AS TO THE ADMISSIBILITY OF

Application No. 27525/95
by Serap KÖZ
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 2 February 1995 by Serap KÖZ against Austria and registered on 7 June 1995 under file No. 27525/95;

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 they have been submitted by the applicant, may be summarised as follows.

The applicant is a Turkish national, born in 1975 and presently residing in Dornbirn (Austria). Before the Commission she is represented by Mr. W.L. Weh, a lawyer practising in Bregenz.

On 26 April 1993 the Dornbirn District Administrative Authority (Bezirkshauptmannschaft) issued a penal order (Strafverfügung) against the applicant imposing a fine of 2000 AS for unlawfully staying in Austria as she had no valid residence permit. The order contained the information that an appeal against the penal order could be lodged within two weeks. As the applicant did not file an appeal the penal order entered into force.

On 8 July 1993 the applicant, assisted by counsel, appealed against the penal order and, as the time limit for filing an appeal had already elapsed, requested leave to appeal out of time (Wiedereinsetzung in den vorigen Stand). She submitted that she could not speak German and only now had learned about the contents of the penal order.

On 16 July 1993 the District Administrative Authority rejected the appeal as being lodged out of time and dismissed the request for leave to appeal out of time. The Authority found that the reason invoked by the applicant, namely that she did not speak German, did not meet the requirements for such a leave to appeal, i.e. that she has been prevented from filing an appeal in time by an unforeseeable and insurmountable obstacle. The applicant knew about her language problems, thus the obstacle was not unforeseeable, and she could have asked third persons to translate or explain to her the contents of the penal order, thus the obstacle was not insurmountable.

On 21 July 1993 the applicant appealed to the Vorarlberg Independent Administrative Senate (Unabhängiger Verwaltungssenat). She submitted that contrary to Article 6 para. 3 of the Convention the penal order had neither been in Turkish nor had a Turkish translation been attached thereto.

On 15 October 1993 the Independent Administrative Senate dismissed the applicant's appeal. It found that the District Administrative Authority had correctly refused to grant leave to appeal out of time and noted further that the penal order of 26 April 1993 had been served on the applicant personally.

On 16 December 1993 the applicant lodged a complaint with the Constitutional Court (Verfassungsgerichtshof).

On 14 June 1994 the Constitutional Court refused to entertain the applicant's complaint for lack of prospect of success.

COMPLAINTS

The applicant complains under Article 6 of the Convention of a violation of her right to be informed in a language she understands of the nature and cause of the accusation against her. She submits that the penal order should either have been issued in Turkish or a Turkish translation should have been attached thereto.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention of a violation of her right to be informed in a language she understands of the nature and cause of the accusation against her. She submits that the penal order should either have been issued in Turkish or a Turkish translation should have been attached thereto.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose the appearance of a violation of Article 6 (Art. 6) of the Convention, as under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law and within a period of six months from the date on which the final decision was taken.

Domestic remedies have not been exhausted where an appeal is not admitted because of a procedural mistake by the applicant (see No. 10785/84, Dec. 18.7.86, D.R. 48, p. 102; No. 12794/87, Dec. 9.7.88, D.R. 57, p. 251).

The Commission observes that on 16 July 1993 the District Administrative Authority rejected the applicant's appeal against the penal order of 26 April 1993 as being lodged out of time and dismissed the applicant's request for leave to appeal out of time.

The Commission has also examined whether the case discloses the existence of any special circumstances which might have absolved the applicant from complying with the requirement of exhaustion of domestic remedies. In this respect, the Commission notes the applicant's

submission that she could not understand the penal order of 26 April 1993 as she had no command of German.

However, the Commission recalls that a foreigner, who is not detained and who alleges that he does not understand a judgment and a notice of appeal which are both in the language of the court, is not absolved from the duty to exhaust available domestic remedies (No. 11122/84, Dec. 2.12.85, D.R. 45, p. 246).

The Commission therefore finds that no special circumstances exist which might have absolved the applicant from complying with the requirement of exhaustion of domestic remedies under Article 26 (Art. 26) of the Convention.

Accordingly the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)