

The European Commission of Human Rights sitting in private on 11 March 1986, the following members being present:

MM. C.A. NØRGAARD, President
G. SPERDUTI
F. ERMACORA
G. JÖRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs G.H. THUNE
Sir Basil HALL

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (art. 25);

Having regard to the application introduced on 26 November 1985 by N.O. against Switzerland and registered on 27 November 1986 under file No. 11866/85;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant, a Turkish citizen born in 1957, is a taxi and lorry driver whose present place of residence, apparently in Switzerland, is unknown. Before the Commission the applicant is represented by Ms. Verena Gessler, a lawyer practising in Pratteln.

Until 1981 the applicant resided in Turkey. During his military service from 1977 to 1979 he allegedly came into contact with persons participating in the political organisation Dev Yol. Without formally belonging to Dev Yol he knew other participants and sympathised with the organisation whom he helped for instance with car transports. He terminated these activities out of fear of being arrested on 12 September 1980 when a military coup took place in Turkey. When a district boss of Dev Yol was arrested in July 1981, the applicant feared that his own name could become known to the authorities. Therefore, on 25 December 1981 he left Turkey.

On 22 January 1982 the applicant entered Switzerland and requested asylum. He then commenced work in Switzerland and settled in well. He is engaged to a Yugoslav citizen whom he intends to marry. His fiancée has been living in Switzerland for 16 years and possesses a residence permit.

While in Switzerland the applicant was taken ill with tuberculosis. Until September 1986 he will have to submit to quarterly controls which, as the respective doctors state, should take place in

Switzerland.

On 8 December 1983 the Swiss Federal Police Office rejected the applicant's request for asylum as he lacked the quality of refugee. The applicant was thereupon ordered to leave Switzerland.

The applicant's appeal against this decision was rejected by the Swiss Federal Department of Justice and Police as the last instance on 13 August 1985. The applicant was ordered to leave Switzerland before 30 September 1985.

In its decision the Department found that he had failed sufficiently to substantiate his quality as refugee. Attention was drawn in particular to the fact that he had been detained on remand in Turkey in 1980 or 1981 in connection with the suicide of a colleague. He had nevertheless been released after four days. Later, he had not in any way been molested by the authorities. He had also legally applied for a passport and been able to leave Turkey. The Department concluded therefrom that the Turkish authorities had no interest in the applicant.

In respect of the medical controls the Department found that the applicant could now be regarded as being healed from tuberculosis. In any event, he could always apply for entry into Switzerland for the controls.

COMPLAINTS

1. The applicant now complains under Art. 3 of the Convention (art. 3) that, if he is expelled from Switzerland, he will be subject to inhuman treatment in Turkey. He refers, on the one hand, to a Swiss newspaper article according to which many Dev Yol participants were sentenced to prison or death in Turkey. On the other hand, he mentions the name of an alleged leader of Dev Yol whom he knew but whose present residence is unknown.

2. Under Art. 12 (art. 12) the applicant appears to allege that the imminent expulsion renders impossible his forthcoming marriage with his fiancée. However, he partly admits that he could have married his fiancée before his request for asylum was rejected.

3. Under Art. 13 (art. 13) he complains that he cannot see which national authority is responsible for respecting the prohibition of refoulement.

THE LAW

1. The applicant complains that, if he is expelled from Switzerland, he will be subject to inhuman treatment in Turkey. He refers in particular to Swiss newspaper articles according to which many Dev Yol participants were subjected to such treatment. He also mentions the name of an alleged leader of Dev Yol whom he knew but whose present residence is unknown. He relies on Art. 3 of the Convention (art. 3) which provides:

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

The Commission has constantly held that the right of an alien to reside in a particular country is not as such guaranteed by the Convention (cf. Dec. No. 7816/77, 19.5.77, D.R. 9 p. 219). However the Commission has also held that deportation may in exceptional circumstances involve a violation of the Convention, for example where there is a serious fear of treatment contrary to Art. 3 (art. 3) in the receiving State (cf. Dec. No. 7729/76, 17.12.76, D.R. 7 p. 164).

In the present case the Commission notes on the one hand that the

applicant has not supplied further confirmation for his allegations, either that he was involved in the respective organisation, or that he would be subject to inhuman treatment on account of such involvement. On the other hand the Commission observes that on various occasions the applicant stood in contact with the Turkish authorities who disclosed no interest in him. Thus, in 1980 or 1981 he was released from detention on remand in connection with another matter after four days. Thereafter, he legally applied for a passport and left Turkey. Furthermore, the Commission also notes that insofar as these points had already been made by the Swiss authorities, they have not been disputed by the applicant before the Commission.

The Commission is therefore of the opinion that the applicant has insufficiently substantiated that his treatment in Turkey would render his expulsion contrary to Art. 3 of the Convention (art. 3).

This part of the application must therefore be rejected as manifestly ill-founded within the meaning of Art. 27, para. 2 of the Convention (art. 27-2).

2. Under Art. 12 of the Convention (art. 12) the applicant apparently alleges that the expulsion renders impossible his forthcoming marriage with his fiancée.

The Commission, however, notes that the applicant has not established that while he resided in Switzerland he was prevented from marrying or that his right to marry has in any way been restricted.

It follows that this part of the application is also manifestly ill-founded within the meaning of Art. 27, para. 2 of the Convention (art. 27-2).

3. The applicant complains under Art. 13 of the Convention (art. 13) that he cannot see which national authority is responsible for respecting the prohibition of refoulement. However, the Commission finds no issue under this Article.

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

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)