AS TO THE ADMISSIBILITY OF

Application No. 27939/95
by M.C.
against the Netherlands

The European Commission of Human Rights sitting in private on 12 September 1996, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

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 28 April 1995 by M.C. against the Netherlands and registered on 21 July 1995 under file No. 27939/95;

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 applicant is a Turkish citizen of Kurdish origin, born in 1948, and at present residing in the Netherlands. Before the Commission he is represented by Ms. S. de Ruijter, a lawyer practising in Amsterdam.

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant entered the Netherlands on 15 November 1993 and requested asylum, or alternatively a residence permit for humanitarian reasons, on 19 November 1993. He alleged that he risked political persecution in Turkey since he had been involved in activities for the illegal TKEP (Türkiye Komunist Emet Partisi) from 1976 until he fled the country. Although he had never been a member of this party, he strongly sympathised with it. The applicant pointed out that he had informed members and supporters of the dates of meetings of the party, that he had distributed magazines and leaflets and that he had painted slogans. In June 1991 the applicant had received a summons to report to the police the following morning. Yet, that night, he had been taken from his home to a police station where he had been held for four days, interrogated about his political activities and tortured. He had been released as there was not sufficient evidence to charge him of illegal political activities, but he had not been allowed to leave the town without prior permission and, for eight to twelve months, he had had to report daily to a police station. Nevertheless, he had continued his activities for the TKEP. On 10 November 1993 the applicant had again received a summons to report to the police station. Although he did not know why the police wanted to see him, he had not reported to them but had fled to Istanbul and from there to the Netherlands. The applicant indicated that he had never had a passport and that the summons had been destroyed by his wife who, together with their four children, remained in Turkey.

On 18 January 1994 the State Secretary for Justice (Staatssecretaris van Justitie) rejected the applicant's requests. As regards his request for asylum, the State Secretary for Justice considered that it had not been established that the applicant had substantial grounds to fear persecution in Turkey since, besides the applicant's detention in June 1991, he and his family had never had any problems with the authorities. As regards his request for a residence permit, the State Secretary for Justice recalled that pursuant to Section 11 para. 5 of the Aliens Act (Vreemdelingenwet) the granting of a residence permit could be refused on grounds of public interest, whereas the Dutch authorities in applying Section 11 para. 5 of the Aliens Act follow a restrictive immigration policy in view of the population and employment situation in the Netherlands. The State Secretary for Justice furthermore considered that since the applicant's presence in the Netherlands did not serve any specific Dutch interest, and since no compelling humanitarian reasons were considered to exist on the basis of which he could be granted a residence permit, the applicant did not fulfil the conditions for obtaining a residence permit.

On 10 February 1994 the applicant filed an objection (bezwaarschrift) against this decision and requested the State Secretary for Justice to reconsider his view. In support of his request, the applicant emphasised that although he had not been involved in major activities, he had sympathised with the TKEP for a period of seventeen years. During these years the applicant had not only distributed leaflets and magazines, but he had also collected contributions for the party.

The applicant was invited to a hearing on 6 July 1994, which took place at a district office of the Ministry for Justice.

On 5 August 1994 the State Secretary for Justice rejected the applicant's objection. The fact that the applicant belonged to the Kurdish population in Turkey did not, according to the State Secretary, in itself lead to the conclusion that he feared persecution by the authorities. In any event, the applicant had not alleged that he feared persecution because of his origins. The State Secretary for Justice

furthermore noted that the detention in 1991 and the applicant's duty to report to the police station afterwards, had apparently not given him cause to flee.

Since the applicant's account was considered vague and inconsistent, and since he had not been able to explain clearly the goals and the organisational structure of the TKEP notwithstanding the fact that he claimed to have been active for this party for seventeen years, the State Secretary for Justice expressed doubts as to the veracity of his account. In this respect, the facts that the applicant was unable to tell why the police had wanted to see him again in November 1993 and to explain why his wife had destroyed the summons, were also taken into consideration.

The State Secretary for Justice decided that the applicant would not be allowed to remain in the Netherlands pending any appeal proceedings to be instituted by him.

On 15 August 1994 the applicant filed an appeal with the Aliens' Chamber (Vreemdelingenkamer) of the Regional Court (Arrondissementsrechtbank) of The Hague sitting at Haarlem (nevenzittingsplaats Haarlem). On 23 September 1994 he also requested the President of the Aliens' Chamber to grant an interim measure (voorlopige voorziening) allowing him to await the outcome of the appeal proceedings in the Netherlands.

The President of the Aliens' Chamber rejected the request for an interim measure on 9 December 1994. Insofar as the applicant had invoked Article 3 of the Convention, the President found no substantial grounds on the basis of which the existence of a genuine and personal risk of inhuman treatment on his return to Turkey had to be assumed. In this respect the President considered that the motives for flight submitted did not carry sufficient weight and did not provide any points of departure from which the conclusion might be reached that the applicant was eligible for asylum.

Since further investigation was not held to be able to contribute to the appeal proceedings, the President considered - pursuant to Section 8:86 of the Administrative Law Act - that there were grounds to decide simultaneously on the appeal instituted by the applicant. The President declared this appeal ill-founded, holding that it had not been established that if returned to Turkey the applicant would face a real risk of treatment contrary to Article 3 of the Convention.

COMPLAINT

The applicant complains that his expulsion to Turkey will expose him to a real risk of being subjected to treatment contrary to Article 3 of the Convention.

THE LAW

The applicant alleges that his expulsion to Turkey will amount to torture or inhuman and degrading treatment in breach of Article 3 (Art. 3) of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission observes that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including Article 3 (Art. 3), to control the entry, residence and expulsion of aliens (cf. Eur. Court HR, Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). Furthermore it must be noted that the right to political asylum is not contained in either the Convention or its Protocols. However, an expulsion decision may give rise to an issue

under Article 3 (Art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be expelled (ibid., p. 34, para. 103). A mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of this provision (ibid., p. 37, para. 111).

The Commission also recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) (cf. No. 27776/95, Dec. 26.10.1995, D.R. 83, p. 101). An assessment of whether such a treatment is in breach of this provision, must be a rigorous one in view of the absolute character of this Article.

The Commission has examined the applicant's submissions and the documents in support of his application.

As regards the particular circumstances of the present case, the Commission notes that the alleged four days of detention in 1991 and the applicant's duty to report to the police afterwards apparently gave him no cause to flee. It is furthermore noted that the applicant and his family did not experience any problems with the authorities since these events, and that the applicant's fear for persecution is principally based on the summons which he claims to have received in November 1993.

In view of the fact that the applicant has failed to put forward any reasons for the police wanting to see him or for his wife destroying the summons, the Commission considers that the information available to it is not sufficient to conclude that the applicant will be exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention if returned to Turkey.

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.

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission