AS TO THE ADMISSIBILITY OF

Application No. 24481/94
by Mehmet ERGÜL
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 30 November 1994, the following members being present:

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

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 13 May 1994 by Mehmet ERGÜL against Germany and registered on 28 June 1994 under file No. 24481/94;

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 Turkish citizen who was born in 1973 in Esslingen, Germany. He is represented by Mrs. B. Tilgner, a lawyer practising in Stuttgart.

It follows from the applicant's statements and the documents submitted that the regional authorities in Esslingen (Landratsamt) issued an expulsion order against the applicant on 4 January 1993 and also ordered its immediate execution.

The decision was based on the following findings:

- the applicant was born and lived in Germany;

- he was unmarried and lived with a girlfriend;

- he had a residence permit and a labour permit of unlimited duration;

- on 10 December 1991 he had been convicted by the Esslingen District Court (Amtsgericht) of trafficking in considerable quantities of drugs and was imposed a prison penalty which was suspended on probation;

- on 3 December 1992 police officers found the applicant in

the possession of 1.3 grams of heroin;

- on 20 December 1992 he was arrested and found in the possession of 100 grams of heroin. He admitted to having taken 3-4 grams of heroin daily for about a year;

- he had alleged that he was employed as an apprentice. It was not clear however whether in view of his detention on remand the apprenticeship had been maintained.

In view of the aforementioned circumstances, in particular the conviction for drug trafficking, which had become final, the authorities considered that an expulsion was necessary for reasons of special prevention (spezialpräventive Gründe). Although according to Section 45 (2) of the Aliens Act (Ausländergesetz) the applicant's personal, economic and other links with Germany had to be taken into account, and although he enjoyed increased protection against expulsion under Section 48 of this Act in view of the length of his stay in Germany, there were no particular circumstances speaking against expulsion. The applicant had himself not alleged or shown that any strong ties existed, in particular no member of his family (the applicant's parents and two older sisters as well as a younger sister and younger brother live likewise in Germany) was financially dependent on him. On the other hand by his drug trafficking activities had revealed a particular criminal propensity. Even a single conviction relating to the dealing in considerable quantities of drugs justified the assumption that there was danger of repetition, all the more so as the applicant had subsequent to his conviction and despite the pending expulsion proceedings, not refrained from indulging in further criminal activities as was shown by the fresh criminal proceedings still pending. Danger of repetition was also given in view of the fact that the applicant was himself admittedly a drug addict.

Furthermore, the expulsion was necessary for reasons of general prevention (generalpräventive Gründe). Dealing with illegal drugs was a particularly serious infringement of the public security and order and the expulsion of foreigners guilty thereof was a measure designed to prevent other foreigners from committing similar offences.

It was admitted that the applicant might have difficulties in adapting to life in his country of origin. Nevertheless the expulsion was not a disproportionate measure as the public interest in protection from drug trafficking prevailed.

The applicant could furthermore not rely on the European agreement on freedom of movement (Europäisches Niederlassungsabkommen). There were also no other bilateral or international treaties which could be invoked by the applicant.

Finally it was stated that the expulsion measures did not violate constitutional rights given in particular that the applicant could maintain his family relations even if he lived abroad.

The applicant then brought an administrative court action with a view to having the expulsion order set aside. He also requested the court for an interim order staying the execution of the expulsion order pending the administrative court proceedings.

The latter request was rejected by the Stuttgart Administrative Court (Verwaltungsgericht) on 28 April 1993. The court considered that the applicant's action appeared to be without any prospect of success because the public interest in the immediate execution of the expulsion order prevailed over the private interests of the applicant to stay in Germany until the final decision was given in his matter. The court stated that the applicant had not questioned the factual findings on which the expulsion order had been based. Referring to the jurisprudence of the Federal Constitutional Court and the Federal

Administrative Court, the administrative court also considered that in view of the applicant's conviction for drug trafficking there was danger of repetition which was also confirmed by his subsequent behaviour. The applicant's allegation that he intended to undergo a long-term disintoxication therapy was likewise no reason to exclude the existence of danger of repetition. So far the applicant had only declared his intention to undergo therapy and there was nothing to show that it would eventually lead to positive results. The court furthermore considered that the expulsion was also justified under Article 8 para. 2 of the European Convention of Human Rights as being necessary in a democratic society for the prevention of disorder and crime, for the protection of health and morals and for the protection of the rights and freedom of others. The court likewise considered that the measure in question was not disproportionate in view of the fact that the applicant had reached the age of majority and had not shown that he was in any way dependent on his family in Germany. Moreover his grandparents lived in Turkey and the applicant was consequently not left on his own in that country. Finally the court stated that the fact that the applicant was presently detained on remand was likewise no reason to stay the execution of the expulsion order as there was a necessity to expel the applicant immediately after his release from detention on remand or as the case may be after his having served a sentence which would possibly be imposed following the pending criminal proceedings.

The administrative court's decision of 28 April 1993 was confirmed by the Baden-Württemberg Administrative Court of Appeal (Verwaltungsgerichtshof) on 24 February 1994.

In the meantime the applicant had been convicted again on 20 April 1993 of continued drug trafficking and this conviction was confirmed by the Stuttgart Regional Court (Landgericht) on 12 November 1993. The applicant was sentenced to a youth penalty (Jugendstrafe) of two years imprisonment.

On 18 November 1993 the applicant was requested to leave the country voluntarily in order to avoid coercive measures.

An appeal against this order was rejected by the Regional Government in Stuttgart (Regierungspräsidium) on 15 February 1994.

The applicant then lodged a constitutional appeal against the latest expulsion measures as well as the administrative court decision denying suspensive effect to his administrative court action. On 11 April 1994 a group of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the constitutional complaint for a decision on the merits.

The applicant has not submitted any further information regarding the development of his Administrative Court action insofar as the merits are concerned and it must therefore be assumed that it is still pending.

COMPLAINTS

The applicant admits that he is a drug addict and alleges that his addiction caused him to deal in drugs. He considers that having always lived in Germany he has the right to undergo disintoxication therapy in that country. He also submits that he has been released from detention on remand on 12 November 1993 and his conduct has been unobjectionable since then. He could however not yet start therapy because in view of the expulsion order the costs of such therapy would not be reimbursed by the social security authorities. He alleges that he lives with his parents and is employed in Germany. Invoking Article 8 of the Convention and community law the applicant requests an annulment of the expulsion order.

THE LAW

Insofar as the applicant complains of his intended expulsion, the Commission first observes that a right not to be expelled from a State of which the person concerned is not a national cannot, as such, be derived from the Convention (No. 15271/89, Dec. 2.7.90, unpublished, and also, mutatis mutandis, Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, para. 85).

It is true that under certain circumstances an expulsion may be considered as an interference with the right to respect for private and family life (Article 8 para. 1 (Art. 8-1) of the Convention) which the applicant invokes. However, the Commission is not required to decide whether or not the facts submitted by the applicant disclose any appearance of the Convention as no final decision has yet been given on the merits of the applicant's administrative court action against the expulsion order. He can in these circumstances not be considered to have complied with the requirement under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies.

There are also no particular circumstances absolving the applicant according to generally recognised rules of international law from complying with this requirement. It is true that the applicant's request for granting suspensive effect to his action has been rejected. He has however, not shown that the provisional execution of the expulsion order would cause him irreparable or disproportionate damage. Rather he will be free to return to Germany would he eventually succeed in his administrative court action.

It follows that the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention in connection with Article 26 (Art. 26) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)