Application No. 17518/90
by Ayhan GEZICI
against Switzerland

The European Commission of Human Rights sitting in private on 7 March 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
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
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 5 November 1990 by Ayhan GEZICI against Switzerland and registered on 21 December 1990 under file No. 17518/90;

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 1957, is a teacher currently detained at Larissa prison in Greece. Before the Commission he is represented by Mr. H. Vest, a lawyer practising at Aesch in Switzerland.

I

According to the applicant's submissions, while still in Turkey he was a member of the Devrimci Kurtulus Revolutionary Liberation Movement as well as of an opposition teachers' trade union. After his arrest in 1980 he was convicted of political offences in 1984 and sentenced to 12 years' imprisonment, though he was released in the same year.

In 1985 the applicant travelled to Greece where he applied for asylum. He then stayed in the Lavrion refugee camp in Greece where he was a member of the camp inmates' board. During this time, serious disputes arose between the camp inmates and the camp's management. The applicant also helped to organise protest demonstrations in the camp.

Eventually, the applicant's request for asylum was dismissed by the Greek authorities. As the applicant feared that he would be expelled to Turkey, he returned illegally in 1986 to that country where until 1989 he lived under a false name in Istanbul.

II

On 7 March 1989 the applicant entered Switzerland, where on 9 March 1989 he applied for asylum.

On 20 April 1989 the Athens Interpol Office transmitted a request to the Swiss authorities to apprehend the applicant.

On 10 November 1989 the applicant was arrested on suspicion of the offence of forging documents as well as on the basis of a warrant of extradition issued by the Swiss Federal Office for Police Affairs (Bundesamt für Polizeiwesen).

On 14 December 1989 the Greek Embassy in Berne requested the applicant's extradition to Greece. The Embassy relied on a warrant of arrest of the Pireus Criminal Court in Greece and on an extradition request of the Public Prosecutor's Office at the Pireus Court of Appeal. The applicant was suspected in particular of having committed a bank robbery in Greece in 1987.

The applicant thereupon informed the Swiss authorities that he objected to his extradition to Greece. He stated that at the time when he was alleged to have committed the offences he had been in Turkey. After 12 March 1990 the applicant underwent a hunger strike.

Meanwhile, on 2 March 1990, the Federal Office for Police Affairs granted the request for the applicant's extradition to Greece.

The applicant then filed an administrative law appeal (Verwaltungsgerichtsbeschwerde) with the Federal Court (Bundesgericht) in which he complained inter alia that the Greek authorities would eventually extradite him to Turkey. During these proceedings, the Greek Embassy in Berne submitted a note according to which the applicant, if extradited, would not be liable to capital punishment in Greece.

On 3 May 1990 the Federal Court dismissed the applicant's appeal. As to the applicant's complaint about his further extradition to Turkey the Court found that according to Article 15 of the European Convention on Extradition, to which both Switzerland and Greece were parties, Greece was not permitted to extradite the applicant without the agreement of Switzerland with regard to offences committed before his extradition to Greece. The Court noted a statement by Amnesty International according to which there existed a risk of further extradition. However, the Court concluded that this statement insufficiently considered the European Convention on Extradition in force between the two States.

The applicant was extradited to Greece on 24 May 1990.

COMPLAINTS

1. The applicant complains of his extradition to Greece. He fears that the Greek authorities will extradite him to Turkey where he would immediately be arrested, detained and subjected to treatment

contrary to Article 3 of the Convention. The applicant alleges that the Swiss, Greek and Turkish authorities have extensively cooperated with regard to his case. He refers to a telex of the Ankara Interpol Office to the Swiss Federal Office of Police Affairs according to which "(the applicant has) a lot of previous convictions and is still wanted for making him serve his 12 years imprisonment".

2. Under Article 6 of the Convention the applicant complains of the unfairness of the extradition proceedings in Switzerland. He refers inter alia to the fact that he could not consult the entire case-file. Under Article 14 taken together with Article 6 of the Convention he complains that he suffered discrimination in these proceedings as he was financially badly off.

THE LAW

1. The applicant complains of his extradition to Greece. He submits that the Greek authorities will extradite him to Turkey where he will be subjected to treatment contrary to Article 3 (Art. 3) of the Convention. This provision 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 risk of treatment contrary to Article 3 (Art. 3) of the Convention in the receiving State (see No. 12102/86, Dec. 9.5.86, D.R. 47 p. 286).

In the present case the Commission notes that the applicant has been extradited to Greece. However, he does not contend that in Greece he would risk treatment contrary to Article 3 (Art. 3) of the Convention.

Rather, his complaint is that he should not have been extradited to Greece as the Greek authorities will further extradite him to Turkey, where he risks treatment contrary to Article 3 (Art. 3) of the Convention.

The Commission notes in the first place the decision of the Federal Court of 3 May 1990 according to which the applicant may not be further extradited to Turkey with regard to offences committed before his extradition to Greece, without the agreement of the Swiss authorities in accordance with Article 15 (Art. 15) of the European Convention on Extradition to which both Greece and Switzerland are parties. There is therefore no immediate risk of the applicant being surrendered to a third country. The applicant furthermore does not claim that the Swiss authorities have given such consent.

Moreover, if Greece were to extradite the applicant to a third country, as a party to the European Convention on Human Rights Greece would have to examine whether the treatment awaiting the applicant in the third country could give rise to an issue under the Convention. The applicant would then be free to bring an application before the Commission under Article 25 (Art. 25) of the Convention in respect of any violation of his Convention rights by the Greek authorities.

Finally, if the applicant were extradited to Turkey, he could file an application under Article 25 (Art. 25) of the Convention in respect of any violation of his 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.

2. The applicant further complains under Article 6 para. 1 (Art. 6-1) of the Convention of unfairness of the extradition proceedings in Switzerland. Under Article 14 (Art. 14) of the Convention taken together with Article 6 (Art. 6) he complains of discrimination as he was financially badly off.

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 the determination of the alien's rights or obligations nor of a criminal charge within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see No. 7317/75, Dec. 6.10.76, D.R. 6 p. 141). It follows that Article 6 para. 1 (Art. 6-1) of the Convention is not applicable to extradition proceedings. Moreover, Article 14 (Art. 14) of the Convention only concerns discrimination in relation to rights and freedoms guaranteed by the Convention; it is therefore also not applicable in the present case.

It follows that the remainder 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.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)