

APPLICATION N° 22903/93

D R v/FRANCE

DECISION of 10 March 1994 (Striking off the list of cases)

Article 3 of the Convention and Article 1 of Protocol No. 6 *Algerian applicant member of the Islamic Salvation Front, sentenced to death in absentia in his country of origin and subject to a deportation order*

Article 30, paragraph 1 (b) of the Convention *Striking off Undertaking by the French Government not to deport the applicant to his country of origin and to keep him in France under house arrest until a country of refuge free of all risk has been found for him No other reason to pursue examination of the application*

THE FACTS

The applicant, born in 1964, is an Algerian national at present in France

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

The applicant entered France on 6 December 1992 under a false name. He claims that he left Algeria for Morocco clandestinely, using a false passport, on 5 December 1992. His wife joined him two days later. He claims to have been a member of the Islamic Salvation Front (the FIS) since 1989 and that he returned to

clandestinity when the Algerian Government annulled the result of the elections of December 1991 and unleashed severe repression against the FIS's supporters

On 10 February 1993 the applicant was arrested by the French police as an illegal immigrant

A deportation order (arrêté de reconduite à la frontière) was made on 12 February at 10 a m , directing that the applicant be placed in administrative detention for the time necessary for his departure from France This order was served on the applicant on the same day at 11 22 a m

On the same day the Minister of the Interior made an order in which, noting that the applicant was the subject of judicial proceedings for forgery, he directed that he be placed under house arrest in Paris for one month Also on that day, in an order made by the Paris Commissioner of Police, the applicant was placed under house arrest in a Paris hotel

On 16 February 1993 the applicant appealed to the administrative court against the deportation order This appeal was dismissed on 18 February 1993, as it had been lodged outside the twenty-four hour limit laid down in Article 22 *bis* of the Ordinance of 2 November 1945

The applicant was arrested again in March 1993 On 5 March 1993 he applied for asylum to the National Office for the Protection of Refugees and Stateless Persons (OFPRA)

His request was rejected on 20 April 1993, as the OFPRA considered that the activities relied on in connection with his political commitment fell within the scope of the provisions of Article 1 F (b) of the Geneva Convention of 28 July 1951 ("The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee")

On 19 May 1993 the Refugees' Appeals Board dismissed the applicant's appeal, holding that the facts had not been established

The trial concerning the terrorist attack carried out at Algiers airport on 26 August 1992 began in the Algiers Special Court in May 1993 At the end of the trial, on 26 May 1993, thirty-eight persons were sentenced to death, including the applicant, who was sentenced *in absentia*

On 9 November 1993, as part of a large-scale police operation concerning Islamic circles in France, the applicant was arrested in Paris and placed in police custody, together with his wife

On 12 November 1993 the applicant and his wife were placed under house arrest at Coutances (department of Manche)

COMPLAINT

The applicant alleges that if he were sent back to Algeria he would undergo treatment contrary to Article 3 of the Convention. He also relies on Protocol No 6 with regard to the death penalty to which he was sentenced, *in absentia*, in that country

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 9 November 1993 and registered on 10 November 1993.

On 10 November 1993 the President applied Rule 36 of the Commission's Rules of Procedure and decided to communicate the application to the respondent Government and to invite them to submit observations on its admissibility and merits

The Government's observations were submitted, after an extension of the time-limit, on 10 December 1993. The Government stated that they had no intention of deporting the applicant to Algeria on account of the serious risks to which he would be exposed, and that they intended to keep him under house arrest in France until a country of refuge free of all risk had been found for him.

These observations were sent on 21 December 1993 to the applicant's lawyer with a request that he submit his observations in reply by 14 February 1994

On 20 January 1994 the Commission decided to renew its indication under Rule 36 of the Rules of Procedure.

In his observations, submitted on 28 February 1994 after a reminder had been sent to him, the applicant's lawyer maintained that the applicant risked being sent back to Algeria without any possibility of appeal.

REASONS FOR THE DECISION

The Commission notes that, in their observations, the French Government have stated that they have no intention of deporting the applicant to Algeria on account of the serious risks to which he would be exposed, and that they intend to keep him under house arrest in France until a country of refuge free of all risk has been found for him

The Commission considers, in the light of the French Government's declaration, that the matter has been resolved, within the meaning of Article 30 para. 1 (b) of the Convention, and that further consideration of the application is accordingly no longer justified.

In addition, the Commission considers that no particular circumstance affecting respect for human rights as defined in the Convention requires the further examination of the application pursuant to Article 30 para. 1 *in fine* of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO STRIKE THE APPLICATION OUT OF ITS LIST OF CASES.