AS TO THE ADMISSIBILITY OF

Application No. 35150/97
by Hamid BELARBI
against Switzerland

The European Commission of Human Rights sitting in private on 7 April 1997, the following members being present:

Mrs. G.H. THUNE, Acting President
Mr. S. TRECHSEL
Mrs. J. LIDDY
MM. G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs. M. HION
MM. R. NICOLINI
A. ARABADJIEV

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 24 January 1997 by Hamid Belarbi against Switzerland and registered on 4 March 1997 under file No. 35150/97;

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, an Algerian citizen born in 1969, is a civil servant currently residing in Kloten in Switzerland. Before the Commission he is represented by Mr S. Aloui, a legal adviser practising in Zürich.

The facts of the case, as submitted by the applicant, may be

summarised as follows.

The applicant worked in Algeria in a civil registry. In January 1995 a member of the Islamic movement FIS asked him to prepare pamphlets on a typewriter. The applicant only agreed to do so as he was threatened with death, preparing the work on a free day. In view of further threats, he undertook a number of other such assignments. He also prepared for non-resident persons residence declarations signed by his director. The latter apparently became suspicious and informed the police. The applicant hid with his cousin when he learned that the police had searched for him at his house and had arrested his brother instead; the police had also threatened with action towards his brother if he, the applicant, did not report to the police within 24 hours.

Previously, the applicant had twice briefly been arrested in January and in March 1991 on account of having participated in demonstrations of the FIS.

The applicant left Algeria without any documents. He travelled through France to Switzerland where he arrived on 6 June 1995 and requested asylum.

The request was dismissed on 2 November 1995 by the Federal Office for Refugees (Bundesamt für Flüchtlinge) which found that the applicant's version of events lacked credibility. In the Federal Office's view, it appeared unlikely that members of an organisation pursued by the authorities would appear at a local administration on a number of occasions and ask a civil servant to type pamphlets, particularly as an organisation such as the FIS had sufficient means to obtain its own means of reproduction.

The Federal Office also ordered the applicant to leave Switzerland by 15 January 1996.

The applicant's appeal was dismissed on 19 June 1996 by the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission), the decision being served on 21 June 1996.

In its decision, the Asylum Appeals Commission noted the applicant's submissions according to which the FIS had in fact ceased to ask him to type the pamphlets at issue as it had acquired its own typewriters; the applicant was thus no longer needed and did not, therefore, have to fear threats from the FIS. The Asylum Appeals Commission further noted that persons who were not active members of the FIS, on the one hand, or who did not belong to particular professions or had a particular status, on the other, generally suffered no retributions in Algeria. The Asylum Appeals Commission also saw no indications that criminal proceedings were pending against the applicant in Algeria, and it noted that he had a family there from whom he could find support. The applicant's request for reopening the proceedings was declared inadmissible on 5 September 1996 as the applicant had failed to pay the advance court costs.

COMPLAINTS

The applicant complains under Article 3 of the Convention that upon his return to Algeria he risks being prosecuted as he formerly sympathised with the FIS. In support of his complaint he submits the copy of a friend's letter of 14 December 1995 according to which the Algerian police has searched the applicant's premises and taken away most of his papers.

The applicant also complains of the unfairness of the asylum proceedings in Switzerland, and of the conditions which he suffered in an internment centre in Switzerland.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 January 1997.

On 29 January 1997 the Acting President decided not to apply Rule 36 of the Commission's Rules of Procedure.

The application was registered on 4 March 1997.

THE LAW

1. The applicant complains that, if he is expelled to Algeria, he will suffer treatment contrary to Article 3 (Art. 3) of the Convention. The applicant also complains of the unfairness of the proceedings.

However, the decision of the Swiss Asylum Appeals Commission of 19 June 1996, which was served on the applicant on 21 June 1996, was the final decision regarding the subject of these particular complaints, whereas the application was submitted to the Commission on 24 January 1997, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

In any event, the applicant's complaint under Article 3 (Art. 3) of the Convention would also be inadmissible for the following reasons.

Article 3 (Art. 3) of the Convention states:

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

According to the Convention organs' case-law, the right of an alien to reside in a particular country is not as such guaranteed by the Convention. Nevertheless, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious and well-founded fear of treatment contrary to Article 3 (Art. 3) of the Convention in the country to which the person is to be expelled (see Eur. Court HR, Chahal v. United Kingdom judgment of 15 November 1996, paras. 72 ff, to be published in Reports 1996).

However, the mere possibility of ill-treatment on account of the unsettled general situation in a country is in itself insufficient to give rise to a breach of Article 3 (Art. 3) of the Convention (see Eur. Court HR, Vilvarajah and others v. United Kingdom judgment of 30 October 1991, Series A no 215, p. 37, para. 111).

The Commission has examined the circumstances of the present case as they have been submitted by the applicant. It notes that the applicant has submitted a friend's letter of 14 December 1995 according to which the Algerian police had searched the applicant's premises.

In the Commission's opinion, however, this document is of an entirely private nature and cannot suffice to substantiate the applicant's fears that, upon his return, he would risk treatment contrary to Article 3 (Art. 3) of the Convention.

The Commission has further had regard to the decisions of the Federal Office for Refugees of 2 November 1995 and of the Swiss Asylum Appeals Commission of 19 June 1996. The Commission notes that the authorities carefully examined the applicant's allegations, though they concluded that the applicant's submissions lacked credibility, and that

neither the general situation in Algeria nor the applicant's circumstances showed a concrete risk militating against his return to his home country.

As a result, the applicant has failed to show that upon his return to Algeria he would face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention.

This part of the application would therefore also be manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 3 (Art. 3) of the Convention about the conditions of his detention in Switzerland. However, the applicant failed to raise this complaint before the Swiss authorities. He has not, therefore, exhausted the remedies available to him under Swiss law. It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and the remainder of the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

H.C. KRÜGER	G.H. THUNE
Secretary	Acting President
to the Commission	of the Commission