

(TRANSLATION)

THE FACTS

The facts of the case as submitted by the applicant can be summarised as follows:

The applicant, a Turkish national born on 10 January 1958 in Sandikli, Afyon province, is a floor layer residing in Wabern, Bern Canton, Switzerland. He is represented before the Commission by Mr. Christian Trenkel, a lawyer in Bern.

I.

The applicant claims that from 1975 onwards, while still resident in Turkey, he was active in various political organisations and newspapers, for instance a newspaper published by the TKP-ML party (Türk Komünist Partisi Marksistleninist) until expelled from the party in 1977 for ideological reasons.

Subsequently, he was an activist in the pro-Kurdish association ASK-DER and a passive member of the teachers' trade union TÖB-DER. In 1979 the applicant held a job in Izmir in a food factory where he was elected shop steward. During a strike, the armed forces cleared the factory and the applicant was imprisoned for a fortnight.

In 1979 the applicant apparently joined the YDGF (Yurtsever Devrimci Gençlik Dernekleri Federasyonu), becoming a member of its executive committee in 1980. In this capacity, he organised in August 1980 at Denizli a political meeting which, although legal, was disrupted by the MIT security service. When later summoned, he failed to appear.

After September 1980 the army prohibited all political activities. Notwithstanding the prohibition, in October 1980, the applicant took part in the organisation of a demonstration at Ekisehir against the military regime. The army put down the demonstration and the applicant was compelled to go into hiding in various towns.

II.

On 1 February 1981 the applicant left Turkey via Yugoslavia and Italy for Switzerland, arriving there on 15 February 1981. On 29 July 1981 he applied for asylum in Switzerland through a lawyer. He was questioned in this connection by the Bern police on 6 October 1981 and again by the Federal Police Office on 11 May 1982 and 28 January 1983.

While his application for asylum was being considered, the applicant took part in various events drawing attention to the political and human rights situation in Turkey. In 1982 he set up the "Association of Turkish Democratic Workers" which regularly participated in demonstrations against the military Government. In January 1983 the association put on a politically inspired play. In spring 1983 the applicant

founded a "Turkish Refugees Committee" which, during a "refugee week" (19-25 June 1983), showed video films on a public square in Bern about the political trials in Turkey. On 5 June 1984 the applicant accused the Turkish Government of human rights violations in a Swiss radio broadcast about Yilmaz Güney's film "The Wall".

III.

On 22 April 1983 the Federal Police Office rejected the applicant's request for asylum on the ground that he had made contradictory statements on essential points and submitted facts which were inconsistent with general experience.

The Federal Police Office observed in particular that in the course of his various examinations the applicant had made contradictory statements concerning his membership of various political organisations. Since he was not a teacher, it was unlikely that he had been a member of a teachers' trade union, and it was inconsistent with general experience that he could have belonged to so many and varied political groups. The applicant had also made contradictory statements about having previously held a passport, and in the same connection about a trip to the Federal Republic of Germany in 1977.

On 9 May 1983 the Federal Aliens Office decided that the applicant must leave Switzerland by 18 June 1983.

On 25 May 1983 the applicant appealed against the decision of 22 April 1983 by the Federal Police Office.

On 18 July 1985 the Federal Justice and Police Department dismissed the applicant's appeal and ordered him to leave Switzerland by 15 September 1985.

The Federal Department considered that the applicant had indeed made a number of contradictory statements about his membership of various political groups. Furthermore, the applicant's claim that he was a victim of political persecution was contradicted by the fact that his departure from Turkey had been in order and that the Turkish passport service, which undoubtedly had a "black list" of wanted individuals, would not have failed to consult that list. Lastly, the Federal Department considered that for the Swiss authorities, only the circumstances existing when the applicant left Turkey were relevant. According to substantiated information, persons having unsuccessfully requested asylum abroad would not suffer adverse consequences on returning to Turkey.

On 3 September 1985 the applicant applied to the Federal Justice and Police Departments for a review of the decision of 18 July 1985, founding *inter alia* on Article 3 of the Convention and invoking grounds of asylum based on events subsequent to his departure from Turkey (Nachfluchtgründe). The execution of the expulsion order was thereupon suspended.

On 10 October 1985 the Federal Department refused the request. It held that the facts submitted by the applicant were not "new developments" warranting a review, and that in any case even an examination of the merits of the arguments put forward would be unlikely to alter the contested decision. It noted that only a foreigner having been reduced to a "refugee situation" during his stay in Switzerland becomes a "refugee on the spot", whereas someone having himself brought about this situation does not. All persons temporarily resident in Switzerland can exercise their basic democratic rights, but an asylum applicant must expect to have his application rejected, and it is accordingly in his interest to restrict his political activities in Switzerland so that they do not come to the attention of the authorities in his country of origin. Otherwise he must take the consequences. The Federal Department ordered the applicant to leave Switzerland by 30 October 1985. On 25 October the Swiss Red Cross, acting on behalf of the applicant, requested an extension of the time limit because of the efforts which were being made to enable him to go to a third country. The deadline was then further extended to 15 January 1986.

On 24 October 1985 the applicant's wife applied to the Turkish Consulate in Bern for an identity card for their daughter born on 18 March 1985. The officials gave her to understand that the applicant was a criminal and advised her to seek a divorce. At the end of October 1985, Mrs. A. returned to Turkey with her daughter.

On 30 October 1985 the Swiss Red Cross applied to the authorities on the applicant's behalf for permission to reside in Bern Canton. The Red Cross was informed on 5 March 1986 that the request had been refused.

In a letter of 20 December 1985 to the Bern cantonal authorities, Mr. S. of the Swiss Central Refugee Aid Bureau, acting as representative of the United Nations High Commissioner for Refugees in German-speaking Switzerland, declared that the applicant's case was one of special hardship (Härtefall). He was of the opinion that the applicant would be prosecuted in Turkey for his political activities and risked several years' imprisonment and also torture.

On 13 January 1986 the applicant lodged a further application for review. In particular, he submitted an extract dated 15 November 1985 from the municipal register of 1 April 1981 of the village of M. in Turkey stating that, according to a report by the martial law authorities, he was wanted and had absconded.

On 3 February 1986, the Federal Justice and Police Departments rejected the application. The decision indicated that the applicant's wife had returned home of her own free will, and that the applicant's efforts to secure admission to a third country were as yet unsuccessful. The Department further noted that the extract from the municipal register produced by the applicant merely showed that he was wanted on 1 April 1981, without however giving the reasons. Nor did it contain any evidence that the applicant's rights under the law of asylum would be jeopardised on his return. The Department considered the applicant's request of 13 January 1986, lodged two days before expiry of the time limit for leaving Switzerland, to have been

aimed purely at obstructing the execution of the order. This conclusion was corroborated by the fact that the applicant, in his application to the European Commission of Human Rights dated 13 January 1986, himself expressed the view that his request for review would be unsuccessful. Lastly, the applicant had been aware since the middle of November 1985 of the document submitted as a "new factor" in support of his request for review. Consequently, the Department ordered the applicant's immediate expulsion.

The applicant's complaints may be summarised as follows:

The applicant, relying on Article 3 of the Convention, complains of his imminent deportation to Turkey. As he has no valid travel document, he is banned from entering a third country. In the event of expulsion, he would therefore be sent to Turkey.

Deportation would lay him open to prosecution on political grounds, to a long and severe prison sentence and to torture. He asserts in particular that he is wanted in Turkey for having engaged in political activities at home and abroad and for having applied for political asylum in Switzerland, both these acts being punishable by severe penalties under Articles 140 to 142 and 159 of the Turkish Criminal Code. Consequently, he would be punished for having professed political opinions. As a result, he would be deprived of his most elementary rights of defence and probably subjected to torture. The Turkish authorities presumably knew about the applicant's wife who had allegedly been told by the consular authorities in Bern on 24 October 1985 that her husband was a criminal, that the Turkish authorities were aware of his activities abroad and that she should seek a divorce.

PROCEEDINGS (Extract)

The application was introduced on 13 January 1986 and registered on 15 January 1986.

On 16 January 1986 the Secretary to the Commission informed the respondent Government of the submission of the application and of a summary of its objects, in accordance with Rule 41 of the Commission's Rules of Procedure.

On 20 January 1986 the Rapporteur drew up the Report prescribed in Rule 40 of the Rules of Procedure.

On 24 January 1986 the Commission decided in accordance with Rule 42 para. 2 (b) of its Rules of Procedure to give notice of the application to the respondent Government and to invite them to present written observations on the admissibility and merits, by 22 March 1986.

On 3 February 1986 the President of the Commission decided to indicate to the respondent Government, in accordance with Rule 36 of the Rules of Procedure, that it would be desirable in the interest of the parties and the proper conduct of the

proceedings before it not to deport the applicant to Turkey before the Commission had had the opportunity to make a more thorough examination of the application at its next session (3-14 March 1986).

On 12 February 1986 the Government submitted their observations on the admissibility and merits of the application. The applicant replied in a memorial dated 24 February 1986.

On 10 March 1986 the Rapporteur submitted a second report (Rule 40 of the Rules of Procedure).

On 11 March 1986 the Commission decided to invite the parties to submit further observations orally on the admissibility and merits of the application (Rule 42 para. 3 (b) of the Rules of Procedure) at a hearing set for 14 April 1986. The Commission also decided to reiterate in the meantime the indication given to the Government in accordance with Rule 36 of the Rules of Procedure.

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THE LAW

1. The applicant alleges that if deported to Turkey he would face prosecution on political grounds, a long and severe prison sentence and torture. By deporting him to Turkey the Swiss Government would, in his opinion, commit a breach of Article 3 of the Convention which provides that:

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

The Government contest the applicant's allegation.

2. The Commission observes that according to its established case-law, the Convention does not secure any right of residence or asylum in a State of which one is not a national (cf. e.g. No. 1802/62, Dec. 26.3.63, Yearbook 6 pp. 462, 478). Deportation is not as such among the matters governed by the Convention (No. 7256/75, Dec. 10.12.76, D.R. 8 p. 161). Consequently, a deportation order is not in itself contrary to the Convention.

The Commission nevertheless recalls that according to its established case-law, the deportation of a foreigner might, in exceptional circumstances, raise an issue under Article 3 of the Convention where there is serious reason to believe that the deportee would be liable, in the country of destination, to treatment prohibited by this provision (No. 8581/79, Dec. 6.3.80, D.R. 29 pp. 48, 54).

The Commission must therefore consider whether the present case discloses special circumstances of this kind and whether there are serious grounds for believing that the applicant would be liable to treatment prohibited by Article 3.

3. The applicant claims that prior to his departure from Turkey in February 1981 he engaged in political activities as a member of various organisations and as a participant in demonstrations of a political nature. After arriving in Switzerland, he also engaged in political activities directed against the regime in Turkey. As a result, he would incur a substantial risk of prosecution if deported to Turkey.

The Government have noted that the applicant's statements concerning his activities in Turkey were contradictory, that these activities were not corroborated by the applicant's wife or the brother, and that the applicant was able to leave his country legally with his passport. The Government express reservations as to the authenticity and relevance of the document produced in connection with the applicant's second request for review. As to the political activities pursued in Switzerland, the Government observe that they were initially restricted to a small group and became more extensive following the rejection of the applicant's request for asylum. According to the Government, an applicant for asylum should in his own interest limit his political activity in the receiving country. Be that as it may, the applicant gave no indication that he would be exposed in Turkey to treatment of such gravity that his deportation would be contrary to Article 3 of the Convention.

4. The Commission notes that there is some uncertainty as regards the applicant's activities prior to his departure from Turkey. Conversely, it is clear that in Switzerland he displayed a critical attitude to the military regime in Turkey. He made public statements on the subject and took part in demonstrations of a political nature. His case was reported in the Swiss press.

The Commission has considered whether these activities were such as to create a serious risk of the applicant's being subjected in Turkey to torture or other treatment prohibited by Article 3. It finds that the documents and evidence submitted by the applicant do not suffice to prove that such a risk exists.

The Commission has also considered the applicant's claim that he risks prosecution under Articles 140 and 159 of the Turkish Penal Code, which would mean prosecution for his political activities. The Commission recalls that in an extradition case it concluded as follows:

"the rule laid down for example in Article 3 of the European Convention on Extradition, whereby extradition may be refused for a political offence, is not included in the Convention whose compliance the Commission must ensure; the fact of granting extradition for a political offence may not be regarded in itself, and in the absence of special circumstances, as inhuman treatment within the meaning of Article 3 of the Convention ... However, if there are reasons to fear that extradition, although requested exclusively for offences under ordinary law, may be used to prosecute the person concerned in breach of the speciality rule for political offences or even simply because of his political

opinions, the Commission cannot rule out immediately the possibility of a violation under Article 3 of the Convention" (No. 10308/83, Dec. 3.5.83, D.R. 36 pp. 209, 232 and 233).

The Commission finds these considerations applicable *mutatis mutandis* to a case where the person concerned complains not of extradition but of deportation which he alleges would lay him open to prosecution on political grounds. In the Commission's opinion, the imposition of a long and severe sentence would raise an issue under Article 3. In this respect, it is not enough to argue that there is a possibility of prosecution: the applicant must prove that there is a definite and serious risk of being prosecuted and sentenced to such a penalty. In point of fact, the applicant has not shown such a risk exists in the present case. In particular, he has not demonstrated that prison sentences have been passed recently in Turkey in other similar cases.

In conclusion, the Commission holds that the applicant has not demonstrated that in the event of deportation to his own country he would be liable to treatment prohibited by Article 3. It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.