﻿

AS TO THE ADMISSIBILITY OF

Application No. 40900/98

by John KARARA

against Finland

The European Commission of Human Rights sitting in private on

29 May 1998, the following members being present:

MM S. TRECHSEL, President

J.-C. GEUS

M.P. PELLONPÄÄ

E. BUSUTTIL

A.S. GÖZÜBÜYÜK

A. WEITZEL

J.-C. SOYER

H. DANELIUS

Mrs G.H. THUNE

MM F. MARTINEZ

C.L. ROZAKIS

Mrs J. LIDDY

MM L. LOUCAIDES

M.A. NOWICKI

I. CABRAL BARRETO

B. CONFORTI

N. BRATZA

I. BÉKÉS

J. MUCHA

D. SVÁBY

G. RESS

A. PERENIC

C. BÎRSAN

P. LORENZEN

K. HERNDL

E. BIELIUNAS

E.A. ALKEMA

M. VILA AMIGÓ

Mrs M. HION

MM R. NICOLINI

A. ARABADJIEV

Mr M. de SALVIA, 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 6 April 1998 by John KARARA against Finland

and registered on 24 April 1998 under file No. 40900/98;

Having regard to the reports provided for in Rule 47 of the Rules

of Procedure of the Commission;

Having regard to the observations submitted by the respondent

Government on 13 and 28 May 1998 and the observations in reply

submitted by the applicant on 25, 27 and 28 May 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a citizen of Uganda born in 1963, is detained

facing deportation from Finland. He is represented by Mr Matti Wuori,

a lawyer in Helsinki.

The facts of the case, as submitted by the parties, may be

summarised as follows.

1. The deportation proceedings

The applicant arrived in Finland in 1991, having married a

Finnish citizen, Z. In 1993 and 1995 the applicant's requests for a

further residence permit were refused, given his criminal behaviour.

He had been convicted on five counts of attempted manslaughter for

having raped several women and having had other sexual contacts,

knowing that he had contracted an HIV infection. He had been sentenced

to over eleven years' imprisonment.

The applicant has been treated against his HIV infection since

1992. In 1995 the applicant and Z divorced. They have no children

together.

On 23 December 1997 the Ministry of the Interior ordered the

applicant's deportation to Uganda and prohibited him from returning to

Finland until further notice. The Ministry noted that the applicant no

longer held a valid visa or residence permit in Finland; that he had

no bonds to the country; and that he had repeatedly infringed Finnish

law, thereby demonstrating that he was a danger to the safety of

others. Moreover, his return to Uganda would not subject him to inhuman

treatment within the meaning of Article 3 of the Convention or to

persecution within the meaning of the 1991 Aliens Act (ulkomaalaislaki,

utlänningslag 378/1991). Nor would he be sent on to an area where he

could face such treatment or persecution.

The applicant appealed to the Supreme Administrative Court

(korkein hallinto-oikeus, högsta förvaltningsdomstolen), arguing that

his deportation would place him at an immediate risk of dying, given

his HIV infection, and subject him to treatment contrary to Article 3

of the Convention. He invoked two medical opinions. In his opinion of

26 November 1997 Dr. M considered that an interruption of the

applicant's medication would result in an acceleration of his illness.

In his opinion of 21 January 1998 Dr. R noted that the applicant's

state of health was good and that his infection was not showing any

significant symptoms. Should his medication be interrupted, his illness

would progress to the stage which it had reached in February 1997, i.e.

to a "symptomatic" stage of HIV infection which was not yet the stage

of AIDS. A patient in a comparable situation in February 1997 would run

a 40 % risk of reaching the AIDS stage within three years.

In his appeal the applicant also invoked an affidavit by the

manager of a support centre for AIDS patients, indicating that as long

as he was staying in Finland, the applicant would be provided with the

necessary socio-psychological support in order to cope with his

illness.

The applicant also invoked a certificate of 8 February 1998

issued by Dr. T, a psychotherapist, indicating that as from 1996 the

applicant had been seeking treatment against his depression.

Before replying to the applicant's appeal on 11 March 1998 the Ministry

consulted a further expert. According to Dr. S, the basic AZT treatment

against HIV/AIDS would be available in Uganda. Its price had also gone

down. The possibility to obtain further medication would depend on the

patient's financial circumstances. The patient's position in his or her

village and the possible assistance by relatives were also of relevance

to the success of the basic treatment. In Finland HIV patients were

normally treated with two or three medicines. The need for treatment

should be determined before deporting an HIV patient to Uganda.

In his rejoinder of 2 April 1998 the applicant also opposed his

deportation on the grounds that he was a refugee from Rwanda. Having

joined the Rwandan Patriotic Forces in 1990, he had fought against the

then Government of the country. He had deserted from the movement after

two months of service.

In his rejoinder the applicant also adduced a supplementary

opinion by Dr. R. This opinion of 31 March 1998 stated that during 1998

the applicant's basic medication would be replaced by a therapy

combining three drugs, this being the medication practice in Finland.

The interruption of either the ongoing or the planned medication would

result in the loss, probably within a few months, of the care

achievements so far.

In his rejoinder the applicant also requested an oral hearing

before the Supreme Administrative Court.

On 17 April 1998 the Supreme Administrative Court dismissed both

the applicant's request for an oral hearing and his appeal as a whole.

As regards the medical grounds invoked, the Court noted that the

applicant would probably not, in Uganda, receive the same level of

treatment against his illness as in Finland. His state of health would

therefore possibly deteriorate and his illness could accelerate towards

the AIDS stage. Considering, however, the information available on the

applicant's current state of health, his deportation would not

constitute inhuman or degrading treatment proscribed by Article 3 of

the Convention. As regards the applicant's alleged background in

Rwanda, the Supreme Administrative Court did not find his submissions

credible. His allegation that the deportation would discriminate

against him on the basis of his race and colour had not been

substantiated and the Supreme Administrative Court found no indication

of treatment contrary to Article 14 of the Convention.

2. The disclosure of the Supreme Administrative Court's

decision

Following the judgment of the European Court of Human Rights in

Z v. Finland (Eur. Court HR, judgment of 25 February 1997, Reports of

Judgments and Decisions, 1997-I) the Chancellor of Justice

(valtioneuvoston oikeuskansleri, justitiekansler i statsrådet)

requested a reopening of the criminal proceedings against the present

applicant in so far as the Court of Appeal had ordered that its

case-file, including notably Z's medical records, should be kept

confidential for a period of ten years.

In its decision of 19 March 1998 the Supreme Court (korkein

oikeus, högsta domstolen) acceded to this request and ordered that the

case-file should be kept confidential for a period of forty years. This

conclusion was reached on the grounds that the Act on the Publicity of

Court Proceedings (laki oikeudenkäynnin julkisuudesta, lag om

offentlighet vid rättegång 945/1984) had been applied in a manifestly

incorrect manner, regard being had to the requirements of Article 8 of

the Convention. Furthermore, the Supreme Court, apparently ex officio,

ordered that during this forty-year period the names and personal

identity numbers of the parties to the proceedings should not be

revealed to outsiders. Z had not been considered a party to the

proceedings.

In its decision of 17 April 1998, dismissing the applicant's

appeal against the deportation order, the Supreme Administrative Court

referred to the applicant by name and mentioned, inter alia, his HIV

infection. Reference was also made to the applicant's conviction of

repeated violent offences as well as to his sentence. In the copy of

the decision which was made available to the public the information

about the applicant's state of health appearing in the medical opinion

of 21 January 1998 had been deleted.

According to the applicant, the Supreme Administrative Court's

decision was widely reported in media.

3. The detention proceedings

On 3 April 1998 the applicant was released on parole but, in

pursuance of section 46 of the Aliens Act, immediately detained by the

Helsinki District Court (käräjäoikeus, tingsrätten) with a view to his

deportation. In such a matter the District Court may be composed of a

single judge and shall review the detention at least every two weeks

(sections 48 and 51). On 14 April 1998 the applicant's detention was

reviewed by Judge H, who had also been presiding over the criminal

trial against him in 1992.

COMPLAINTS

1. The applicant complains that his deportation to Uganda would

result in an irrevocable deterioration of his state of health and

subject him to inhuman and degrading treatment in violation of

Article 3 of the Convention. He is dependent not on the basic AZT

medication against HIV/AIDS but on an antiretroviral therapy combining

two drugs (and in the future most likely three). Because of the limited

availability and the high cost of such medication in Uganda (or Rwanda

if he were to be returned by Uganda to that country) he would no longer

receive adequate treatment against his illness. Furthermore, he would

lack socio-psychological support, as he has no relatives or friends

either in Uganda or Rwanda. He also refers to his desertion from the

Rwandan Patriotic Forces which would subject him to a risk of

punishment and other reprisals.

2. The applicant also complains that his deportation would violate

his rights under Article 8 of the Convention, as he would be separated

from his friends and acquaintances in Finland.

3. Under Article 8 the applicant also complains that the Supreme

Administrative Court's disclosure to the public of his identity and

illness, as mentioned in its decision of 17 April 1998, failed to

respect his private life within the meaning of Article 8 of the

Convention.

4. The applicant furthermore complains that his deportation would

also discriminate against him on the basis of his race and thus violate

Article 14 of the Convention.

5. The applicant also complains of the denial of an oral hearing

before the Supreme Administrative Court. He invokes Article 6 of the

Convention and Article 1 (c) of Protocol No. 7.

6. Finally, the applicant complains that Judge H's review of his

detention for deportation purposes was not in accordance with Article

6 of the Convention, as the same judge had presided over the trial

against him in 1992.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 April 1998 and registered on

24 April 1998.

On 20 April 1998 the President of the Commission decided to

indicate to the respondent Government, in accordance with Rule 36 of

the Rules of Procedure, that it was desirable in the interests of the

parties and the proper conduct of the proceedings before the Commission

not to deport the applicant to Uganda until the Commission had been

able to examine the application no later than 24 April 1998.

On 24 April 1998 the Commission decided to communicate to the

respondent Government the applicant's complaint under Article 3 of the

Convention concerning his forthcoming deportation to Uganda as well as

his complaint under Article 8 concerning the disclosure to the public

of the Supreme Administrative Court's decision of 17 April 1998. The

Commission also prolonged the above-mentioned indication under Rule 36

until 29 May 1998.

The Government's written observations were submitted on

13 May 1998. The applicant replied on 25 May 1998. Additional

observations were submitted by the applicant on 27 and 28 May 1988 and

by the Government on 28 May 1998.

On 29 May 1998 the Commission granted the applicant legal aid.

THE LAW

1. The applicant complains that, given his HIV infection, his

deportation to Uganda would result in an irrevocable deterioration of

his state of health and subject him to inhuman and degrading treatment

in violation of Article 3 (Art. 3) of the Convention. If removed from

Uganda to Rwanda, his desertion from the Rwandan Patriotic Forces would

subject him to a risk of punishment and other reprisals.

Article 3 (Art. 3) of the Convention reads as follows:

"No one shall be subjected to torture or to inhuman or

degrading treatment or punishment."

The Government consider the complaint "ill-founded". In a

previous case (No. 2267/1997) the Supreme Administrative Court indeed

quashed a deportation order issued in respect of a person in an

advanced stage of AIDS. The Government recall, however, that on

21 January 1998 the applicant's state of health was considered good and

his infection had not shown any significant symptoms. An interruption

of his medication would not yet trigger off the AIDS stage of the

infection. In any case, so the Government argue, the progression of the

applicant's illness cannot be predicted with certainty, given the

individual differences. His medical condition is much better than that

of applicant D, who was expected to die of AIDS within a year from the

moment his application was examined by the European Court of Human

Rights (see Eur. Court HR, judgment of 2 May 1997, Reports of Judgments

and Decisions, 1997-III, pp. 784-785, para. 15).

The Government concede that in Uganda the applicant would

probably not receive the same level of treatment against his illness

as in Finland. This could lead to an acceleration of his illness, if

he were to be deported. However, the receiving State has taken measures

in order to improve the treatment of HIV patients. To that end it is

committed to the extensive campaign by the United Nations (UNAIDS)

which requires, inter alia, that medication be provided at a reduced

price. Uganda has also reserved hospital beds for HIV patients and the

first specialised hospital will be opened in June 1998.

Finally, the Government recall that the applicant never sought

asylum with reference to his alleged activities against the Rwandan

Government. Up to the appeal proceedings before the Supreme

Administrative Court the applicant consistently indicated that he was

a citizen of Uganda and did not seek protection against his possible

forced return to Rwanda. The Government therefore consider the

allegation that he could be returned to the latter country to lack

credibility. Even if he were to be returned to Rwanda, the prison

sentence which he might face in that country is not in itself

sufficient for establishing a real risk that he would be treated

contrary to Article 3 (Art. 3) of the Convention.

The applicant submits that the situation in respect of care

facilities for AIDS patients is notoriously out of control in Uganda.

The authorities give priority to preventive measures and treatment of

mothers and children. As a social outcast the applicant would have no

means of receiving proper care, whether medical or psychological. His

return to Uganda would therefore have a decisive negative impact on his

chances of survival.

Finally, as for the alleged risk of ill-treatment due to his

background in Rwanda, the applicant contends that immediately after

requesting a visa to enter Finland he began his involvement with the

Rwandan Patriotic Forces which lasted about two months. On account of

his desertion from that movement he could face up to ten years in

prison as well as reprisals further endangering his life and limb. This

risk should also be assessed against his background as a Tutsi.

The Commission recalls at the outset that Contracting States have

the right, as a matter of well-established international law and

subject to their treaty obligations including the Convention, to

control the entry, residence and expulsion of aliens. The Commission

recalls that Article 3 (Art. 3) prohibits in absolute terms torture or

inhuman or degrading treatment or punishment. Its guarantees therefore

apply irrespective of the reprehensible nature of the conduct of the

person in question (see the above-mentioned D v. the United Kingdom

judgment, pp. 791-792, paras. 46-47).

The Convention organs are not prevented from scrutinising an

applicant's claim under Article 3 (Art. 3) where the source of the risk

of proscribed treatment in the receiving country stems from factors

which cannot engage either directly or indirectly the responsibility

of the public authorities of that country, or which, taken alone, do

not in themselves infringe the standards of that Article. In any such

contexts the Commission must subject all the circumstances surrounding

the case to a rigorous scrutiny, especially the applicant's personal

situation in the deporting State (ibid., pp. 792-793, paras. 49-50; No.

23634/94, Dec. 19.5.94, D.R. 77-A, p. 133).

(a) Against this background the Commission will first determine

whether the applicant's deportation to Uganda would be contrary to

Article 3 (Art. 3) in view of his present medical condition.

In the case of D v. the United Kingdom the Court found that the

applicant's return to St. Kitts would violate Article 3 (Art. 3),

taking into account his medical condition. The Court noted that the

applicant was in the advanced stages of AIDS. An abrupt withdrawal of

the care facilities provided in the respondent State together with the

predictable lack of adequate facilities as well as of any form of moral

or social support in the receiving country would hasten the applicant's

death and subject him to acute mental and physical suffering. In view

of those very exceptional circumstances, bearing in mind the critical

stage which the applicant's fatal illness had reached and given the

compelling humanitarian considerations at stake, the implementation of

the decision to remove him to St. Kitts would amount to inhuman

treatment by the respondent State in violation of Article 3

(Art. 3). The Court nevertheless emphasised that aliens who have served

their prison sentences and are subject to expulsion cannot in principle

claim any entitlement to remain on the territory of a Contracting State

in order to continue to benefit from medical, social or other forms of

assistance provided by the expelling State during their stay in prison

(see pp. 793-794, paras. 51-54 of the judgment).

In a recent application the Commission has found that the

deportation to the Democratic Republic of Congo (formerly Zaire) of

a person suffering from a HIV infection would violate Article 3

(Art. 3), where the infection had already reached an advanced stage

necessitating repeated hospital stays and where the care facilities in

the receiving country were precarious (B.B. v. France, Comm. Report

9.3.98, pending before the Court).

In the light of all the material before it the Commission finds

that the present applicant's illness has not yet reached such an

advanced stage that his deportation would amount to treatment

proscribed by Article 3 (Art. 3), taking also into account the

conditions in Uganda.

(b) The Commission will next determine whether there is a real risk

that the applicant's deportation to Uganda would be contrary to

Article 3 (Art. 3) in view of his alleged activities within the Rwandan

Patriotic Forces.

The Commission recalls that the protection afforded by Article 3

(Art. 3) is equally absolute when the person to be removed from a

respondent State would run a real risk of treatment contrary to that

provision in the light of his or her previous activities in the

receiving State (see, e.g., Eur. Court HR, Chahal v. the United Kingdom

judgment of 15 November 1996, Reports of Judgments and Decisions, 1996-

V, pp. 1831 et seq.).

The Commission notes that the allegation relating to the

applicant's activities within the Rwandan Patriotic Forces was first

made in the proceedings before the Supreme Administrative Court in

which he sought to have the deportation order quashed. It can be left

open whether the applicant has, in respect of this aspect of the

complaint, exhausted domestic remedies as required by Article 26

(Art. 26) of the Convention. This aspect is at any rate also manifestly

ill-founded, as no evidence has been adduced in respect of the

applicant's purported activities in Rwanda and the risk that he might

be removed from Uganda to that country and there face ill-treatment.

Substantial grounds have thus not been adduced for believing that the

applicant would, if deported, run a real risk of being treated contrary

to Article 3 (Art. 3) in view of his alleged activities against the

Rwandan Government.

(c) Accordingly, there is no indication that the applicant's

deportation to Uganda would violate Article 3 (Art. 3) of the

Convention on either of the two grounds invoked.

It follows that this complaint must be rejected as being

manifestly ill-founded within the meaning of Article 27 para. 2

(Art. 27-2) of the Convention.

2. The applicant also complains that his deportation would violate

his rights under Article 8 (Art. 8) of the Convention, as he would be

separated from his friends and acquaintances in Finland.

Article 8 (Art. 8) provides, as far as relevant, as follows:

"1. Everyone has the right to respect for his private and

family life...

2. There shall be no interference by a public authority

with the exercise of this right except such as is in

accordance with the law and is necessary in a democratic

society in the interests of national security, public

safety or the economic well-being of the country, for the

prevention of disorder or crime, for the protection of

health or morals, or for the protection of the rights and

freedoms of others."

The Commission recalls that the expulsion of a person from a

country in which close members of his family live may amount to an

unjustified interference with his right to respect for his family life

within the meaning of Article 8 (Art. 8) (see, e.g., Eur. Court HR,

Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193,

pp. 19-20, paras. 43-46). Whether removal of a family member from a

Contracting State is incompatible with the requirements of Article 8

(Art. 8) will depend on a number of factors such as whether there are

insurmountable obstacles to taking up family life in another country

(cf., e.g., No. 11333/85, Dec. 17.5.85, D.R. 43, p. 227).

The Commission notes that the applicant is divorced and has no

children in Finland. There is thus no indication that his deportation

would interfere with his "family life" within the meaning of Article 8

para. 1 (Art. 8-1) of the Convention. Even assuming that his

deportation would interfere with his "private life" in the light his

relationships with friends and acquaintances in the respondent State,

this complaint is in any case inadmissible for the reasons below.

It has not been argued that the applicant's deportation would not

be "in accordance with the law" or that it would not pursue a

legitimate aim such as the prevention of crime or the protection of the

rights and freedoms of others. The necessity criterion in Article 8

para. 2 (Art. 8-2) implies the existence of a pressing social need and,

in particular, requires that the measure must be proportionate to the

legitimate aims pursued. It has to be determined whether a fair balance

has been struck between the applicant's right to respect for his

private life and the legitimate interests of the State which

furthermore must be afforded a certain margin of appreciation (see,

e.g., Eur. Court HR, Boughanemi v. France judgment of 24 April 1996,

Reports of Judgments and Decisions, 1996-II, pp. 609-610,

paras. 41-42).

The Commission recalls that the applicant has been convicted of

a number of serious offences committed in Finland, including five

counts of attempted manslaughter, and sentenced to over eleven years'

imprisonment. Taking into account the respondent State's margin of

appreciation, the Commission concludes that the Finnish authorities

have reasonably been entitled to pursue the above-mentioned legitimate

aim by ordering the applicant's deportation after having struck a fair

balance between the relevant interests. The assumed interference with

the applicant's right to respect for his private life can therefore be

considered justified under Article 8 para. 2 (Art. 8-2) of the

Convention. Accordingly, there is no appearance of a violation of that

provision on the point in question.

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.

3. Under Article 8 (Art. 8) the applicant also complains that the

Supreme Administrative Court's disclosure to the public of his identity

and illness, as mentioned in its decision of 17 April 1998, failed to

respect his private life within the meaning of Article 8 (Art. 8) of

the Convention.

The Government submit that this complaint is inadmissible for

non-exhaustion of domestic remedies. The applicant never requested that

his name and the information relating to his health be kept

confidential by the Supreme Administrative Court. Had he made such a

request, the Court would have had to examine the matter. In the

alternative, the Government consider the complaint manifestly

ill-founded, as the Supreme Administrative Court in fact took into

account the need to keep the medical information pertaining to the

applicant confidential. In the circumstances of the case the fact that

the applicant's illness was mentioned in general terms in the Supreme

Administrative Court's decision was not contrary to Article 8 (Art. 8).

The applicant concedes that he did not request that any part of

the Supreme Administrative Court's decision be ordered to be kept

confidential. However, referring to the highly intimate nature of his

case, he did request an oral hearing, following which he would have

sought to have most of the material protected against publicity.

Moreover, in his rejoinder to the Supreme Administrative Court he

argued that he had already been stigmatised by the negative publicity

surrounding his conviction and sentence. It must have been clear from

the terms of those submissions that he did not consent to any further

publicity. Instead of inviting him to finalise his pleadings in writing

the Supreme Administrative Court dismissed his request for an oral

hearing in its decision regarding the merits of his appeal. He was

therefore prevented from further substantiating his pleadings on the

point of publicity.

The applicant furthermore argues that in light of the Supreme

Court's decision of 19 March 1998 pertaining to the underlying criminal

proceedings against him, he had no reason to suspect that his identity

or personal identity number would be disclosed to the public in the

deportation proceedings. The Supreme Court's decision ordered that the

names and personal identity numbers of the parties to the criminal

proceedings should not be disclosed to the public. As this decision

must also be respected by other courts, the applicant could

legitimately expect the Supreme Administrative Court to consider ex

officio the need for confidentiality also in the deportation

proceedings.

The Commission considers that it is not required to decide

whether or not the facts alleged by the applicant in respect of

this grievance disclose any appearance of a violation of the provision

invoked as, under Article 26 (Art. 26) of the Convention, it may only

deal with the matter after all domestic remedies have been exhausted,

according to the generally recognised rules of international law.

It is true that in a State where the Convention is directly

applicable (such as Finland) the domestic courts are competent to

examine of their own motion whether the Convention has been complied

with. The Commission recalls, however, that this possibility does not

absolve an applicant from the obligation of raising the relevant

complaint at least in substance before those courts (see, e.g., Eur.

Court HR, Cardot v. France judgment of 19 March 1991, Series A no. 200;

No. 11244/87, Dec. 2.3.87, D.R. 55, p. 98; No. 11425/85, Dec. 5.10.87,

D.R. 53, p. 76; No. 11921/86, Dec. 12.10.88, D.R. 57, p. 81;

No. 7367/76, Dec. 10.3.77, D.R. 8, p. 185).

The Commission notes that in his submissions to the Supreme

Administrative Court the applicant failed to request that any part of

the Supreme Administrative Court's decision should be kept

confidential. His request for an oral hearing cannot be construed as

such a request. Nor could he take it for granted that he would be given

an opportunity to submit such a request at a later stage. Moreover,

given that the Supreme Court's decision of 19 March 1998 was not made

in the deportation proceedings but by a different tribunal in the

context of a reopening of the criminal proceedings against him, he was

not absolved from his duty under Article 26 (Art. 26) to request

confidentiality in an unequivocal manner before the Supreme

Administrative Court.

An examination of the application does not therefore disclose the

existence of any special circumstances which might have absolved the

applicant, according to the generally recognised rules of international

law, from exhausting the remedy at his disposal.

It follows that this complaint must be rejected pursuant to

Article 27 para. 3 (Art. 27-3) of the Convention.

4. The applicant furthermore complains that his deportation would

also discriminate against him on the basis of his race and thus violate

Article 14 (Art. 14) of the Convention. This provision reads, in so far

as relevant, as follows:

"The enjoyment of the rights and freedoms set forth in this

Convention shall be secured without discrimination on any

ground such as ... race, colour, ..."

The Commission finds no indication that the deportation order in

respect of the applicant was issued and upheld on discriminatory

grounds. Nor is there any indication that the enforcement of the

deportation order would contain discriminatory elements. Accordingly,

there is no indication of any violation of Article 14 (Art. 14), read

in conjunction with any of the other provisions invoked in respect of

the applicant's deportation.

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.

5. The applicant also complains of the denial of an oral hearing

before the Supreme Administrative Court. He invokes Article 6 (Art. 6)

of the Convention which guarantees, inter alia, the right to a fair and

public hearing by an independent and impartial tribunal in the

determination of someone's civil rights and obligations.

The applicant also invokes Article 1 (c) of Protocol No. 7

(P7-1-c) which guarantees that an alien lawfully resident in the

territory of a Contracting State shall not be expelled therefrom except

in pursuance of a decision reached in accordance with law. He or she

shall be allowed, inter alia, to be represented for these purposes

before the competent authority.

(a) The Commission recalls its constant case-law according to which

Article 6 (Art. 6) of the Convention has no application to asylum,

expulsion, deportation proceedings or the like (see, e.g., No. 8118/77,

Dec. 19.3.81, D.R. 25, p. 105, and No. 9990/92, Dec. 15.5.84, D.R. 39,

p. 119).

(b) The Commission furthermore notes that when the deportation

proceedings began the applicant was no longer in possession of a

residence permit and thus not "lawfully resident" in the territory of

the respondent State within the meaning of Article 1 (c) of

Protocol No. 7 (P-1-c). This provision is therefore also inapplicable

in the instant case.

(c) It follows that this complaint must be rejected as being

incompatible ratione materiae with the provisions of the Convention,

pursuant to Article 27 para. 2 (Art. 27-2).

6. Finally, the applicant complains that Judge H's review of his

detention for deportation purposes was not in accordance with Article 6

(Art. 6) of the Convention, as the same judge had presided over the

trial against him in 1992.

The Commission finds that Judge H's decision to prolong the

applicant's detention for deportation purposes did not involve any

determination of his "civil rights or obligations" or of any "criminal

charge" against him (cf. Keus v. the Netherlands, Comm. Report 4.10.89,

paras. 82-83, Eur. Court HR, Series A no. 185-C, pp. 80-81;

No. 10600/83, Dec. 14.10.85, D.R. 44, pp. 155, 164). Accordingly,

Article 6 (Art. 6) of the Convention is not applicable in respect of

this complaint either.

It follows that this complaint must also be rejected as being

incompatible ratione materiae with the provisions of the Convention,

pursuant to Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M. de SALVIA S. TRECHSEL

Secretary President

to the Commission of the Commission