AS TO THE ADMISSIBILITY OF

Application No. 27646/95
by Ali ÖZDEMIR
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 16 January 1996, 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. 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 7 February 1995 by Ali ÖZDEMIR against Austria and registered on 19 June 1995 under file No. 27646/95;

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 national, born in 1959 and residing in Lauterach (Austria). Before the Commission he is represented by Mr. W.L. Weh, a lawyer practising in Bregenz (Austria).

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

In April 1992 the applicant arrived in Austria. On 22 June 1992 he married an Austrian citizen in Vienna. Subsequently a residence permit and a working permit were issued to the applicant. In August 1992 the applicant moved to Vorarlberg. His wife did not follow him.

On 27 June 1993 the Vorarlberg Public Security Authority (Sicherheitsdirektion) questioned the applicant suspecting that he had obtained his residence permit on the basis of a marriage of convenience (Scheinehe). The applicant submitted that he had met his wife in Vienna and married her after two months. He still had contact with her and visited her in Vienna once a month. Before leaving Turkey his marriage with his former wife had been dissolved. Three children had been born to that marriage.

On 18 October 1993 the Public Security Authority in Graz heard the applicant's wife. She stated that the marriage with the applicant

was one of convenience. She had received 20.000 As for having entered into the marriage. The transaction had been organised by third persons and she had seen the applicant only once before the marriage and on the occasion of the marriage. Since then she has not seen her husband again. The persons who had organised the marriage had also promised to take care of the divorce proceedings and to carry the necessary expenses, but had not kept their promise.

On 18 November 1993 the Vorarlberg Public Security Authority heard the applicant again.

On 9 February 1994 the Bregenz District Administrative Authority (Bezirkshauptmannschaft) annulled the applicant's residence permit. The District Authority found that the applicant had entered into a marriage of convenience for the purpose of obtaining a residence permit and a working permit. The Authority noted in this respect the detailed statements of his spouse and found that the applicant's own submissions were not plausible. Furthermore the applicant had from April 1992 until 22 June 1992 stayed illegally in Austria. Under Section 11 of the Aliens Act (Fremdengesetz) it had to annul a residence permit if subsequently facts become known which would have lead to the refusal of a residence permit. The District Authority found that it was against the public interest and a gross violation of the law if a foreigner staying unlawfully in Austria obtained surreptitiously a residence permit.

On 24 March 1994 the applicant complained to the Administrative Court (Verwaltungsgerichtshof). He submitted that his marriage had not been dissolved and there were no reasons to assume that it was one of convenience. Furthermore an annulment of the residence permit could not be based on his previous unlawful stay in Austria.

On 21 July 1994 the Administrative Court dismissed the applicant's complaint. The Administrative Court, referring to its previous case-law, found that by entering into a marriage merely for the purpose of obtaining a residence permit the person concerned abused the law and his further stay in Austria would violate the public order. In this context it was not relevant whether this marriage of convenience formally continued to exist. The Administrative Court also found that the assessment of evidence by the District Authority was convincing. This decision was served on the applicant on 8 August 1994.

On 16 August 1994 the Bregenz District Administrative Authority requested the applicant to leave Austria within 2 weeks failing which a residence prohibition (Aufenthaltsverbot) would be imposed on him.

It appears that until now no residence prohibition has been issued against the applicant and no other measures for his removal from Austria have been taken.

COMPLAINTS

The applicant complains under Article 8 of the Convention that the annulment of his residence permit violated his right to respect for his private and family life. He submits that the District Administrative Authority should not have arrived at the conclusion that he had entered into a marriage of convenience as, in his view, such a finding could only be the result of civil court proceedings for the annulment of a marriage. He also relies on Article 12 of the Convention.

THE LAW

1. The applicant complains that the annulment of his residence permit violated his right to respect for his private and family life. He relies on Article 8 (Art. 8) of the Convention which reads as

follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that no right of an alien to enter or to reside in a particular country, nor a right not to be expelled from a particular country, is as such guaranteed by the Convention (see No. 12461/86, Dec. 10.12.86, D.R. 51 pp. 258, 264). However, in view of the right to respect for private and family life ensured by Article 8 (Art. 8) of the Convention, the exclusion of a person from a country in which his immediate family resides may raise an issue under this provision of the Convention (see Eur. Court H.R., Moustaquim judgment of 18 February 1991, Series A no. 193, p. 18, para. 36; No. 13654/88, Dec. 8.9.88, D.R. 57 pp. 287, 289).

Nevertheless, an applicant can only claim to be a victim of an alleged violation of Article 3 (Art. 3) of the Convention, or, as in the instant case, of Article 8, within the meaning of article 25 para. 1 (Art. 25-1) if an expulsion order has been made against him, the mere refusal or annulment of a residence permit not being sufficient to meet this requirement (Eur. Court H.R., Vijayanathan and Pusparajah judgment of 27 August 1992, Series A no. 241-B, p. 87, para. 46).

In the present case, the Bregenz District Administrative Authority annulled on 9 February 1994 the applicant's residence permit. On 16 August 1994 the Bregenz District Administrative Authority requested the applicant to leave Austria within two weeks failing which a residence prohibition would be imposed on him. The applicant does not submit that a residence prohibition had been issued against him or that any other measure aimed at his removal from Austria has been taken.

In these circumstances the applicant cannot claim to be a victim of an alleged violation of Article 8 (Art. 8) of the Convention in respect of the annulment of his residence permit.

It follows that this part of the application is incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Lastly, the applicant complains that the annulment of his residence permit violated his right under Article 12 (Art. 12) of the Convention which provides as follows:

> "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

The Commission notes that the applicant married his wife unhindered. Furthermore, the Commission finds that Article 12 (Art. 12) of the Convention does not impose a general obligation upon Contracting States to respect a married couple's choice of the place where they wish to found a family or to accept non-national spouses for settlement to facilitate that choice (No. 14069/88, Dec. 14.12.88, unpublished; No. 19788/92, Dec. 9.2.92, unpublished).

It follows that this aspect of the case is 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 First Chamber President of the First Chamber

(M.F. BUQUICCHIO) (C.L. ROZAKIS)