AS TO THE ADMISSIBILITY OF

Application No. 27269/95
by Hasan DOYMUS
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 28 June 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Ms. M.-T. SCHOEPFER, 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 9 March 1995 by Hasan Doymus against Switzerland and registered on 5 May 1995 under file No. 27269/95;

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

The applicant, a Turkish citizen born in 1969, is a labourer residing at Lenzburg in Switzerland. Before the Commission he is represented by Mr. U. Oswald, a lawyer practising at Zurzach in Switzerland.

The applicant came to Switzerland in 1976 to join his parents, who are Turkish citizens. Subsequently, he went to school in Switzerland. He obtained a permission to establish domicile (Niederlassungsbewilligung) in Switzerland.

On 27 September 1989 the Aarau District Court (Bezirksgericht) sentenced the applicant to six years' imprisonment on account of having contravened the Narcotics Act (Betäubungsmittelgesetz) and also ordered his expulsion from Switzerland for a period of 15 years. Upon appeal, the Court of Appeal (Obergericht) of the Canton of Aargau on 6 June 1990 reduced the sentence to four and a half years' imprisonment.

On 3 May 1991 the Department of the Interior of the Canton of Aargau ordered the applicant to leave Switzerland for an undetermined

period of time. His appeal was dismissed by the Government (Regierungsrat) of the Canton of Aargau on 21 September 1992; in its decision it was pointed out that the applicant was still living with his parents.

Meanwhile, the Justice Division (Justizabteilung) of the Department of the Interior ordered the applicant's suspended release from imprisonment on 3 July 1991, though it did not suspend the applicant's expulsion from Switzerland. His appeal against this decision was upheld on 15 November 1991 by the Administrative Court (Verwaltungsgericht) of the Canton of Aargau.

The applicant's administrative law appeal (Verwaltungsgerichts-beschwerde) against the decision of the Government of the Canton of Aargau was dismissed by the Federal Court on 21 October 1994, the decision being served on the applicant on 10 November 1994.

In its decision the Court found that Section 10 para. 1 (a) of the Act on Residence and Domicile of Aliens (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer) envisaged expulsion of a person who had been convicted by a court of a criminal offence. According to Section 11 para. 3 of the Act, expulsion could only be pronounced if it appeared proportionate (angemessen). Section 16 of the Ordinance to the Act stated that when deciding on the expulsion the length of time spent in Switzerland had to be considered as well as the disadvantages arising for the person's family.

The Court further found that between 1987 and 1988 the applicant had dealt with heroin. The length of the prison sentence indicated that the applicant's criminal culpability was serious. The security police therefore had a considerable interest (sicherheitspolizeiliches Interesse) in keeping the applicant away from Switzerland. The decision continues:

<Translation>

> "In the applicant's case ... it must be considered that he has not at all entirely integrated into Swiss society. It transpires from the decision of the Court of Appeal that he moves mainly in circles of Turkish and Kurdish immigrants. Every one to two years, recently every year, he has spent his holidays in Turkey. Until his arrest he had a girlfriend in Turkey who regularly wrote to him. He also has a relationship to an aunt living there. It is not credible that the applicant no longer speaks his mother tongue; he spent at least the first six years of his life in Turkey, his father cannot speak German, and he mainly communicates with his countrymen. It is true that the parents and siblings live in Switzerland. However, the applicant has today reached an age where these family ties diminish and he must in any event stand on his own feet. Even if it involves considerable difficulties, it cannot completely be regarded as unreasonable that he returns to his home country and lives there."

<German>

> "Beim Beschwerdeführer ist ... in Rechnung zu stellen, dass er keineswegs vollständig in die schweizerische Gesellschaft integriert ist. Wie aus dem obergerichtlichen Urteil hervorgeht, bewegte er sich hauptsächlich in Kreisen türkischer und kurdischer Emigranten. Die Ferien verbrachte er alle ein bis zwei Jahre, in der letzten Zeit jährlich, in der Türkei. Bis zu seiner Verhaftung hatte er eine Freundin in der Türkei, welche ihm regelmässig schrieb. Beziehungen bestehen auch zu einer dort wohnhaften Tante. Dass der Beschwerdeführer seine Muttersprache nicht mehr beherrschen würde, ist nicht glaubhaft, da er zumindest die ersten sechs Lebensjahre in der Türkei verbracht

hatte, sein Vater nicht deutsch spricht und er überhaupt vorwiegend mit eigenen Landsleuten verkehrte. Was die Familie betrifft, leben zwar Eltern und Geschwister in der Schweiz. Der Beschwerdeführer ist aber in einem Alter, in welchem diese familiären Bindungen abnehmen und er ohnehin auf eigenen Füssen stehen muss. Es ist für ihn, wenn auch mit erheblichen Schwierigkeiten verbunden, so doch nicht unzumutbar, in seinen Heimatstaat zurückzukehren und dort zu leben."

The applicant was ordered to leave Switzerland by the end of March 1995.

COMPLAINTS

The applicant complains that his expulsion to Turkey would breach Article 8 of the Convention. He has done all his schooling in Switzerland, and his relatives live here. He speaks Swiss German. He would lose his entire social network, as he has no longer any contacts or ties with Turkey. He cannot therefore be expected to remain abroad. The applicant refers to the Convention organs' case-law, inter alia to the cases of Moustaquim and Beldjoudi (see Eur. Court H.R., Series A nos. 193 and 234-A).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 9 March 1995.

On 15 March 1995 the President of the Commission decided not to apply Rule 36 of the Commission's Rules of Procedure.

The application was registered on 5 May 1995.

THE LAW

The applicant complains, with reference to the Convention organs' case-law, that his expulsion to Turkey would breach Article 8 (Art. 8) of the Convention. He would lose his entire social network, as he has no longer any contacts or ties with Turkey.

Article 8 (Art. 8) of the Convention states, insofar as relevant:

"1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others."

The Commission recalls that no right of an alien to enter or to reside in a particular country is as such guaranteed by the Convention. However, the expulsion of a person from a country where close members of his family are living may amount to an infringement of the right to respect for private and family life guaranteed in Article 8 para. 1 (Art. 8-1) of the Convention (see Eur. Court H.R., Moustaquim judgment of 18 February 1991, Series A, no. 193, p. 18, para. 36; No. 9203/80, Dec. 5.5.81, D.R. 24 p. 239; No. 9478/81, Dec. 8.12.81, D.R. 27 p. 243).

In the present case the issue arises whether there was family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. The applicant, who is now 26 years old, has merely submitted, without closer substantiation, that his relatives all live in Switzerland. Having regard to the decisions of the Swiss

authorities, it transpires that the applicant has siblings in Switzerland and that he lived with his parents at least until the end of 1992.

The Commission need nevertheless not resolve this issue. Thus, even if the decision of the Swiss authorities to expel the applicant amounted to an interference with the applicant's right to respect for his private and family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention, such interference would be justified under Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission observes that the Swiss authorities, in particular the Federal Court in its decision of 21 October 1994, when deciding to expel the applicant, relied on Sections 10 and 11 of the Act on Residence and Domicile of Aliens, as well as on Section 16 of the Ordinance to this Act. The interference was therefore "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

Moreover, when deciding to expel the applicant, the Swiss authorities considered that he had been convicted of a serious offence. The Commission notes in particular that he was convicted of contravening the Narcotics Act and, upon appeal, sentenced to four and a half years' imprisonment. The interference was therefore imposed "for the prevention of crime" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

Furthermore, in its decision of 21 October 1994 the Federal Court carefully balanced the various interests involved. It considered on the one hand that the applicant had not at all integrated into Swiss society; that he moved mainly in circles of Turkish and Kurdish immigrants; and that he spent most of his holidays in Turkey where he also had an aunt and a girlfriend. On the other hand, the Court considered that the ties with his family had diminished.

The Commission furthermore notes that the Federal Court decided on the applicant's case in the last resort, and after having considered all circumstances of the case. It concluded that the decision to expel the applicant was necessary in order to maintain public security.

Taking into account the margin of appreciation which is left to Contracting States in such circumstances (see Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, p. 15, para. 28), the Commission does not find that the Swiss authorities, when deciding to expel the applicant, acted unreasonably in balancing the various interests involved.

The Commission therefore considers that any interference with the applicant's right to respect for his private and family life would be justified under Article 8 para. 2 (Art. 8-2) of the Convention in that it could reasonably be considered "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

The application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)