AS TO THE ADMISSIBILITY OF

Application No. 27139/95
by Erdal SÖNGER
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 24 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
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 20 March 1995 by Erdal Sönger against Switzerland and registered on 26 April 1995 under file No. 27139/95;

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 of Kurdish origin born in 1974, is a labourer residing at Steinhausen in Switzerland. Before the Commission he is represented by Mr H.P. Roth, a legal adviser.

I.

In 1992 the applicant lived in Maras in Turkey where he worked in the shop of his father. As from early 1992 onwards members of the Kurdish Workers Party, the PKK, frequented the shop. While he was first unaware of their political connections, he suspected their ties with the PKK as they frequently only came after midnight to the shop. Eventually, these persons confirmed their membership of the PKK, but instructed the applicant not to tell his father anything. At some stage the applicant apparently was offered the unspecified function of "village guard". However, other persons in the village must have reported these events to the father, though the applicant denied any knowledge thereof.

Eventually, a person unknown to the applicant informed the police of the events whereupon police officers turned up at the shop and asked the applicant to admit that members of the PKK were frequenting the shop. This was denied by the applicant. Three days later, apparently

in early May, the police returned, calling the applicant a liar, threatening him with death and asking him to report any further visits of PKK members by means of radio transmission. The applicant declined.

In April and May 1992 the members of the PKK frequented the shop on approximately six to seven occasions.

Later in 1992 soldiers again appeared in the shop. In view of empty Coca Cola bottles on the floor, they concluded that PKK members had again turned up, whereupon the applicant was hit on his neck. He fell and cut himself on a broken bottle.

The next day the applicant informed his father for the first time of all these events and told him that he would go to his uncle in Antalya. When he heard that the soldiers had found out his new whereabouts, he decided to leave his country.

On 19 September 1992 the applicant left Turkey from Istanbul.

II.

On 23 September 1992 the applicant entered Switzerland where he requested asylum. He was heard by the Swiss authorities on 19 October 1992 and 12 July 1994.

His request for asylum was dismissed on 30 August 1994 by the Federal Office for Refugees (Bundesamt für Flüchtlinge) which found that the applicant's submissions did not appear credible. Thus, it appeared unlikely that the PKK had continued to turn up at the father's shop even though the police had made inquiries there, and that the father had remained unaware of the events. There were also doubts as to whether a person unknown to the applicant would have first reported him to his father and then to the police.

Insofar as the applicant maintained that upon his return he would refuse to perform military service and therefore lose his Turkish nationality, the Federal Office considered that according to the applicable law the applicant risked a fine or imprisonment, neither of which constituted a ground for granting asylum in Switzerland.

The applicant's appeal was dismissed on 17 November 1994 by the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission) which found that the applicant had failed sufficiently to substantiate a danger of persecution upon his return to Turkey, in particular as there were too many contradictions in his submissions. The Commission further found that upon his return the applicant was free to reside in another area of Turkey, which according to his own submissions he had already previously done without any difficulties.

The applicant requested the reopening of this decision inter alia as the Commission had failed to deal with his complaint that he would be severely punished upon his return to Turkey if he refused to perform military service. This request was dismissed by the Asylum Appeals Commission on 10 March 1995, inter alia as the previous decision had sufficiently mentioned these submissions.

COMPLAINTS

The applicant complains under Article 3 of the Convention that upon his return to Turkey he would face severe psychological distress (psychische Notlage) as he would have to choose between performing military service and participating in the crimes of war against other Kurds or serving longterm imprisonment for objecting to military service. Moreover, if criminal proceedings were instituted against him he could not expect to be treated fairly as required by Article 6 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 March 1995.

On 24 March 1995 the President of the Commission decided not to apply Rule 36 of the Commission's Rules of Procedure.

The application was registered on 26 April 1995.

THE LAW

The applicant complains under Article 3 (Art. 3) of the Convention that upon his return to Turkey he will either have to perform military service and fight against the Kurds, or be subject to criminal proceedings contrary to Article 6 (Art. 6) of the Convention as a result of which he will be convicted and sentenced to longterm imprisonment.

Article 3 (Art. 3) of the Convention states:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

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 exceptionally involve a violation of the Convention, for example where there is a serious and well-founded 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 Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 32 et seq., paras. 81 et seq.; p. 45, para. 112).

Nevertheless, 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 has had regard to the decisions of the Federal Office for Refugees on 30 August 1994 and of the Swiss Asylum Appeals Commission in Matters of Asylum of 17 November 1994 and 10 March 1995. The Commission notes that the authorities carefully examined the applicant's allegations, though they concluded that in view of the applicant's submissions as to the events in his home village in 1992 he had not credibly established a danger of persecution upon his return to Turkey.

The Commission has further examined the applicant's complaints about military service awaiting him upon his return to Turkey. It recalls its case-law according to which prosecution for refusal to perform military service does not in itself constitute treatment contrary to Article 3 (Art. 3) of the Convention (see No. 12364/86, dec. 17.10.86, D.R.50 p. 280). In the present case the applicant has not provided any documents or other evidence in support of his allegations. In particular, no indications have been given as to whether he would indeed be obliged to perform military service and during what period of time, in what area of Turkey and in which function in the army it appeared likely that he would have to perform his service.

As a result, 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.

The application is therefore 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)