

APPLICATION N° 24088/94

A N v/France

DECISION of 12 October 1994 on the admissibility of the application

Article 3 of the Convention *To fall within the scope of this provision, ill treatment must attain a minimum level of severity. The conditions of existence of a foreigner who does not have the legal right to exercise a professional activity do not constitute degrading treatment.*

Article 27, paragraph 1 (b) of the Convention *Inadmissibility of a part of the application on the ground that it is essentially the same as a previous application struck out of the list.*

Competence *ratione materiae*

- a) *The Convention does not guarantee, as such, any right to enter, reside or remain in a State of which one is not a national.*
 - b) *Economic and social rights, including the right to work, are not, as such, guaranteed under the Convention.*
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THE FACTS

The applicant is an Angolan national who was born in 1958 in the Congo Republic. He is currently subject to a compulsory residence order in the Seine and Marne department. He is represented before the Commission by Mr. Eboma Mafulu, with whom he is lodging.

The following is a summary of the facts as described by the applicant.

1 The applicant left Angola by boat in August 1989 after serving a term of imprisonment for opposing the regime then in power. He was allegedly subjected to inhuman treatment while in prison.

He entered France clandestinely on 5 September 1989. On 13 September 1989, he applied to the French Agency for the Protection of Refugees and Stateless Persons (OFPRA) for political refugee status.

Following the rejection of his application, a deportation order was made against him on 30 December 1992.

As he refused to leave French territory, the Criminal Court of Bobigny made an order against the applicant forbidding him from entering French territory for three years.

His appeal against the deportation order was dismissed by the Administrative Court of Paris on 26 May 1993 on the ground that it was time barred.

2 On 30 April 1993, the applicant submitted an application to the Commission (No. 22182/93) arguing that, as a member of UNITA, he risked imprisonment, torture, or even the death penalty if he were to return to Angola (1).

On 8 July 1993, the Commission decided to apply Rule 36 of the Rules of Procedure to the applicant's case and indicated to the respondent Government that it would be desirable in the interest of the parties and the proceedings, not to send the applicant back to Angola. This indication was renewed on 21 October 1993.

The Government were also invited on 8 July 1993 to submit written observations on the admissibility and merits of the application.

In their observations submitted on 12 November 1993, the Government indicated that the Minister for the Interior had given a formal commitment, by letter of 8 November 1993, *not to enforce the deportation order to Angola made against the applicant or the order prohibiting entry into the territory*.

On 9 December 1993, the Commission decided not to extend application of Rule 36 of the Rules of Procedure.

The applicant did not submit observations in reply to those submitted by the French Government.

On 20 January 1994, the Commission, after noting that the Government had given a formal undertaking not to enforce the decisions to deport the applicant to Angola, decided to strike the application out of its list.

(1) See p. 76 above.

COMPLAINTS

In this application, the applicant argues firstly that having been subjected to cruel, inhuman and degrading treatment in his country, he cannot be deported to his country because he would face immediate execution

The applicant also complains that, as he is not authorised to work, he is without means and unable to meet his basic needs. He does not invoke any provision of the Convention

THE LAW

1 In so far as the applicant complains that he cannot be sent back to his country of origin without facing certain death, the Commission notes that the facts and the complaint are the same as those already submitted in Application No 22182/93 struck out of the list by decision of 20 January 1994. As the applicant does not submit any relevant new information, the Commission considers that this part of the present application must be dismissed in accordance with Article 27 para 1 (b) of the Convention

2 The applicant also complains that as he does not have the right to work, he is without means and cannot meet his basic needs. He does not invoke any provision of the Convention

This part of the application contains new information as compared to Application No 22182/93 in so far as the applicant complains that he is unable to work in France. However, the Commission observes that according to established case law, the Convention does not recognise, as such, the right of an individual to enter or reside in a State of which he is not a national (see No 7816/77, Dec 19 5 77, D R 9 p 219) any more than it recognises, as such, the right to work (see No 6907/75, Dec 10 12 75, D R 3 p 153). When examined from this point of view, the complaint must be dismissed as being incompatible *ratione materiae* with the Convention, pursuant to Article 27 para 2

When examined under Article 3 of the Convention, the Commission considers that although the applicant is in an extremely difficult position as a result of not being entitled to exercise a professional activity, his situation is not sufficiently serious for him to be considered as being subjected to degrading treatment. It follows that even assuming the applicant has exhausted domestic remedies, his complaint, examined in the light of Article 3 of the Convention, is manifestly unfounded and must be rejected pursuant to Article 27 para 2 of the Convention

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE