AS TO THE ADMISSIBILITY OF

Application No. 26556/95
by A.B.A.
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 27 June 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 1 June 1994 by A.B.A. against Germany and registered on 17 February 1995 under file No. 26556/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Tunisian citizen, born in 1949, and presently hiding in Germany. He is represented by Mr. Feldmann, a lawyer practising in Hohenwestedt.

The applicant complains about the imminent risk of being sent back to Tunisia where he allegedly risks the death penalty.

It follows from his statements and the documents submitted that, in 1975, the applicant had already made an unsuccessful request for political asylum in Germany.

He returned to Tunisia in 1980. On 29 November 1990 he again travelled to Germany and made a new request for political asylum. He was summoned to a hearing at the Federal Office for the Recognition of Foreign Refugees (Bundesamt für die Anerkennung ausländischer Flüchtlinge) but did not appear. His lawyer stated in a letter of 28 January 1994 that the applicant had seen no reason to appear because he had already been heard in 1975.

On 4 February 1994 the applicant submitted the following reasons for his request to be granted asylum: he had been arrested after his return to Tunisia and had been accused of being a member of an illegal

political party. He had been sentenced to six years' imprisonment. Subsequent to his release from prison there were two attacks on Western tourists in Tunisia. Afraid of being connected to these attacks, he had gone into hiding. Allegedly criminal proceedings were nevertheless instituted against him in his absence and he was convicted and sentenced, the death sentence being imposed. This sentence was later changed to life imprisonment.

On 7 April 1994 the above-mentioned Federal Office refused to grant asylum and requested the applicant to leave Germany within one week of receipt of the decision. The office stated that the request had been made out of time and noted in addition that the applicant had obtained a Tunisian passport on 14 July 1990.

The applicant then brought an action before the Administrative Court in Schleswig-Holstein claiming asylum. This action was dismissed on 12 October 1994. The Court considered that the applicant's allegations were unproven. It noted that in 1987 the new Tunisian Government introduced an amnesty with regard to all convictions prior to 1987. Furthermore, the Court considered that if the applicant was wanted in Tunisia in connection with attacks on tourists, this was a criminal matter with no implications of political persecution. The Court also noted that at the hearing the applicant had failed to furnish any explanations or information showing that there was a concrete danger for his life or physical integrity if he were sent back to Tunisia.

It appears that the Administrative Court's decision was confirmed on appeal by the Administrative Court of Appeal in Schleswig-Holstein on 4 November 1994.

The applicant then lodged a constitutional complaint which was rejected by a panel of three judges of the Federal Constitutional Court on 29 December 1994.

PROCEEDINGS BEFORE THE COMMISSION

The applicant's request under Article 36 of the Rules of Procedure was rejected by the Commission's President on 3 January 1995.

Subsequently his lawyer lodged the present application on behalf of the applicant stating however that for some time already he had had no contact with the applicant, and the applicant's whereabouts were unknown to him.

COMPLAINTS

The applicant maintains that, if extradited to Tunisia, he risks political persecution and invokes Article 3 of the Convention.

THE LAW

The applicant submits that the denial of political asylum and the risk of being sent back to his home country Tunisia amount to a violation of his human rights.

It is true that Article 3 (Art. 3) of the Convention forbids, inter alia, inhuman or degrading treatment and the Commission has consistently held that the expulsion or extradition of a person could, in certain exceptional circumstances, infringe Article 3 (Art. 3) where there is serious reason to believe that the deportee will be subjected to treatment prohibited by the Article (Art. 3) in the receiving country.

The expected ill-treatment must however attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of this minimum depends on all the circumstances of the

case. Furthermore, the existence of the risk of ill-treatment must be assessed primarily with reference to those facts known to the Contracting State at the time of the decision denying a foreigner a residence permit or asylum and/or threatening a person with expulsion (cf. Eur. Court H.R., Vilvarajah and others, judgment of 30 October 1991, Series A no. 215, para. 107).

The Commission notes that according to the findings of the Administrative Court the applicant is wanted in Tunisia under suspicion of attacks on tourists, i.e. a criminal matter without any implication of political persecution. The Court furthermore found that the applicant had submitted no proof showing that there was a concrete danger for his life or physical integrity if he were expelled.

In the present proceedings the applicant has likewise failed to submit relevant evidence in support of his submissions.

The Commission concludes that in these circumstances there is no indication of a concrete risk of possible persecution which could amount to a breach of Article 3 (Art. 3) of the Convention (cf. Eur. Court H.R., Vilvarajah and others, as cited above).

It follows that the complaint under Article 3 (Art. 3) of the Convention has to be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)