AS TO THE ADMISSIBILITY OF

Application No. 21958/93
by N.K.
against Switzerland

The European Commission of Human Rights (First Chamber) sitting in private on 30 June 1993, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI

Mrs. M.F. BUQUICCHIO, Secretary to the First 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 24 May 1993 by N.K. against Switzerland and registered on 2 June 1993 under file No. 21958/93;

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 is of Albanian origin and a national of former Yugoslavia. He was born in 1965. An accountant by profession, he lived in Kosovo before travelling to Switzerland. He has not specified his current place of residence in Switzerland. Before the Commission he is represented by Ms. Isabelle Merk, a lawyer practising in Lucerne.

I.

According to the applicant's submissions, he has long been involved in movements whose aim is the independence of Kosovo. Thus, in 1981, at the age of 16 he participated in demonstrations for this cause.

In 1985 the applicant took over his deceased father's position as an accountant.

On 3 November 1989 the applicant participated in a demonstration in the course of which he was arrested and brought to the Pristina police station. Without being brought before a judge or having contact with a lawyer, he was remanded in custody for 48 hours. During this time he was interrogated and beaten. Two days later, on 5 November 1989, the trial took place before the Pristina District Court. As a

result the applicant was convicted and sentenced to 60 days' imprisonment. In these proceedings he was not represented by a lawyer. His appeal was dismissed without grounds on 8 November 1989.

The applicant served 57 days in a prison in Dubrava. During the first week he was asked under physical and psychological pressure to participate in the Serbian secret service. During the remaining period he was regularly beaten.

Upon the applicant's release he intensified his political activities. He joined the newly-founded LDK, a political party of Kosovo Albanians. The applicant organised demonstrations and participated in meetings, always with a view to the independence of Kosovo. During this period of time he was twice questioned by State security officials; each time he was asked to participate in the security service.

In view of the applicant's political activities he lost his employment in 1991.

In 1992 the LDK appointed the applicant vice-president of the electoral committee of the Pristina District. It was his duty to examine the correct conduct of the parliamentary elections of 1992. As a result, the Serbian authorities declared him an unwanted person.

In June 1992, the police unsuccessfully searched for him at his home. On 1 July 1992 the police, who had a warrant of arrest against him, searched his house in his absence. The applicant then decided to go into hiding.

In August 1992 the applicant decided to flee to Switzerland.

II.

On 11 August 1992 the applicant applied for asylum in Switzerland. In support of his application he submitted, inter alia, a warrant of arrest.

His request was dismissed by the Federal Office for Refugees (Bundesamt für Flüchtlinge) on 18 December 1992.

In its decision the Federal Office regarded it as credibly established that the applicant had undergone the prison sentence. However, it considered that the prison sentence could no longer be regarded as relevant as it had taken place a long time before. The same consideration applied to his questioning by State security officials.

The Federal Office also identified the warrant of arrest submitted by the applicant as clearly being falsified. It further found that there was no civil war in Kosovo, and that the applicant could be expected to return to his home country.

The applicant's appeal was dismissed by the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission) on 20 April 1993, which confirmed the conclusions of the Federal Office. The Commission found that the applicant would not suffer persecution either in Kosovo or in Macedonia.

The applicant was then ordered to leave Switzerland by 25 May 1993.

On 19 May 1993 the applicant applied for reconsideration of his situation (Wiedererwägungsgesuch). He also requested that his application be granted suspensive effect.

COMPLAINTS

The applicant complains under Articles 2 and 3 of the Convention of the order to leave Switzerland. He claims that upon his return to Kosovo he will have to undergo court proceedings on account of his political activities; the applicant refers here to his prominent position in the LDK and to his previous conviction. Allegedly the proceedings are notoriously unfair, and torture and inhuman treatment will be systematically applied. The applicant submits that Albanians are generally persecuted in Kosovo.

The applicant explains that he submitted a false warrant of arrest to the Swiss authorities as he was under pressure to find protection from persecution.

In support of his application before the Commission the applicant submits, inter alia, the judgment of the Pristina District Court, as well as a confirmation of his LDK membership dated 13 January 1993. The applicant also submits a report of Caritas Switzerland on the general situation in Kosovo.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 May 1993 and registered on 2 June 1993.

On 27 May 1993 the President decided not to apply Rule 36 of the Commission's Rules of Procedure.

THE LAW

The applicant complains that he has been ordered to leave Switzerland. He alleges that upon his return to Kosovo he will suffer treatment contrary to Articles 2 and 3 (Art. 2, 3) of the Convention, which respectively protect the right to life and prohibit inhuman and degrading treatment.

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 fear of treatment contrary to Articles 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., para. 81 et seq.).

In the present case the Commission notes that the evidence submitted by the applicant in support of his allegations of ill-treatment in Kosovo is documents relating to his detention in 1989. The Commission observes that in the light of these documents the Federal Office for Refugees in its decision of 18 December 1992 regarded it as established that the applicant had served a prison sentence.

Nevertheless, in the Commission's opinion, these documents, concerning events in 1989, cannot serve to substantiate alleged persecution forcing the applicant to flee Kosovo three years later in 1992.

Moreover, the applicant does not claim that criminal proceedings were pending against him when he left Kosovo, or that any warrant of arrest or search warrant had been issued against him which prompted his departure in 1992, or that such documents were issued after he arrived in Switzerland.

In the Commission's opinion the applicant has not sufficiently demonstrated that, in view of his support of the LDK, he was tortured or ill-treated by the authorities before he left Kosovo, or that upon his return to Kosovo he will risk such treatment.

Insofar as the applicant refers to the situation in Kosovo in general and submits a report of Caritas Switzerland in support of these allegations, the Commission recalls that 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).

The Commission finds therefore that the applicant has failed show that, upon his return to Kosovo, he would face a real risk of being subjected to treatment contrary to Articles 2 and 3 (Art. 2, 3) 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 First Chamber — Acting President of the First Chamber

M.F. BUQUICCHIO — F. ERMACORA