AS TO THE ADMISSIBILITY OF

Application No. 27275/95
by Murat TIMOCIN
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 28 June 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
F. MARTINEZ
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 9 March 1995 by Murat Timocin against Switzerland and registered on 5 May 1995 under file No. 27275/95;

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 born in 1970, is a labourer residing at Aarau in Switzerland. Before the Commission he is represented by Mr. U. Oswald, a lawyer practising at Zurzach in Switzerland.

The applicant came to Switzerland in September 1973 to join his parents who are Turkish citizens. Subsequently, he lived with his parents and his siblings and went to school in Switzerland. He obtained a permission to establish domicile (Niederlassungs-bewilligung) in Switzerland.

As from December 1988 the applicant was suspected of having contravened the Narcotics Act (Betäubungsmittelgesetz); he was remanded in custody until 3 January 1989. On 28 June 1989 he was again remanded in custody on renewed suspicion of having committed further criminal offences. On 17 January 1990 the Aarau District Court (Bezirksgericht) sentenced the applicant to four years' imprisonment and expelled him from Switzerland for a period of ten years. Upon appeal, the Court of Appeal (Obergericht) of the Canton of Aargau on 22 May 1991 reduced the sentence to three and a half years' imprisonment.

On 23 April 1992 the Department of the Interior of the Canton of Aargau ordered the applicant to leave Switzerland for an undetermined period of time. His appeal was dismissed by the Government (Regierungsrat) of the Canton of Aargau on 21 September 1992.

Meanwhile, the Justice Division (Justizabteilung) of the Department of the Interior ordered the applicant's suspended release from imprisonment on 26 August 1992.

The applicant's administrative law appeal (Verwaltungsgerichts-beschwerde) against the decision of the Government of the Canton of Aargau was dismissed by the Federal Court on 21 October 1994, the decision being served on the applicant on 10 November 1994.

In its decision the Court found that Section 10 para. 1 (a) of the Act on Residence and Domicile of Aliens (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer) envisaged expulsion of a person who had been convicted by a court of a criminal offence. According to Section 11 para. 3 of the Act, expulsion could only be pronounced if it appeared proportionate (angemessen). Section 16 of the Ordinance to the Act stated that when deciding on the expulsion the length of time spent in Switzerland had to be considered as well as the disadvantages arising for the person's family.

The Court further found that as from 1987 the applicant had dealt with heroin. The length of the prison sentence indicated that the applicant's criminal culpability was serious. The security police therefore had a considerable interest (sicherheitspolizeiliches Interesse) in keeping the applicant away from Switzerland. The decision continues:

<Translation>

> "On the other hand, it must be borne in mind that the applicant is a foreigner who still as a small child came to Switzerland with his parents and grew up here. This criterion enjoys considerable weight when balancing the interests from the point of view of the Aliens' Police, as the proportionality of expulsion depends considerably on the time the foreigner has spent in Switzerland. Of course, it must not be overlooked that the applicant has not entirely integrated into Swiss society. It transpires from the penal judgment of the Court of Appeal that the applicant moved mainly in Turkish circles. This qualifies the relevance of the fact that he grew up here. It is true, as far as his family is concerned, that his parents and his siblings live in Switzerland. However, the applicant has today reached an age where these family ties diminish and he must in any event stand on his own feet. His Turkish home country is not alien to him, as he has on many occasions in the past been there, if only for holidays; at least his grandmother also lives in that country. The applicant furthermore is familiar with the Turkish language. It is therefore not completely unreasonable to expect the applicant to return to his home country and to live there."

<German>

> "Auf der anderen Seite ist zu beachten, dass es sich beim Beschwerdeführer um einen Ausländer handelt, der noch als Kleinkind mit seinen Eltern in die Schweiz gekommen und hier aufgewachsen ist. Diesem Kriterium kommt in der fremden-polizeilichen Interessenabwägung erhebliches Gewicht zu, denn die Verhältnismässigkeit der Ausweisung hängt wesentlich von der Dauer der Anwesenheit des Ausländers in der Schweiz ab. Freilich ist nicht zu übersehen, dass der Beschwerdeführer nicht vollständig in die schweizerische Gesellschaft integriert ist. Wie aus dem obergerichtlichen Strafurteil hervorgeht, bewegte sich der Beschwerdeführer hauptsächlich in türkischen Kreisen.

Das relativiert die Bedeutung des Umstands, dass er hier aufgewachsen ist. Wohl leben, was die Familie betrifft, Eltern und Geschwister in der Schweiz. Der Beschwerdeführer ist heute aber in einem Alter, in welchem diese familiären Bindungen abnehmen und er ohnehin auf eigenen Füssen stehen muss. Seine türkische Heimat ist ihm nicht fremd, hat er sich doch in der Vergangenheit mehrfach, wenn auch ferienhalber, dort aufgehalten und lebt zumindest auch seine Grossmutter in diesem Land. Der Beschwerdeführer ist überdies mit der türkischen Sprache vertraut. Gänzlich unzumutbar ist es für ihn folglich nicht, in seinen Heimatstaat zurückzukehren und dort zu leben."

The Court further noted that even the applicant's detention on remand had not prevented him from further contravening the Narcotics Act.

The applicant was ordered to leave Switzerland by the end of March 1995.

COMPLAINTS

The applicant complains that his expulsion to Turkey would breach Article 8 of the Convention. He has done all his schooling in Switzerland, and his relatives live here. He speaks Swiss German. He would lose his entire social network, as he has no longer any contacts or ties with Turkey. He cannot therefore be expected to remain abroad. The applicant refers to the Convention organs' case-law, inter alia to the cases of Moustaquim and Beldjoudi (see Eur. Court H.R., Series A nos. 193 and 234-A).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 9 March 1995.

On 15 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 5 May 1995.

THE LAW

The applicant complains, with reference to the Convention organs' case-law, that his expulsion to Turkey would breach Article 8 (Art. 8) of the Convention. He would lose his entire social network, as he has no longer any contacts or ties with Turkey.

Article 8 (Art. 8) of the Convention states, insofar as relevant:

"1. Everyone has the right to respect for his private and family life ...

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 and 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 is as such guaranteed by the Convention. However, the expulsion of a person from a country where close members of his family are living may amount to an infringement of the right to respect for private and family life guaranteed in Article 8 para. 1 (Art. 8-1) of the Convention (see Eur. Court H.R., Moustaquim judgment of 18 February 1991, Series A, no. 193, p. 18, para. 36; No. 9203/80, Dec. 5.5.81, D.R. 24, p. 239; No. 9478/81, Dec. 8.12.81, D.R. 27,

p. 243).

In the present case the issue arises whether in the applicant's case there was family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. The applicant, who is now 25 years old, has merely submitted, without closer substantiation, that his relatives all live in Switzerland. Having regard to the decisions of the Swiss authorities, it transpires that the applicant's parents live in Switzerland, and that he also has one brother and one sister there.

The Commission need nevertheless not resolve this issue. Thus, even if the decision of the Swiss authorities to expel the applicant amounted to an interference with the applicant's right to respect for his private and family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention, such interference would be justified under Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission observes that the Swiss authorities, in particular the Federal Court in its decision of 21 October 1994, when deciding to expel the applicant, relied on Sections 10 and 11 of the Act on Residence and Domicile of Aliens, as well as on Section 16 of the Ordinance to this Act. The interference was therefore "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

Moreover, when deciding to expel the applicant, the Swiss authorities considered that he had been convicted of a serious offence. The Commission notes in particular that he was convicted of contravening the Narcotics Act and, upon appeal, sentenced to three and a half years' imprisonment. The interference was therefore imposed "for the prevention of crime" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

Furthermore, in its decision of 21 October 1994 the Federal Court carefully balanced the various interests involved. It considered on the one hand that the applicant had not entirely integrated into Swiss society; that he moved mainly in Turkish circles; that he was familiar with the Turkish language; and that he had been on holidays in Turkey where he also had a grandmother. On the other hand, the Court considered that the ties with his family had diminished.

The Commission furthermore notes that the Federal Court decided on the applicant's case in the last resort, and after having considered all circumstances of the case. It concluded that the decision to expel the applicant was necessary in order to maintain public security.

Taking into account the margin of appreciation which is left to Contracting States in such circumstances (see Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, p. 15, para. 28), the Commission does not find that the Swiss authorities, when deciding to expel the applicant, acted unreasonably in balancing the various interests involved.

The Commission therefore considers that any interference with the applicant's right to respect for his private and family life would be justified under Article 8 para. 2 (Art. 8-2) of the Convention in that it could reasonably be considered "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber President of the Second Chamber

(M.-T. SCHOEPFER) (H. DANELIUS)