AS TO THE ADMISSIBILITY OF

Application No. 21126/93
by Ahmet, Besey, Hasan and Fikret YUEKSEL
against Switzerland

The European Commission of Human Rights sitting in private on 15 January 1993, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI

Mr. M. DE SALVIA, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 11 December 1992 by Ahmet, Besey, Hasan and Fikret YUEKSEL against Switzerland and registered on 5 January 1993 under file No. 21126/93;

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:

The applicants are Turkish citizens of Kurdish origin. The first and second applicants are husband and wife, the third and fourth applicants are their children. The applicants were born in 1962, 1963, 1982 and 1986, respectively. Although residing in Switzerland, the applicants have at present no permanent domicile. Before the Commission they are represented by Mr. A. Rüst, a collaborator at the Legal Advice Office for Asylum Seekers (Rechtsberatungsstelle für Asylsuchende) in St. Gallen in Switzerland.

As from 1976 the first applicant, while residing at Socag in Turkey, supported the illegal marxist-leninist TKP-ML party. As a result, he was reported to the authorities. In November 1988 he was twice arrested by the police and detained for five and three days, respectively, whereupon he was unconditionally released. While detained the first applicant was interrogated daily during one to two hours and also ill-treated.

Fearing further arrests the first applicant went to Istanbul in the beginning of 1989. In the company where he worked he heard that he was wanted by the police (gesucht) in Istanbul, in particular on 20 December 1991. This was probably because of his previous detention. Thereupon, he decided to leave Turkey.

Various other family members have left Turkey and have been granted asylum in Europe, for instance the husband of one of his sisters and two distant relatives who both reside in France, and the brother-in-law of another sister who resides in Switzerland.

II.

The first applicant left Turkey on 4 January 1990 and entered Switzerland on 8 January 1990. The other applicants entered Switzerland on 8 September 1990. All applicants applied for asylum.

When filing his request the first applicant was questioned as to his motives. He stated that he feared persecution upon his return to Turkey. He claimed that he had helped supporters of the TKP party until 1980. He had left Turkey as he was suffering pressure on account of his relatives who had been wanted by the authorities since 1988. The second applicant explained that she was applying for asylum in order not to be separated from her husband.

On 5 March 1990 the first applicant was questioned by the competent authorities of the Canton of St. Gallen as to his motives for applying for asylum. He stated that he was requesting asylum not on account of his relatives, but because of his support of the TKP-ML party. He claimed that he had also assisted the TKP-ML party after 1980, and that when previously questioned he had said that his relatives had been wanted since 1980.

The first applicant further pointed out that he had supported other members of the TKP-ML party in 1988 whenever they came to the village. When questioned he stated that they stayed in the village at night for approximately two hours. Subsequently he stated that they spent the night with him.

Finally, the applicant was asked whether he wanted to add anything to his statements. The applicant thereupon explained that upon his first detention his wife had also been present at the police station for one hour.

On 10 October 1990 the Delegate for Refugees (Delegierter für das Flüchtlingswesen) dismissed the first applicant's request for asylum.

The decision considered in particular that on account of contradictions the applicant's statements did not appear credible. Thus, when filing his request for asylum he had stated that he had assisted the TKP-ML party until 1980, whereas before the cantonal authorities he had stated that he had helped this party until 1988. Moreover, in respect of his relatives he had first mentioned the year 1988, and later 1980. The decision noted further discrepancies as to the support which he had allegedly offered other members of the TKP-ML party, in particular as to whether they had only stayed two hours in the village, or had spent the night with him.

The appeal of the first and second applicants was dismissed by the Asylum Appeals Commission (Asylrekurskommission) on 19 August 1992.

The decision upheld the grounds given by the Delegate. Insofar as the applicants maintained that the contradictions resulted from an incorrect translation when being questioned, the Appeals Commission noted that when questioned on 5 March 1990 by the cantonal authorities the applicant had been offered the possibility to provide further information as to his allegations. However, he had failed further to substantiate the alleged fears of persecution upon his return to Turkey.

On 31 August 1992 the applicants were ordered to leave Switzerland before 30 November 1992.

On 28 November 1992 the applicants filed a request for the reopening of the previous proceedings (Revision).

COMPLAINTS

The applicants complain of the first applicant's impending expulsion to Turkey. They allege that upon his return he will be subjected to detention and torture contrary to Article 3 of the Convention. The applicants allege that the first applicant was incorrectly questioned by the Swiss authorities; they complain in particular of a deceiving leading question (irreführende Suggestivfrage).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 December 1992 and registered on 5 January 1993.

On 21 December 1992 the President decided not to apply Rule 36 of the Commission's Rules of Procedure.

THE LAW

The applicants complain of the first applicant's impending expulsion to Turkey. They allege that upon his return he will be subjected to detention and torture contrary to Article 3 (Art. 3) of the Convention.

The Commission has constantly held that the right of an alien to reside in a particular country is not as such guaranteed by the Convention. However, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious fear of treatment contrary to Article 3 (Art. 3) of the Convention in the country to which the person is to be expelled (see No. 12102/86, Dec. 9.5.86, D.R. 47 p. 286 with further references; mutatis mutandis Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 32 et seq., para. 81 et seq.).

In the present case the Commission observes that the Swiss authorities found various inconsistencies in the first applicant's statements. For instance, he first stated that he had assisted the TKP-ML party until 1980, whereas before the cantonal authorities he stated that he had helped this party until 1988. There were also discrepancies concerning his relatives, and the support which he had afforded other members of the TKP-ML party. The applicant was made aware of these inconsistencies and had the opportunity on 5 March 1990 to provide further information thereupon. However, he did not do so.

As a result, the Commission considers that the first applicant's submissions raise doubts as to their accuracy.

Furthermore, the first applicant has not provided any concrete evidence, for instance by means of a warrant of arrest, that he is being wanted by the authorities and that upon his return to Turkey he will be remanded in custody.

Moreover, the Commission notes that the alleged detention on remand and ill-treatment of the first applicant occurred in November 1988. The first applicant has not alleged that subsequently, while still residing in Istanbul for over a year until 4 January 1990, he was subjected to further ill-treatment. In this connection the Commission further notes that in November 1988 the first applicant was released unconditionally from detention on remand.

The Commission finds therefore that the first applicant has failed to show that he would face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention if expelled to Turkey.

The application must therefore 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(M. de Salvia) — (C.A. Nørgaard)