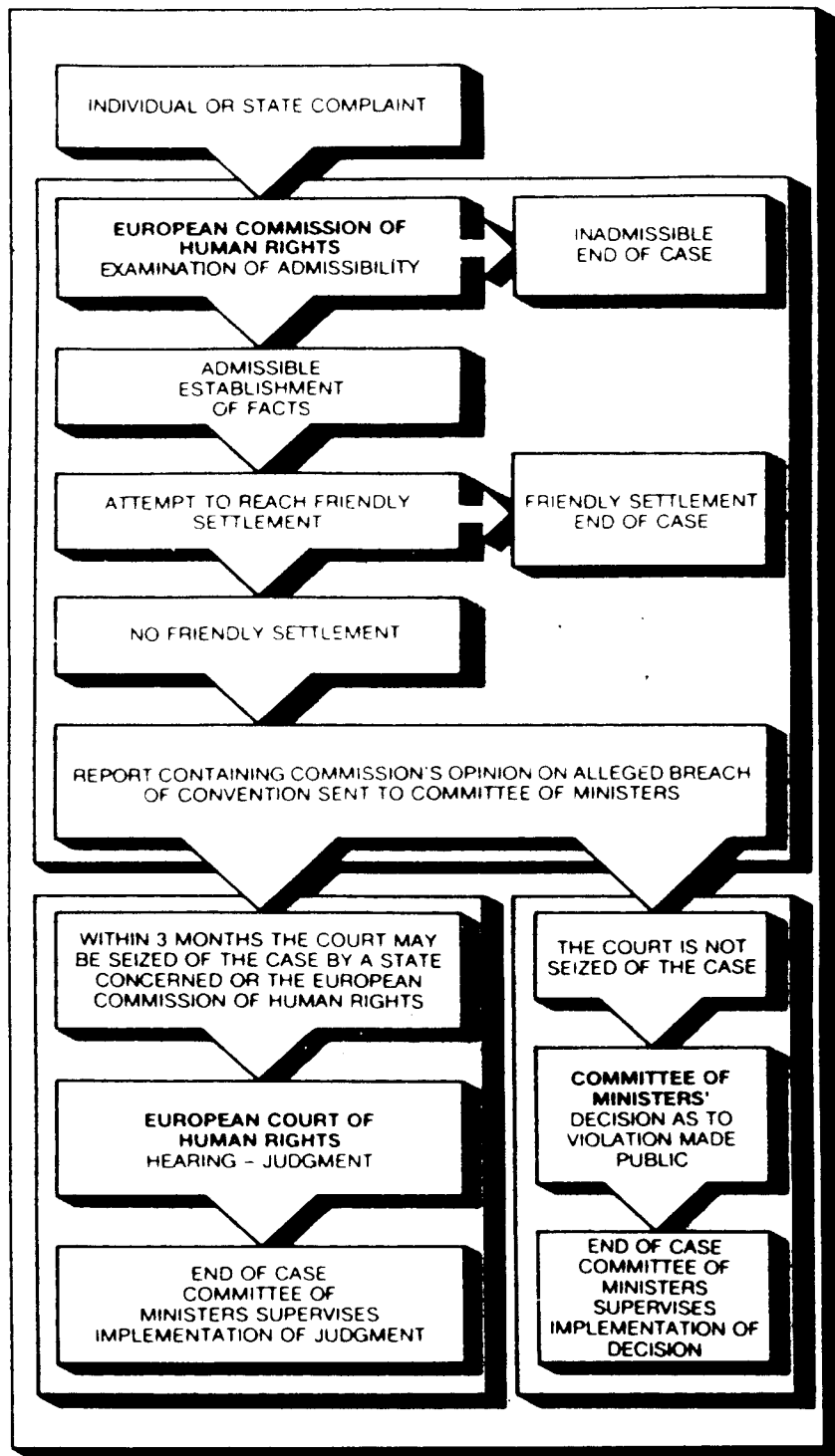


TURKEY

VIOLATIONS OF THE RIGHT OF PETITION TO THE EUROPEAN COMMISSION OF HUMAN RIGHTS

HOW THE EUROPEAN COMMISSION OF HUMAN RIGHTS AND EUROPEAN COURT OF HUMAN RIGHTS FUNCTION	2
SUMMARY	3
RECOMMENDATIONS	4
BACKGROUND	5
SCOPE OF PROBLEM	8
ADJUDICATED VIOLATIONS OF ARTICLE 25	9
Akduvar and Others v. Turkey (Application Number 21893/93)	9
Aksoy vs. Turkey (Application Number 21987/93)	11
ALLEGED VIOLATIONS OF ARTICLE 25	13
Akkoc v. Turkey (Application Number 22947/93 and 22948/93)	13
Tanrikulu v. Turkey (Application Number 23763/94)	15
Sen v. Turkey, (Application Number 25354/94)	17
Kurt v. Turkey (Application No. 24276/94)	20
Tepe v. Turkey	22
Kapan v. Turkey (Application Number 22057/93)	23
The Case of M. Sakir Basak	24
The Case of "K.O."	25
HARASSMENT OF LAWYERS AND PARALEGALS INVOLVED IN FILING PETITIONS TO THE EUROPEAN COMMISSION OF HUMAN RIGHTS	25
THE RIGHT OF INDIVIDUAL PETITION AND TURKEY: AN ASSESSMENT	29
APPENDIX A	33
APPENDIX B	36

HOW THE EUROPEAN COMMISSION OF HUMAN RIGHTS AND EUROPEAN COURT OF HUMAN RIGHTS FUNCTION



Source: Directorate of Human Rights of the Council of Europe, "The Council of Europe and the Protection of Human Rights," Strasbourg, June 1991.

We want to be part of Europe. We recognized the individual's rights of appeal [to the European Commission of Human Rights]. We recognized the authority of the court in Europe, in Strasbourg.... We view ourselves as Europeans. That is to say, "We support that system in its entirety, we intend to do what it requires." If we say that, then it means that for us there is no difference between the court in Strasbourg and those in Kadikoy Courthouse in Istanbul. In that case, who is meddling in whose business? The European Court is also our own court.... It is impossible to say, "I eat hamburgers, I wear blue jeans, I drink Nescafe, but I do not accept all articles of the European Human Rights Convention."

—Bakir Caglar, former Turkish government representative to the European Commission of Human Rights at Strasbourg, quoted in *Nokta* (Istanbul), January 1-7, 1995.

SUMMARY

In 1954 Turkey signed the 1953 European Convention for the Protection of Human Rights and Fundamental Freedoms, henceforth the Convention. The Convention has the force of law in Turkish domestic law under Article 90 of the Turkish Constitution. The signatories (High Contracting Parties) to the Convention pledge to uphold a host of fundamental rights enshrined in the document, including the right to life (Article 2), free expression (Article 10), the right not to be subjected to torture (Article 3), the right to a fair trial (Article 6), and the right to an effective legal remedy before a national authority if rights in the Convention are violated (Article 13). In early 1987, Turkey ratified Article 25 of the Convention, the right of individual petition to the European Commission of Human Rights of the Council of Europe, henceforth the Commission.

Since that time, Turkish citizens who believe that the state has violated their rights guaranteed under the Convention and who have not been able to find domestic legal redress can bring suit against their own government under Article 25. It states that, "The Commission may receive petitions...from any person, nongovernmental organization, 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 the Convention....those of the High Contracting Parties who have made such a declaration [to recognize individual petition] undertake not to hinder in anyway the effective exercise of this right." Since 1991, at least 778 Turkish citizens have applied to the Commission, often alleging violations in connection with a conflict that has raged since 1984 in largely Kurdish-inhabited southeastern Turkey between security forces and the PKK, a violent armed Kurdish group. The area has been under emergency rule since 1987.

Unfortunately, however, some who have applied to the Commission alleging violations of their rights under the Convention—especially those living in the region of southeastern Turkey under emergency rule because of armed conflict—report that they have suffered intimidation and maltreatment because of the very exercise of the right to apply to the Commission under Article 25: detention by security authorities, house raids, anonymous, telephoned death threats, veiled threats and "friendly conversations" with officials, and torture.

This report documents nine such cases. Although details of the cases in progress remain confidential, a November 1995 interview with members of the Secretariat of the Commission about Turkish cases that have been previously brought before it leads to the conclusion that a significant number of allegations concerning violations of Article 25 have arisen in a relatively brief period of time from one particular area: southeastern Turkey. According to the Secretariat, there have been relatively few allegations of violations of Article 25 in the history of the Commission's work. In an October 1995 ruling, *Akduvar and Others v. Turkey*, Report of the Commission (10/95), the Commission found that the Turkish government had indeed violated Article 25 in one case. In another case, however, *Aksoy v. Turkey*, Report of the Commission, (10/95), the Commission ruled that while the applicants' rights had been violated under the Convention, his right to apply under Article 25 had not. Actions such as those taken in the case of *Akduvar*

and Others v. Turkey—in which applicants were approached directly by government officials and asked to sign statements retracting their applications—constitute a serious violation of the government’s obligation not to “hinder” the rights of individual petition, and Human Rights Watch/Helsinki calls on the Turkish government to cease all interference with those who have applied to the Commission under Article 25 and to bring to justice those who have harassed, threatened, or taken other punitive measures against Turkish citizens exercising the right of individual petition.

RECOMMENDATIONS

To the Government of Turkey:

- Investigate all allegations of violations of Article 25 of the Convention and punish the guilty in full conformity with international standards of due process.
- Do not allow state officials to approach applicants or purported applicants or question them about their case before the Commission in the absence of their legal representative.
- Set up a special unit consisting of representatives of the Justice and Foreign Ministries to investigate violations of Article 25. Have this unit meet with applicants only in the presence of their lawyers. Make this unit directly responsible to the Prime Minister. Allow the Commission access to the workings of this unit.
- Instruct all gendarme and police stations and public prosecutor's offices of their obligations under Article 25 of the Convention. Make the Convention and the rights of individual application part of all police human rights training.
- Implement in good faith any and all rulings handed down by the European Court of Human Rights.

To the European Commission of Human Rights:

- More actively investigate allegations of violations of Article 25.
- Develop a mechanism to assist applicants to the Commission who may face harassment because of a violation of Article 25.

To the Secretary General of the Council of Europe:

- Under Article 57 of the Convention, call on Turkey to show how domestic laws “ensure the effective implementation of any of the provisions of this Convention.”
- Allot more funds to the Commission to deal with the increased caseload from Turkey and the unique requirements of work there.

To the European Union, the Council of Europe, and the United States government:

- Condemn the abuses outlined in this report and work towards bringing about the recommendations listed above.
- Continue to finance training courses for lawyers in Turkey on filing petitions to the Commission.

BACKGROUND

Since 1991, the Commission has received at least 778 cases against the Republic of Turkey.¹ Most of these recent cases—both allegations of violations of the right to petition under Article 25 and violations of other provisions of the Convention—originate from southeastern Turkey, an area largely inhabited by ethnic Kurds. The region has been the scene of armed conflict since 1984 between government security forces and the PKK ("Partia Karkaren Kurdistan") a militant armed Kurdish group fighting for an independent Kurdish state. The conflict has been characterized by severe human rights abuses by both security forces and the PKK; by 1996 an estimated 19,000 security forces, civilians, and PKK members had been killed. In 1987 ten provinces in the region were placed under emergency rule because of an increase in fighting. This strict decree gave security forces special powers, including the right to hold suspects in incommunicado detention up to thirty days for certain crimes and to restrict the press. In 1991, an Anti-Terror Law was instituted to punish so-called "separatist propaganda," resulting in the repression of peaceful free expression—especially concerning debate on the Kurdish issue—and the imprisonment of writers and intellectuals. By 1992, the conflict in the southeast entered a new spiral. Torture and deaths in detention increased, as did disappearances under mysterious circumstances. A wave of so called "actor unknown murders" targeted a Kurdish nationalist intellectuals and journalists and also suspected PKK members, rising to almost 1,200 between 1992 and 1994. A Turkish parliamentary commission investigation into these killings, leaked to the press in 1995, concluded that "'illegal formations' within the state bear some responsibility for mystery killings; they must be 'cleansed'...and brought to justice." In turn the PKK assassinated those suspected of cooperating with the state, such as teachers, civil servants, and former PKK members. The government intensified a counterinsurgency campaign against the PKK, forcibly evacuating and burning rural villages. Most of the estimated 2,200 villages and hamlets depopulated in the region since 1984 are the result of this campaign. The PKK in turn launched attacks against both security forces and villages that had joined the government civil-defense "village guard" program, killing village guards and their families alike. An October 1994 Human Rights Watch/Helsinki report stated that,

Both Turkish security forces and PKK fighters are guilty of human rights abuses. Security forces operating in the southeast often make little distinction between civilians and the PKK members, and the PKK has continued its practice of brutality punishing any cooperation with state authorities.... In an effort to deprive the PKK of its logistic base of support, security forces forcibly evict villagers from their villages and sometimes destroy their homes. Torture and arbitrary detention often accompany such evictions. Security forces especially target those villages who refuse to enter the village guard system or those that give food and shelter to the PKK fighters or are suspected of doing so.²

¹An individual can only file a petition against a state that has recognized the right of individual petition. One cannot bring a petition against another person or group of persons under Article 25 of the Convention. The Commission only declares a petition admissible if it is satisfied that the plaintiff has exhausted all domestic legal channels to the extent that is possible. Article 13 of the Convention provides that one should have recourse to effective domestic remedies to seek redress for violations of the Convention.

² Human Rights Watch/Helsinki, "Forced Displacement of Ethnic Kurds from Southeastern Turkey," October 1994, p. 3. See also, Helsinki Watch, "Free Expression in Turkey: Killings, Convictions, Confiscations," *A Human Rights Watch Short Report*, vol. 5, no. 17, August, 1993; Helsinki Watch, *The Kurds of Turkey: Killings, Disappearances and Torture* (New York: Human Rights Watch, 1993); Helsinki Watch, *Broken Promises: Torture and Killings Continue in Turkey*, (New York: Human Rights Watch, 1992).

While the situation improved somewhat in 1995, the U.S. State Department's annual *Country Reports on Human Rights Practices for 1995* (henceforth, *Country Reports*) stated that, "The human rights situation improved in a number of areas, but very serious problems still remain. The situation in the southeast was of particular concern."³ Applicants to the Commission from all of Turkey—but especially from the southeast—report having suffered a range of abuses by the government in violation of the Convention, including torture, village destruction, disappearances, unlawful death in detention, and murder.

While Human Rights Watch/Helsinki believes that the Commission should continue its efforts in Turkey and is pleased that the Turkish government has newly ratified the right of individual petition for another three years, the emergency rule conditions that presently exist in southeastern Turkey put the right of individual petition and those who exercise that right under great strain and lead to violations of Article 25 for two main reasons. First, the right of individual petition to the Commission was intended to serve as an appellate court of sorts, where points of law would be discussed. Article 13 of the Convention clearly states that, "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." The Commission was not intended to serve as a court of first instance. In many cases, however, it seems that the Commission often undertakes the sole substantive investigation of cases in southeastern Turkey, because of the lack of proper investigations on the part of the Turkish government, and because of the fear and discouragement lawyers have in southeastern Turkey of taking political cases or ones that deal with police abuse.⁴ According to the U.S. State Department's 1995 *Country Reports*,

Serious prosecutions of police or security officers for extrajudicial killings and torture continue to be rare, although the number of convictions in torture cases increased modestly [in 1995]. The climate of impunity that the relatively small number of convictions creates probably remains the single largest obstacle to reducing unlawful killing, torture, and other human rights abuses.⁵

The six cases discussed here for which there exists a decision of admissibility, were ruled admissible because the Commission found that there was sufficient proof of the inadequacy of domestic remedies in the areas of southeastern Turkey under emergency rule. The Commission rejected the government's position that these applications were inadmissible because of a failure to exhaust domestic legal remedies under Article 26 of the Convention. The Commission did not rule, however, that there were no domestic remedies in Turkey regarding administrative practices. In *Akduvar and Others v. Turkey* (Application Number 21893/93), the Commission wrote that:

³ Department of State, *Country Reports on Human Rights Practices for 1995* (Washington, D.C.: U.S. Government Printing Office, 1996).

⁴ Documentation of intimidation and state persecution against lawyers in southeastern Turkey was provided by a report prepared jointly by the International Bar Association, the Kurdish Human Rights Project, the Bar of England and Wales Human Rights Committee, and the Law Society International Directorate, *The European Convention Under Attack: The Threat to Lawyers in Turkey and the Challenge to Strasbourg* (London: August 1995). Henceforth, *European Convention Under Attack*). See also below, "Harassment of Lawyers and Paralegals Who File Petitions with the European Commission of Human Rights."

The case of Serif Avsar, who was abducted in April 1994 from his shop in Diyarbakir, a city in southeastern Turkey, and murdered shortly thereafter by state sponsored village guards, provides a good example of the fear lawyers have of becoming involved with cases that involve charges against state authorities. According to Senal Sarihan, the chair of the "Cagdas Hukukcular Dernegi," The Contemporary Lawyers Association, and a lawyer for the Avsar family, no lawyer in Diyarbakir would represent the Avsars out of fear. She also reported that during her visits to Diyarbakir for hearings in the case, she was followed by individuals she believed were police and threatened with violence by an unidentified individual. Human Rights Watch/Helsinki interview, October 1995, Turkey.

In July 1994, the state prosecutor put on trial six individuals allegedly responsible for the killing. According to a July 7, 1994 story in the Ankara daily *Turkish Daily News*, the men arrested stated that they were taking the fall for higher placed figures in the security forces.

⁵ *Country Reports* (URL: gopher://dosfan.lib.uic.edu:70).

The Commission does not deem it necessary to determine whether there exists an administrative practice on the part of the Turkish authorities tolerating abuses of human rights of the kind alleged by the applicants because it agrees with the applicants that it has not been established that the applicants had at their disposal adequate remedies under the state of emergency to deal effectively with their complaints. The Commission has formed this view for the following reason:

It is a known fact that there has been significant destruction of villages in South-East Turkey with many people displaced as a result. The applicants allege that their homes...have been destroyed by the security forces...The Government have outlined a general scheme of remedies that would normally be available for complaints against security forces....The Government have not provided a single example of compensation being awarded to villagers for damage like that allegedly suffered by the present applicants. Nor have significant examples been given of successful prosecutions against members of the security forces for the destruction of villages and the expulsion of villagers....*The Commission recalls that the existence of "remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness..."*⁶

In *Sen v. Turkey*, (Application Number 25354/94), the Commission addressed the effectiveness of remedies in cases of unlawful killings:

The Commission notes that while the Government refers to the pending inquiry by the public prosecutor into the death of the applicant's husband on or around 26 March 1994, almost two years have passed since the killing and the Commission has not been informed of any progress having been made in the investigation. In view of the delays involved and the serious nature of the crime, the Commission is not satisfied that this inquiry, in the prevailing circumstances, can be considered as furnishing an effective remedy for the purposes of Article 26 of the Convention.

Second, as this report documents, in southeastern Turkey applicants to the Commission can face intimidation and threats from security force because of the climate of impunity there. This is exacerbated by the nature of the process of individual application, whereby the file of an applicant can find its way into the hands of the security forces or officials who are alleged to have committed the initial abuse. Once a Turkish citizen files an application with the Commission, for example, it is sent to the Turkish government for its observations and comments, a customary and normal procedure in a legal dispute between two parties. The file then makes its way back to the local authorities in southeastern Turkey, such as the Gendarme command or Security directorate, who often are alleged to have been involved in the incident in question in the first place.

In at least three cases Human Rights Watch/Helsinki is aware of, including *Akduvar and Others v. Turkey*, the Commission opined that it cannot be discounted that applicants might face retaliation had they further pursued their complaints to state authorities about alleged violations:

It cannot be said at this stage that the applicant's fear of reprisal if he had complained more vigorously about the bombing of his home and family is wholly without foundation.⁷

⁶Italics added. See also *Akkoc v. Turkey*, (Application Numbers 22947/93, 22948/93); *Aksoy v. Turkey*, (Application Number 21987/93); *Tanrikulu v. Turkey* (Application Number 23763/94); *Kurt v. Turkey*, (Application Number 24276/94); *Sen v. Turkey*, (Application Number 25354/94).

⁷ *Ibid.* See also the similar language in *Cetin v. Turkey* (Application No. 22677/93) and *Gundem v. Turkey* (Application No. 22275/93). *Kurt v. Turkey* (Application Number 24275/94).

It would not be difficult to imagine in these circumstances that security forces might punish or intimidate applicants who had decided to complain to the Commission because they feared or were unable to complain to domestic authorities.

SCOPE OF PROBLEM

Human Rights Watch/Helsinki has no way of independently confirming the extent of intimidation in all the estimated 778 cases filed since 1991 or whether the situation with regards to threats and intimidation directed at applicants from these cases is deteriorating or improving. Nevertheless, a serious problem exists judging by the research Human Rights Watch/Helsinki conducted and by the unusual number of allegations of violations of Article 25 that became apparent in an Human Rights Watch/Helsinki meeting with the Secretariat of the Commission. Given the confidential nature of the proceedings, only the Commission itself would be able to provide a definitive answer.⁸ Of the lawyers with whom we spoke, one stated that there was little or no problem, another said that there had been violations of Article 25, while the majority—especially those operating in southeastern Turkey—stated that the situation remained as in the past: poor.

Lawyers who deal with Commission cases from southeastern Turkey and human rights activists from area allege a serious problem. Mahmut Sakar, a lawyer who works as the chairman of the Human Rights Association of Turkey [HRA] in Diyarbakir complains that an environment of fear and intimidation has been created in southeastern Turkey to hamper the proper functioning of the right of individual petition. According to Mr. Sakar:

In the last two years in Diyarbakir thirty to forty lawyers have been put on trial and tortured. Most of these cases are still going on. Many lawyers go through this because of their human rights activity. An atmosphere has been created where a lawyer cannot take a case. Most lawyers are afraid to participate in a case against the police. You see, a lawyer who has been practicing for twenty years is afraid to bring a case against the state; what do you expect from a peasant? There is also huge pressure to keep witnesses from the hearings. They are threatened first, then told, "You can take part in the hearing, it's okay." We apply to the Commission, which sends the application to the government. For example, we file an application on the burning of a village in Lice, they send the application to the Gendarme, who then call the villagers. They ask them, "Did you do this?" and they reply, "No, we love the state." We claim that the Gendarme has burned a village, and it is the Gendarme that is asked to assist in the investigation." In my opinion, 90 percent of the applicants from this region have been threatened. I know most of the cases from around here. Most realize the best way to survive is to shut up.⁹

A lawyer with several cases before the commission echoed Sakar's belief that the system is problematic when applied to southeastern Turkey. He commented that, "People face intimidation to drop cases. I had one such case. Also, witnesses face threats when they are called to testify. This prevails mostly in the emergency rule region in the southeast."¹⁰

⁸ Proceedings are confidential until the Commission issues its admissibility decision and a so-called "Article 31" decision on the merits of the case.

⁹ Human Rights Watch/Helsinki interview, Turkey, October 1995. The Gendarme ("Jandarma") in Turkey is a paramilitary rural police force. It is part of the Ministry of the Interior.

¹⁰ Human Rights Watch/Helsinki interview, Turkey, October 1995.

Turgut Kazan, chairman of the Istanbul Bar, on the other hand, said he believes that there are few if any barriers to applying to the Commission. In particular he pointed out a seminar that had been held in Istanbul in 1993 to familiarize lawyers with the application process. According to Kazan, "Three times we had seminars on how to apply, once even in Strasbourg. The Foreign Ministry was actually pleased. Cem Duna, the ambassador in Geneva, even told me to make sure that people know how to fill out the applications."¹¹

M. Semih Gemalmaz is a law professor at Istanbul University and an expert on the Commission and its relationship with Turkey.¹² He takes a middle position, stating there was a problem of intimidation that has subsided somewhat because of actions by the government. Professor Gemalmaz categorizes three phases since Turkey accepted the right to individual petition in 1987. According to Gemalmaz, the first period, 1987-1990, was a "dead season" since most lawyers did not understand the system. Between 1990-1993, lawyers in Turkey became more active as they began to become familiar with filing applications and as cases that had been declared admissible began to appear in the Turkish press. After 1993, more and more cases were filed, reaching a high in 1995.

When asked if applicants to the Commission and their lawyers were harassed by security authorities, Professor Gemalmaz believed that it was a problem in southeastern Turkey up until recently, but since that time repression has eased up. Gemalmaz stated that,

There were some serious cases of harassment of applicants and lawyers. I think the harassment of the applicants occurred in a minority of cases, not the majority. But the state then began to understand that if they use repression against the applicants and their lawyers, the case will go against the state. The Foreign Ministry understands this and tries to influence the other ministries.¹³

But another lawyer knowledgeable of the Commission and its activity in Turkey simply said, "The Foreign Ministry hasn't done anything to stop the threats."¹⁴

One lawyer in Ankara who has at least fifteen cases registered with the Commission told Human Rights Watch/Helsinki that neither he nor his clients suffered any problems. These cases, however, are all from western Turkey.

ADJUDICATED VIOLATIONS OF ARTICLE 25

Akduvar and Others v. Turkey (Application Number 21893/93)¹⁵

Date Application Registered: May 18, 1993

Date Declared Admissible: October 19, 1994

Date Application referred by Commission to Court: October 26, 1995

¹¹Human Rights Watch/Helsinki interview, Istanbul, October 18, 1995.

¹²This summer Gemalmaz published a series of full-page Articles on the European Commission on Human Rights and Turkey in the paper of record in Turkey, *Cumhuriyet*.

¹³Human Rights Watch/Helsinki interview, Istanbul, October 5, 1995.

¹⁴Human Rights Watch/Helsinki interview, Istanbul, October 1995.

¹⁵Copy available from the Council of Europe, Strasbourg, France.

The case of Huseyin Akduvar, Abdurahman Akduvar, Ahmet Akduvar, Ali Akduvar, Zulfukar Cicek, Ahmet Cicek, Abdurahman Aktas, and Mehmet Karabulut represents the first time that the Commission has found Turkey in violation of the right of individual petition, i.e. Article 25, as well as of most of the Articles the plaintiffs alleged were violated in their original petition.¹⁶

Applicants' Allegations

The applicants charge that their rights under Article 3 (right not to be subjected to torture), Article 5 (right to liberty and lawful arrest), Article 6 (right to a fair trial), Article 8 (right to home and private and family life), Article 13 (right to an effective legal remedy before a national authority), Article 18 (restrictions allowed under the Convention shall only be used for intended purpose), Article 1 of protocol 1 (peaceful enjoyment of possessions). They allege that on November 10, 1992, Turkish security forces, including special team members, entered the village of Kelekci, Dicle district, Diyarbakir province. The forces burned nine houses, after which approximately five hundred villagers fled. The attack came as retribution for a November 1, 1992, PKK attack against a police station in a nearby village. The villagers also believe they were being punished because they had ceased to serve as village guards in August 1992 after a July 17, 1992, PKK attack on the village killed some of the village's guards. Later, in 1993, most of the village's houses were destroyed by government forces.

Government's Observations

The Turkish government accepts the fact of the July 17, 1992 PKK attack against the village, but states that during the November 1, 1992 PKK attack against the police station firing came from both Kelekci and Bogazli villages, forcing security forces to return fire. Houses in both villages were damaged in the crossfire. After this, villagers from Kelekci of their own accord began to evacuate the village. On November 10, 1992, searches that government forces conducted revealed fourteen PKK hide-outs but caused no damage to houses. On April 6, 1993, government forces again searched Kelekci village without causing damage. They noticed that the PKK had damaged many houses. After security forces left the village, the PKK burned the remaining houses.

Violation of Article 25

It was reported to Human Rights Watch/Helsinki that in early 1995 several applicants in this petition were summoned to a gendarme station and told that the Commission was coming to the region to conduct an investigation. A government official instructed the applicants not to make statements against the government and promised aid if they went along with the scheme. The individuals in question reportedly refused this arrangement.

Commission's Ruling Regarding Alleged Violation of Article 25

As stated earlier, in its October 26, 1995 opinion the Commission ruled that the Turkish government had violated Article 25 in incidents such as the one described above. The Commission rejected the government's allegation that it had spoken with witnesses only as a legitimate part of the investigation. It expressed deep concern that applicants before it like Huseyin Akduvar and Ahmet Cicek had been openly and directly asked by government officials about their applications and had been given statements to sign indicating that they had never made such an application:

¹⁶Council of Europe, Press Release Number 621 (95), December 7, 1995. The Commission conducted evidence hearings in Diyarbakir in March 1995 and in Ankara in April 1995. The Commission excluded the petition of Huseyin Akduvar as it could not ascertain his identity. The Commission ruled that there had been a violation of Articles 8, 3, 6, 13, and Article 1 of protocol I. It ruled that there had been no violation of Articles 14 and 18.

The Commission notes with concern that the applicants, or people thought to be applicants, have been directly asked about their applications to the Commission and have been presented with statements to sign declaring that in effect that no such applications have been brought....The Commission considers it inappropriate for the domestic authorities to approach applicants, or purported applicants, and question them about their applications to the Commission in the absence of legal representatives. This is particularly so, where, as in the present case, the applicants are in a difficult and vulnerable position and where any such initiatives by the authorities could easily be understood as attempts to discourage them from pursuing their complaints....¹⁷

In its opinion, the Commission also cast severe doubt on statements that certain villagers had given to state officials supporting government assertions. It noted that many of the statements that the villagers gave to the gendarme were nearly the same and formulaic and cast doubts as to their evidentiary value in support of the government's assertions.

Aksoy vs. Turkey (Application Number 21987/93)¹⁸

Date Application Registered: June 7, 1993

Date Application Declared Admissible in Full: October 19, 1994

In the other case concerning alleged violations of Article 25 that the Commission has already adjudicated, it found that Turkey had not violated the right of individual petition, i.e. Article 25, although it did find that Turkey did violate three Articles of the Convention with regard to the applicant.

Applicant's Allegation¹⁹

Zeki Aksoy, who is now deceased, alleged that his rights had been violated under Article 3 (right not to be subjected to torture) Article 5 (right to liberty and lawful arrest), Article 6 (right to a fair trial), and Article 13 (right to an effective legal remedy before a national authority). On November 24, 1992, Zeki Aksoy was detained by police along with his brother in Kiziltepe district, Mardin province, and held over two weeks, during which time he was tortured for four days. He was given electric shock, beatings, hung by his arms, and sprayed with water. His brother was held for eleven days. Nine days after Zeki Aksoy was detained, his father Mehmet Serif Aksoy was detained and also tortured. Zeki Aksoy received no medical treatment while in custody although police brought him before an official forensic doctor who made a cursory examination in the presence of the police. He was released on December 10, 1992, by which time he could not use his hand to sign a statement. On December 21, 1992, the public state prosecutor released him for insufficient evidence. Zeki Aksoy was treated for the torture he suffered in police custody as an in-patient at Dicle University Medical Faculty from December 15 to 31, 1992.

Government Observation

The Turkish government states that Zeki Aksoy was detained at his home on November 26, 1992, on suspicion that he was a member of the Kiziltepe PKK group, and for aiding its operations and distributing its literature. Thirteen other individuals were detained during this operation. He was released on December 10, 1992, and did not complain of torture to the state prosecutor. On that same day he was examined by a doctor working at the district prefecture who

¹⁷ Akduvar and Others, Report of the Commission (10/95), para. 252, p. 37.

¹⁸ Copy available from the Council of Europe, Strasbourg, France.

¹⁹ The following account was composed from the admissibility decision, Aksoy v. Turkey, (Application Number 21987/93), the Article 31 report, Aksoy v. Turkey, Report of the Commission (10/95), and by speaking with one family member who did not wish to be identified out of fear, and one member of the Diyarbakir branch of the Human Rights Association, who commented only on what had been made public in the Article 31 report.

found no signs of torture; neither did Mr. Aksoy complain of torture or mistreatment. On December 21, charges were dropped against Zeki Aksoy and two others, while eleven others arrested in the operation were prosecuted.

Alleged Violations of Article 25

On April 16, 1994, Zeki Aksoy was murdered near his home in Kiziltepe, Mardin. The circumstances of his death point to the fact that his application to the Commission was the reason behind the murder. Immediately after his release, Zeki Aksoy reported his ill-treatment in police custody to the Diyarbakir Human Rights Association (HRA) and applied to the Commission on May 20, 1993. Harassment came almost immediately after Mr. Aksoy complained of his treatment to the HRA, which helped him file his petition to the Commission. As one family member stated, "After Zeki first applied to the HRA the threats began. Telephone calls. Death threats. We had a shop in Kiziltepe, Mardin, by the road. Police would come by and threaten us, asking, 'Why are you applying to the HRA?'"

Mahmut Sakar, the chairman of the Diyarbakir HRA, was the last person involved with Zeki Aksoy's application who spoke with him. While Mr. Sakar noted that he would have to limit his comments out of concern for confidentiality, he confirmed what was said in the Article 31 report, *Aksoy v. Turkey*, Report of the Commission, (10/95) which has been made public. According to Sakar:

In 1994, the Commission asked for more information from Zeki Aksoy. I called him on April 14, 1994. I remember the conversation very clearly. I told him that I was a lawyer from the HRA and that I was rather familiar with his case. He immediately began to complain about the threats he had received over the phone because of his application to the Commission, saying that he was constantly being followed and that he had no personal security. He also complained about us. He said that we couldn't protect or help him. We couldn't talk freely over the phone, so I told him to come to Diyarbakir from Mardin province, where he lived, so we could have a face to face meeting. Two days later April 16, 1994, he was killed in Kiziltepe, Mardin. Shortly thereafter, we talked to the family. His father told me that Zeki had received death threats to drop the case after our conversation on April 14. The father said that he would bring the case. After that he was detained and tortured. He couldn't stay in Kiziltepe and fled to Diyarbakir.²⁰

It is alleged that three or four individuals came to the Aksoy's shop in a white Renault, and took him away. The body of Zeki Aksoy was found a while later near the shop on Dokuzuncu Sok. (street), Ipekalti Mahallesi. The cause of death was gunshot wounds.

²⁰Human Rights Watch/Helsinki interview with Mahmut Sakar, December 1995. Mr. Sakar did not want to discuss the case further for reasons of confidentiality. See also *Aksoy v. Turkey*, Report of the Commission, (10/95).

After Zeki Aksoy was murdered, the family member interviewed by Human Rights Watch/Helsinki stated that Mr. Aksoy's father Mehmet Serif Aksoy was detained three times between April 1994 and November 1994 in Mardin province. According to the same witness, during this time Zeki Aksoy's father was systematically tortured, including by hanging, electric shock, and high pressure water. He was held six days during the first detention, nine days during the second detention, and four days during the last detention. During the first detention there were no demands that he drop his son's case with the Commission, but the police reportedly told him that, "The PKK killed your son, not the security forces. It was because of an intra-PKK conflict." The father refused to accept this version of the death. During the second and third detentions, the police reportedly openly threatened Mehmet Serif Aksoy in demanding he drop the case: "If you don't drop the case we will kill you. We will kill your whole family and bomb your house." The cause of his third detention appears to have been a trip to the HRA office in Diyarbakir. After his final detention, Zeki Aksoy's father left his home in Kiziltepe, Mardin and went into hiding. He suffered hearing loss from the beating received during these three detentions. In an April 29, 1994, statement given by Mehmet Serif Aksoy to the Commission and summarized in the Article 31 report, it is reported that, "The family is under constant persecution and fearful."²¹

Government Account of Zeki Aksoy's Murder

The Turkish government argues that an individual has been arrested in the death of Zeki Aksoy and is in custody. The cause of the murder appears to have been an intra-PKK fight. According to the government, the individual charged in Zeki Aksoy's murder is alleged to have committed several murders and violent acts.

Commission's Ruling on Aksoy Case and on Alleged Violation of Article 25

On October 23, 1995, the Commission referred the Aksoy case along with one other case to the European Court of Human Rights. In a report made public on December 7, 1995, the Commission expressed the opinion that there had been violations of Articles 3, 5(3), and 6(1) by votes of fifteen to one for the first two Articles and thirteen to three for the last.²²

Regarding the allegations of violation of Article 25, the Commission ruled that while it was "deeply concerned" with the allegation and with the possibility that the death of Zeki Aksoy was connected with his application, it ruled that, "the Commission notes that it does not have any evidence which would allow it to take a view on the responsibility for the applicant's death. It notes that criminal proceedings are pending in relation to this tragic event and cannot find it established that there was in fact such a link with the present application or the applicant's right of individual petition under Article 25 of the Convention.

ALLEGED VIOLATIONS OF ARTICLE 25

Akkoc v. Turkey (Application Number 22947/93 and 22948/93)²³

Date Applications Registered: November 18, 1993

Date Declared Admissible in Part or Full: October 11, 1994

Applicant's Allegations

Nebahat Akkoc, a Turkish Kurd and retired teacher, was born in 1953 and resided in Diyarbakir until her arrest in 1991.²⁴ She has filed two applications with the Commission, one, 22947/93, that alleges violation of Articles

²¹See Aksoy v. Turkey, Report of the Commission (10/95), para. 72, p. 9.

²² Press Release no. 621, December 7, 1995. Article 3, the right to be free from torture or degrading treatment, Article 5 (3), the right to be brought promptly before a judge if arrested, Article 6(1), right to a fair trial.

²³ Copy available from the Council of Europe, Strasbourg, France.

²⁴ Presently Mrs. Akkoc is appealing a three-and-one-half year sentence for aiding the PKK. She is not in custody,

2 (right to life), Article 6 (right to a fair trial), Article 10 (freedom of expression), Article 11 (freedom of assembly), Article 13 (right to an effective legal remedy before a national authority), and Article 14 (freedom from discrimination) in connection with her trade union activities and another, 22948/93, that alleges violation of Articles 2, 6, 13, 14 with regard to the death squad-style killing of her husband, Zubeyir Akkoc.²⁵

Prior to his death, Nebahat Akkoc's husband Zubeyir Akkoc was the head of the Diyarbakir branch of Egit-Sen, the education union, founded in 1990. The Diyarbakir branch was declared illegal in September 1992. Mrs. Akkoc reported that because of her work for the trade union she suffering threats and pressure, which ultimately forced her to leave her job as a teacher and give up her work as a trade union official. After police rudely disrupted a scheduled October 1992 meeting between members of Egit Sen and the National Educational Directorate, Akkoc complained to the Governor, who she said told her, "You don't raise your voice when the State's soldiers die. Why do you want to meet when teachers die?" On October 31 and November 23, 1992, Mrs. Akkoc criticized events at the National Education Directorate, as well as deficiencies in the educational system in Diyarbakir, and attacks and threats against teachers and Egit-Sen members in the newspaper *Diyarbakir Soz*. Because of those statements and her activities for Egit-Sen, Mrs. Akkoc suffered disciplinary action by the National Education Ministry under Law no. 657, which prohibits collective action by civil servants, including applications or complaints made jointly by two or more civil servants. She was also found to have violated the same law by giving unauthorized statements to the press. As a result of these findings, she suffered a reduction in pay. She also complained that she was not able to collect severance pay and that obstacles had been placed in the way of getting a pension.

Mr. Akkoc was murdered along with a colleague in an "actor unknown" murder on January 13, 1993. As head of Egit-Sen in Diyarbakir before his death, he had received anonymous telephone threats, as well as verbal harassment from police. Although the killing was investigated by the police, the perpetrators were never identified by the police and the case remains open. In June 1993, the Diyarbakir National Education Directorate decided that her husband had been killed by "persons unknown." As a result, the Pension Fund of the Republic of Turkey ruled that since her husband had not been killed carrying out his duties, it could not grant compensation and a pension.

Government's Observations

On February 28, 1994, the Commission transmitted the admissible part of application 22947/93 and all of application 22948/93 to the Turkish government. On May 6 and May 9, 1994, the Turkish government asked for an extension of one month and was granted until June 13, 1994 to submit observations. No observations were submitted by the Turkish government before or after June 13, 1994.

however.

²⁵The Commission ruled that only the applicants' charge under Article 10 was admissible in application no. 22947/93 and all the charges were admissible in case 22948/93.

Alleged Violations of Article 25²⁶

Mrs. Akkoc reported that on at least one occasion security authorities in southeastern Turkey arrested and tortured her because of her application to the Commission. According to Mrs. Akkoc, she was arrested at her home in February 1994, and questioned by police about her application to the Commission. The police ostensibly detained her in connection with charges of membership in the PKK. During that time, she suffered severe torture over a period of nine days and was held for ten days in all in what she believed to be the Gendarmerie Mobile Forces Command in Diyarbakir. Finally, a state prosecutor released her, telling her that it was not a crime to apply to the Commission and that he doubted evidence regarding her PKK membership. According to Mrs. Akkoc:

²⁶ The following information comes from an Human Rights Watch/Helsinki interview with Nebahat Akkoc, Diyarbakir, Turkey, October 1995, though the fact of her alleged harassment by security forces in connection with her application with the Commission is noted in Akkoc v. Turkey, (Application Numbers 22947/93 and 22948/93) p. 5. Mrs. Akkoc replied to questions we asked her concerning allegations of intimidation contained in Akkoc v. Turkey, (Application Numbers 22947/93 and 22948/93). She told us that her application is ongoing before the Commission and that the process is confidential. She also noted that she did not want to say anything that was not publicly known that may put her case in jeopardy. Shortly after this interview, Mrs. Akkoc was detained overnight by security officials. She has continued to be harassed since her release.

In February 1994 I was detained as a PKK member, and in March 1994 charged under Article 168, mostly based on an accusation of a person I never met. They know I'm not PKK. But under torture in February they didn't ask about this PKK membership. They asked about my connection with DEP and about my application to the Commission. They said things like, "You are complaining about Turkey abroad. We're angry about that. Why are you going to Europe, to the *gavur*."²⁷

After she was released she claims that she received death threats and other threats over the phone. Because of the continuing nature of the calls, Akkoc went to see the Diyarbakir Provincial Governor, Dogan Hatipoglu, who listened politely to her complaint of harassment and promised to look into the matter. He gave her a special number to call should she receive phoned threats again; since that time, the harassing calls have ceased.

On September 26, 1995, Nebahat Akkoc was detained again. The subject of her application came up again during the detention, but she did not give any further details. She was not badly treated on this occasion.

Tanrikulu v. Turkey (Application Number 23763/94)²⁸

Date Application Submitted: February 25, 1994

Date Application Registered: March 28, 1994

Date Declared Admissible: November 28, 1995

Applicant's Allegation²⁹

Selma Tanrikulu is the wife of Doctor Zeki Tanrikulu, born in 1958, who was serving as the head doctor of the Silvan District State Hospital when he was murdered by death squads on September 2, 1993. In connection with his murder, she alleges violation of Article 2 (right to life), Article 6 (right to a fair trial), Article 13 (right to an effective legal remedy before a national authority), and Article 14 (freedom from discrimination). Mrs. Tanrikulu has applied to the Commission because of her husband's murder. After working at a state hospital in far western Turkey in Canakkale province, where he practiced from 1986-1990, the Tanrikulu family returned to Silvan in early 1991, a time when both legal and illegal political activity in southeastern Turkey was on the rise. It was also the period when death squad assassinations began in earnest. Mrs. Tanrikulu states that:

Death squad style murders began in Silvan at the end of 1991. My husband was a doctor. He was one of the last ones killed among intellectuals, the learned, business people, and politically active Kurds. In early 1991 [shortly after his return], my husband was detained in Silvan for about two hours. They asked him, "Why did you return?" His family was in Silvan, and he wanted to help the people there. He wasn't politically radical at all. I used to kid him that I was radical compared to him. Doctors got in trouble because they gave reports to torture victims and treated all without distinction. The first medical person who was killed was Seymus Akinci. The... [second was killed] on June 10, 1992, I believe—Mehmet Emin Ayhan, a doctor at the Silvan State Hospital. They both were accused of treating PKK fighters.

²⁷*Gavur* is used as negative expression for Christians.

²⁸Copy available from the Council of Europe, Strasbourg, France.

²⁹All information unless otherwise stated from an Human Rights Watch/Helsinki interview with Mrs. Selma Tanrikulu, Diyarbakir, October 1995.

Political life in Silvan remained tense throughout 1993. In June, Dr. Tanrikulu was detained for several hours at the security directorate in Silvan. After that, a couple of policemen who Dr. Tanrikulu had treated and who were sympathetic to him came and told him, "Leave the city. If you can't, stay away from the balcony. You might be shot."³⁰ On September 2, 1993, Dr. Zeki Tanrikulu was murdered within twenty-five to fifty meters of the Silvan security directorate. According to Mrs. Tanrikulu:

My husband left the house that day to go see the district governor about a new hospital that had been built but not yet opened. I heard shooting, but I thought it can't be Zeki, not so close to the Security directorate. I ran out and saw my Zeki laying on the ground, bleeding. I saw two men running towards the security directorate, making a large circle as if they wanted to enter from behind. One had blond hair, maybe twenty-one years old. The other was darker. I started to run after them, shouting, "The murderers are getting away," but then I went back to my husband. There was a great deal of blood; I knew he was going to die. Special teams were there, about ten. They prevented people from leaving their homes and started to make people go back inside.³¹ Someone told me he saw the two men run into the Security directorate.

Government's Observation

The government states that the Public Prosecutor of the Diyarbakir State Security Court is presently investigating the case, although no suspects have been apprehended. The government reports that an autopsy, ballistic work, and an on-site inspection of the murder scene was conducted. The government also argues that Dr. Tanrikulu's detention in April 1993—not June, as Mrs. Tanrikulu claims—was in no way connected with his death. The government also states that Mrs. Tanrikulu did not sign power of attorney over to her representatives, which could have been grounds for dismissing the case.³²

Alleged Violation of Article 25

Mrs. Tanrikulu submitted her application to the Commission in February 1994, five months after her husband's death, because she had little faith that local authorities would conduct a proper investigation. She claims that the police did not take her statement, although she was a principal witness to the killing.³³ Unlike the other cases investigated in this report, the threats against Mrs. Tanrikulu were either indirect or couched in the form of "friendly advice." In November 1993, Mrs. Tanrikulu and her two children left Silvan for Diyarbakir because of rumors that she heard that she would be killed and her house would be bombed. She also realized that she was pregnant. In March 1994, the police came to Mrs. Tanrikulu's home, kicked the door, asked the building superintendent about a man who did not live in the building, and left. Roughly at the same time, in her effort to get compensation for her husband's death, she went to see Yilmaz Aydogan, who was an assistant to the governor of Diyarbakir. According to Mrs. Tanrikulu, he made the following statement during the meeting. "Did you see. The doctor didn't listen to us. See how we managed to have him killed.... We tried to have him leave the city. We will protect you, but your husband was from the PKK." In June, the police went to Mrs. Tanrikulu's home again. Mrs. Tanrikulu was at the household goods shops she runs. Her babysitter was there, and she told the police that Selma Tanrikulu was at her shop and would wait for them. "The police came to my shop and said they were looking for me and that they had orders to arrest me. They then waited, had tea, and then said they were looking for a certain Mehmet who had given my address. They then left. After this the police came to my house several other times looking for different people."

³⁰According to the description Mrs. Tanrikulu gave, their apartment was in view of the Silvan security directorate and the district governor's office (*Kaymakam*).

³¹Special Teams, *Ozel Tim*, are specially-trained anti-terror police with a reputation for abusive behavior against the civilian population in southeastern Turkey.

³²Mrs. Tanrikulu's representatives rebutted this assertion and stated that the applicant had confirmed her power of attorney. The Commission ruled in favor of Mrs. Tanrikulu.

³³The admissibility decision states that Mrs. Tanrikulu asked for a guarantee of safety for herself, members of her family, and those who helped in her application.

In early fall 1994, the police visited Mrs. Tanrikulu's home once more. She was not home, but the officers left a summons for her to appear at the Diyarbakir State Security Court in the morning. There she was confronted with her application to the European Human Rights Commission and told that "things would be better for her" if she withdrew her application. According to Mrs. Tanrikulu:

I was worried when I walked in, but I didn't think that it had anything to do with my application to the ECHR because I didn't believe the Commission would send my file back to the Turkish government...The state prosecutor put a file in front of me and angrily said, "Is this yours?" I looked at it, it was in English, but I saw a misspelled version of my name. The prosecutor then said, "You made a complaint against us?" I looked back and told him that I had made a complaint against the state and that the file was mine, although my name had been misspelled. I felt like I was a suspect, rather than the plaintiff. He asked me why I had not come to them and gone to Europe instead, but I told him that I didn't trust the legal system in Turkey because I was a witness to my husband's murder and no one from the state came to take my statement.³⁴

The prosecutor then started to cajole Mrs. Tanrikulu to withdraw her case. He promised to help her obtain compensation for her husband's death. According to Mrs. Tanrikulu,

The prosecutor started to act like a father to me. He said things like, "You have nobody. You are young. You are both a mother and father to your children. They need you. You cannot benefit from this. I advise you to please withdraw your case. It won't work out for you. Don't trust in Europe. They will not give you anything. Why should you destroy your peace of mind by trusting in Europe?" He kept playing on my children. He also kept asking me who advised me to apply. He also said that he would help me get the compensation I sought. I finally said that I would not drop the case, and the discussion ended.³⁵

Since that meeting, Mrs. Tanrikulu has had no open, direct appeals for her to drop her case with the Commission. She believes, however, that she is sometimes followed by security officials, who also drop by her shop quite often and linger or look in the windows. On several occasions they have come to her shop in her absence to inquire about her.

Sen v. Turkey, (Application Number 25354/94)

Date Application Registered: September 1994

Date Declared Admissible: March 5, 1996

Applicant's Allegations

³⁴ Human Rights Watch/Helsinki interview with Mrs. Selma Tanrikulu, Diyarbakir, October 1995.

³⁵ Ibid. At the end of 1994, Mrs. Tanrikulu received her compensation, although it is unknown what role the prosecutor's promise played in her obtaining the compensation.

Nuray Sen has applied to the Commission on behalf of her husband, who was murdered apparently while in police custody in March 1994.³⁶ Mrs. Sen, who is presently in custody following a November 10, 1995 police raid on the Diyarbakir branch of the Mesopotamian Cultural Center ("Mezopotamya Kultur Merkezi"), alleges violations of Article 2, right to life, Article 3, right not to be subjected to torture, Article 6, right to a fair trial, Article 13, right to an effective legal remedy before a national authority, and Article 14, discrimination.³⁷ Born in 1945, Mehmet Sen, the husband of Nuray Sen, was politically-active and a candidate for mayor on the pro-Kurdish Democracy Party (DEP) list in Aryan, Birecik district, Urfa province in local elections that were held on March 27, 1994.³⁸ The Sens had three children; two of them are presently in exile because of state pressure. Mehmet Sen ran a small coffee house in Nizip, a district of Gaziantep province. Nuray Sen was a teacher for seventeen years and the Nizip teachers' union representative (*Egit-Sen*). According to Nuray Sen, "The period running up to the elections was very tense. All the members of our family were kept in a sort of "house arrest." There was a police car in front of our house all the time and verbal threats." Finally, Mehmet Sen withdrew from the elections. Mehmet Sen was taken by several men from his coffee house on the evening of March 26; his body was found several days later. According to his wife:

On the evening of March 25, my husband said that two men whom he didn't recognize had been following him for a couple of days. He thought they were counter-guerillas. The next day my husband went to his coffee shop, the Cagdas Cafe. From talks had with witnesses who were there, I was able to piece together the following chronology. At around 5:00p.m. that evening two plainclothes policemen came to the coffee shop, drank tea, used the phone to make a call. At about 7:00p.m. they returned with three other men in a car, a Dogan with the license plate 34 PLT 30. Three men got out, went into my husband's cafe, and asked a man who looked like my husband if he were Mehmet Sen. He says no. They then find my husband and identify themselves as police, ask him if he has weapons, and tell him that he must go with them to the security directorate. He resists, but they drag him off and put him in a car. Another car with four men in it pulled out behind the Dogan. The individuals who told me this reportedly told the same to the prosecutor in Nizip. But they were taken to the Gendarmerie station and changed their statements. One of them told me, "I am frightened, they will kill me."³⁹

Over the next two days, Mrs. Sen or others called the security directorates in Nizip, Gaziantep, Urfa, and Birecik. "In spite of all my applications, I got the same answer: "We don't have him. We have no information." Then the Social Democratic People's Party (SHP) member of Parliament for Gaziantep, Bahattin Alagoz and the Nizip SHP chairman Cagatay Ozaslan also promised to help.⁴⁰ They met with officers from the Security directorate in Gaziantep, who stated that the license plate was false and that these plates were used by the security directorate in Adana. Then she went with some people from the Human Rights Association Gaziantep branch to the Gaziantep security directorate. They were told that the PKK had kidnaped her husband. After that Mrs. Sen went to the security directorate in Adana and asked them what she could do and whom she should apply to. According to Mrs. Sen, "They asked me, 'what are you after. Nothing can be done. Go home and wait, the investigation is continuing.'"

³⁶Human Rights Watch/Helsinki interview with Nuray Sen, Turkey, October 1995. Information comes from Nuray Sen unless otherwise stated. Mrs. Sen was forced to flee her home and has taken refuge in a western Turkish city.

³⁷Human Rights Foundation of Turkey, Documentation Center, November 27, 1995. Reportedly she was ill-treated during her arrest and detention. A hearing was held on February 17, 1996 regarding a case against Mrs. Sen.

³⁸DEP, a pro-Kurdish party, was closed in mid-1994 and several members of parliament from the DEP were tried and found guilty of having links with the outlawed PKK. HADEP, or the People's Labor Party, replaced DEP.

³⁹"Counter-guerrillas" is slang used to mean members of death squads alleged to have links with security forces.

⁴⁰SHP, the Social Democratic Populist Party, was the junior partner in a coalition government that ruled in Turkey from late 1991-September 1995. The SHP later closed down and merged with CHP, the Republican People's Party.

On March 30, 1994, an unidentified women called the offices of DEP, and *Ozgur Gundem* newspaper and said that Mehmet Sen's body was in the Gaziantep morgue. Mrs. Sen identified the body, which had severe signs of torture, including an eye that had been gouged out. "The *Adli Tip* autopsy report said that he had been killed by a bullet wound, but he must have died under torture, his body was so mutilated."⁴¹

Not long after her husband's death, Mrs. Sen began the process of applying to the Commission because, as she explained, "I had to do everything. No one was really asking questions about my husband's death. For example, in September 1995, I spoke with my lawyer, who said there is no investigation into my husband's murder."

Government's Observations

The government's response to the Commission said that according to witness statements, the men who came into the cafe had not identified themselves as police officers and no one could see a police identity card. In addition, one witness is said to have stated that Mehmet Sen left the cafe with the men as if he had known them. On March 29, 1994, the body of Mehmet Sen was found in a yard near the Kahramanmaraş-Gaziantep highway. An autopsy was carried out that day that showed death due to a bullet wound. It reported no signs of assault or torture. The Nizip Public Prosecutor started an investigation, but on May 18, 1994, ruled that it did not have jurisdiction and sent the case to the Gaziantep Public Prosecutor. An inquiry is still pending, but early indications show that Mehmet Sen was not taken into custody by security officers.

Alleged Violation of Article 25

Mrs. Sen was repeatedly threatened at least three times by the police after her husband's death. First, according to Mrs. Sen, an unmarked police car was regularly in front of her home even after her husband's death and her phone, she believed, was tapped. "Our phone was bugged. You could hear strange noises and often communications from police radios." Once, in April, police in front of her house cursed her, warning that, "You talk too much. You will end up like Mehmet Sen. You will pay for that."

The next threat came in the form of a raid against the Sen's home in Nizip on May 28, 1994. According to Mrs. Sen:

I spoke openly about the fact that I was going to apply to the Commission on the phone. I talked to the Diyarbakir HRA office just before the raid. They needed some additional documents. I wasn't home the night my home was raided. I was in Gaziantep, it got late, and I was afraid to travel home at night because of the checkpoints. My neighbors told me that the police first tried to open the door with keys, which I think were my husband's. I changed the lock, so they couldn't get in and began to pound on the door. They then proceeded to the home of a friend where my twelve year old daughter was spending the night. He was detained that night and my daughter was slapped several times by the police, given death threats, and called a terrorist.

In May a newspaper report stated that a man who had the same family name as Mehmet Sen, Yusuf Sen, was stopped by police and special team members on the Gaziantep-Birecik road near Nizip. He was allegedly verbally harassed and physically abused for two hours. According to the account Mr. Yusuf Sen gave the paper:

They told me that I was Mehmet Sen's relative and that the same things that happened to him could fall on my head....they said that I was a PKK member and should go to the mountains. They took me inside an olive grove by the side of the road and hit me for about two hours.⁴²

⁴¹*Adli Tip* is shorthand for the State Forensic Institute that conducts official autopsies.

⁴²*Ozgur Ulke*, Istanbul, May 13, 1994.

A few days after this raid, Mrs. Sen and her daughter secretly fled Nizip. After this, a family member was detained three times in one month in order to find out where she was. "The police asked him, 'Where is Nuray Sen? We will find out where she is.' They even made him swear on a Koran."

Niyazi Bulgan is Nuray Sen's lawyer and familiar with the case. He believes that her life was in danger, especially after she made her application to the Gaziantep State Prosecutor's office to open a case against the police. According to Mr. Bulgan, "I know personally that she was in hiding for a long time with her daughter. After her application to the prosecutor's office, the murderers of her husband wanted to get her and at the very least to intimidate her."⁴³ Mr. Bulgan also thinks that the likelihood that domestic remedies will work, i.e that the Turkish legal system will bring to justice those guilty for the death of Mehmet Sen, are slim:

Her husband was kidnaped and killed. The main suspect is the counter-guerrillas, which has connections to the state. No one has any doubt about this. The manner in which he was killed all points towards this: The killers had radios in their hands, acted with great self-confidence, and wore police style clothes. The state prosecutor doesn't give any information to me about the case because the outcome is clear—no further investigation.

Kurt v. Turkey (Application No. 24276/94)⁴⁴

Date Application Registered: June 6, 1994

Date Application Declared Admissible: May 25, 1995

In the case of Koceri Kurt, rather than employ force or intimidation, authorities are alleged to have convinced or tricked the applicant into withdrawing her case. Human Rights Watch/Helsinki was unable to interview the individual in question, an elderly Kurdish woman; rather, all the information comes from the admissibility decision on her case.

Under Article 30 of the Convention, the Commission has several options when an applicant wishes to withdraw her case. It may remove a case from a docket, "where the circumstances lead to the conclusion that the applicant does not intend to pursue the petition..." Or, the Commission can "continue the examination of a petition if respect for Human Rights as defined in this convention so requires." The Commission can also reopen a case if "the circumstances justify such a course." In the Kurt case, the Commission chose to continue the case.

Applicant's Allegation

The applicant alleges that the following rights were violated: Article 2 (right to life); Article 3 (freedom from torture); Article 5 (right to liberty and lawful arrest); Article 13 (right to an effective legal remedy before a national authority); Article 14 (freedom from discrimination); Article 18 (restrictions allowed under the Convention shall only be used for intended purpose). According to the initial complaint, during a military operation on November 24, 1993, the son of Koceri Kurt, Uzeyir Kurt, thirty-five years old, was detained by soldiers in Agilli village in the Dicle district of Diyarbakir. On November 25, 1993, Koceri Kurt saw her son in the village being guarded by soldiers. It appeared that he had been mistreated and tortured. In the admissibility decision, Kurt is quoted as stating that, "I saw swellings around my son's eyes, they had tortured him." That is the last time Uzeyir Kurt was seen. Between November 29 and December 15, 1993, Koceri Kurt applied to the Bismil State Prosecutor's office, the State Prosecutor of Bismil, and the Office of the Chief Prosecutor of the State Security Court. The only answers she received was either that her son had not been taken into custody or that he may have been kidnaped by the PKK.

Government's Observation

The Turkish government alleges that soldiers clashed with PKK militants who came to extort money from the village of Agilli on November 23, 1993. It said a sergeant and three militants died, and weapons stores were found in

⁴³Human Rights Watch/Helsinki interview, Gaziantep, October 11, 1995.

⁴⁴ Copy available from the Council Of Europe, Strasbourg, France.

some houses. Twelve people detained in the operation, including Uzeyir Kurt, were, by the government's account, released on November 25, 1993. The government contends that PKK militants kidnapped Uzeyir Kurt and added that the PKK later forced the villagers to leave their homes.. Also, it said that statements by other family members and villagers refute the allegations of Koceri Kurt.

Alleged Violation of Article 25

On January 23, 1995, Koceri Kurt's legal representatives wrote to the Commission. In this correspondence, they stated that on December 7, 1994, two relatives of Koceri Kurt, Uzeyir's sixteen-year-old sister and his sister-in-law, as well as two other individuals named in the application, were detained. In addition, raids were carried out against the homes of Hasan Kilic and Uzeyir Kurt's older brother. On December 9, 1994, Koceri Kurt withdrew her application in a letter to the HRA. A conversation that the applicant had with an HRA member indicates, however, that Koceri Kurt withdrew her application under threat from the gendarmerie.

In a letter of February 9, 1995, the Turkish government enclosed a notarized statement by Koceri Kurt dated January 6, 1995, in which she revoked all petitions to the Commission and complained that efforts to find her son "had been distorted and exploited without her knowledge or consent for the purposes of PKK propaganda."⁴⁵ Later, the government denied that any of the persons mentioned by Koceri Kurt's legal representatives had been detained and reported that on December 7, 1994, eleven individuals including Koceri Kurt, family members, and villagers, gave statements to the gendarmerie regarding the case at the request of the Justice Ministry and then freely left. In a letter dated April 12, 1995, the applicant's` representatives indicated that two further raids had been carried out on Koceri Kurt's house, but that she wanted to continue the case.

Although the Turkish government argued that the case be dropped, the Commission ruled under Article 30 that it would continue to hear Koceri Kurt's petition. The decision was based on two principles. First, the Commission decided that while the notarized letter of Koceri Kurt complained that her petition had been misused for PKK propaganda, "there is no clear retraction as regards the central factual elements of the application..." Second, it decided that because a doubt existed regarding the withdrawal of the petition, it would continue to hear the case. The Commission ruled that:

The Commission has also....examined with concern the grave allegations made by the applicant's representatives in regard to intimidation of the applicant and members of her family. Its notes the Government's denial of these allegations. It considers however that where there exists a doubt as to the voluntariness of a withdrawal of an application it would run counter to the efficacy of the system of protection of human rights set up under the European Convention of Human Rights to discontinue its examination of the case. *In the current state of the application, the Commission finds that elements exist which raise such a doubt.*⁴⁶

Tepe v. Turkey
Submitted to the Commission March 1995
Admissibility Decision Pending

Applicant's Allegations

⁴⁵ Kurt v. Turkey (Application Number 24276/94), page 5.

⁴⁶ *Italics added.*

Ferhat Tepe worked as the Bitlis reporter for the now-banned *Ozgur Gundem* newspaper. Bitlis, a province located in southeastern Turkey, is predominately Kurdish. On June 28, 1993, when he was nineteen years old, Ferhat Tepe disappeared after meeting two men in a garden near the Semsî primary school in Bitlis who were believed to be police or connected with the security forces. Shortly thereafter, on July 29, 1993, an individual telephoned Ferhat Tepe's parents and said that the Turkish Revenge Brigade ("Turk Intikam Tugayi") had kidnapped Ferhat and listed four demands. Mr. Tepe petitioned to the Bitlis Provincial Governor's office and Provincial Security Directorate, the Ministry of the Interior, the Emergency Rule (OHAL) Governor's Office in Diyarbakir, the chief of staff, and the prime minister's office. In early August 1993, Ferhat Tepe's body was found near a lake in Elazig province, north of Bitlis, bearing marks of torture.

His father, Ihsak Tepe, was a well-off and respected man in Bitlis. He was the provincial administrator for DEP and had been an aide to the mayor of the city as well as a candidate for the post himself. Ihsak Tepe conducted his own investigation of sorts, some of the findings of which came out in the book *Bizim Ferhat*.⁴⁷ According to Mr. Tepe:

A day or so before the murder, two plainclothes police came to the shop over which we live and asked for Ferhat Tepe. Later Ferhat gets a phone call from police, who told him to meet them in a garden by a school about five hundred meters from the *Ozgur Gundem* office in Bitlis. I gave the names of these witnesses, a teenage boy playing football in the park and the owner of the shop under my store. On the first day or so of Ferhat's disappearance, I called the shopkeeper and introduced him to the police. The police threatened him in front of me. He then was taken to the police station and gave a different story. His mother came to me and said, "Leave us alone. I don't want my son to be killed. He can't be a witness." This individual has since left the area. The boy playing football went to the police and told what he said. He was visiting his grandfather and actually lives in western Turkey. His grandfather has since come to me and said, "I don't want my grandson to be killed. He cannot testify. In the spring of 1994, I went to the local authorities in Bitlis to find out about the course of the investigation into my son's murder, but they were not at all helpful and said that little would come of it.

Government's Observations

Because there has been no admissibility decision, the government's observations have not been made public.

Alleged Violations of Article 25

Because of the lack of progress with domestic remedies, Ihsak Tepe decided to apply to the Commission. In November 1994, he sent his application from Turkey to legal counsel in England, who submitted it to the Commission in March 1995. While in the past Ihsak Tepe had received threats because of his role as the Bitlis provincial chief of the now banned DEP party and had been telephoned anonymously "to drop" the investigation into his son's murder, after his application to the Commission the telephone threats referred explicitly to his complaint to the Commission. According to Ihsak Tepe:

⁴⁷ A. Kadir Konuk, editor, *Bizim Ferhat: Bir Cinayetin Anatomisi (Our Ferhat: The Anatomy of a Murder)*, (Istanbul: Belge Press, 1994). Another individual who worked on the book was Sayfettin Tepe, Ferhat's cousin and also a journalist. He died in August 1995 in Bitlis while in police custody. See below.

After the application, there were numerous phone calls. This time they adopted a new style. Individuals would call up and say things like, "The Turkish state is great. We will not kneel down to foreign arrogance. Foreigners can't save you. Until we left our home in Bitlis in January 1995 we received these threats. I haven't gone back to Bitlis since then."⁴⁸

On February 23, 1996, it was reported that Ihsak Tepe was detained by police in Barton and sent back to Bitlis for interrogation.⁴⁹

On August 29, 1995, Sayfettin Tepe, a cousin of Talat Tepe and nephew of Ihsak Tepe, died in police custody in the Bitlis Security Directorate. At the time Sayfettin Tepe was working for the now banned *Yeni Politika* newspaper, a successor to the banned *Ozgur Gundem* newspaper. Police authorities claimed that Sayfettin Tepe committed suicide, while a lawyer investigating his case, his uncle Talat Tepe, charges the police with the death.⁵⁰ Several people told us that Sayfettin had been investigating the murder of his cousin Ferhat Tepe. An individual knowledgeable about the deaths of Ferhat and Sayfettin Tepe told us that, "The Ferhat Tepe case has taken on a special dimension. The state was angry that the Tepes helped collaborate on the book, *Bizim Ferhat (Our Ferhat)*. The book was confiscated. He was killed especially for that reason. I think Sayfettin would have testified in the case of Ferhat before the Commission. They were thinking of calling him as a witness."⁵¹ While Human Rights Watch/Helsinki cannot independently verify whether or not there is a link between the death of Sayfettin Tepe and his work in investigating the death of his cousin Ferhat Tepe, we urge the Commission and the Turkish government to investigate these two deaths.

Kapan v. Turkey (Application Number 22057/93)
Case Submitted May 1993
Admissibility Decision Pending

Applicant's Allegation

In November 1992, in the Mazidagi district of Mardin province, Siyamet Kapan was wounded by unknown gunmen and hospitalized in the Diyarbakir State Hospital. Two relatives whom he was with at the time were killed in the attack. He submitted his application to the Commission in May 1993, charging violations under Article 2 (right to life), Article 3 (freedom from torture), Article 6 (right to a fair trial), Article 13 (right to an effective legal remedy before a national authority), and Article 14 (freedom from discrimination) of the Convention. To our knowledge, the Commission held an inconclusive procedural hearing on October 19, 1995.⁵²

Government's Observations

Because the case has not yet been declared admissible, the government's observations remain private.

Alleged Violations of Article 25

⁴⁸ Human Rights Watch/Helsinki interview, Turkey, October 1995.

⁴⁹ Human Rights Foundation of Turkey, Documentation Center, February 26, 1996.

⁵⁰ At a press conference held in Istanbul on September 8, 1995, Talat Tepe stated that, "Rupture and ecchymosis which must be seen on the neck muscles in an autopsy on a person being hanged, were not stated in the autopsy report. Rupture in the internal layer of carotid artery and bleeding in the neck tissues below the trace of hanging, both of which must be determined in such a case, were not stated either." Reported in Human Rights Foundation of Turkey, Documentation Center, Istanbul, Monday, September 11, 1995.

⁵¹ Human Rights Watch/Helsinki interview, Istanbul, October 1995.

⁵² Council of Europe, Press Release Number 518 (95), Communique issued by the Secretary to the European Commission of Human Rights, October 19, 1995.

Rozan Alicioglu worked at the Diyarbakir branch of the Human Rights Association of Turkey.⁵³ Her main task was taking statements from applicants applying to the Commission. She knew quite well both Siyamet Kapan and his wife and met with them often, visiting Siyamet while he was hospitalized for his injuries suffered in the attack.

According to Rozan Alicioglu, Siyamet Kapan and his wife experienced threats and harassment from security forces almost as soon as he went to the Diyarbakir office of the Human Rights Association in the spring of 1993:

A friend I knew was a relative of the Kapans who was also visiting at the hospital, so we were quickly able to establish a bond between us....Later they came together to the HRA office and gave their statement. I want to open a case they said. We talked and I took their statement....Sometime later Siyamet's wife came back. "I'm under a great threat," she said. I want to withdraw [the case], she said. I asked how she was being threatened, and she, "By telephone," she said, "they call, [saying] 'Look, you complain to Europe about Turkey, you've applied to a court there.'" She also complained about the fact that the Gendarme took them to the police station for questioning and also threatened them and told them to drop the case.

According to Alicioglu, the Kapans then asked if it were possible to make their application anonymously. Mrs. Kapan told, "Other people died in the incident. Only my husband remained alive. I don't want his death in the future. Can we keep our application secret?" In 1994, Alicioglu reports that Siyamet Kapan told her that he was being called to the Gendarme station in Mazidagi and threatened to withdraw his case. According to her, "He said, 'I'm afraid.' He said they wanted him to withdraw the case and told him, 'You will die. You will be killed.'" He always would say that if he were in better financial shape he would leave Mazidagi immediately."

Later that year, it became difficult to travel to or from Mazidagi because of increased security in the region, and Alicioglu fell out of contact with the Kapans. To our knowledge the Kapans have not withdrawn their case.

The Case of M. Sakir Basak

In the case of M. Sakir Basak, the plaintiff had not even made an official submission to the Commission but was allegedly harassed by police officers in Izmir after they detained him and discovered a power of attorney statement for a case he planned to file with the Commission.⁵⁴ The case involved the May 1995 burning of the applicant's home village in Mardin province in which three individuals were killed. On May 19, 1995, Besir Basak, the uncle of M. Sakir Basak, applied to the Izmir branch of the HRA, alleging that on March 17, 1995, village guards murdered three men in the family's home village of Kayabasi, Omerli district, Mardin province as the village guards were burning the village. On May 23, 1995, the Izmir branch of the Human Rights Association (HRA) sent these allegations to the State Ministry for Human Rights in Ankara asking the ministry to investigate the event. On August 14, 1995, State Minister for Human Rights Algan Hacaloglu responded that according to the Mardin Provincial Governorate the men in question died on May 16, 1995 at Kayaballi village during a clash between PKK militants and members of the security forces.

After this, M. Sakir Basak decided to apply to the Commission and gave several lawyers power of attorney to represent him concerning the alleged burning of Kayaballi village.

On August 30, 1995, M. Sakir Basak alleges that on his way home he was detained by four men who identified themselves as police and forced him into a car. He said that these individuals threatened, insulted, and beat him in an

⁵³In September 1994, Rozan Alicioglu fled Turkey because of pressure she faced from security forces stemming from her work at the Human Rights Association. Information on this case comes from a Human Rights Watch/Helsinki interview with her, Sursee, Switzerland, September 30, 1995. See also section, "Harassment of Lawyers and Paralegals who File Petitions to the European Commission on Human Rights."

⁵⁴This and the following information comes from an October 16, 1995 Human Rights Watch/Helsinki interview in Izmir with Ismail Kavak, M. Sakir Basak's lawyer, and from a complaint filed to the Izmir State Prosecutor's Office by Mr. Kavak in behalf of M. Sakir Basak.

uninhabited area. According to a statement M. Sakir Basak gave to his lawyer, the police began to insult and hit him after they discovered the above mentioned power of attorney statement and a booklet titled, "What do you think of the Messiah?" They then hit him in the head with a gun and conducted a mock execution. According to Mr. Basak, they warned that, "This time the weapon is empty, but if you go on like this you won't be so lucky the next time." When he asked the men what his crime was, he was told, "How more can you be guilty: you go to church and by complaining against Turkey you commit treachery...We know where you're coming and going...go and withdraw your application from the attorneys."

The Case of "K.O."⁵⁵

Applicant's Allegation

In 1992, the *muhtar* (head man) of a village in his early fifties, K.O., was detained by security forces and after several days of torture died. The villagers had been under pressure to become village guards, but the headman had consistently refused. The body was returned to the family with the explanation that the man had died of a sudden illness while in detention. When the family received the body, marks of torture were clearly visible. Other individuals who had been detained with K.O. reported that he had suffered severe torture. State authorities initially did little to investigate the death, so the family decided to apply to the Commission.

Alleged Violation of Article 25

In 1994, the applicant to the Commission was called to a gendarme station in southeastern Turkey where he was asked to sign several papers he was told were connected with the case. Since the applicant is poorly educated, he later said he did not realize that he had signed a statement to the Commission asking them to withdraw his case. In the meantime the body of K.O. had been exhumed and sent to *Adli Tip* for a new autopsy.

In the summer of 1995, the applicant called a member of the Human Rights Association (HRA) familiar with the event to find out the progress of the applicant's petition to the Commission. The HRA member told the applicant that he had sent a letter to the commission asking it to withdraw the case, which came as a great surprise to the individual. He then related, however, the above story and realized that the papers he had signed in 1994 in the Gendarme station were to withdraw the case. The applicant stated that he had never intended to withdraw his case and wanted to reopen the petition.⁵⁶

HARASSMENT OF LAWYERS AND PARALEGALS INVOLVED IN FILING PETITIONS TO THE EUROPEAN COMMISSION OF HUMAN RIGHTS

⁵⁵Initials are a pseudonym. Information pieced together from various sources, whose identities must be withheld..

⁵⁶Two Human Rights Watch/Helsinki interviews. Turkey, October 1995.

Lawyers in southeastern Turkey who file petitions with the Commission have been an object of a persistent pattern of harassment.⁵⁷ In November and December 1993, for example, sixteen lawyers and six others were put on trial in Diyarbakir charged with membership in the PKK. The indictment stated that making petitions to the Commission was a sign of PKK membership.⁵⁸ Much of this seems to be motivated by the fact that the government contends that some applications filed—especially from the southeast—abuse the right of petition on the grounds that they are filed for propaganda purposes for the PKK, rather than for a legitimate reason.⁵⁹ In the cases cited, however, the Commission has clearly refuted that argument. In *Akduvar and Others v. Turkey* (Application Number 21893/93), which deals with allegations of a village burning by security forces, the Commission argued that,

The Government maintains that the application, being devoid of any sound judicial basis, has been lodged for the purpose of political propaganda against the Turkish Government. Accordingly, the application constitutes an abuse of the right of petition which discredits the legal nature of the Convention control mechanism....The Commission considers that the Government's argument could only be accepted if it were clear that the application was based on untrue facts. However, this is far from clear at the present stage of the proceedings, and it is therefore impossible to reject the application on this ground.⁶⁰

On February 27, 1995, eleven individuals, including members of HADEP, the legal pro-Kurdish political party, and members of the Diyarbakir Human Rights Association (HRA), were arrested and eventually charged with PKK membership.⁶¹ In part, the indictment stated that a meeting had been held where it had been decided to "negatively propagandize to hinder entry into the Customs Union and the European Union....and make PKK propaganda through committees to be formed." The indictment also charged that Servet Ayhan, an HRA member who helped prepare applications to the Commission, "dealt with representatives coming as the result of their sending unfounded petitions to Europe, that he provided them biased information against Turkey, and that he conducted PKK terrorist organisation propaganda." In an interview with a representative of the Bar of England and Wales Human Rights Committee, Bekir Selcuk, chief state security court prosecutor for the Emergency Rule Region, stated that references in the indictment to communications between the defendants and third parties were meant to refer to unfounded and frivolous applications to the Commission.⁶²

Servet Ayhan's statement to police, which was allegedly taken under torture, underscores the attempt by police to target him for his activity in helping prepare applications to the Commission. In a written statement by Servet Ayhan given to Human Rights Watch/Helsinki, Ayhan refutes these charges and alleges mistreatment. Ayhan started preparing statements for applicants to the Commission after the individual who normally did it, Mahmut Sakar, a lawyer and Human Rights Association member, was arrested in December 1994 and charged with PKK membership largely for three human rights reports the Diyarbakir HRA issued. The following is the portion of Ayhan's police

⁵⁷ See *European Convention Under Attack*. See also footnote 10.

⁵⁸ *Ibid.*, p. 3.

⁵⁹ See some of the following cases: *Akduvar and Others v. Turkey* (Application Number 21893/93); *Aksoy v. Turkey* (Application Number 21987/93); *Demir v. Turkey* (Application Number 22280/93); *Kilic v. Turkey* (Application Number 22492/93); *Tekin v. Turkey* (Application Number 22496/93).

⁶⁰ *Akduvar and Others v. Turkey* (Application Number 21893/93), p.12.

⁶¹ See Turkish Republic Diyarbakir State Security Court Chief State Prosecution Indictment No. 1995/561, March 22, 1995.

⁶² *European Convention Under Attack*, p. 16.

statement dealing with the Commission and the Diyarbakir HRA's work in filing applications. The statement was taken under duress.⁶³

[Police] Question:

During the time you worked at the [Diyarbakir] Human Rights Association, the petitions connected with human rights violations that you sent to Europe were groundless. As far as you know why were these done and by which intermediary? What was your goal? Please expound on what you know connected with this subject.

Response:

When I first started working serving tea at the IHD and DEP party office I wasn't doing this work. Earlier the person who was doing this work is the lawyer Mahmut Sakar, who is presently arrested and in jail on trial. He himself had one goal. To make propaganda for the illegal terror organization PKK that carries out armed actions and to found a Kurdish state in the region. He did so continuously during that time together with the lawyer Abdullah Cager, Neytullah Gunduz, Melike Alp, Hayri Veznedaroglu, who were working with him, and the Director Halit Temli, who has an arrest warrant out on him. Mahmut Sakar used to write petitions to Europe saying that human rights are abused and people are tortured in Turkey. Citizens used to come from the human rights association, [foreign] consulates, and democratic organizations. As I said earlier, these friends were arrested and I started to take an interest in this work and I took responsibility for this work of Mahmut Sakar. When I said I was a tea server no one would get suspicious. I did the work rather peacefully. Here is an example. When a citizen would come we would say we know those who burnt your village and would write a petition for them. They would sign the petition and we would take it and send it to Europe; if we couldn't send it to Europe we would send it to the US Consulate located in Adana. If we couldn't send it to Europe we would send it to the interested parties. Because of our connections in Europe this work could be done with ease. In Europe, a friend by the name of Kerim Yildiz receives [them] and processes the business with ease [there] with the result that the European Human Rights Commission would come to Turkey. When the Commission came to Turkey we would meet with them in garages. We would provide them the necessary help and bring them to the burned out villages. We would set up meetings [for them] with villagers who had left their villages. We would create the image that these events were continually done by the security forces and in such a way a report would be prepared. Sometimes we ourselves would write lying, unfounded petitions about citizens who themselves had not even come [to us] and we would send these lying, unfounded petitions along this route.... This is my work: to make false, lying, unfounded human rights petition and by means of these false, lying, unfounded human rights petitions to conduct propaganda of the PKK terror organization and to send them to Europe....

⁶³Ifade Tutanagi ("Statement Minutes,") March 5, 1995. The language that Ayhan uses in this statement in itself suggests that it was not given voluntarily. For example, he constantly refers to the PKK as the "illegal PKK terrorist organization," which is the standard state reference to the armed group.

Servet Ayhan, who is in hiding, refuted this police statement in an informal written statement forwarded to Human Rights Watch/Helsinki. Servat Ayhan started working at the Diyarbakir branch of the Human Rights Association in late 1993. Among his duties was taking statements from individuals who wanted to file complaints with the Commission. He was detained along with several others from the office of this office on February 27, 1995, by plainclothes police. In early March eleven individuals were charged with membership in the PKK and several—including Servet Ayhan—were remanded into custody until May 1, 1995, the date of the first hearing.⁶⁴

According to his account, for approximately four days Servet Ayhan was given little to eat or drink and beaten with fists and kicked. A loud radio playing twenty-four hours a day prevented sleep. On three separate occasions he was systematically tortured including being stripped naked and sprayed with high-pressure water, being hanged by his arms, and having his genitals squeezed. He also reported receiving death threats from police officials while in detention. According to Ayhan, "The interrogators wanted me to make statements to the effect that there was a connection between the Human Rights Association and the PKK and that the cases that we helped bring before the Commission were frivolous or made up. They also wanted me to say that many foreign human rights activists, including Kerim Yildiz, who files case with the Commission, had connections with the PKK. They bragged that they received all documents relating to cases we filed with the Commission."

⁶⁴At that hearing the defense lawyers asked for bail, which the prosecutor to the surprise of many in the courtroom agreed to grant for all but two. All the defendants denied the charges and alleged that their statements had been taken under duress.

From mid-1992 to June 1994, Rozan Alicioglu worked at the Diyarbakir Human Rights Association office. Like Ayhan, she reported suffering police harassment, detention, and torture because of her work helping applicants file petitions with the Commission.⁶⁵ She eventually fled Turkey in September 1994 because of this pressure and has applied for political asylum in Switzerland.

Alicioglu estimates that she helped work on between thirty and forty cases that were sent on to Strasbourg. She eventually fled Turkey. According to Alicioglu, the Diyarbakir office was responsible for the region, and often she and lawyers would travel to Urfa or Elazig to take a statement from applicants and witnesses to help prepare documents that would then be sent to the Commission.

There was a general sense of seige at the Diyarbakir Human Rights Association (HRA) during the time Alicioglu worked there. Death threats would come by mail or over the phone, individuals would be followed, and plainclothes police would make threats while conducting identity checks on the street. According to Alicioglu, "They would say, " 'Why are you still working at the HRA? You're still up to your terrorist activities there? Why are you going against the government? A lot of things could happen to you.'"

Alicioglu was detained four times during her tenure at the Diyarbakir HRA office. Mistreatment and torture, including electric shock, beating, hanging by the arms, and hosing with high pressure water often accompanied such detentions. During these periods she reported being warned to quit her work at the HRA "because if you continue working there nothing good will come out of it."

During a period of detention in 1994, she said the police who were interrogating her directly mentioned her work in filing petitions to the Commission. According to Alicioglu:

I was detained in Adana in 1994 and held two days. I was going to the district congress of the *Halkin Demokrat* newspaper held in August. I was participating as a guest....I was held for two days....One of them who was said he was a police commissioner said, " Why do you work at the HRA? Why don't you go to the guerillas? You have other work. Complaining about Turkey to Europe." He mentioned cases before the Commission. He said, "How much longer will you do this...? You complain about Turkey to the court in Europe." He openly mentioned the Commission.... He said, " You complain about Turkey to Europe but you also live within this state. You call yourself a defender of human rights. What type of human rights defender are you?".... Of course they were hitting me during this time, in the head, in the stomach.....Mostly they asked these types of questions.

THE RIGHT OF INDIVIDUAL PETITION AND TURKEY: AN ASSESSMENT

First and foremost, the Commission should investigate every allegation of harassment and intimidation of applicants or possible applicants to the Commission. While the number of petitions to the Commission from Turkey increased to an all time high in 1995, the long-term integrity of the process of individual petition will be damaged—at least in southeastern Turkey—if the problem of intimidation is not dealt with quickly and honestly. The Commission must develop a mechanism to protect applicants better, and the Turkish government must make every effort to discipline and punish individuals who intimidate applicants.

Already, harassment against applicants has dissuaded some from even starting the application process or forced others to drop their case. Sometime after hearing a lawyer's warning that filing a case can bring trouble, the

⁶⁵Information for this section comes from a Human Rights Watch/Helsinki interview with Rozan Alicioglu, Sursee, Switzerland, September 30, 1995.

potential applicant gives up the idea and tries to continue on with his or her life. One lawyer who handles cases before the Commission told us that the cases of repression against applicants from southeastern Turkey has created a sense of fear that prevents other potential applicants from pressing their complaints. He told us about two such cases:

One man came to me. His brother had died under torture in a gendarme station in southeastern Turkey in 1992 after being detained. No investigation was carried out; the prosecutor just called the man and said he should pick up the body. Last year he came to me and asked me what remedies he had. I told him he could apply to the Commission, but that he might face threats and harassment from the authorities. He refused to file a complaint. In another case, an old man from Tunceli came to me. His home—along with a collection of old books—had been burned by security forces in 1994. He wanted to file a complaint. I told the old man what could happen. He's old and didn't mind, but his family is still in the Tunceli and he said that he would have to think about it.⁶⁶

Another lawyer in Istanbul echoed the statements above. Some individuals from Gazimahalle, an area in Istanbul where police killed twenty-one demonstrators this March, came to the man's office to inquire about applying to the Commission. He relates that, "I took them into my office and told them that they might face some harassment from the police because of the application. After hearing that they lost interest in applying."⁶⁷

A man whose son had disappeared in 1991 after police detained him still had some trepidations about applying to the Commission: he has heard nothing about his son since police detained him. The man applied to all the relevant government bodies in Turkey, met numerous high-level officials, and even conducted his own investigation at considerable cost and effort. "I haven't applied to the European Human Rights Commission yet. I'm thinking about applying, but I'm considering what could happen. It's not a direct fear, but we have other children. I don't want anything to happen to them."⁶⁸

Yet, the process of individual application to the Commission represents a positive development. First, and most directly, without the right of individual application many of the violations alleged by applicants would not be seriously investigated in the environment of the "climate of impunity" mentioned earlier. The Commission is the independent European body that is the best able to conduct professional investigations of alleged human rights abuses on the ground in southeastern Turkey. And despite threats and intimidation, people are still willing to apply and doing so in increasing numbers.

⁶⁶Human Rights Watch/Helsinki interview, Istanbul, October 1995.

⁶⁷Human Rights Watch/Helsinki interview, Istanbul, October 1995.

⁶⁸Human Rights Watch/Helsinki interview, Istanbul, October 1995.

Second, and most importantly, we hope that the right of individual petition and the effect it has on civil society will help in developing the rule of law in Turkey in the long run. Conferences and training sessions have been held in Turkey for lawyers on how to apply the Commission, and scores of lawyers have started to think about using the opportunity provided by individual petition to try to bring Turkish law into compliance with Council of Europe standards where it is lacking. In 1994, the Turkish Human Rights Association ran seminars for lawyers on how to file individual applications in Diyarbakir, Samsun, Adana, Izmir, and Istanbul. One lawyer with whom we spoke talked of building a "bridge of petitions" from Turkey to Strasbourg, the seat of the Commission.⁶⁹ As the number of individual applications filed by Turkish citizens against their government increases, the Turkish press has paid increasing attention to both the process itself and the reason behind the applications, especially as Turkey has begun to pay out so-called "friendly settlements." Last April, during a Commission hearing in Ankara, the conservative mass circulation daily *Hurriyet* published an extremely insightful story on the proceedings, arguing that,

The European Commission on Human Rights has over three hundred files on Turkey....The shameful aspect of the matter is as follows: Complaints have also been made against other countries. But the European Commission has not felt the need to send a delegation to these countries....Obviously, nothing can be achieved by delaying democracy, violating human rights, torching villages, and torturing people. So the True Path Party deputies must not argue that the European officials have no right to conduct an inquiry in our country. Instead, they must act with common sense and support the call for amending laws that disgrace Turkey.⁷⁰

Third, the Turkish government has often in the past dismissed the work of domestic and international human rights nongovernmental organizations (NGO's) as unproven allegations or worse as propaganda. It has also dismissed criticism from allied governments. In January 1995, on American television, Onur Oymen, Deputy Undersecretary in the Turkish Foreign Ministry, dismissed the annual U.S. State Department's *Country Reports on Human Rights Practices* by claiming that:

What we hear, what we listen on such reports, or other reports, are allegations. So we cannot accept these general allegations. And we consider that it's—it's a pity that—a friendly country can write such reports without proven facts.⁷¹

⁶⁹ Mehmet Nur Terzi practices law in Izmir and is a member of the Izmir Bar's International Law and International Relations Committee. As part of that group, Mr. Terzi intends to file petitions with the Commission for individuals held in incommunicado detention that exceeds four days and six hours, the maximum set by a ruling of the Europe Human Rights Commission Council of State. Every year in Turkey thousands of individuals are held in incommunicado detention for more than four days, six hours under the Code of Criminal Conduct, that allows suspects tried in state security courts or detained in areas under emergency rule to be held for up to thirty days. Terzi has already filed five applications to the commission based on this violation of European legal standards, hoping to have a "bridge of petitions from Izmir to Strasbourg. Human Rights Watch/Helsinki interview, Izmir, October 1995.

⁷⁰ Oktay Eksi, "Unfortunately, We have behaved shamefully," *Hurriyet*, Istanbul, April 14, 1995, p. 1, in FBIS-WEU-95-075, p. 45. See also Dogan Akin, "Ciller unuttu, Hazine oduyor" ("Ciller forgets [to appoint a Human Rights Minister], Treasury pays,") *Cumhuriyet*, Istanbul, October 9, 1995, p. 4; Nurettin Kurt and Selin Caglayan, "Bizi Ankara'da yargiladilar," (We are being judged in Ankara," *Hurriyet*, Istanbul, April 13, 1995; Saygi Ozturk, "A Memorandum from Cetin to Two Ministers," *Hurriyet*, Istanbul, July 17, 1994, in FBIS-WEU-94-140, July 21, 1994, p. 43.

⁷¹ 60 Minutes, "An American Dilemma," Vol. XXVIII, No. 16, January 14, 1996.

But the final rulings of the European Court of Human Rights,⁷² the ultimate decision making body where the Commission forwards its findings, will not be allegation, but facts established on the basis of lengthy, detailed investigations in Turkey and deliberations in Strasbourg in which the Turkish government has had every opportunity to defend itself and to present evidence. In addition, Turkish nationals sit on both the Court and the Commission and help staff the Secretariat of the Commission. And by its own admission the Turkish government strongly supports the implementation of the Convention in Turkey, stating this in a recent letter to Human Rights Watch, responding to the organization's appeals to the government and the PKK alike to observe the minimum standards established in Common Article 3 to the Fourth Geneva Conventions of 1949:

Nevertheless, not applying Common Article 3 to the situation in the southeast of Turkey does not mean that human rights should not be safeguarded: In fact, compared to the European Human Rights Convention, the first paragraph of Common Article 3 is very limited....Turkey is fully bound by the European Human Rights Convention and, therefore, it is totally irrelevant to claim that Turkey is attempting to safeguard its Security Forces by not applying Common Article 3, especially when it accepts even tighter human rights control mechanisms within the said European Human Rights Convention.⁷³

Mindful of this, we urge that the E.U. member states, the United States government, and the Council of Europe to do all in their power to ensure that Turkey abides by any rulings the Court should hand down.

Finally, the avalanche of individual petitions sent to Strasbourg will hopefully provide an impetus for the Turkish government to change its legal system—however incrementally—to remove obstacles and practices that violate international treaties like the Convention. Already, it appears that the influence of Strasbourg has had some positive effect, however small. In July 1994, for example, it was reported that Turkish Foreign Minister Hikmet Cetin sent a memorandum to the Justice and Interior Ministries warning them in essence that violations by state authorities that are not properly investigated would end up in Strasbourg, “enabl[ing] the ECHR to replace the Turkish judiciary on the incidents in southeastern Turkey and act as a body that directly controls the developments.”⁷⁴ Bakir Caglar, a Turkish government representative at Strasbourg, in an interview explained how a former Turkish Justice Minister urged judges to consider decisions and actions in light of international conventions. Caglar commented that:

The [legal] system needs to be reformed. Justice Minister Mehmet Mogultay has sent some positive messages to new justices. “You must consider the cases before you not only in the light of our own laws but also in light of the international conventions that Turkey has signed,” he said. If a Justice Minister says that, it is clear that our legal system is not in conformity with the international legal system. That is official acknowledgment of the lack of conformity.⁷⁵

This report is based on two fact-finding missions to Turkey in September-October 1995 and November 1995. It was written by Christopher Panico, research associate with Human Rights/Helsinki, and was edited by Holly Cartner,

⁷²Henceforth, the Court.

⁷³Turkish Embassy Response to January 17, 1996 letter from Kenneth Roth, Human Rights Watch Executive Director to H.E. Nuzhet Kandemir, Turkish Embassy, Washington, D.C., February 7, 1996. The situation referred to in the letter is the armed conflict with the PKK. See Background.

⁷⁴ Ozturk, “A Memorandum from Cetin to Two Ministers,” *Hurriyet*.

⁷⁵ “Wall Will Spring Up Around Turkey! Professor Bakir Caglar on Leaving his Official Post at the European Human Rights Commission,” *Nokta* (Istanbul), January 1-7, 1995.

executive director of Human Rights Watch/Helsinki, and Mike McClintock, deputy program director of Human Rights Watch. Shira Robinson provided production assistance.

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Human Rights Watch/Helsinki

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. The staff includes Kenneth Roth, executive director; Cynthia Brown, program director; Holly J. Burkhalter, advocacy director; Barbara Guglielmo, finance and administration director; Robert Kimzey, publications director; Jeri Laber, special advisor; Gara LaMarche, associate director; Lotte Leicht, Brussels office director; Juan Méndez, general counsel; Susan Osnos, communications director; Jemera Rone, counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Helsinki division was established in 1978 to monitor and promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. It is affiliated with the International Helsinki Federation for Human Rights, which is based in Vienna, Austria. Holly Cartner is the executive director; Erika Dailey, Rachel Denber, Christopher Panico, and Diane Paul are research associates; Ivan Lupis and Maxine Marcus are research assistants; Anne Kuper, Alexander Petrov, and Shira Robinson are associates. Jonathan Fanton is the chair of the advisory committee and Alice Henkin is vice chair.

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APPENDIX A

The Working of the European Commission of Human Rights: An Overview

In 1954, Turkey ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, which had entered into force on September 3, 1953. Article 19 of the Convention sets up a European Commission on Human Rights and a European Court on Human Rights "[T]o ensure the observance of the engagements undertaken by the High Contracting Parties in the present convention..." The Commission represents the first instance for an application under the Convention and consists of a member from each signatory state. Signatories of the Convention may appeal to the Commission regarding another signatory (Article 24), as well "any person, non-governmental organisation, or group of individuals," Article 25).⁷⁶ Article 25 states that,

The commission may receive petitions...from any person, non-governmental organization, 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 complainant has been lodged has declared that it recognizes 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 anyway the effective exercise of this right.*⁷⁷

Under Article 57 of the Convention, the Secretary General of the Council of Europe can request from a signatory country information concerning how domestic laws "ensures the effective implementation of any of the provisions of this Convention."

On January 28, 1987, Turkey accepted the right of individual application to the European Commission of Human Rights under the Convention. Most states renew the right to individual petition every few years, with few states granting the right indefinitely. Turkey has chosen a three year period, which must be renewed in 1996. Between January 1991 and October 31, 1995, there have been at least 778 cases of individual petition from citizens of the Turkey registered with the Commission, with the following chronological breakdown: 1991, 33; 1992, 180; 1993, 128; 1994, 187; and for the first ten months of 1995, an estimated 250.⁷⁸

The Convention sets strict criteria for applications to the Commission. One may apply to the Commission only after all domestic remedies have been exhausted but must do so within six months after the final use of a domestic remedy (Article 26). An individual petition may not be filed anonymously (Article 27.1.a) The Commission can declare an application inadmissible that is "incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition (Article 27.2)." The Commission can also declare an application inadmissible if domestic remedies have not been exhausted or if the application has been made more than six months after the final act of domestic remedies (Article 27.3). The proceedings of the Commission are confidential.

⁷⁶ Since 1954, there have been no more than twenty applications to the Commission of states applying against another state; in the same period, there have been around 26,000 individual applications.

⁷⁷ Italics added.

⁷⁸ Information provided by the Secretariate of the Commission, Strasbourg, France, November 9, 1995.

Once a case is registered, a rapporteur is appointed, who makes a report on the application.⁷⁹ If the Commission decides *prima facie* that the application meets the above criteria, the whole application is communicated to the government in question through its agent, who in the case of Turkey is Mr. Bakir Caglar. The application is sent to the International Relations Department of the Justice Ministry, which then distributes it to the relevant ministries and state bodies. The state must return its observations on the case to the Commission within ten weeks of receipt, though it may apply for an extension. Although it is rare that the Commission will continue without government observations, in several cases it has done so in the absence of a government response.

The Commission can then declare a case admissible in part or whole or inadmissible; this is done, however, "without prejudging the merits of the case." On average, the Commission declares only about 10 percent of cases admissible.⁸⁰

Once the Commission declares a case admissible, it follows a dual strategy of investigating the facts of the case while at the same time working towards a friendly settlement between the parties. Under Article 28, the Commission,

...shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation....it shall at the same time place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this convention.

Should no friendly settlement be reached nor the case be dismissed for any reason, under Article 31 the Commission writes up the facts of the case, states its opinion as to whether there has been a breach of the Convention, and then submits what is referred to as an "Article 31" report to the Committee of Ministers and to state[s] involved. The report is confidential. The Commission can then refer the case to the Court under Article 48.⁸¹ If within a three month period after transmitting its report to the Committee of Ministers the Commission does not refer the case to the Court, the Committee by a two-thirds majority must rule if there has been a violation of the Convention (Article 32). If there has been a violation, the Committee of Ministers sets a period under which the High Contracting Party must fulfill the requirements prescribed in the Committee's ruling that a violation occurred. The ruling of the Committee of Ministers is binding. There is usually a three to four year period between filing an application with the Commission and achieving a final outcome.

Procedures for Filing a Complaint to the European Commission of Human Rights

Allegation of violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms in home country.

- Individual alleging violation tries to use domestic legal remedies to seek redress. If unsatisfied with domestic remedies, individual has six months from the date of the use of last domestic remedy to apply to Commission.

⁷⁹ Since 1954, there have been no more than twenty applications to the Commission of states applying against a state; in the same period, there have been around 26,000 individual applications. Information from Secretariate, European Commission on Human Rights.

⁸⁰ Charles Bremner and Frances Gibb, "Only Turkey loses more cases than Britain," *Financial Times* (London), September 28, 1995, p. 3. In the past five years, 20 percent of cases brought against the UK have been declared admissible.

⁸¹ Under Article 48, only the Commission or a High Contracting Party that referred the case to the Commission, is a plaintiff in the case, or whose national is an alleged victim may bring a case directly before the Court. An individual, NGO, or group of individuals who lodged the complaint may bring a case it filed with the Commission before the Court, it must convene a special three individual panel to review the case again before the Court takes it under consideration. Under Article 52, the judgement of the court is final, while under Article 53, the Court's final decision must be carried out by the state.

- Individual either goes to lawyer, who assists in filling out petition to Commission in Strasbourg, or files the petition himself. About one third of applicants use legal counsel.
- Commission registers the case and appoints rapporteur to investigate allegations. If the case satisfies the criteria for admissibility, the Commission sends it to the government in question for its observations.
- Government has ten weeks to submit observations but has the right to ask for an extension.
- After receiving government's observations and additional information from the applicant's lawyer, the Commission holds an admissibility decision.
- If the case is declared admissible, the Commission can hold hearings in both the country in question and in Strasbourg to determine the facts of the case should the parties dispute them.
- The parties can also agree to a "friendly settlement" whereby the state pays compensation without admitting guilt.
- In a so-called "Article 31" report, the Commission states its opinion as to whether or not there has been a violation of the Convention. The Commission gives this report to the Committee of Minister and to the States involved.
- The Commission or Government can also refer the case to the European Court of Human Rights.

APPENDIX B

RELEVANT ARTICLES FROM THE EUROPEAN CONVENTION OF HUMAN RIGHTS

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3

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

Article 5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1^o of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6

1. 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 within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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.

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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.

Article 11

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.

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 18

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Article 25

1. The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization 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 recognizes 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.

3. The declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.

4. The Commission shall only exercise the powers provided for in this Article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs.

Article 1, First Protocol

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 of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.