AS TO THE ADMISSIBILITY OF

Application No. 27020/95
by N. A.
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 17 May 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Ms. M.-T. SCHOEPFER, 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 15 February 1995 by N. A. against Switzerland and registered on 10 April 1995 under file No. 27020/95;

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 submitted by the applicant, may be summarised as follows.

The applicant, a Turkish citizen born in 1968, is a salesman residing at Wohlen in Switzerland.

I.

Until 1992 the applicant lived in Turkey. According to his subsequent submissions before the Swiss authorities, as from 1991 he sympathised with the Youth Committee of the Populist Labour Party, the HEP, in Piskülen. In 1992 he stopped working as a shop assistant as soldiers suspected him and his brother of supporting the Kurdish Workers Party, the PKK, in the mountains.

In September 1992, following the death of the journalist M.A., the applicant became a member of a four person organisational committee organising a demonstration. Shortly after the demonstration commenced, the police intervened and arrested two of the organisers.

As a result, the applicant fled together with other persons into the mountains where he hid until November 1992. During this period, the police frequently looked for him at his home and molested his

parents.

In November 1992 the applicant travelled to Istanbul for health reasons, and on 4 December 1992 he left Turkey.

II.

On 7 December 1992 the applicant entered Switzerland where he applied for asylum.

The applicant was heard as to his request for asylum on 30 December 1992 and on 18 May 1993. On 27 July 1993 the Swiss authorities requested the Swiss representation in Ankara in Turkey to obtain information on certain issues concerning the applicant's request for asylum.

On 11 April 1994 the Federal Office for Refugees (Bundesamt für Flüchtlinge) dismissed the applicant's request for asylum. In its decision, the Office found that the applicant's description of the facts did not appear credible, inter alia as he had contradicted himself.

Thus, while he had stated that he had never possessed a passport in Turkey, it was established that he had obtained a passport in 1990. He had moreover, without telling the Swiss authorities, previously spent some time in the Netherlands where he had lived with relatives. He had furthermore not been in a position to describe in which mountains he had hidden as from September 1992, nor to tell the names of the organisers who were arrested during the demonstration in September 1992.

Insofar as the applicant maintained that criminal proceedings were pending against him, the Federal Office found that according to the investigations of the Swiss representation in Ankara, it had not been established that the applicant was wanted, or that he had been denied the right to possess a passport.

The Federal Office further found discrepancies in the dates mentioned by the applicant. Moreover, when questioned during the asylum proceedings he had once stated that he did not know why the friends with whom he had hidden in the mountains were looked for by the police, whereas upon another occasion he had told the Swiss authorities that his friends were wanted inter alia as they had organised protests.

The applicant's appeal was dismissed by the Swiss Appeals Commission in Matters of Asylum (Schweizerische Asylrekurskommission) on 16 February 1995.

In its decision the Appeals Commission found in particular that it did not transpire from the applicant's submissions that upon his return to Turkey there was a serious risk that he would be submitted to treatment contrary to Article 3 of the Convention. The applicant was also free upon his return to Turkey to reside in areas other than those where he had lived before.

On 23 February 1995 the applicant was ordered to leave Switzerland before 31 May 1995.

COMPLAINTS

The applicant complains that he cannot return to Turkey where as a Kurd he will be persecuted. Moreover, he refuses to undertake military service and will therefore be punished.

The applicant further complains about unfairness of the asylum proceedings. He alleges in this respect for instance that the authorities did not consider his statements.

The applicant complains about various instances of discrimination resulting from his position as a person who has requested asylum. For instance, he has no permission to work, he finds no support to obtain special literature, he cannot travel in Switzerland without permission, and he suffers psychological distress as he only receives 91 SFr a month for his upkeep. The situation is worse than in prison.

THE LAW

1. The applicant complains that he cannot return to Turkey where as a Kurd he will be persecuted and subjected to treatment contrary to Article 3 (Art. 3) of the Convention.

According to the Convention organs' case-law, the right of an alien to reside in a particular country is not as such guaranteed by the Convention. Nevertheless, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious and well-founded fear of treatment contrary to Article 2 or 3 (Art. 2, 3) of the Convention in the country to which the person is to be expelled (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, p. 32 et seq., paras. 81 et seq.).

However, the mere possibility of ill-treatment on account of the unsettled general situation in a country is in itself insufficient to give rise to a breach of Article 3 (Art. 3) of the Convention (see Eur. Court H.R., Vilvarajah and others judgment of 30 October 1991, Series A no 215, p. 37, para. 111).

Having examined the circumstances of the present case as they have been submitted by the applicant, the Commission notes that the applicant has not provided any documents or other evidence in support of his allegations, nor has he shown that upon his return to Turkey he will be prevented from taking up residence in parts of the country other than those where he lived before.

The Commission has therefore had regard to the decisions of the Federal Office for Refugees on 11 April 1994, and of the Swiss Appeals Commission in Matters of Asylum on 16 February 1995. The Commission notes that the authorities carefully examined the applicant's allegations, though they concluded that he had not credibly established a danger of persecution upon his return to Turkey.

Thus, the applicant has failed to show that upon his return to Turkey he would face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention.

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Insofar as the applicant complains under Article 6 (Art. 6) of the Convention about unfairness of the asylum proceedings, the Commission recalls that the decision whether an alien should be allowed to stay in a country or be expelled does not involve either the determination of the alien's civil rights or obligations, or a criminal charge, within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see No. 8118/77, Dec. 19.3.81, D.R. 25 p. 105). This part of the application is therefore incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

3. Insofar as the applicant appears to complain under Article 14 (Art. 14) of the Convention of various instances of discrimination which he has been suffering in Switzerland during the asylum proceedings, the Commission finds that the complaint has not been sufficiently substantiated. The remainder of the application is

therefore also 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 Second Chamber — President of the Second Chamber

(M.T. SCHOEPFER) — (H. DANELIUS)