(TRANSLATION)

THE FACTS

The applicant, a Turkish national born in 1966, is resident in Izmir. At the time of the events complained of he was a cadet at the Ankara Military Academy.

The facts, as submitted by the parties, may be summarised as follows.

In September 1983 the applicant enrolled at the Ankara Military Academy (Army). His fees for tuition and board and lodging were paid by the State. In return, the applicant undertook to perform his military service in the army for the statutory period.

At the beginning of the academic year 1986-87, having committed no breaches of the disciplinary regulations by the time he entered his fourth year, he had obtained the maximum mark of 160.

In autumn 1986 disciplinary proceedings were brought against him on the ground that he had participated in fundamentalist activities. However, the High Disciplinary Council acquitted the applicant of the charges brought against him in January 1987 for lack of evidence.

Still in January 1987, the officer commanding the Military Academy imposed on the applicant a disciplinary penalty of 28 days' arrest for visiting the premises of fundamentalist organisations, reading Muslim fundamentalist publications and participating in ideological meetings. The applicant's good-conduct mark was reduced by 112 points. Subsequently, over a very short period of time, the Military Academy imposed other penalties on the applicant which brought his good-conduct mark down to minus 71. The other acts of indiscipline committed by the applicant were: a slipshod attitude (he used to go for walks dressed as if for prayer during working hours and arrive late for lectures); damage to college property (he used to place his blanket on the ground to say his prayers and had damaged a telephone cabin); failure to obey orders from his superiors (he had left the quarters where he had been placed under arrest and those where he was supposed to spend his sick leave).

On 2 June 1987 the regimental disciplinary council recommended to the High Disciplinary Council that he be expelled, expressing the opinion that the applicant did not have the makings of either a Military Academy cadet or an officer.

In a decision dated 5 June 1987 the High Disciplinary Council of the Military Academy decided to expel the applicant. That decision was upheld on 21 August 1987 by the army's commander-in-chief.

On 24 July 1987 the applicant's lawyers submitted to the Supreme Military Administrative Court an application to have the above-mentioned decision set aside. They maintained that the allegations that their client had committed breaches of discipline were without foundation, since the disciplinary proceedings brought against him by the authorities of the Military Academy were based on the supposition that he had participated in Muslim fundamentalist movements, whereas their client had merely manifested his religion, which the Constitution gave him the freedom to do.

In a judgment given on 3 February 1988 and served on 15 March 1988 the Supreme Military Administrative Court dismissed the applicant's appeal on the grounds that the disciplinary penalties had been imposed after the applicant's observations had been received, that the applicant had admitted committing the offences he was accused of, that he had not told the truth about the offences for which a penalty of 28 days' arrest had been imposed, that the penalties imposed on the applicant did not exceed the limits laid down in the regulations, that the senior officers who had imposed those penalties had not exceeded their authority, that the decision had been given in accordance with the procedure laid down in Article 5 of Law No. 1462 on Military Academies, in Articles 15 and 16 of the General Regulations for Military Academies and in the Disciplinary Regulations, and that it had become final; consequently, the administrative decision to expel the applicant was lawful.

COMPLAINTS

The applicant alleges in the first place a violation of Article 7 of the Convention. He claims that he was expelled from the Military Academy for participating in Muslim fundamentalist movements, an offence which was not proved and not defined as an offence in Turkish law.

The applicant further alleges a violation of his right to education under Article 2 of Protocol No. 1. He claims that he no longer has the possibility of continuing his university studies.

The applicant also complains of an infringement of his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1, in that he is now obliged to reimburse all the fees for tuition and board and lodging paid for him by the State during his studies at the Military Academy.

Lastly, the applicant complains that the accusations of fundamentalist activity and propaganda levelled against him by the Military Academy authorities, while unfounded, were designed to punish him for his religious beliefs. In that connection he relies on Article 9 of the Convention.

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THE LAW

1. The applicant complains that he was expelled from the Military Academy for participating in Muslim fundamentalist movements, an offence not proved and not defined as an offence in Turkish law. In that connection he relies on Article 7 of the Convention.

The respondent Government first plead inadmissibility on the ground that this complaint is incompatible *ratione materiae* with the provisions of the Convention, in that paragraph 3 of the Government's declaration under Article 25 of the Convention excludes from the competence of the Commission "matters regarding the legal status of military personnel and in particular, the system of discipline in the armed forces".

The applicant contests this argument. He maintains that the restriction introduced by the Government firstly does not concern the disciplinary system of the Military Academy, and secondly is incompatible with the provisions of Article 25 of the Convention, under which "any person" may submit an application to the Commission.

The Commission refers in this connection to its case-law to the effect that there is no legal basis in the Convention for a restriction of a declaration under Article 25 other than the temporal limitations provided for in paragraph 2 of that Article (Nos. 15299/89, 15300/89 and 15318/89, Dec. 4.3.91, D.R. 68 p. 216). Accordingly, the respondent Government's plea of inadmissibility in this respect cannot be upheld.

However, the Commission recalls that Article 7 of the Convention prohibits the retroactive application of the criminal law (cf., *inter alia*, No. 8988/80, Dec. 10.3.81, D.R. 24 p. 198). But in this case the applicant's expulsion from the Military Academy was not a criminal penalty. Accordingly, the Commission considers that the provision in question is not applicable to this case.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention.

2. The applicant further complains that the accusations of engaging in Muslim fundamentalist activities levelled against him, while unfounded, were designed to punish him for his religious beliefs. In that connection he alleges a violation of Article 9 of the Convention.

The respondent Government plead inadmissibility for failure to exhaust domestic remedies, in that the applicant did not explicitly rely on the provisions of the Convention in the Turkish courts.

In reply, the applicant submits that he asserted before the Supreme Military Administrative Court his right to the freedom of religion guaranteed by the Turkish Constitution.

The Commission refers in this connection to its well established case-law to the effect that domestic remedies have been exhausted if, before the highest domestic authority, the applicant has submitted in substance the complaint submitted to the Commission, even without particular reference to the Convention (cf., *inter alia*, Nos. 7299/75 and 7496/76, Dec. 4.12.79, D.R. 18 p. 5). Accordingly, this objection by the respondent Government cannot be upheld.

With regard to the merits of this complaint, the respondent Government observe that the applicant was expelled from the Military Academy because he was incapable of submitting to military discipline. They maintain in the first place that the applicant's expulsion from the Military Academy for indiscipline did not constitute an interference with the freedom of religion.

The respondent Government submit that the applicant was able to observe his religious practices freely, and moreover that he has not made any allegation to the contrary. The Government also point out that practice of one's religion is not an act of indiscipline in the military academies and that cadets at the Military Academy are instructed in the disciplinary regulations at lectures given throughout the year.

The respondent Government maintain in the second place that the obligation to respect the principle of secularity imposed on officers and cadets of the Military Academy must be held to be in conformity with the limitations provided for in the second paragraph of Article 9 of the Convention. They claim that the principle of secularity is one of the fundamental principles of the Turkish army. As activity or

conduct contrary to that principle might destroy order in the army, it is understandable that they are considered incompatible with military discipline.

On the other hand, the applicant maintains that the rapid reduction of his good-conduct mark from 160 to minus 74 within a period of only two months can be explained only by the implicit determination of the Military Academy authorities to punish him for his religious beliefs. He claims that his superiors, who had informed the applicant's father of his anti-secular behaviour, subsequently preferred to "convert" his minor breaches of discipline into "serious" disciplinary offences in order to be able to expel him.

The applicant considers that the respondent Government's observations to the effect that activities by military cadets contrary to the principle of secularity are regarded as acts of indiscipline show that the Government do not respect the freedom of religion and belief.

The Commission recalls that Article 9 expressly protects "worship, teaching, practice and observance" as manifestations of a religion or belief.

The Commission has previously ruled that Article 9 of the Convention does not always guarantee the right to behave in the public sphere in a way which is dictated by such a belief. In particular, the term "practice" as employed in Article 9 para. 1 does not cover each act which is motivated or influenced by a religion or belief (cf. Arrowsmith v. the United Kingdom, Comm. Report 12.10.78, para. 71, D.R. 19 p. 5, and No. 10358/83, Dec. 15.12.83, D.R. 37 p. 142).

In order to determine whether there has been a violation of Article 9 in this case, it must first be ascertained whether the measure complained of constituted an interference with the exercise of the freedom of religion.

The Commission takes the view that by enrolling at a military academy an officer cadet submits of his own accord to military rules precisely enunciated in that academy's regulations. These regulations may make cadets' freedom to practise their religion subject to limitations as to time and place, without however negating it entirely, in order to ensure that the army functions properly.

The Commission notes that it is not contested that cadets at the Military Academy can perform their religious duties within the limits imposed by the requirements of military life. In fact, outside working hours, and in premises reserved for worship, soldiers are able to pray and perform their other religious duties.

The Commission recalls that it has held to be compatible with the freedom of religion protected by Article 9 of the Convention the obligation imposed on a teacher of observing the working hours which in his opinion clashed with his religious duties (cf. No. 8160/78, X. v. the United Kingdom, Dec. 12.3.81, D.R. 22 p. 27). The Commission considers that military discipline implies, by its very nature, the possibility

of placing certain limitations on the rights and freedoms of members of the armed forces which could not be imposed on civilians (Engel judgment of 8 June 1976, Series A no. 22, p. 24, para. 57). These limitations may include a duty for military personnel to refrain from participating in the Muslim fundamentalist movement, whose aim and programme is to ensure the pre-eminence of religious rules.

Training at the Military Academy, with the existing restrictions, does not therefore, as such, constitute an interference with the freedom of religion and conscience, given that the applicant freely chose to pursue his military career within that system.

The Commission notes that in this case the disciplinary authorities found that the applicant had committed a number of disciplinary offences and that he did not have the makings of an army officer. As a result, the applicant's right to continue his military career was in jeopardy, and his activities and opinions were taken into consideration in order to determine whether he had the qualities needed to become an officer.

Consequently, the Commission notes no interference with the right guaranteed by Article 9 para. 1 of the Convention. It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The applicant also complains that he no longer has the possibility of continuing his university studies. In that connection he relies on Article 2 of Protocol No. 1.

The Government observe that under Turkish legislation the applicant cannot be re-admitted to a military academy, but that there is no reason why he should not continue his university studies in a civilian establishment.

The Commission recalls that the right to education contemplated in the provision relied on mainly concerns elementary education and not necessarily specialist advanced studies (No. 5962/72, D.R. 2 p. 50; No. 7671/76 and 14 other applications, D.R. 9 p. 185). Moreover, the Commission considers that in principle the right to education cannot be allowed to impinge on the State's right to regulate education (cf. Campbell and Cosans judgment of 25 February 1982, Series A no. 48, p. 19, para. 41) and that this right does not exclude all disciplinary penalties. It would not be contrary to Article 2 of Protocol No. 1 for pupils to be suspended or expelled, provided that the national regulations did not prevent them from enrolling in another establishment in order to pursue their studies.

The Commission notes that in this case the applicant was expelled from the Military Academy following disciplinary proceedings.

It follows that this complaint is manifestly ill-founded, within the meaning of Article 27 para. 2 of the Convention.

4. Lastly, the applicant complains of being obliged to reimburse all the fees for tuition and board and lodging paid for him by the State for his studies at the Military Academy. He alleges a violation of Article 1 of Protocol No. 1.

However, the Commission considers that the full amount of the fees for tuition and for board and lodging paid by the State constitutes a debt owed to the State by the applicant, who, for his part, undertook to perform his military service in the army for the statutory period. In the case of expulsion or withdrawal the person concerned is obliged to pay back this debt to the State. The Commission therefore considers that reimbursement of the fees for tuition and board and lodging after an expulsion for a breach of discipline does not raise any problem whatsoever under Article 1 of Protocol No. 1.

Accordingly, this part of the application must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 27 para. 2.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.