AS TO THE ADMISSIBILITY OF

Application No. 15099/89
by E.H.
against Switzerland

The European Commission of Human Rights sitting in private on 13 July 1989, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 31 May 1989 by E.H. against Switzerland and registered on 6 June 1989 under file No. 15099/89;

Having regard to the report provided for in Rule 40 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 1965, is a dancing teacher and assistant cook residing at Muttenz in Switzerland. Before the Commission she is represented by Mr. M. Neidhardt, a lawyer practising in Basel.

I.

The applicant's family originates from the village Davutlar. As the family actively propagates the Kurdish culture, various members have been arrested. In 1980 the Turkish security authorities conducted investigations in Davutlar on which occasion the applicant fell to the ground, thereby injuring her right hand. She was then detained on remand for a week. The applicant's father subsequently took his children to their grandparents in Gaziantep, where they went to school.

In spring 1987 the applicant attempted to pass the entry examinations for Ankara university. She also participated in a hunger strike against a Turkish university law whereupon she was detained on remand for two days and allegedly suffered inhuman treatment. As a result, she was excluded from the examinations.

In order to avoid further persecution the applicant left Turkey on 16 April 1987. She entered Switzerland with the help of third persons on 21 April 1987 whereby she avoided the official frontier controls.

II.

On 22 April 1987 the applicant applied for asylum. Her application was dismissed by the Delegate for Refugees (Delegierter für das Flüchtlingswesen) on 15 March 1988.

The applicant's subsequent appeal was dismissed by the Federal Department of Justice and Police (Eidgenössisches Justiz- und Polizeidepartement) on 9 August 1988. The decision noted, inter alia, that the applicant had never been convicted for her cultural activities. Her arrest in 1980 was too far back in time to be relevant. The refusal to be granted entry to the University played no part, and the occurrences concerning her relatives and friends were irrelevant as long as she herself had not suffered serious disadvantages. The applicant was then ordered to leave Switzerland by 20 September 1988.

On 10 October 1988 the Federal Department of Justice and Police dismissed the applicant's request for reopening the asylum proceedings. It found that the various newspaper articles submitted by the applicant were too general to corroborate her claims.

On 2 November 1988 the applicant submitted a new request for reopening the proceedings. The request contained a confirmation of the Deputy Public Prosecutor of the Ankara National Security Court of 5 October 1988 stating that her brother was wanted by the authorities as a member of the illegal separatist organisation PKK.

The Federal Department of Justice and Police thereupon suspended the applicant's expulsion and requested the Swiss Embassy at Ankara to verify the applicant's submissions. On 11 November 1988 and 31 January 1989 the Embassy replied that the documents submitted by the applicant were correct though the applicant's brother had meanwhile been acquitted and released from detention on remand on 23 February 1989. The applicant herself had never been mentioned in these proceedings; she had left Turkey having failed her university entry examinations and her family had had no problems with the authorities.

On 12 May 1989 the Federal Department of Justice and Police dismissed the applicant's request for reopening the proceedings. It noted the replies of the Swiss Embassy at Ankara, according to which the applicant was not wanted by the authorities and her family had not suffered retribution. The Department further noted that the applicant's brother had been acquitted. Insofar as the applicant submitted new newspaper articles reporting that her brother had been re-arrested, the Department found that these articles were not sufficient to confirm the alleged danger for the applicant.

On 22 May 1989 the applicant was ordered to leave Switzerland not later than 5 June 1989.

COMPLAINTS

The applicant complains under Article 3 of the Convention of her imminent expulsion to Turkey. She refers to the various arrests of her brother and claims that upon her return she will most likely be arrested and ill-treated.

Under Article 6 para. 1 of the Convention the applicant complains that the proceedings before the Federal Department of Justice and Police were unfair. Under Article 13 of the Convention she complains that she had no effective remedy at her disposal and that the Federal Department of Justice and Police was not independent.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 31 May 1989 and registered on 6 June 1989.

On 6 June 1989 the Acting President decided not to apply Rule 36 of the Commission's Rules of Procedure.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention of her imminent expulsion to Turkey. Under Article 6 para. 1 (Art. 6-1) of the Convention she alleges that the proceedings before the Federal Department of Justice and Police were unfair. Under Article 13 (Art. 13) of the Convention she claims that she did not have an effective remedy at her disposal.

The Commission recalls that under Article 26 (Art. 26) of the Convention it "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". In the present case the decision of the Federal Department of Justice and Police which was given on 9 August 1988 was the final decision regarding the applicant's original complaints, whereas the application was submitted on 31 May 1989, that is more than six months after the date of that decision.

An issue arises in particular whether the subsequent decision of the Federal Department of Justice and Police of 12 May 1989 suspended the running of that period. This decision concerned the applicant's request, on the basis of alleged new information, for the reopening of the previous proceedings.

However, the Commission is not required to decide on this matter since the application is in any event inadmissible for the following reasons.

2. The applicant complains that if expelled to Turkey she 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 fear of treatment contrary to Article 3 (Art. 3) of the Convention in the receiving State (see No. 10564/83, Dec. 10.12.84, D.R. 40 p. 262).

In the present case the Commission notes on the one hand that the main evidence submitted by the applicant concerns the situation of her brother. On the other hand, according to the information obtained by the Swiss Embassy in Turkey, the applicant herself has not been mentioned in connexion with the proceedings concerning her brother, and her family has not suffered retribution on account of these proceedings.

The Commission finds therefore that the applicant has failed to show by means of concrete submissions concerning her own situation

that her treatment in Turkey would render her expulsion contrary to Article 3 (Art. 3) of the Convention.

In any event the Commission notes that after her 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 her Convention rights by the Turkish authorities.

This part of 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.

3. The applicant further complains under Article 6 para. 1 (Art. 6-1) of the Convention of unfairness of the proceedings in particular before the Federal Department of Justice and Police.

However, the Commission recalls its case-law according to which a decision as to whether an alien should be allowed to stay in a country or be expelled does not involve either the determination of the alien's rights or obligations or of a criminal charge within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see No. 8118/77, Dec. 19.3.81, D.R. 25 p. 105).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. Insofar as the applicant complains under Article 13 (Art. 13) of the Convention that she did not have an effective remedy, the Commission recalls its case-law according to which the domestic appeal introduced by the applicant satisfies the requirements of Article 13 (Art. 13) in that it warrants sufficiently independent proceedings before the Federal Department of Justice and Police (see No. 12573/86, F. and F. v. Switzerland, Dec. 6.3.87, to be published in D.R. 51). It follows that the remainder of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)