common practice of arbitrary application of the law, and for none of the wrongs she has suffered is there adequate prospect of her receiving justice by way of further recourse to domestic remedies.

As regards the six months' time-limit, the applicant considers that, in view of the threats and intimidation to which she is exposed, there is a continuing situation for the purposes of fixing the time-limit for application to the Commission. Alternatively, the latest disciplinary decision taken against her was dated 14 May 1993, which is within the six months' time-limit. As a further alternative, she considers that the six months' rule should be suspended in her case, since she has not been in a position to supply the full facts because of fear of reprisal from the authorities.

THE LAW

1. The applicant complains of a violation of Article 2 of the Convention in that the Turkish authorities have allegedly failed to provide her with the protection she needs in a situation where she has well-founded fears for her life.

Article 2 of the Convention provides, inter alia, that "Everyone's right to life shall be protected by law". It is true that this provision imposes on the Contracting States an obligation to take appropriate steps to protect life (cf. No. 9348/81, Dec. 28.2.83, D.R. 32 p. 190; No. 11604/85, Naddaf v. the Federal Republic of Germany, Dec. 10.10.86, D.R. 50 P. 259). However, in the present case the applicant has not shown that she is exposed to such threats to her life as would make it necessary for the authorities to take specific protective measures.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant next complains of a violation of Article 6 of the Convention in that she did not have a fair and public hearing by an independent and impartial tribunal in the disciplinary proceedings brought against her.

Article 6 of the Convention provides, inter alia, that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ...".

However, the proceedings brought against the applicant were clearly of a disciplinary character and cannot be considered to have concerned either her civil rights or obligations or the determination of a criminal charge against her (cf. No. 9208/80, Saraiva de Carvalho v. Portugal, Dec. 10.7.81, D.R. 26 p.262; No. 10059/82, Dec. 5.7.85,

D.R. 43 p.5). Consequently, Article 6 was not applicable to those proceedings.

It follows that this complaint is incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2.

3. The applicant also complains of a violations of Article 10 of the Convention in that she has been subjected to disciplinary measures because of statements which she made to a local newspaper.

Article 10 of the Convention reads, insofar as relevant, as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Commission notes that on 5 March 1993 the Diyarbakir Provincial National Education Discipline Committee imposed a disciplinary penalty on the applicant for having made a statement to a newspaper on 23 November 1992.

However, according to Article 26 of the Convention, the Commission may only deal with a complaint which has lodged within a time-limit of six months from the date of the final domestic decision. The present application was introduced on 1 November 1993, i.e. more than six months after the contested decision of 5 March 1993.

The applicant has stated that, in view of the threats and intimidation to which she has been exposed and her fear of reprisals, the situation should be regarded as a continuing one, or that the six months' time-limit should be considered to have been suspended in her case.

The Commission cannot find that, as regards the disciplinary sanction for the statement to the press on 23 November 1992, there exists a continuing violation of the Convention. Nor has it been shown that the applicant was unable to complain to the Commission during the six months following the decision of 5 March 1993.

It follows that the complaint regarding the decision of 5 March 1993 must be rejected in accordance with Articles 26 and 27 para. 3 of the Convention.

The Commission further notes that, in its decision of 14 May 1993, the Diyarbakir Provincial National Education Disciplinary Committee found that the applicant had violated Turkish law by addressing a statement to a local newspaper on 31 October 1992. As far as the complaint regarding this decision is concerned, the Commission finds it necessary to obtain the observations of the respondent Government before taking a decision on its admissibility.

4. The applicant further complains of a violation of her right to peaceful assembly ensured by Article 11 of the Convention in respect of the following:

- alleged threats and intimidation with a view to making her relinquish her functions as a trade unionist;

- alleged reprisals after she had relinquished these functions;

- the decisions of 22 February 1993 (the Diyarbakir National Education Directorate) and 5 March 1993 (the Diyarbakir Provincial National Education Disciplinary Committee) in which the applicant's exercise of trade union rights were found to be in violation of Turkish law; and

- police intervention and the ensuing events on 27 October 1992.

Article 11 of the Convention provides as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

a) The Commission first considers that, insofar as the applicant alleges in general terms that she has been exposed to threats, intimidation and reprisals, she has not substantiated her complaints. This aspect of her complaint is therefore manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

b) As regards the decisions of 22 February and 5 March 1993, the Commission notes that the application was introduced more than six months after the dates of these decisions. For the reasons indicated above under point 3 above, the Commission considers that in this respect there is no continuing situation and that it has not been shown that the applicant was unable to complain to the Commission within the six months' time-limit.

As regards the complaint about events on 27 October 1992, the Commission notes that the applicant complained to the State Prosecutor, who dismissed the matter in February 1993. She did not, however, complain to the Commission within six months of this rejection of her complaint. In this respect too, there is no question of a continuing situation, and it has not been shown that the applicant was unable to lodge her complaint with the Commission within the applicable time-limit.

It follows that, as regards the decisions of 22 February and 5 March 1993 and events on 27 October 1992, the applicant's complaints must be rejected pursuant to Articles 26 and 27 para. 3 of the Convention.

5. The applicant next complains of a violation of Article 13 of the Convention in that there was no effective remedy against the alleged violation of her rights with the events on 27 October 1992.

Article 13 guarantees the right to an effective remedy before a national authority in respect of violations of Convention rights and freedoms.

The Commission recalls that it has found the complaint regarding the events on 27 October 1992 to be inadmissible for non-observance of the six months' time-limit (see point 4 b) above). It follows that the same ground of inadmissibility applies to the complaint under Article 13 of the Convention, which must, therefore, also be rejected pursuant to Articles 26 and 27 para. 3.

6. The applicant also complains of violations of Article 14 in conjunction with Articles 6 and 11 of the Convention, in that the situation in South-East Turkey is such as to constitute discrimination against her in the enjoyment of her rights under the latter provisions.

Article 14 of the Convention prohibits discrimination in the enjoyment of Convention rights and freedoms.

The Commission recalls that the applicant's complaint under Article 6 has been found to be incompatible with the Convention ratione materiae (see point 2 above), and that the applicant's complaints under Article 11 have been found to be partly manifestly ill-founded and partly inadmissible for having being introduced after the expiry of the six months' time-limit (see point 4 above). The Commission finds that the complaints about violations of Article 14 in conjunction with these Articles are inadmissible on the same grounds. They must, therefore, be rejected pursuant to Article 27 para. 2 and Articles 26 and 27 para. 3 respectively.

7. Finally, the applicant complains of a violation of Article 1 of Protocol No 1 in that her right to the peaceful enjoyment of her possessions has been breached as a result of the refusal to pay her a pension and a severance allowance after the termination of her employment.

The first paragraph of Article 1 of Protocol No 1 provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles ofinternational law".

However, the Commission does not find it established that the applicant had, under Turkish law, a right to the financial benefits at issue. Consequently, it has not been shown that she has been denied the peaceful enjoyment of her possessions or that she has been deprived of any property.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

- **ADJOURNS its examination of the applicant's complaint about a violation of her freedom of expression allegedly resulting from the decision of the Provincial National Education Disciplinary Committee on 14 May 1993;**

- **DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.**

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)

Sevtap YOKUS and others v. Turkey
Application No. 23143/93

Declared partly adjourned and partly inadmissible on 3 April 1995

THE FACTS

The applicants were all members of the Diyarbakır Branch of the Education and Science Workers Union (Egit-Sen), which was founded in November 1990, but was never granted formal legal status. A meeting between the union and the National Education Director took place on 27 October 1992 with the purpose of appealing to the Director to put an end to attacks against members of Egit-Sen. About one hundred members of the trade union came to attend the meeting but the Director accepted to receive only a small delegation. Those not part of that delegation wanted to leave but the police did not allow them to do so. The police filmed and verbally abused and threatened the persons who had gathered there. After the filming, an identity check was carried out by the police. Three of the applicants, together with eleven others in attendance were further manhandled and detained. The 3 applicants were all released without charge. Since those events, the applicants claim to have been subjected to threats. One of the applicant, Yüksel Zengin, who was a teacher, was subjected to a disciplinary sanction on 8 July 1993 for having signed a statement relating to a press conference as the Secretary to Egit-Sen.

THE COMPLAINTS The applicant, Yüksel ZENGIN, complains of violations of Articles 6, 10, 11 and 14 of the Convention

• **Article 10 and 11:** On account of the fact that the penalty, which was imposed upon her on 8 July 1993, constituted an unjustified interference with her freedom of expression and association, in relation to her trade union activity.

• **Article 6 para. 1:** On account of the penalty which was not the product of a fair and public hearing by an independent and impartial tribunal.

• **Article 14 in conjunction with Article 6 para. 1:** On account of the situation in southeast Turkey which is such as to constitute discrimination against her in the enjoyment of her rights under the latter provision.

• **Article 5:** The 3 applicants, who were detained, complain of a violation of **Article 5** of the Convention, in that their arrest and detention were not carried out in accordance with a legitimate purpose as prescribed in paragraph 1 of that Article.

The applicants all complain of violations of Articles 8, 11 and 14 of the Convention:

• **Article 8:** On account of the filming and taking of their personal details by the police.

• **Article 11:** On account of the intimidation, to which they were subjected for assembling at the National Education Directorate, which constituted an unjustified interference with their freedom of peaceful assembly and their freedom of association.

• **Article 14 in conjunction with Article 11:** On account of the situation in south east Turkey, which is such as to constitute discrimination in the enjoyment of their rights under this Article.

THE COMMISSION'S DECISION

As regards the fourth applicant's complaints, the Commission found that it could not, given the current state of the file, determine the admissibility of the complaints pertaining to violations of Articles 10 and 11 of the Convention, the examination of which was therefore **adjourned**. It also concluded that the complaints for violations of Article 6 and 14 of the Convention were incompatible ratione materiae with the provisions of the Convention pursuant to Article 27 para. 2 of the Convention, and had to be dismissed.

As regards the other complaints, the Commission noted that the remainder of the application had been lodged out of time and therefore had to be declared **inadmissible** in accordance with Article 26 and 27 para. 3 of the Convention.

COUNCIL OF EUROPE — CONSEIL DE L'EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application No. 23143/93
by 1. Sevtap YOKUS
2. Musa FARISOGULLARI
3. M. Selim SEFTALI
4. Yuksel ZENGIN
5. Bedri ALTINDAG
6. Omer YARDIMCI
7. Ahmet CICEK
8. Kadri KAYA
9. Osman KARAKAS
10. Ismet SUZER
11. Ahmet SEVER
12. Abdullah ZENGIN
against Turkey

The European Commission of Human Rights sitting in private on 3 April 1995, the following members being present:

MM. C.A. NORGAARD, President
H. DANELIUS
C.L. ROZAKIS
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.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BEKES
J. MUCHA
E. KONSTANTINOV
D. ŠVÁBY

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 7 December 1993 by Sevtap Yokuş and 11 others against Turkey and registered on 19 August 1993 under file No. 23143/93;

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 facts of the present case as submitted by the applicants may be summarised as follows:

The applicants are all members of the Diyarbakir Branch of the Education and Science Workers Union (Egit-Sen). They are represented before the Commission by Professor Kevin Boyle, Ms. Francoise Hampson and Ms. Sheldon Leader, all university teachers at the University of Essex.

The Union was founded on 13 November 1990, but has never been granted formal legal status. The Diyarbakir Branch was declared illegal by the Office of the Chief of Police and the Mayor of Diyarbakir.

On 26 October 1992 a meeting between the union and the National Education Director was arranged for the following day. The purpose was to appeal to the Director to put an end to the attacks against members of Egit-Sen, since, in October 1992, four members had been attacked, one of them had died, others were undergoing treatment, and about 40 members had been exiled to other regions.

The fourth applicant, Yuksel Zengin, was the first to arrive at the meeting on 27 October 1992. When he saw that there were police forces outside the Directorate, he explained to them that there was not going to be any protest action but only a meeting with the Director. The police accepted that a meeting had been arranged by appointment, but said that they had no intention of leaving.

Shortly thereafter, about a hundred members of the trade union, including the other applicants, arrived and were allowed into the grounds of the Ministry. The Director said he could only receive a small delegation and those not part of that delegation could leave. The delegation went into the building, but the police did not allow the remainder of the group to leave. The persons who had gathered there were surrounded by the police who filmed, verbally abused and threatened them. During the filming, the commanding officers said to their officers, "Look at them well, get to know them well. From now on, if anything happens pick them up from the schools and bring them in. These are traitors." After the filming, the police carried out an identity check and wrote down everyone's identity details and home address. The fourth applicant submits that, following this development, the persons who were subjected to identity checks, have been telephoned, visited and disturbed in their homes.

While the filming and identity checks were taking place, the applicants M. Selim Seftali (third applicant), Kadri Kaya (eighth applicant) and Abdullah Zengin (twelfth applicant), together with eleven other attendants, were allegedly manhandled and detained.

M. Selim Seftali submits that when they were taken to the Police Headquarters, they were kicked and sworn at until they reached the eighth floor. When they got to the top, the policemen who had brought them said to their colleagues, "We have brought you some traitors". M. Selim Seftali was detained for 30 hours and released without charge.

After being arrested Abdullah Zengin was threatened by a plain clothes officer who said, "Take your steps carefully. Otherwise I will

break your feet. We know what you are up to in the school. You shout slogans with your pupils." Abdullah Zengin was detained for one and a half days in the Headquarters of the Police Anti-Terrorism Branch and then released.

Kadri Kaya was detained for 29 hours and then released.

Since their release, none of these three applicants has been charged with any offence arising out of the meeting on 27 October 1992.

A woman educationalist, while being arrested, was allegedly kicked, slapped and abused.

In a later statement to the press, the National Education Director stated that the meeting had gone smoothly and that no teacher had been detained.

Since those events, the applicants claim to have been subjected to threats.

On 2 July 1993 the Diyarbakir Province National Education Disciplinary Committee examined a proposal to impose a disciplinary sanction on Yuksel Zengin (the fourth applicant). It was stated in the proposal that the applicant had signed a statement relating to a press conference as the Secretary to Egit-Sen, a trade union whose authorities and responsibilities were not known, i.e. its activities in Diyarbakir Province were unauthorised and therefore illegal. The proposal was brought in accordance with Article 125 D(g) of Law No. 657, which prohibits State officials from "giving information and statements to the press, news agencies, radio or television institutions when not authorised to do so". The proposed sanction was to suspend the applicant's promotion for a period of one year. The Committee, considering that the applicant had a good record and that his defence was partly satisfactory, rejected the proposal and sent the file to the Governor's Office.

On 8 July 1993 the Governor of Diyarbakir Province disciplined the fourth applicant by a reduction of 1/30 of his salary in accordance with Article 125 C of Law No. 657. The Governor held that, based on the decision of the Committee, he had imposed a lower sanction on the applicant.

COMPLAINTS

The fourth applicant complains that the disciplinary penalty imposed upon him on 8 July 1993 by the Governor of Diyarbakir Province breached his Convention rights and freedoms as follows:

- The penalty which was imposed upon him for signing a press statement in his capacity as a trade union official constituted an unjustified interference with his freedom of expression and freedom of association, in relation to his trade union activity, guaranteed by Articles 10 and 11 of the Convention.

- The penalty was not the product of a fair and public hearing by an independent and impartial tribunal as guaranteed by Article 6 para. 1 of the Convention.

- The violation of Article 6 para. 1 in the disciplinary proceedings was the result of a breakdown in the system of justice to a degree that occurs on a systematic basis only in South-East Turkey, and thus also constitutes discrimination under Article 14 of the Convention.

The applicants allege the following violations of the Convention arising out of the meeting at the Diyarbakir National Education Directorate on 27 October 1992:

- The third, eighth and twelfth applicants complain of a violation of Article 5 of the Convention, in that their arrest and detention were not for any legitimate purpose prescribed in paragraph 1 of that Article. They assert in this regard that the police did not have any intention of charging them with any offence but rather wished to intimidate them.

- The applicants all complain of a violation of Article 8 of the Convention, in that the filming and taking of their personal details by the police constituted an unjustified interference with their private life.

- The applicants all complain of a violation of Article 11 of the Convention in that the intimidation, to which they were subjected for assembling at the National Education Directorate, constituted an unjustified interference with their freedom of peaceful assembly and their freedom of association in relation to their trade union activity.

- The applicants all complain under Article 14 in conjunction with Articles 11 of the Convention that, as trade unionists, they are subjected to legal disabilities and police action which are not applied to trade unionists in other parts of Turkey.

As regards the six months' time-limit laid down in Article 26 of the Convention, the applicants consider that, in view of the ongoing threats and intimidation to which they are exposed, there is a continuing situation for the purposes of fixing the time-limit for application to the Commission. The applicants further assert that the last action taken by the State against the fourth applicant, Yüksel Zengin, for his activities as a trade union official occurred on 8 July 1993, which was the latest event in this continuing situation. As a further alternative, the applicants consider that the six months' rule should be suspended in their case, since they have not been in a position to supply the full facts because of continuing fears of reprisal from the authorities.

As regards exhaustion of domestic remedies for the purposes of Article 26 of the Convention, the applicants submit that there is a fear of reprisal, which should be seen as a legitimate reason for not exhausting remedies. In any case, the remedies are not effective. There is a common practice of arbitrary application of the law, and for none of the wrongs they have suffered is there an adequate prospect of receiving justice by having recourse to domestic remedies.

THE LAW

1. The fourth applicant complains that the disciplinary penalty imposed upon him by the Governor of Diyarbakir Province for his statement to the press in his capacity as a trade union official violated Articles 10 and 11 of the Convention. Article 10 of the Convention guarantees freedom of expression, subject to certain limited exceptions, and Article 11 of the Convention guarantees freedom of association with others, including the right to form and join trade unions for the protection of one's interests, subject to certain restrictions concerning, inter alia, civil servants.

The Commission finds that these complaints raise questions involving the exhaustion of domestic remedies, as well as the facts and law. It cannot, therefore, on the basis of the present state of the file, determine the admissibility of these complaints and considers that it is 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 fourth applicant also complains of a violation of Article 6 para. 1 of the Convention in that he allegedly did not have a fair and public hearing by an independent and impartial tribunal in the disciplinary proceedings brought against him.

Article 6 para. 1 of the Convention provides, inter alia, that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ... ".

However, the proceedings brought against the fourth applicant were clearly of a disciplinary character and cannot be considered to have concerned either his civil rights and obligations or the determination of a criminal charge against him (cf. No. 9208/80, Saraiva de Carvalho v. Portugal, Dec. 10.7.81, D.R. 26 p.262; No. 10059/82, Dec. 5.7.85, D.R. 43 p.5). Consequently, Article 6 was not applicable to those proceedings.

It follows that this complaint is incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2.

3. The fourth applicant also complains of discrimination under Article 14 of the Convention in that the violation of Article 6 was the result of a breakdown in the system of justice that occurs on a systematic basis only in South-East Turkey.

Article 14 prohibits discrimination only in relation to the enjoyment of Convention rights and freedoms. It is true that the fourth applicant has invoked Article 6 para. 1 of the Convention in conjunction with Article 14. However, as the Commission found above, the complaint under Article 6 para. 1 is incompatible ratione materiae with the provisions of the Convention.

It follows that the complaint under Article 14 of the Convention is likewise incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2.

4. The applicants M. Selim Seftali (third applicant), Kadri Kaya (eighth applicant) and Abdullah Zengin (twelfth applicant) complain of a violation of their liberty of person ensured by Article 5 para. 1 of the Convention because, allegedly, their arrest and detention following the meeting of 27 October 1992 was not for any of the legitimate purposes prescribed in that provision.

Furthermore, in relation to the events which occurred on 27 October 1992, the applicants all allege the following violations of the Convention:

- a violation of Article 8 in that the filming and taking of their personal details by the police at the meeting constituted an unjustified interference with their private life;

- a violation of Article 11 in that the intimidation to which they were allegedly subjected for assembling at the Directorate constituted an unjustified interference with their freedom of peaceful assembly and association; and

- a violation of Article 14 in conjunction with Article 11 of the Convention, in that the situation in South-East Turkey is such as to constitute discrimination in the enjoyment of their Article 11 freedoms.

As regards exhaustion of domestic remedies pursuant to Article 26 of the Convention, the applicants submit that there is a fear of reprisal, which should be seen as a legitimate reason for not exhausting remedies. They also allege that there are no effective remedies.

The Commission is of the opinion that it does not need to decide whether the applicants may be said to have exhausted domestic remedies, since Article 26 of the Convention also provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". According to the Commission's constant case-law, where no domestic remedy is available, the six month period runs from the act alleged to constitute a violation of the Convention, unless there is a continuing situation, in which case the six month period runs from the end of that situation (No. 9303/81, Dec. 13.10.86, D.R. 49 p. 44). The Commission further recalls that in the absence of a remedy against detention on remand, the six month period runs from the date of release from detention (No. 8130/78, Dec. 10.5.79, D.R. 16 p.120).

The Commission notes that, in the present case, the third, eighth and twelfth applicants were released from detention on remand on 28 October 1992. It further notes that the events which gave rise to the applicants' complaints under Articles 8, 11 and 14 of the Convention occurred on 27 October 1992. Therefore the application, as regards these complaints, was filed after the expiry of the six months' time-limit.

The applicants have stated that, in view of the threats and intimidation to which they have been exposed and their fear of reprisals, the situation should be regarded as a continuing one, or that the six months' time-limit should be considered to have been suspended in their case.

The Commission cannot find on the facts of the present case that there exists a continuing violation of the Convention. Nor has it been shown that the applicants were unable to complain to the Commission during the period of six months following the meeting of 27 October 1992, or, as regards the third, eighth and twelfth applicants, following their release from detention. The Commission, therefore, finds that this part of the application has been lodged out of time and must be rejected in accordance with Articles 26 and 27 para. 3 of the Convention.

For these reasons, the Commission unanimously

ADJOURNS its examination of the fourth applicant's complaints about violations of his freedom of expression and freedom of association in relation to his trade union activity, allegedly resulting from the decision of the Governor of Diyarbakir Province on 8 July 1993;

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)

Ozkan KILIÇ v. Turkey
Application No. 31236/96

Declared partly adjourned and partly inadmissible on 1st December 1997

THE FACTS

On 13 September 1991 the Public Prosecutor of the State Security Court of Istanbul indicted the applicant under the Anti-Terror law and charged him with disseminating separatist propaganda for publishing an article in a weekly magazine, of which the applicant was editor in chief. He initiated other criminal proceedings against the applicant in respect of a second article, published in the same magazine. As regards the criminal proceedings pertaining to the publishing of the first article, the State Security Court of Istanbul first acquitted the applicant in October 1992. However, the judgment was quashed by the Court of Cassation in December 1992, following an appeal lodged by the Public Prosecutor. By judgment of 14 October 1993, the State Security Court of Istanbul sentenced the applicant to 2 years imprisonment and a fine pursuant to Article 312 of the Turkish Penal Code but not pursuant to the provisions of the Anti-terror law. This judgment was confirmed on 1st March 1994 by the Court of Cassation.

As regards the second article, which was a press release from the PKK European representation, the State Security Court of Istanbul acquitted the applicant in September 1992 after considering that the article was only providing information and not disseminating propaganda. This judgment was quashed by the Court of Cassation in December 1992 and, by judgment of 17 September 1993 the State Security Court of Istanbul sentenced the applicant to a fine of 25 000 000 Turkish Lira under the Anti-Terror law. This judgment was confirmed on 7 February 1994 by the Court of Cassation. In both proceedings the final judgments of the Court of Cassation were notified to the applicant on 16 May 1994. The applicant was taken into custody on 12 May 1994 at the Kartal Police headquarters and transferred to the Security Directorate of Istanbul on 14 May 1994. At the time the application was presented to the Commission, the applicant was detained in Bayrampasa prison.

THE COMPLAINTS The applicant complains of violations of Articles 3, 6, 7, 10, 13 and 14 of the Convention

• **Article 3 in conjunction with Articles 13 and 14:** On account of the fact that the applicant was subjected to ill-treatment while in custody; on account of the lack of any effective national remedy and on account of the existence of an administrative practice made all domestic remedies illusory, inadequate and ineffective.

• **Article 6 para. 1:** On account of the fact that he was denied a fair hearing before an independent and impartial tribunal, in particular because one of his judges was a military judge.

• **Article 7:** On account of his criminal conviction under provisions which were not clearly defined by the law.

• **Article 10:** On account of his criminal conviction for publishing articles and on account of an administrative practice of violation of this article.

• **Article 14 in conjunction with Articles 6 and 10:** On account of an administrative practice of discrimination on grounds of ethnic origin.

THE COMMISSION'S DECISION

As regards the applicant's complaints regarding violations of Article 6 para. 1 in conjunction with Article 14 of the Convention and of violations of Article 7 of the Convention, as well as Article 10 in conjunction with Article 14 of the Convention the Commission found that, in view of the information currently contained in the file, it could not determine the admissibility of these complaints and considered that it was 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. For these reasons, the Commission **adjourned** the examination of this part of the application.

As regards the applicant's complaint for violation of Article 3 of the Convention in conjunction with Articles 13 and 14 of the Convention, the Commission noted that the applicant's period in custody ended on 14 May 1994, while the arguments in respect of these three Articles were introduced by the applicant on 1st February 1996. Therefore this part of the application was out of time and was declared **inadmissible** in accordance with Articles 26 and 27 para. 3 of the Convention.

COUNCIL OF EUROPE — CONSEIL DE L'EUROPE

COMMISSION EUROPÉENNE DES DROITS DE L'HOMME

DÉCISION PARTIELLE

SUR LA RECEVABILITÉ

de la requête N° 31236/96
présentée par Özkan Kılıç
contre la Turquie

La Commission européenne des Droits de l'Homme, siégeant en chambre du conseil le 1er décembre 1997 en présence de

M. S. TRECHSEL, Président
Mme G.H. THUNE
Mme J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. ŠVÁBY
G. RESS
A. PERENIČ
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIŪNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mme M. HION
MM. R. NICOLINI
A. ARABADJIEV

M. M. de SALVIA, Secrétaire de la Commission ;

Vu l'article 25 de la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales ;

Vu la requête introduite le 31 août 1994 par özkan Kılıç contre la Turquie et enregistrée le 30 avril 1996 sous le N° de dossier 31236/96 ;

Vu le rapport prévu à l'article 47 du Règlement intérieur de la Commission ;

Après avoir délibéré,

Rend la décision suivante :

EN FAIT

Le requérant, ressortissant turc, né en 1964, est journaliste. Lors de l'introduction de la requête, il était détenu à la maison d'arrêt de Bayrampaşa.

Devant la Commission, il est représenté par M. Kevin Boyle et Mme Françoise Hampson, professeurs à l'Université d'Essex, et M. Tony Fisher, avocat au barreau de Londres.

Les faits, tels qu'ils ont été exposés par le requérant, peuvent se résumer comme suit.

Par acte d'accusation déposé le 13 septembre 1991, le procureur de la République près la cour de sûreté de l'Etat d'İstanbul intenta une action pénale contre le requérant sur la base des articles 6 et 8 de la loi antiterroriste n° 3713. Se basant sur un article intitulé "La chaleur d'août monte à Botan" et publié dans l'hebdomadaire "Yeni Ülke" (Nouveau Pays) dont le requérant était rédacteur en chef, il lui reprocha d'avoir fait de la propagande séparatiste.

Par un deuxième acte, invoquant un article intitulé "Ils ne sont pas partis, ils se sont enfuis" publié dans l'hebdomadaire susmentionné, le procureur de la République près la cour de sûreté d'İstanbul intenta une autre action pénale contre le requérant, sur la base des articles 6 et 8 de la loi antiterroriste n° 3713.

1. Procédure pénale portant sur l'article intitulé "La chaleur d'août monte à Botan "

Par décision du 14 octobre 1992, la cour de sûreté de l'Etat d'İstanbul, à l'unanimité, acquitta le requérant. Se fondant sur le contenu dudit article dans son ensemble, la cour considéra que les données de la cause ne permettaient pas de conclure que le requérant visait à faire de la propagande séparatiste par voie de publication, infraction prévue par les articles 6 et 8 de la loi antiterroriste.

Le procureur de la République se pourvut en cassation contre la décision du 14 octobre 1992.

Par arrêt du 22 décembre 1992, la Cour de cassation cassa la décision de première instance. Elle considéra que les motifs invoqués par la cour de sûreté de l'Etat d'İstanbul quant à l'acquittement du requérant ne pouvaient être retenus. Elle releva que l'article mis en cause et la photo qui l'accompagnait étaient de nature à inciter le peuple à l'hostilité et à la haine résultant de la distinction fondée sur l'origine, délit prévu par l'article 312 par. 2 du Code pénal turc.

Par décision du 14 octobre 1993, la cour de sûreté de l'Etat d'İstanbul, se conformant à l'arrêt de la Cour de cassation, condamna le requérant à une peine d'emprisonnement de 2 ans et à une amende de 120 000 livres turques, pour l'infraction visée au paragraphe 2 de l'article 312. Elle déclara notamment: "Dans l'ensemble, après examen de l'article intitulé 'La chaleur d'août monte à Botan' et de la photo qui l'accompagne, sur laquelle on voit une pancarte de ERNK <Front de libération nationale de Kurdistan> énonçant 'Vive la lutte pour la libération du peuple kurde' (...) publié dans l'hebdomadaire 'Yeni Ülke' (...), compte tenu des dessins et des textes accentuant les noms des villages et des régions en kurde et <disant> 'nous avons combattu,

nous combattons (...) nous allons combattre' (...) , <la cour> considère que la façon d'exprimer les relations entre le PKK, groupement armé séparatiste illégal, la fermeture des volets et les autres événements décrits dans l'article incriminé vise à susciter publiquement dans la société la haine et l'hostilité résultant de la distinction fondée sur la race et la région."

Par arrêt du 1er mars 1994, la Cour de cassation confirma la décision de première instance.

2. Procédure pénale portant sur l'article intitulé "Ils ne sont pas partis, ils se sont enfuis"

L'article susmentionné était un communiqué de presse de la représentation européenne du PKK.

Par décision du 4 septembre 1992, la cour de sûreté de l'Etat d'Istanbul acquitta le requérant, considérant que l'article incriminé constituait une information.

Par arrêt du 22 décembre 1992, la Cour de cassation infirma la décision de première instance. Elle estima que les motifs invoqués par la cour de sûreté de l'Etat d'Istanbul quant à l'acquittement du requérant ne pouvaient être retenus. Elle releva que l'article mis en cause était une déclaration d'une organisation illégale constituant le délit prévu par l'article 6 par. 2 de la loi antiterroriste n° 3713.

Par jugement du 17 septembre 1993, la cour de sûreté de l'Etat d'Istanbul, se conformant à l'arrêt de la Cour de cassation, condamna le requérant à une amende de 25 000 000 livres turques, pour l'infraction visée au par. 2 de l'article 6 de la loi antiterroriste. La cour examina le cas du requérant en sa qualité de rédacteur en chef de l'hebdomadaire. Elle déclara que dans ses grandes lignes, l'article incriminé faisait l'apologie d'une organisation illégale. Elle constata en outre que l'article mis en cause était un communiqué de presse de la représentation européenne du PKK.

Par arrêt du 7 février 1994, la Cour de cassation confirma la décision de première instance.

Les deux arrêts de la Cour de cassation auraient été signifiés au requérant le 16 mai 1994.

D'après la formule de requête datée du 1er février 1996, le requérant aurait été arrêté par la police le 12 mai 1994, puis placé en garde à vue au commissariat de police de Kartal. Le 14 mai 1994, il aurait été transféré à la direction de la sûreté d'Istanbul.

Eléments de droit interne

Article 312 par. 2 du Code pénal turc :

"Quiconque, publiquement, suscite la haine et l'hostilité dans la société en invoquant une distinction fondée sur la classe sociale, la race, la religion, les sectes religieuses ou la région, sera puni ..."

La loi antiterroriste n° 3713, telle qu'en vigueur à l'époque des faits, énonce, en ses dispositions pertinentes :

Article 6 par. 2:

"Quiconque imprime ou publie les tracts et les déclarations des organisations terroristes sera puni..."

Article 8 par.1 :

"La propagande écrite ou orale, les réunions, les assemblées et les manifestations visant à porter atteinte à l'unité indivisible de l'Etat de la République de Turquie, de son territoire et de sa nation sont prohibées quelles que soient la méthode ou l'intention et les idées qui les ont motivées. Quiconque poursuit une telle activité sera condamné ..."

L'article 8 par. 2 de la loi susmentionnée prévoit la condamnation des propriétaires et rédacteurs des périodiques.

GRIEFS

Le requérant se plaint de la violation de l'article 3 de la Convention combiné avec ses articles 13 et 14. Il allègue qu'il a été soumis à des mauvais traitements pendant sa garde à vue de 48 heures au commissariat de police de Kartal. Il soutient qu'il ne disposait pas en droit turc d'un recours efficace lui permettant de présenter ce grief et qu'il n'est pas tenu d'exercer les voies de recours internes, en raison de l'existence en Turquie d'une pratique administrative qui rend tout recours illusoire, insuffisant et inefficace.

Le requérant se plaint également que sa cause n'aurait pas été entendue équitablement par un tribunal indépendant et impartial, contrairement à l'article 6 par. 1 de la Convention. Il fait valoir à cet égard qu'un juge militaire, dont l'indépendance vis-à-vis de ses commandants militaires n'est pas assurée, siégeait au sein de la cour de sûreté de l'Etat.

Le requérant allègue par ailleurs la violation du principe selon lequel les peines et les délits doivent être prévus par la loi et de son corollaire, le principe de l'interprétation restrictive des textes répressifs, dans la mesure où il a été condamné au pénal en application de dispositions qui ne sont pas définies clairement par la loi. A cet égard, il invoque l'article 7 de la Convention.

Le requérant se plaint en outre d'une atteinte à son droit à la liberté d'expression, en violation de l'article 10 de la Convention, dans la mesure où il a été condamné au pénal en raison des articles qu'il a publiés. Il allègue en outre l'existence d'une pratique administrative de la violation de l'article 10 de la Convention.

Enfin, invoquant les mêmes faits, le requérant allègue la violation de l'article 14 de la Convention combiné avec ses articles 6 et 10. Il se plaint d'une pratique administrative de discrimination fondée sur l'origine ethnique.

EN DROIT

1. Le requérant se plaint de ce que sa cause n'aurait pas été entendue équitablement par un tribunal indépendant et impartial,

contrairement à l'article 6 par. 1 de la Convention combiné avec son article 14. Il fait valoir à cet égard qu'un juge militaire, dont l'indépendance vis-à-vis de ses commandants militaires n'est pas assurée, siégeait au sein de la cour de sûreté de l'Etat.

Invoquant l'article 7 de la Convention, le requérant allègue par ailleurs la violation du principe selon lequel les peines et les délits doivent être prévus par la loi et de son corollaire, le principe de l'interprétation restrictive des textes répressifs, dans la mesure où il a été condamné au pénal en application de dispositions qui ne sont pas définies clairement par la loi.

Le requérant se plaint en outre d'une atteinte à son droit à la liberté d'expression, en violation de l'article 10 de la Convention combiné avec son article 14, dans la mesure où il a été condamné au pénal en raison des articles qu'il a publiés. Il allègue en outre l'existence d'une pratique administrative de la violation de l'article 10 de la Convention.

La Commission considère qu'en l'état actuel du dossier, elle n'est pas en mesure de se prononcer sur la recevabilité de ces griefs et juge nécessaire de porter cette partie de la requête à la connaissance du gouvernement défendeur en application de l'article 48 par. 2 b) du Règlement intérieur.

2. Le requérant se plaint aussi de la violation de l'article 3 de la Convention combiné avec ses articles 13 et 14. Il allègue qu'il a été soumis à des mauvais traitements pendant sa garde à vue de 48 heures au commissariat de police de Kartal. Il soutient qu'il ne disposait pas en droit turc d'un recours efficace lui permettant de présenter ce grief et qu'il n'est pas tenu d'exercer les voies de recours internes, en raison de l'existence en Turquie d'une pratique administrative qui rend tout recours illusoire, insuffisant et inefficace.

Toutefois, la Commission n'est pas appelée à se prononcer sur le point de savoir si les faits allégués par le requérant révèlent l'apparence d'une violation desdites dispositions. En effet, l'article 26 de la Convention prévoit que la Commission ne peut être saisie qu'après l'épuisement des voies de recours internes et dans le délai de six mois.

La Commission constate, au vu des éléments du dossier et des affirmations du requérant, que ce dernier n'a pas fait valoir ce grief devant les autorités internes.

La Commission estime que, à supposer même que le requérant ne disposait d'aucun recours efficace en l'espèce, il était tenu, en vertu de l'article 26 de la Convention, d'introduire sa requête dans le délai de six mois à partir de l'acte incriminé (cf. N° 10530/83, déc. 16.5.85, D.R. 42, p. 171).

La Commission relève à cet égard que les griefs tirés de l'article 3 de la Convention combiné avec ses articles 13 et 14, n'étaient invoqués par le requérant que dans sa formule de requête datée du 1er février 1996.

Par ailleurs, la Commission note que dans la correspondance antérieure le requérant n'a en aucune manière évoqué les faits qui sont à la base de ces griefs.

La Commission observe qu'en l'espèce, la garde à vue du requérant a pris fin le 14 mai 1994, alors que l'argumentation concernant ces trois articles a été présentée par le requérant le 1er février 1996. Cette partie de la requête est donc tardive et doit être rejetée, conformément aux articles 26 et 27 par. 3 de la Convention.

Par ces motifs, la Commission,

AJOURNE l'examen des griefs du requérant concernant l'impartialité et l'indépendance de la Cour de sûreté de l'Etat qui l'a condamné, la condamnation au pénal en application des dispositions qui ne sont pas définies clairement par la loi et une éventuelle atteinte à son droit à la liberté d'expression ainsi qu'une éventuelle discrimination à son encontre ;

à l'unanimité
DECLARE LA REQUETE IRRECEVABLE pour le surplus.

M. de SALVIA
Secrétaire
de la Commission

S. TRECHSEL
Président
de la Commission

Kurdish Human Rights Project

The Kurdish Human Rights project is an independent non-political project founded and based in Britain. The KHRP is a registered charity. It is committed to the protection of the human rights of all persons within the Kurdish areas, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

AIMS

- to promote awareness of the situation of the Kurds in Iran, Iraq, Syria, Turkey and countries of the former Soviet Union.
- to bring an end to the violation of the rights of the Kurds in these countries and of Kurds and non-Kurds in predominantly Kurdish areas.
- to promote the protection of human rights of Kurdish people everywhere.

METHODS

- Monitoring legislation including emergency legislation, and its application.
- Conducting investigations and producing reports on the human rights situation of Kurds in Iran, Iraq, Syria, Turkey, and in the countries of the former Soviet Union by, amongst other methods, sending trial observers and engaging in fact-finding missions.
- Using such reports to promote awareness of the plight of the Kurds on the part of committees established under human rights treaties to monitor compliance of states.
- Using the reports to promote the awareness of the plight of the Kurds on the part of the European Parliament, the Parliamentary Assembly of the Council of Europe, the national parliamentary bodies and inter-governmental organisations including the United Nations.
- Liason with other independent human rights organisations working in the same field, and co-operating with lawyers, journalists and others concerned with human rights.
- Assisting individuals with their applications before the European Commission and Court of Human Rights in Strasbourg.
- Offering assistance to indigenous human rights groups and lawyers in the form of advice and training seminars on international human rights mechanisms.

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