AS TO THE ADMISSIBILITY OF

Application No. 27442/95
by Abdulkerim TUNC and Family
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 19 October 1995, the following members being present:

MM. G. JÖRUNDSSON, Acting President
H. DANELIUS
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

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 17 March 1995 by Abdulkerim TUNC and Family against Sweden and registered on 31 May 1995 under file No. 27442/95;

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 applicants, may be summarised as follows.

All applicants are Turkish citizens. The first applicant was born in 1964 and the second applicant, his wife, was born in 1963. The third, fourth, fifth, sixth, seventh and eighth applicants are their children, born in 1982, 1984, 1986, 1987, 1992 and 1993 respectively. The ninth applicant is the first applicant's sister, born in 1966 and the tenth and eleventh applicants are her children, born in 1993 and 1994 respectively. All applicants are at present living in a church at Sollefteå, Sweden. They are represented by Mr. Claes Åberg.

At the age of sixteen the first applicant became involved in the political activities of the Kurdish Democratic Party - the KDP - in the area near Durakbasi in the South-east of Turkey. In September 1980 he was arrested at Diyarbakir and detained for 45 days, during which he was allegedly tortured. His family managed to buy him out of the prison. In January 1982 he was arrested and detained again for 45 days. He was allegedly tortured again but released from prison after his family had once more paid a sum of money. During both periods of detention the police wanted to obtain information about the KDP and its members.

In 1985 the first applicant was called up for military service and was stationed in eastern Turkey. He submits that he participated

in several operations against the Kurdish PKK guerillas and in 1986 he was furthermore sent to Iraq to fight against the Kurds living there. While in Iraq he deserted from the army and remained there until September 1988 when he returned to Turkey. He stayed in Istanbul until 25 January 1989 when he flew to Warsaw using a passport, visa and air tickets which had been "arranged" by the KDP. He submits that his family paid 3 million Turkish lira for the assistance. From Poland the first applicant went by boat to Sweden where he arrived on 28 January 1989 and applied for asylum referring to his political activities and to the fact that he had deserted from the army.

On 26 May 1989 the National Immigration Authority (Statens invandrarverk - the SIV) rejected the application. The appeal was rejected by the Government on 1 February 1990. Two new applications were rejected by the SIV on 5 and 23 March 1990.

Subsequently the first applicant applied for asylum under a false identity, claiming to come from Iraq. On 7 May 1991 he was granted a permanent residence permit. His wife and four children, the second, third, fourth, fifth and sixth applicants, obtained a residence permit on 17 September 1991 and thus joined the first applicant in Sweden, also using false identities.

In 1993 the SIV obtained information about the above irregularities and requested clarification from the family. Admitting the use of false identities the family now applied for asylum referring to the first applicant's above-mentioned political activities, to his desertion from the army and to the fact that the family had now been in Sweden for some years. On 11 January 1994 the SIV withdrew the family's residence permits as these had been obtained on the basis of incorrect submissions and rejected the requests for asylum.

In the meantime the first applicant's sister, the ninth applicant, had arrived in Sweden and also obtained a residence permit using a false identity. Following the discovery thereof her residence permit was withdrawn on 14 January 1994 and her new application for asylum, which was also submitted on behalf of her son, the tenth applicant, was rejected the same day.

All applicants appealed against these decisions to the Aliens Board (Utlänningsnämnden). On 1 November 1994 the Board rejected the appeals stating inter alia as follows:

(translation)

> "(The first applicant) has in this case admitted that he has applied for asylum using two different identities. The Board agrees with the SIV that (the first applicant) and also his wife ... deliberately gave false information about their and their children's identities and previous activities in order to obtain a residence permit in Sweden. The false information was of importance for the evaluation of the permit question. Therefore there is reason to withdraw (the first applicant's) permanent residence permit... .
>
> The Board is aware of the fact that the situation in the South-east of Turkey from where the family comes recently has become more difficult for those living there. However, having regard to what is otherwise known about the situation in Turkey and after consultation with the UNHCR, the Board finds that a person from the South-east of Turkey, by staying in other parts of Turkey, can avoid the troubles which exist in this region. Accordingly, the fact that a person comes from the South-east of Turkey is not as such a reason to grant asylum or an impediment to refoulement to Turkey. The reasons submitted by asylum seekers from the South-east of Turkey shall therefore be

examined in the usual individual manner.

> The Board agrees with the SIV that what (the first applicant) and (the second applicant) have alleged in regard to Turkey is not sufficient for considering them and their children as refugees according to Chapter 3 section 2 of the Aliens Act (Utlänningslagen). ...
>
> Since there are otherwise no humanitarian or other reasons to change the decision appealed against (the first applicant's) permanent residence permit shall be withdrawn and an expulsion ... of the family shall follow. ..."

A similar decision was taken by the Aliens Board concerning the first applicant's sister and her two children.

Further applications for residence permits were rejected by the Aliens Board on 13 January, 9 May and 7 July 1995.

COMPLAINT

The applicants complain that their expulsion to Turkey would be in violation of Article 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 March 1995 together with a request, under Rule 36 of the Commission's Rules of Procedure, to take the measures necessary to stay the execution of the expulsion order.

On 23 March 1995 the President of the Commission decided not to apply Rule 36 of the Rules of Procedure.

THE LAW

The applicants complain that in particular the first applicant risks treatment contrary to Article 3 (Art. 3) of the Convention if returned to Turkey. Article 3 (Art. 3) of the Convention reads:

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

The applicants maintain that due to the first applicant's desertion he risks being subjected to torture, inhuman or degrading treatment or punishment by the Turkish military. Furthermore, they maintain that he risks similar treatment from members of the PKK since he participated in operations against this organisation. The applicants also refer to the first applicant's political activities and to the fact that they have all now lived in Sweden for some years.

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to political asylum is not protected in either the Convention or its Protocols (Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 3) of the Convention, where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be expelled (ibid., para. 103). A mere possibility of ill-treatment is not in itself sufficient (ibid., p. 37, para. 111).

The Commission notes that the expulsion in question is foreseen to a State, Party to the Convention, which has declared that it recognises the competence of the Commission to receive individual petitions lodged under Article 25 (Art. 25) of the Convention.

Furthermore, the Commission considers that the general situation in Turkey is not such that an expulsion to that country would in itself amount to a violation of the Convention or any of its Protocols.

As regards the particular circumstances of the present case the Commission does not consider that the first applicant's affiliation to the KDP is of such a character that he would risk treatment contrary to Article 3 (Art. 3) in Turkey for that reason. Concerning his possible imprisonment for the offence of desertion from the army, the Commission does not find such a penalty so severe as to raise an issue under Article 3 (Art. 3) of the Convention (cf. No. 12364/86, Dec. 17.10.86, D.R. 50, p. 280 and No. 11017/84, Dec. 13.3.86, D.R. 46, p. 176).

The Commission further finds no substantiation of the allegations of possible ill-treatment of other family members upon their return to Turkey.

The Commission concludes, on the evidence before it concerning the applicants' background and the general situation in Turkey, that it has not been established that there are substantial grounds for believing that the applicants would be exposed to a real risk of being subjected to treatment, contrary to Article 3 (Art. 3) of the Convention, if expelled from Sweden to that country.

Moreover, the Commission recalls from its previous case-law that Chapter 8, section 1 of the Swedish Aliens Act imposes an absolute obligation on the enforcement authority in Sweden to refrain from expelling an alien should the human rights situation in the receiving country constitute a firm reason to believe that he or she would be in danger of being subjected to capital or corporal punishment, or torture, in that country (cf., e.g., No. 25387/94, Kas Ibrahim and Parsom v. Sweden, Dec. 4.7.95, unpublished).

It follows that the application must be rejected as being 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 the Second Chamber	Acting President of the Second Chamber
(M.-T. SCHOEPFER)	(G. JÖRUNDSSON)