AS TO THE ADMISSIBILITY OF

Application No. 17428/90
by A.
against Switzerland

The European Commission of Human Rights sitting in private on 14 January 1991, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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

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

Having regard to the application introduced on 12 November 1990 by A. against Switzerland and registered on 15 November 1990 under file No. 17428/90;

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, a Turkish citizen born in 1960, resides at F. in Switzerland. Before the Commission he is represented by Mr. W. Spirig, a lawyer practising at Berne in Switzerland.

The facts submitted may be summarised as follows.

I.

As from the age of 22 years the applicant has sympathised with the prohibited Kurdish communist party PKK. He was often together with members of the PKK and provided them with food and clothes. His father supported the marxist-leninist TKP party and, for this reason, had to flee to the Federal Republic of Germany where he disappeared in 1982.

After the applicant's father had left Turkey, the military authorities interrogated the applicant's mother and his brother. In 1982 the applicant found himself before the choice of either joining

the PKK and undertaking a training course in Lebanon, or fleeing. He decided to flee and left Turkey in February 1982.

II.

The applicant unlawfully entered Switzerland on 21 March 1982. On 23 March 1982 he filed a request for asylum with the Swiss authorities. In his written request he stated that, while in Turkey, he had intended to visit his father in prison. On that occasion he had been tortured by the authorities.

While in Switzerland the applicant made propaganda for the PKK.

The applicant was questioned by the authorities as to his request on 17 September 1983. He then declared that his father had been killed in Hamburg by a Kurd. Out of fear of having to suffer the same destiny he had fled to Switzerland where one of his uncles lived. He also stated that he had never been arrested by the Turkish civil or military police.

On 2 December 1988 the Delegate for Refugees (Delegierter für das Flüchtlingswesen) dismissed the applicant's request for asylum. He noted in particular the contradiction between the applicant's statement in his written request for asylum, in which he claimed that he had been tortured, and his statement when questioned, according to which he had never been arrested by the Turkish police.

On 15 February 1989 the applicant was convicted by the Konolfingen District Criminal Court (Strafamtsgericht), inter alia of the offence of bodily injury, and conditionally sentenced to nine months' imprisonment. He was also conditionally ordered to leave Switzerland (Landesverweisung, bedingt erlassen).

Meanwhile, the applicant appealed against the decision of the Delegate for Refugees to the Federal Department of Justice and Police (Eidgenössisches Justiz- und Polizeidepartement). On 20 April 1989 the applicant wrote a letter to the Department stating that, upon the return of one of his brothers to Turkey, the latter had joined the PKK and attended a training camp in Lebanon. The applicant submitted that for this reason, if he returned to Turkey, he would be subjected to great risks.

On 18 May 1990 the Federal Department of Justice and Police dismissed the applicant's appeal. The Department considered that the facts invoked by the applicant were not sufficiently credible. Moreover, the applicant had himself not been persecuted. The Department found that, while the applicant had now resided for many years in Switzerland, his expulsion would be justified in view of his criminal conviction.

On 29 May 1990 the applicant was informed that he had to leave Switzerland by 31 August 1990.

On 21 August 1990 the applicant filed a request to the Federal Department of Justice and Police for reconsideration of its previous decision. He submitted in particular the statement of 7 August 1990 of a certain R.B., a Turkish citizen and refugee in Switzerland, in which the latter affirmed that in 1987 he had been arrested in Bingöl in Turkey and that the authorities had also questioned him about the wherabouts of the applicant.

On 7 September 1990 the Federal Department of Justice and Police dismissed the applicant's request for reconsideration of the decision, inter alia as it would have been possible for him to submit the statement of R.B. during the appeal proceedings.

COMPLAINTS

The applicant complains of the threatened expulsion to Turkey. He refers to the situation of his father and his brother who returned to Turkey in 1986, as well as of his sister who has been detained by the Turkish authorities for three days. He claims that he sympathises with the PKK. As a result, upon his return to Turkey he would risk persecution by the Turkish authorities contrary to Article 3 of the Convention.

The applicant alleges that the Turkish authorities may persecute him also on the basis of a responsibility of the family (Familienverantwortung). Reference is further made to the general situation in Turkey. The applicant explains the contradictions during the proceedings before the Swiss authorities inter alia by referring to the fact that an unknown Kurd had written these partly confused sentences according to which he had been tortured.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 November 1990 and registered on 15 November 1990.

On 15 November 1990 the President decided not to apply Rule 36 of the Commission's Rules of Procedure.

THE LAW

The applicant complains that if he is expelled to Turkey he will be subjected to inhuman treatment contrary to Article 3 (Art. 3) of the Convention which states:

> "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. However, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious risk of treatment contrary to Article 3 (Art. 3) of the Convention in the receiving State (see No. 12102/86, Dec. 9.5.86, D.R. 47 p. 286; mutatis mutandis Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, pp. 32 et seq.)

In the present case the Commission considers that, apart from referring to the general situation in Turkey, the applicant's submissions concern mainly the situation of various family members. In respect of the applicant's own experiences in Turkey, even having regard to the statement of R.B., a refugee in Switzerland, he has not supplied sufficient confirmation for his allegation that he was involved in the prohibited organisation in question. In fact the applicant made conflicting statements before the Swiss authorities in particular as to whether he had already been subjected to treatment contrary to Article 3 (Art. 3) of the Convention. The applicant explains these contradictions with the fact that an unknown person had written down confusing statements, but he does not deny that, when questioned on 17 September 1983, he stated that he had not been persecuted by the Turkish authorities.

The Commission finds therefore that the applicant has failed to show by means of concrete submissions concerning his own situation that his treatment in Turkey would render his expulsion contrary to Article 3 (Art. 3) of the Convention.

In any event after his return to Turkey the applicant can bring an application before the Commission under Article 25 (Art. 25) of the Convention in respect of any violation of his Convention rights

by the Turkish authorities.

The application must therefore be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)