

(TRANSLATION)

THE FACTS

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

The applicant, a Kurd of Turkish nationality born in 1960 in Kars, Turkey, is a manual worker.

In the proceedings before the Commission, he is represented by Ms. Claire Nordmann-Tschopp, a lawyer practising in Fribourg.

The applicant left Turkey on 23 September 1979 and arrived in Switzerland in November of the same year, following a short stay in Italy.

He was employed in a Fribourg restaurant without a work permit from 1 December. He applied for permission to stay in Geneva on 18 September 1980. The application was examined as an application for political asylum, in view of the fact that the applicant stated that he had come to Switzerland as a result of political events in Turkey. After taking part in a hunger strike organised in support of the campaign for the independence of Kurdistan, he became afraid and withdrew his application six days later. Understanding neither German nor French, he was unaware of the consequences of this withdrawal.

On 11 December 1980, the applicant went to the Turkish Embassy in Bern, where the validity of his passport was extended for a period of one year.

Following a police check on 8 June 1981, it was noted that the applicant had been employed from 1 March 1981 at a butcher's in Flamatt without a work permit. On 29 June he declared that he was obliged to work in Switzerland in order to support his large family (10 persons), who were very poor, and that he had not found any employment in Turkey.

On 9 July 1981 the Swiss federal authorities issued an order giving the applicant until 31 July 1981 to leave Switzerland and forbidding him from entering Switzerland between 31 July 1981 and 31 July 1983.

The applicant claims that he has campaigned in his country of origin for the independence of Kurdistan. As a supporter of the Workers' Party of Kurdistan, he carried out propaganda activities to this end. Several members of his family, together with the applicant himself, were arrested on a number of occasions by the military authorities and tortured. His father died in prison.

The applicant was a student at the University of Kars. Because of his political activities, he was forbidden to continue his studies.

In view of these facts, it was impossible for him to comply with the order to leave Switzerland by the end of July 1981. On 15 April 1982, his lawyer lodged an application for political asylum.

Following questioning of the applicant by the police, his request for political asylum was rejected on 15 March 1985. He was also ordered to leave Switzerland. As the applicant had had no valid papers since 1981, he had no alternative, if expelled, but to return to his country of origin, where he risked being arrested.

In accordance with the relevant Swiss rules of procedure, on 15 April 1985 the applicant's lawyer lodged an appeal against the decision with the Federal Department of Justice and Police. The appeal was accompanied by various documents which proved, or at least rendered plausible, the risks to which the applicant would be exposed if expelled to Turkey.

These included letters from his family, in which it was said that several members of his family were being sought by the military authorities and were missing.

In spite of this evidence, the appeal lodged on 15 April 1985 was rejected by a decision of the Federal Department of Justice and Police on 27 February 1986.

On 29 May 1986, the applicant applied to the Federal Department of Justice and Police for a review of his case, submitting various supporting documents. The application for a review was declared inadmissible on 4 August 1986.

COMPLAINTS

The applicant's complaints may be summarised as follows :

The applicant alleges violations of Articles 3 and 6 of the Convention.

-- Article 6 of the Convention

During the administrative proceedings concerning the right of asylum, the applicant lodged numerous documents in support of his claim that he had been exposed to serious risks in Turkey. He also supplied full information to show that, if returned to Turkey, he would be arrested by the Turkish military authorities and might be sentenced to death.

The Swiss authorities took no account of these documents. By simply stating that it was not established that the applicant would risk the same ill-treatment as several of his relatives, the Swiss authorities violated the fundamental principle of the right "to be heard".

Swiss legislation on political asylum does not require the applicant to prove the risks he runs because of his political opinions ; he simply has to show that they are likely :

-- Article 3 of the Convention

When in Turkey, the applicant was arrested by the military forces and tortured together with several members of his family. His only option was to leave his country of origin and seek refuge in Switzerland. The documents supplied make it abundantly clear that the applicant, if he had remained in Turkey, would now be in prison and punished for his activities protected by Articles 9 *et seq* of the European Convention on Human Rights.

The Kilic family is known to the Turkish authorities for its militant activities on behalf of the independence of Kurdistan. The applicant is campaigning for the independence of Kurdistan in Switzerland. Amongst other things, he appealed to doctors in the Canton of Fribourg to donate medicines for his compatriots. He does propaganda work for the Kurdish cause and is affiliated to various movements. The applicant is also known to the Turkish Embassy in Switzerland.

He would still have to perform his military service, which he did not do before leaving Turkey because he was not yet old enough. He has thus rendered himself criminally liable on that account.

The applicant also draws attention to the attitude of the Swiss authorities. On the one hand, they take into consideration the fact that, following his arrival in Switzerland, he went to the Turkish Embassy in 1981 in order to have the validity of his passport extended ; they point out that this fact alone proves that the applicant, who had put himself "in the hands of his country", was not at any risk from his country. On the other hand, they refuse to consider the fact that the applicant has

established his political affiliations and ideas by mentioning his political activities in Switzerland, this fact having occurred after his arrival in Switzerland.

In conclusion, if the applicant is returned to his country of origin, he risks being arrested by the Turkish authorities and fears that he may be subjected to treatment contrary to Article 3 of the Convention.

THE LAW

1. The applicant, in respect of whom the Federal Department of Justice and Police took a decision on 4 August 1986, refusing him the right of asylum and ordering him to be returned to his country of origin, maintains that if this measure is implemented, he risks being subjected upon his arrival in Turkey to treatment prohibited by Article 3 of the Convention.

This provision reads: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission notes that, according to its established case-law, the Convention does not guarantee any right of residence or asylum in a State of which the person concerned is not a national (cf., for example, No. 1802/62, Dec. 26.3.63, Yearbook 6 pp. 463, 479). Expulsion, as such, is not among the matters governed by the Convention (No. 7256/75, Dec. 10.12.76, D.R. 8 p. 161). Consequently, an expulsion order is not in itself contrary to the Convention.

The Commission recalls, however, that according to its established case-law the expulsion of a foreigner might, in exceptional circumstances, raise an issue under Article 3 of the Convention where there are serious reasons to believe that the individual will be subjected to treatment prohibited by that Article in the country to which he is expelled (No. 8581/79, Dec. 6.3.80, D.R. 29 pp. 48, 54).

Consequently, the Commission must consider whether in the present case such exceptional circumstances exist and whether there are serious reasons for believing that the applicant would be subjected to treatment prohibited by Article 3.

In support of his argument, the applicant asserts that in Turkey his family are known to the Turkish authorities for their activities in favour of the independence of Kurdistan. He himself claims to have been a "supporter" of the Workers' Party of Kurdistan and to have "carried out propaganda activities". Because of his political activities, he was, he alleges, forbidden to continue his studies and was arrested and tortured by the military forces, together with certain members of his family.

The Commission considers that the applicant has offered no precise and detailed evidence in support of his claims. It is true that he provided some private letters as well as a declaration by a Kurdish lawyer in exile. However, it is impossible to conclude from this material that he would be exposed to a serious danger because of his political activities if he returned to Turkey.

It must also be noted that the applicant, after requesting a residence permit in 1980, withdrew his application a few days later and that he did not request political asylum until 15 April 1982.

Moreover, it is to be observed that in its decision of 27 February 1986 the Federal Department of Justice and Police drew attention to a number of inconsistencies and improbabilities in the applicant's declarations, which do not enable it to be established that he had been persecuted because of his activities or opinions.

The applicant also refers to the fact that he has not yet discharged his military obligations in Turkey.

The Commission notes in this connection that if the applicant is a deserter from the army, he may be prosecuted and convicted on his return to Turkey. However, this criminal procedure does not in itself constitute treatment contrary to Article 3 of the Convention (cf. No 7334/76, Dec. 9.3.76, D.R. 5 p. 154).

Moreover, the Commission considers that it is not sufficient to refer to fears or a possibility of criminal proceedings, but that the applicant must demonstrate that there is a definite and serious risk of his being prosecuted and exposed to treatment forbidden by Article 3 of the Convention. As it happens, however, the applicant's claims concerning his political involvement in Turkey and the measures to which he would be exposed in that country are very vague and general, and neither his claims nor his desertion from the army enable it to be concluded that if he returned to Turkey he would run risks of such gravity that his expulsion could be considered contrary to Article 3 of the Convention.

The Commission therefore concludes that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant also alleges a violation of Article 6 of the Convention in that the guarantees set out in that provision were not respected in the administrative proceedings concerning the right of asylum.

It should be noted, however, that proceedings relating to an application for asylum do not come within the scope of Article 6 of the Convention (cf. No. 8118/77, Dec. 19.3.81, D.R. 25 p. 105).

Consequently, this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.