AS TO THE ADMISSIBILITY OF

Application No. 32168/96
by Hüsnü ÖZ
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 3 December 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION

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 9 April 1996 by Hüsnü ÖZ against Germany and registered on 8 July 1996 under file No. 32168/96;

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, born in 1959, is a Turkish national. When lodging his application he was living in Bielefeld. In the proceedings before the Commission he is represented by Mr. C. Michalke, a lawyer practising in Münster.

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

In January 1993 the applicant, together with his family, came from Turkey to the Federal Republic of Germany with a view to work as muslim minister of religion and religious teacher (imam) on the basis of an employment contract with a Turkish-Muslim cultural association in Gelsenkirchen.

The applicant was granted a residence permit linked to this purpose of his stay in Germany. His last residence permit, issued by the Gelsenkirchen Municipality on 4 October 1993, was limited in time, namely until 1 October 1994. Furthermore, the permit was subject to the condition (auflösende Bedingung) that the applicant continued to be employed by, and work as minister of religion for the above-mentioned association in Gelsenkirchen.

On 18 May 1994 the applicant's employment with the above-mentioned association terminated. By letters of 16 And 20 May 1994 the Turkish Consulate-General in Münster informed the Gelsenkirchen Municipality that the applicant had already been requested to return to Turkey as soon as his office as minister of religion had terminated.

In July 1994 the applicant applied for a new residence permit, stating that he had concluded an employment contract with a religious association with seat in Bielefeld according to which he would work as minister of religion and religious teacher.

On 27 July 1994 the Bielefeld Municipality dismissed the applicant's request and ordered him to leave the territory of the Federal Republic of Germany before 14 August 1994, and ordered his expulsion in case that he should not leave Germany in time.

In its decision, the Municipality, relying on the relevant provisions of the Aliens Act (Ausländergesetz) in conjunction with the Regulations on (Employment) Residence Permits (Verordnung über Aufenthaltsgenehmigungen zur Ausübung einer unselbständigen Erwerbstätigkeit), noted that the applicant had previously been granted a residence permit solely with regard to his employment in Gelsenkirchen. Under the relevant provisions no such permit could be granted if such a decision would affect general interests of the Federal Republic of Germany. In the present case, the Turkish Government had expressed their wishes that the applicant be no longer granted a residence permit for the purposes of exercising functions as minister of religion. If these wishes were disregarded the international relations between Turkey and Germany could possibly suffer. Moreover, having regard to the Consulate-General indications as to the applicant's political activities, the Municipality observed that such activities could be contrary to the public order. In any event, there were several Muslim ministers of religion working in Bielefeld and, accordingly no local need for the applicant's activities as minister of religion. Furthermore, the German general immigration policies did not allow for a new residence permit. Moreover, the applicant who had spent most of his life in Turkey, could be expected to return and take up work in Turkey. Balancing all interests involved, the public interest in his return to Turkey outweighed his private interests to stay in Germany.

The applicant lodged an administrative appeal (Widerspruch) and applied with the Minden Administrative Court (Verwaltungsgericht) for a stay of execution of the decision of 27 July 1994.

On 24 October 1994 the Administrative Court dismissed the applicant's request. The Court, in a summary evaluation, found that there was a public interest in the immediate execution of the impugned decision. The Court found that there was no procedural error. Moreover, as regards the merits of his case, the Court expressed considerable doubts as to whether the conditions under the Regulations on (Employment) Residence Permits for granting a new residence permit were met. On the whole the decision appeared to be lawful, in particular the foreign policy considerations as well as the general immigration policy arguments were tenable. These interests outweighed the applicant's private interest in temporarily staying in Germany. In this respect, the Court noted that the applicant's stay in Germany had been limited in time and solely linked to his work in Gelsenkirchen. In accordance with the general rule, he therefore had to await the outcome of his appeal proceedings in his home country.

On 12 July 1995 the Northrhine Westphalia Administrative Court of Appeal (Oberverwaltungsgericht) dismissed the applicant's appeal (Beschwerde).

On 24 August 1995 the Minden Administrative Court dismissed the applicant's request to amend the preceding decisions to the effect that

he had a provisional right to stay in Germany and that the execution of the expulsion order be stayed. The Court found that the applicant had failed to show any relevant new circumstances since its last decision, as confirmed upon appeal. In particular, part of his submissions were contradictory and, in any event, he could have raised the issues concerned in the first set of proceedings.

On 25 September 1995 the Northrhine Westphalia Administrative Court of Appeal dismissed the applicant's appeal.

On 7 November 1995 the Federal Constitutional Court (Bundesverfassungsgericht) refused to entertain the applicant's constitutional complaint (Verfassungsbeschwerde).

By letter of 29 October 1996 the Bielefeld Municipality informed the applicant that his further stay in Germany could no longer be permitted. In this respect the Municipality referred to the fact that the Committee at the Northrhine Westphalia Ministry of the Interior, deciding on cases where an envisaged expulsion would amount to an undue hardship, had not favoured the applicant's further stay in Germany. The applicant was requested to leave Germany by 30 November 1996. If he should not leave voluntarily the necessary measures to execute the expulsion order were to be implemented. The time-limit was apparently orally prolonged until 15 December 1996.

COMPLAINTS

The applicant complains under Article 9 of the Convention that his expulsion violates his right to freedom of religion and in particular his freedom to manifest his religion together with the members of his religious community in Bielefeld.

THE LAW

The applicant complains about his envisaged expulsion to Turkey. He relies on Article 9 (Art. 9) of the Convention which provides as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Commission notes that the applicant lodged an administrative appeal against the decision of July 1994, and subsequently pursued two sets of court proceedings with a view to obtaining a stay of execution. In the first set of these proceedings the applicant failed to lodge a constitutional complaint with the Federal Constitutional Court. He only did so in the second set of proceedings concerning a review of the earlier administrative court decisions. In any event, in the context of the said proceedings, the German courts only decided on the question whether the applicant should exceptionally be entitled to stay in Germany pending the main proceedings and, in this context, summarily considered the prospects of success of the applicant's case. The applicant did not show that he also exhausted the remedies available to him in the main proceedings regarding the decision in question. The question, therefore, arises whether the applicant exhausted domestic remedies, as required by Article 26 (Art. 26) of the Convention. However, this question can be left open as the application is anyway inadmissible for the following reasons.

The Commission recalls that no right of an alien to enter or to reside in a particular country, or not to be removed from that country, is as such guaranteed by the Convention. Nevertheless, in so far as a measure of expulsion or extradition has consequences adversely affecting the enjoyment of a Convention right, it may, assuming that the consequences are not too remote, attract the obligations of a Contracting State under the relevant Convention guarantees (cf. Eur. Court HR, Abdulaziz, Cabales and Balkandali v. United Kingdom judgment of 25 May 1985, Series A no. 94, pp. 31-32, paras. 59-60; Soering v. United Kingdom judgment of 7 July 1989, Series A no. 161, p. 33, para. 85).

Accordingly, a measure of expulsion does not as such constitute an interference with the rights guaranteed by Article 9 (Art. 9), unless it can be established that the measure was designed to repress the exercise of such rights and stifle the spreading of the religion or philosophy of the followers (cf. No. 8118/77, Dec. 19.3.81, D.R. 25, p. 105).

In the present case, the applicant has not, whilst in the jurisdiction of Germany, been subjected by the authorities to any restrictions his rights to manifest his religion, in particular in teaching and worship. Rather, his stay in Germany was authorised for the particular purpose of teaching Muslim beliefs and working as a Muslim minister of religion in Gelsenkirchen for a limited period of time, and his residence permit expired automatically upon termination of this employment. His request for a further residence permit, namely for the purpose of taking up employment with another employer in another German town, was refused.

However, the Commission finds that freedom of religion does not as such encompass the right to a residence permit for the purposes of taking employment, even if the employer is a religious association. There is nothing to show that the refusal of the applicant's request for a new residence permit was designed to repress the exercise of his right to freedom of religion. In these circumstances, there is no indication of any interference with the applicant's right to freedom of religion as guaranteed by Article 9 (Art. 9).

Nevertheless, even assuming that the impugned refusal of a new residence permit amounted to an interference with the applicant's right to manifest his religion, this measure was justified under paragraph 2 Article 9 (Art. 9). In this respect, the Commission considers that the decision concerned was based on the relevant provisions of the Aliens Act in conjunction with the Regulations on (Employment) Residence Permits, and the German administrative courts, in their summary evaluation, regarded the measure as apparently lawful. As regards the necessity of the measure in a democratic society, the Commission finds that the reasons advanced by the German authorities, in particular those relating to German foreign policy and general immigration policy are genuine reasons of public order in the exercise of their power to control the entry, residence and expulsion of aliens (cf. Eur. Court HR, Moustaquim judgment of 18 February 1991, Series A no. 193, p. 19, para. 43). The applicant's personal interests were duly balanced against the public interests in his leaving Germany, and there is no appearance of disproportionality. The German authorities have not, therefore, gone beyond the margin of appreciation left to the Contracting Parties in this field.

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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber