

AS TO THE ADMISSIBILITY OF

Application No. 15608/89
by G.
against the United Kingdom

The European Commission of Human Rights sitting in private on
7 December 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
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
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 12 October 1989
by G. against the United Kingdom and registered on 12 October 1989
under file No. 15608/89;

Having regard to:

- reports provided for in Rule 47 of the Rules of Procedure of the Commission;
- the Commission's decision of 15 February 1990 to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits;
- the observations submitted by the respondent Government on 24 April 1990 and the observations in reply submitted by the applicant on 11 June 1990;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Turkey, born in 1965 in A.,
Turkey. The present application arises out of the applicant's removal

from the United Kingdom to Turkey on 12 October 1989. He is represented in the proceedings before the Commission by Mr. Michael Hanley, of Messrs. Miller Wilson, Solicitors, London.

The facts of the present case, as submitted by the parties, may be summarised as follows:

The applicant is of Kurdish ethnic origin and Alevi by religion. He states that his family was forced to leave the village of his birth (K.) in the mid 1970s, following an armed clash. He also alleges that his father was arrested and tortured by the local police, resulting in his death.

The applicant claims that he was arrested and detained on three occasions, twice in 1984 and once in 1988, for a period of three days in various police stations. He alleges that he was assaulted by the police on these occasions. He avers that he has never committed any criminal offence.

He states that he is a sympathiser of the illegal movement Halkan Kurtulusu which supports Kurdish rights and which is a proscribed organisation.

The applicant went to the United Kingdom on 18 May 1989 and immediately made an application for asylum, pursuant to the Convention Relating to the Status of Refugees 1951. He was detained in HM Prison Winchester.

He was, inter alia, interviewed by an immigration officer on 20 May 1989 and completed a political asylum questionnaire. He disputed that the questionnaire provided an accurate record of what he said during the interview with the immigration officer. His solicitors subsequently sent a letter to the Home Office on 14 June 1989, recording various inaccuracies. He was served with a decision by the Secretary of State, refusing his asylum application on 27 June 1989.

The applicant made an application for leave to move for judicial review on 30 June 1989. This application was withdrawn on 13 July 1989, following a Home Office undertaking to reconsider his case. The applicant was then re-interviewed on 19 July 1989 by a Home Office executive officer on behalf of the Secretary of State for the Home Department.

On 10 August 1989 he was served with a "Minded to Refuse" Notice. On 14 August 1989 the Secretary of State confirmed his decision to reject the application for asylum. A further application was made for leave to move for judicial review. It was rejected by the Divisional Court on 18 August 1989.

Following this refusal, the applicant's case was referred to the London representative of the United Nations High Commissioner for Refugees (UNHCR). The UNHCR, while expressing the opinion that the applicant could not be regarded as a mere "economic migrant", considered that the available information was not sufficient to conclude that the applicant had a well-founded fear of persecution within the meaning of the 1951 Convention.

While in Winchester prison the applicant was examined by a doctor from the Medical Foundation for the Care of Victims of Torture. The report indicated that the applicant had various scars on his body and concluded as follows:

"Mr. G. gave a clear and concise account of his experiences and made no attempt to exaggerate or over-dramatise. I considered him to be a reliable witness and I have absolutely no reason to doubt the credibility

of his statement. He has all the usual symptoms of depression and in addition has clear signs of a fairly severe anxiety state, namely the tremor of his hands and eyelids, the split apical first heart sound, a very rapid heart rate of 100 and brisk tendon reflexes. The scars which I have described, in my opinion, bear out his story of having been beaten."

The applicant was removed from the United Kingdom to Turkey on 12 October 1989. The Government stated that the applicant was accompanied by two experienced escorts provided by the Metropolitan Police. The police said that shortly before the aircraft was to depart the applicant began to create a disturbance and was restrained by the use of handcuffs. These were removed about an hour after departure by which time the officers judged that he was sufficiently calm not to pose a threat to himself or other passengers. At no time were any drugs administered and a minimum of force was employed to secure the safety of the aircraft and its passengers. On arrival at Istanbul, the applicant left the aircraft in the company of an airline representative. This is normal international practice. He was not handed over to the Turkish authorities by the escorts. Some two hours later, the applicant telephoned the escorts at their hotel to inform them that he had been released by the authorities and to enquire about some missing baggage.

The applicant's representative refuted this version of the return. He stated that the applicant was handed directly to a Turkish policeman and his passport handed to the Turkish police. He was kept for two days of questioning at the Gayretteppe police station. His interpreter in England had managed to speak to him on the second day after being informed by a relative that he had not been in contact with his family. On the telephone to the interpreter the applicant spoke only briefly and the interpreter formed the impression that the applicant had been unable to speak freely and had sounded frightened.

The applicant's legal representative stated in January 1990 that the applicant was in hiding in Turkey. The applicant claimed to be too frightened to attend the police station to collect his passport which was taken by the Turkish authorities. He also stated that the police made inquiries at his mother's home and that as a result she, too, had gone into hiding.

The Government queried whether the applicant was at risk after receiving papers via the Commission showing that the applicant is working as a waiter in a specific town. In reply, the applicant's representative contended that this does not automatically mean that the Turkish authorities know where the applicant is.

COMPLAINTS

The applicant complains that his removal to Turkey constituted a breach of Article 3 of the Convention. He claims, with reference to his medical report, that he has legitimate cause to fear treatment contrary to Article 3 in Turkey.

He also complains of a breach of Article 13 of the Convention. In this respect he points out that under Section 13 of the Immigration Act 1971 he did not have a right of appeal against the decision rejecting his application for asylum and refusing him leave to enter the United Kingdom until he had been removed from the country. He submits that a right of appeal after removal is not an effective remedy for purposes of this provision. He further submits that judicial review proceedings are ineffective since the High Court has no jurisdiction to examine the merits of his case.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 October 1989 and registered on the same day. The Commission first examined the application on 12 October 1989 and refused a request that an indication be given to the respondent Government under Rule 36 of the Rules of Procedure not to remove the applicant to Turkey.

After a preliminary examination of the case by the Rapporteur, the Commission considered the admissibility of the application on 15 February 1990. It decided to communicate the application to the respondent Government pursuant to Rule 42 para. 2 (b) (old version) of its Rules of Procedure. The Government submitted their observations on 24 April 1990 to which the applicant replied on 11 June 1990, after being granted legal aid by the Commission on 18 May 1990.

THE LAW

1. The applicant has complained that his removal to Turkey by the United Kingdom constituted a breach of Article 3 (Art. 3) of the Convention, which prohibits torture, or inhuman and degrading treatment. He considered that he has a legitimate cause to fear treatment in breach of Article 3 (Art. 3) in that country because of various factors:- his support for an illegal Kurdish organisation, the previous ill-treatment he experienced, the acknowledged refugee status of others from the applicant's home village and the fact that he fears to return to his family house or collect his passport from the police. Although the applicant has found work, his representative submitted that this does not automatically mean that the Turkish authorities are aware of the applicant's whereabouts or are able to locate him.

The Government replied that there were no grounds, prior to 12 October 1989, for considering that the applicant's complaint was substantiated and this has been borne out by the fact that he has not claimed to have been ill-treated since his return to Turkey and, contrary to his statement, he is not in hiding but working as a waiter in a specific town. Moreover, the applicant has the possibility of lodging an application to the Commission against Turkey, pursuant to Article 25 (Art. 25) of the Convention, should he experience a breach of the Convention in that country.

The Commission recalls that according to its established case-law the right to asylum and freedom from expulsion are not as such included among the rights and freedoms mentioned in the Convention, but that the expulsion of a person may nevertheless, in certain exceptional circumstances, raise an issue under the Convention, and in particular under Article 3 (Art. 3), where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the State to which he is to be sent (see *inter alia* Eur. Court H.R., *Soering* judgment of 7 July 1989, Series A no. 161, para. 91).

In the present case the Commission does not consider that the applicant has shown that he had substantial grounds for fearing that he would be subjected to treatment in breach of Article 3 (Art. 3) of the Convention on his return to Turkey. In reaching this conclusion the Commission has had regard to the fact that the London representative of the United Nations High Commissioner for Refugees did not support the applicant's claim that he was a refugee with a well-founded fear of persecution. Furthermore, the Commission notes that the applicant does not allege that he was maltreated by the police during his detention and interrogation on his return to Turkey on 12 October 1989 or thereafter. He appears to be living a relatively normal life working as a waiter, even if he is taking care to avoid the authorities. Finally, the Commission attaches importance to the fact that Turkey is a party to the European Convention on Human Rights and has accepted the right of individual petition under Article

25 (Art. 25) of the Convention with the result that it is now open to the applicant to bring an application before the Commission in respect of any violation of one of the Convention provisions by the Turkish authorities.

It follows that the applicant's complaint under this provision must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains under Article 13 (Art. 13) of the Convention that there exists under United Kingdom law no effective remedy in respect of his complaint under Article 3 (Art. 3) of the Convention.

The Commission recalls that an issue can only arise under this provision in respect of an "arguable" claim that there has been a breach of one of the provisions of the Convention (see Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 39, para. 71). The Commission refers to its finding above that the applicant has not shown that there were substantial grounds for his fear that he would be subjected to treatment in breach of Article 3 (Art. 3) on his return to Turkey. The applicant's complaint under this provision does not therefore give rise to an "arguable" claim for purpose of Article 13 (Art. 13). It follows that this complaint must also 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 Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)