AS TO THE ADMISSIBILITY OF

Application No. 14912/89
by F.
against Switzerland

The European Commission of Human Rights sitting in private on 1 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
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 13 April 1989 by F. against Switzerland and registered on 19 April 1989 under file No. 14912/89;

Having regard to

- the report provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 25 July 1989 and the observations in reply by the applicant on 27 September 1989;

Having deliberated;

Decides as follows:

THE FACTS

The facts submitted by the parties may be summarised as follows.

The applicant, a Lebanese citizen born in 1954, is a teacher and apparently of moslem faith. In 1988 he arrived in Switzerland where he is currently hiding at an unknown place. Before the Commission he is represented by Mr. U. Kern of the "Zürcher Freiplatzaktion für Asylsuchende" and Mr. A. Achermann, a lawyer practising at Berne in Switzerland.

The applicant stated before the Swiss authorities that he had worked from 1971 until 1975 in secret in Lebanon for the Arab socialist workers' party. From 1976 until 1982 he undertook these activities in public. From 1983 to 1985 he was involved with the revolutionary workers' party, a Trotzkyite movement. As from 1985 onwards he ceased his political activities, while maintaining contacts with the Lebanese communist party.

Between January and March 1988 the applicant received various death threats, such as bullet shots, grenades, broken windows and anonymous letters.

In 1988 the applicant applied to the Italian Embassy in Beirut for an entry visa into Italy. This was granted on 10 March 1988 for a period of three months.

On 27 March 1988 the applicant flew from Beirut to Sofia in Bulgaria from where, on 28 March 1988, he travelled to Milan in Italy. On 31 March 1988 he attempted to enter Switzerland but was refused entry at the frontier.

II.

On 1 April 1988 the applicant entered Switzerland illegally. On 24 May 1988 the applicant applied for political asylum in Switzerland. He was questioned as to the reasons for his request by the Berne Cantonal Police on 13 June 1988.

According to the minutes prepared by the Berne Cantonal Police on that day the applicant first explained his particulars, inter alia that he was not liable to military service in Lebanon as his brother had already done such service, and under Lebanese law it sufficed if one brother did so. He then referred in some detail to his political activities until 1985. Thus, he belonged to the marxist wing of the workers' party, as opposed to the bureaucratic wing which was in contact with other groups, among them the Amal.

The applicant then explained the various threats he had received. Thus on 6 February 1988 shots were fired at him at Uzai, a Beirut suburb, on his way to Wardania where he was teaching. The Uzai was controlled by the Amal movement and two unkwown men in civilian clothing had fired the shots. Later, upon his return to Beirut on 29 February 1988, masked men threw a grenade at him. On 5 March 1988 he found the windows of his car riddled by bullet shots.

On 19 August 1988 the Swiss Delegate for Refugees (Delegierter für das Flüchtlingswesen) dismissed the applicant's request for asylum and ordered him to leave Switzerland not later than 31 October 1988.

In his decision the Delegate found that the activities of the applicant in Lebanon, which were first illegal and then legal, never resulted in a danger to his life. The Lebanese authorities had not taken any specific and grave measures against him and could not be made responsible for acts by third persons. The acts of which the applicant complained were merely criminal acts committed by individuals. The Delegate concluded that, while the applicant's security in Lebanon could not at present be ensured to the same extent as in times of peace, the fact that he was a victim of a general situation nevertheless did not require the granting of asylum.

The applicant's appeal against this decision was dismissed on 15 December 1988 by the Federal Department for Justice and Police (Eidgenössisches Justiz- und Polizeidepartement) which also ordered the applicant to leave Switzerland within a time-limit not under six weeks.

In its decision the Department found that the applicant had not presented new submissions which would call in question the previous decision. Insofar as the applicant claimed that the actions of the Amal militia had to be qualified as dangers emanating from a State authority, the Department noted that on 13 June 1988, when questioned by the Berne Cantonal Police, the applicant had expressly stated that these threats were those of unknown persons. The Department also observed that the applicant's legal departure from Lebanon via the Beirut airport contradicted his claims since the Beirut airport was completely controlled by the Amal militia.

The applicant's further requests for the reopening of the proceedings were rejected by the Delegate for Refugees on 7 February 1989 and by the Federal Department of Justice and Police on 28 March 1989.

COMPLAINTS

The applicant complains under Articles 2 and 3 of the Convention of a threat to his life if he is expelled from Switzerland to Lebanon. He maintains that he will be persecuted in Lebanon on the grounds of his religious beliefs and political views. He submits that the Swiss authorities did not sufficiently consider that the Amal militia which are persecuting him constitute a quasi-State authority. The decision refusing his request for asylum incorrectly described and assessed the facts.

The applicant states that he was able to leave the Beirut airport on 27 March 1988 by bribing the airport official. As to the attacks by the Amal militia, he points out that in areas controlled by Amal only their members can walk around armed. As regards the incident with the grenade, he explains that he was then driving in a car. He thereby saw in the mirror that a car with Amal number plates was following him and that one man in the back of the car threw the grenade.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 13 April 1989 and registered on 19 April 1989.

On 20 April 1989 the Acting President decided to indicate to the Swiss Government, in accordance with Rule 36 of the Commission's Rules of Procedure, that it was desirable in the interest of the parties and the proper conduct of the proceedings before the Commission not to expel the applicant until the Commission had had an opportunity to examine the application.

Further information was submitted by the Government on 27 April and 8 May 1989 and by the applicant on 20, 25 and 27 April 1989.

On 12 May 1989 the Commission decided to bring the application to the notice of the respondent Government and invite them pursuant to Rule 42 para. 2 (b) of the Rules of Procedure to submit observations on the admissibility and merits of the application. The Commission also decided not to prolong its indication under Rule 36 of the Rules of Procedure.

On 14 June 1989 the respondent Government submitted further information.

The respondent Government's observations on the admissibility and merits of the application were submitted on 25 July 1989 and the reply thereto by the applicant on 27 September 1989.

The applicant submitted further observations on the

application on 28 September 1989 and 13 July 1990.

THE LAW

The applicant complains of his expulsion to Lebanon where he will allegedly be subjected to measures of persecution contrary to Articles 2 and 3 (Art. 2, 3) of the Convention. Insofar as his expulsion has not yet been enforced, the applicant contends that the Government's position on this issue is not sufficiently precise.

The Government submit that the applicant has failed sufficiently to demonstrate that upon his return to Lebanon he would be subjected to the measures alleged. The Government further observe that the expulsion order is currently not being enforced. They state that the applicant will be notified between four to six weeks in advance of any decision that it should be enforced.

The Commission recalls 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 instance where there is a serious fear of treatment contrary to Articles 2 and 3 (Art. 2, 3) of the Convention (see No. 10564/83, Dec. 10.12.84, D.R. 40 p. 262; mutatis mutandis Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, pp. 32 et seq.).

The Commission further recalls that in its previous case-law it has left open the question whether, from the standpoint of Article 3 (Art. 3) of the Convention, it may take into account an alleged danger arising, not only from public authorities, but also from autonomous groups (see No. 8581/79, Dec. 6.3.80, D.R. 29 p. 48).

In the present case the applicant submits that upon his expulsion to Lebanon he will be subjected to measures of persecution contrary to Articles 2 and 3 (Art. 2, 3) of the Convention. However, the Commission notes that the Swiss authorities have not enforced the expulsion order since 1989.

The Commission is moreover satisfied that the assurances of the respondent Government provide sufficient guarantee that, if the applicant's expulsion order were to be enforced, he would be granted sufficient opportunity to challenge the execution, if possible before the Swiss authorities, and in any event before the European Commission of Human Rights.

As a result, there is at present no serious reason to believe that the applicant will be subjected to treatment prohibited in Articles 2 and 3 (Art. 2, 3) of the Convention. In these circumstances, and in particular in view of the Government's assurances, the Commission considers that the applicant cannot at the present claim to be a victim of the alleged violation within the meaning of Article 25 (Art. 25) of the Convention. It follows that 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

unanimously DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)