

AS TO THE ADMISSIBILITY OF

Application No. 23551/94
by M. C.
against Switzerland

The European Commission of Human Rights sitting in private on
11 March 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS

Mrs. J. LIDDY

MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY

Mr. H.C. KRÜGER, 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 4 February 1994
by M. C. against Switzerland and registered on 1 March 1994 under file
No. 23551/94;

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 is a Turkish citizen of Kurdish origin born in
1965. Before the Commission he is represented by Mr. K. Rüst of a
Legal Consulting Office at St. Gallen in Switzerland.

I.

While in Turkey the applicant sympathised inter alia with the
Kurdish Workers Party (PKK). He was not a member of the party, though
he supported its activities, for instance by keeping and distributing

newspapers and leaflets and acting as a messenger.

In 1979, while remanded in custody, the applicant was allegedly tortured by the police, though he was eventually released from detention for lack of evidence. In 1987 he tried to leave Turkey with a false passport whereupon he was arrested at Istanbul airport, detained and tortured. In 1988 he was again arrested on account of political propaganda. During his detention he was allegedly beaten, burned with cigarettes and treated with electroshocks. The applicant's wife was allegedly ill-treated in 1988 in that her wrist was burnt with acid liquids.

The applicant apparently refused to cooperate with the secret police whereupon he was banned from his home-village and transferred to Gaziantep where he was obliged to report daily to the local police office and to file a request for any leave. The Police repeatedly searched the applicant's home, and he was again arrested.

II.

The applicant and his wife left Turkey on 6 June 1990 and arrived in Switzerland on 11 June 1990. On the same day they applied for asylum. On 18 June 1990 they were questioned by the Office of the Delegate for Refugees (Delegierter für das Flüchtlingswesen). They were again questioned by the St. Gallen cantonal authorities on 4 July 1990, and by the Federal Office for Refugees (Bundesamt für Flüchtlinge) on 1 April 1993. This interview apparently caused the applicant emotional distress. Thus, he confused dates and departed from earlier statements. However, he maintained his general allegations of having been tortured on various occasions.

On 28 April 1993 the Federal Office for Refugees dismissed the applicant's request for asylum on the ground that his account of the events was inconsistent and lacked credibility. While the Office acknowledged that persons belonging to the Kurdish minority were persecuted in various regions of Turkey, it found that these risks could be avoided by taking residence in other parts of the country.

The applicant's appeal was dismissed by the Swiss Appeals Commission in Matters of Asylum (Schweizerische Asylrekurskommission) on 29 September 1993. The Commission held that the medical evidence and press cuttings submitted did not suffice to substantiate the applicant's claims and that no indication of post-traumatic distress (posttraumatische Belastungsstörungen) had been established. Insofar as the applicant had lost his emotional control while being questioned by the Federal Office, the Commission considered his claim of partial amnesia as being unfounded.

The applicant then filed a request for the reopening of the Appeals Commission's decision. In his request, in which he also asked for suspensive measures, he complained that the Commission had not examined a psychiatric expert opinion previously submitted in the proceedings. The applicant further submitted a medical opinion prepared by Dr. O. of St. Gallen on 29 December 1993. According to this opinion the applicant suffered from a psychological disturbance (psychische Störung) resulting from various traumatic experiences of torture and ill-treatment in Turkey and militating against his expulsion. The medical opinion was based on an interview between Dr. O. and the applicant and recommended the applicant's psychiatric treatment. The applicant also submitted a letter from his father dated 6 September 1993 according to which a friend had been arrested and tortured in Turkey and thereby mentioned the applicant's name to the police. Moreover, the parents had also been interrogated and tortured, and the applicant was wanted by the police.

On 10 January 1994 the Appeals Commission refused to order suspensive measures as the applicant's request for reopening the

proceedings lacked prospects of success. The Commission imposed advance costs of 1,700 SFr on the applicant if he wished to pursue his request for reopening the proceedings, and ordered the immediate execution of the decision of 29 September 1993.

COMPLAINTS

The applicant complains under Article 3 of the Convention about his expulsion to Turkey. He alleges the likelihood of individual political persecution and continued torture as his family is known for its political activities; thus, asylum has been granted to two other family members in Germany. The applicant also complains about the arbitrary assessment of facts and evidence by the Swiss authorities which refused to examine the medical expert opinions.

In support of his allegations the applicant submits a newspaper article of 29 July 1993 according to which his friend K.T. had been arrested, and a decision of the German authorities according to which his cousin had been granted asylum in Germany.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 4 February 1994.

On 9 February 1994 the President of the Commission decided not to indicate interim measures under Rule 36 of the Rules of Procedure.

The application was registered on 1 March 1994.

THE LAW

The applicant complains of his expulsion to Turkey where allegedly he will be subjected to treatment contrary to Article 3 (Art. 3) of the Convention.

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 in exceptional circumstances involve a violation of the Convention, for example where there is a serious and well-founded fear of treatment contrary to Article 2 or 3 (Art. 2, 3) of the Convention in the country to which the person is to be expelled (see No. 10564/83, Dec. 10.12.84, D.R. 40 p. 262, *mutatis mutandis* Eur. Court H.R., *Soering* judgment of 7 July 1989, Series A no. 161, p. 32 et seq., paras 81 et seq.).

However, 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 examined the circumstances of the present case as they have been submitted by the applicant, who claims that upon his return to Turkey he will be subjected to treatment contrary to Article 3 (Art. 3) of the Convention.

The Commission notes that the applicant has not provided any documents or other evidence confirming his own arrest and detention in Turkey. There are also no documents relating to his obligation daily to report to the police station. Rather, the documents submitted concern other persons. Thus, the newspaper article of 29 July 1993 concerns the arrest of his friend K.T., and the decision of the German authorities relates to asylum granted to his cousin in Germany.

It is true that the applicant relies in this respect on a medical expert opinion prepared in Switzerland according to which his mental

disturbances resulted from traumatic experiences. However, even assuming that the applicant has in respect of this document complied with the requirement as to the exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention, the Commission notes that the traumatic experiences referred to in the document were based on the applicant's own submissions to the examining doctor, and the medical opinion does not refer to concrete dates or places where the applicant suffered ill-treatment. This document cannot therefore serve sufficiently to confirm the applicant's claims.

The applicant has furthermore not shown that he was prevented from taking up residence in other parts of Turkey.

Finally, the Commission has had regard to the decisions of the Swiss authorities, in particular those of the Federal Office for Refugees on 28 April 1993, and of the Swiss Appeals Commission in Matters of Asylum on 29 September 1993. The Commission notes that the authorities carefully examined the applicant's allegations, though they concluded that in view of various contradictions in the applicant's statements he had not credibly established a danger of persecution upon his return to Turkey.

Thus, 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 by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)