AS TO THE ADMISSIBILITY OF

Application No. 26400/95
by Metin ÖZTÜRK
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1995, 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. MARXER
G.B. REFFI
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 16 December 1994 by Metin ÖZTÜRK against Austria and registered on 6 February 1995 under file No. 26400/95;

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, born in Austria in 1973 and presently residing in Bludesch (Austria). Before the Commission he is represented by Mr. G. Waibel, a lawyer practising in Dornbirn.

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

On 17 December 1990 the applicant, represented by counsel, requested a visa for entering Austria from the Austrian Embassy in Ankara. He submitted that his parents were living and working in Austria and that one of his brothers was living with them. After having finished school in Turkey he would now like to join them in Austria.

On 3 October 1991, after some correspondence with the applicant, the Austrian Embassy issued a visa valid until 3 January 1992. The Embassy also informed him that in the future visas for visits of comparable length could be issued at regular intervals. On 28 October 1991 the applicant arrived in Austria.

On 19 December 1991 the applicant requested the Bludenz District

Administrative Authority to grant him a two years' residence permit in order to settle down in Austria. He submitted that he now wished to stay permanently with his parents.

On 2 September 1992 the Bludenz District Administrative Authority imposed on the applicant a residence prohibition under Section 18 paras. 1 and 2 (6) of the Aliens Act (Fremdengesetz) valid until 31 December 1997. It noted that, according to enquiries carried out, the Austrian Embassy had specified that the visa was given for the purpose of visiting relatives in Austria. In his letters of 3 September 1991 and 11 October 1991 the applicant had also stated expressly that he only wanted to visit his family in Austria but had no intention to settle down there. The District Administrative Authority concluded that the applicant when requesting the visa had made false statements before the Embassy as to the purpose and length of his intended stay in Austria, since from the very beginning he had had the intention to settle down in Austria.

The District Administrative Authority had also regard to the applicant's private and family situation. In this respect it noted that the applicant's parents had been living in Austria for a long time. However, the applicant had lived in Turkey since his early youth and had joined his parents in Austria only for occasional holiday visits. Thus, the links to his parents were not strong. The applicant's family and private situation therefore did not outweigh the public interest in imposing the residence prohibition.

On 2 February 1993 the Vorarlberg Federal Security Authority (Sicherheitsdirektion) dismissed the applicant's appeal against the District Administrative Authority's order of 2 September 1992. It referred to the findings of the District Administrative Authority and added that once he had arrived in Austria the applicant had applied for a work permit which had been granted on 15 April 1992. Also this element confirmed that the applicant, contrary to his statements before the Austrian Embassy in Ankara, had from the beginning had the intention to settle down in Austria. He therefore had made false statements before the authorities which was a serious violation of Austrian immigration law.

On 1 March 1993 the applicant lodged a complaint with the Constitutional Court (Verfassungsgerichtshof) in which he invoked Article 8 of the Convention.

On 28 February 1994 the Constitutional Court declined to deal with the applicant's complaint for lack of prospect of success and referred the case to the Administrative Court (Verwaltungsgerichtshof).

On 23 June 1994 the Administrative Court dismissed the applicant's complaint. It found that the imposition of a residence prohibition was necessary in the public interest involved in a proper administration of immigration laws and that the administrative authorities had properly weighed the public interest against the applicant's individual interest in staying in Austria.

COMPLAINTS

1. The applicant complains under Article 8 of the Convention that the residence prohibition against him violated his right to respect for his private and family life.

2. He further complains under Article 6 para. 1 of the Convention that in the proceedings leading to the residence prohibition there had been no oral hearing before the Administrative Court.

THE LAW

1. The applicant complains under Article 8 (Art. 8) of the

Convention that the residence prohibition against him violated his right to respect for his private and family life.

Article 8 (Art. 8) of the Convention 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. However, in view of the protection of the right to respect for private and family life afforded by Article 8 (Art. 8) of the Convention, the expulsion of a person from a country in which his immediate family is resident may give rise to issues under this provision (Eur. Court H.R., Beldjoudi judgment of 26 March 1992, Series A no. 234-A, p. 25, para. 67; Beldjoudi v. France, Comm. Report 6.9.90, para. 54, Eur. Court H.R., Series A, no. 234-A, p. 41).

The Commission further recalls that the question whether family life exists is essentially a question of fact. Relationships between adults do not necessarily attract the protection of Article 8 (Art. 8) of the convention without evidence of further elements of dependency, involving more than normal emotional ties (see No. 10375/83, Dec. 10.12.84, D.R. 40, p. 196).

In the present case the applicant was born in Austria but from his early youth on he lived in Turkey and attended school there. He visited his parents who are living and working in Austria for occasional holidays. In October 1991 at the age of 18 he joined his parents in Austria. There are no indications in the applicant's submissions that he is still dependent on his parents.

The Commission need not decide whether or not in these circumstances the residence prohibition complained of constitutes an interference with the applicant's right to respect for his private and family life existing in Austria. Even assuming that there has been such an interference, it was justified under the terms of paragraph 2 of Article 8 (Art. 8-2) of the Convention for the following reasons.

In order to be so justified an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the aims enumerated in paragraph 2 (Art. 8-2) and it must be necessary in a democratic society for that aim or those aims.

As regards the lawfulness of the measures complained of, the Commission finds that the legal basis of the impugned residence prohibition was Section 18 para. 1 and 2 (6) of the Aliens Act. There is no indication that the residence prohibition was not issued in accordance with the law.

Moreover, the residence prohibition at issue pursued a legitimate aim within the meaning of Article 8 para. 2 (Art. 8-2), namely the prevention of disorder and the preservation of the country's economic well-being (cf. Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, p. 15, para. 26; No. 18056/91, Dec. 11.1.94, unpublished).

As regards the question whether the residence prohibition was

"necessary in a democratic society" for the above-mentioned aims, the Commission recalls that it is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens (Eur. Court H.R., Beldjoudi judgment of 26 March 1992, Series A no. 234-A, p. 27, para. 74).

In the case at issue the Austrian authorities, when imposing the residence prohibition upon the applicant, found that he had mislead the immigration authorities as regards the purpose and length of his intended stay in Austria, in particular that when applying for a visa, he had concealed his intention to settle down in Austria. The Commission notes further that the competent authorities duly considered the applicant's private and family situation.

Taking into account the margin of appreciation left to the Contracting States, the Commission considers that the residence prohibition complained of can be considered as "necessary in a democratic society in the interest of ... the economic well-being of the country or ... for the prevention of disorder".

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains under Article 6 para. 1 (Art. 6-1) of the Convention that in the proceedings leading to the residence prohibition there had been no oral hearing before the Administrative Court.

Article 6 para. 1 (Art. 6-1) of the Convention, as far as relevant, reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

However, the Commission recalls that a decision as to whether an alien should be allowed to stay in a country does not involve the determination of a civil right or of a criminal charge within the meaning of Article 6 of the Convention (No. 8118/77, Dec. 19.3.81, D.R. 25, p. 105, at p. 119).

It follows that Article 6 para. 1 (Art. 6-1) of the Convention is not applicable in the present case. This part of the Application is therefore incompatible ratione materie with the provisions of the Convention 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)