AS TO THE ADMISSIBILITY OF

Application No. 25525/94
by Mumin ADVIC
against United Kingdom

The European Commission of Human Rights (Second Chamber) sitting in private on 6 September 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 30 August 1994 by Mumin ADVIC against United Kingdom and registered on 3 November 1994 under file No. 25525/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of former Yugoslavia. He claims that he was born on 11 January 1939. Before the domestic authorities, however, the applicant claimed that he was born on 26 November 1936. He further claims that he is a Muslim by religion. The applicant is currently residing in Poland. In the proceedings before the Commission, the applicant is represented by Mr. B. A. Murphy, a solicitor practising in Ayr.

The facts of the case, as they have been submitted by the applicant, can be summarised as follows:

a) Particular circumstances of the case

The applicant spent his first 18 or 21 years in Yugoslavia. In 1957 he emigrated to Scotland, where his father had already established himself. He was given leave to remain and married in 1966. Both the applicant's children were born in Scotland around 1967 and 1972.

In May 1975, when he was made redundant, the applicant and his family emigrated to Yugoslavia. He claims that he could not find employment in the United Kingdom and that he had been offered a job in Bosnia.

On 25 April 1992 the applicant's wife left Bosnia for Poland

where her parents lived. His children left Bosnia as well. On 25 May 1992 the applicant was made redundant once again. In an interview he gave to an Entry Clearance Officer at the United Kingdom Consulate in Warsaw on 20 April 1993 the applicant attributed his loss of employment to the general hardship caused by the civil war. In particular he submitted that he "lost (his) job as when (the) war started no one had a job". Before the Commission he claims that he lost his job because he was a Muslim in an area controlled by Serbs. In the course of the above-mentioned interview the applicant further claimed that he "had to leave (his) house as they started knocking on doors and taking people to camps and murdering them". Before the Commission he claims that his house was forcibly taken away and that he was temporarily held in a prisoner of war camp. In August 1992 the applicant left for Croatia. He subsequently joined his family in Poland.

Seven months after his arrival in Poland the applicant applied to the United Kingdom Consulate in Warsaw for an entry clearance as a returning resident. On 20 April 1993 he was interviewed by an Entry Clearance Officer. The applicant submitted that he had a brother who had been married and raised a family in Scotland, with whom he had retained close links. He further indicated that his wife and children were not prepared to follow him to Scotland. He also claimed that his main reason for wishing to return to the United Kingdom was the social security rights he had acquired there before 1975. He finally submitted that he did not speak Polish and, as a result, the prospects of establishing himself successfully in Poland were limited. At the time he and his family, with the exception of his son who was working, were supported by his wife's parents who had a farm and received a pension.

The Entry Clearance Officer formed the view that the applicant's readmission as a returning resident was not justified under paragraphs 58 and 59 of the Immigration Rules (H.C. 251) on the ground that the applicant had been absent abroad for 18 years and there existed no special circumstances. In his explanatory statement the officer noted the following: First, the applicant had resided in the United Kingdom for over 18 years. While this was a substantial period it did not amount to a major portion of his life. Secondly, the applicant left the United Kingdom of his own free will for economic reasons. He now wished to return clearly for economic reasons. His case could not be considered to be a compassionate one. Thirdly, while having family in the United Kingdom, the applicant had only seen them once in 17 years. Correspondence over the years was claimed, but this could not be substantiated. There was little in the way of a close tie to the United Kingdom.

The applicant was informed of the decision of the Entry Clearance Officer on 11 May 1993. He immediately lodged an appeal. The United Kingdom authorities in Warsaw examined his appeal in the light, inter alia, of the fact that his children had in the meantime acquired United Kingdom passports. They decided, however, not to alter the original decision. In accordance with the 1971 Immigration Act, the appeal was submitted to an independent adjudicator.

On 22 November 1993 the applicant's daughter arrived in the United Kingdom. On 4 February 1994 his son arrived there as well. His wife was admitted on 5 February 1994 on the basis of a six months' visitors' visa.

The applicant's appeal was heard in Glasgow on 3 March 1994. His wife appeared at the hearing and addressed the adjudicator. The applicant's representative relied expressly on Article 8 of the Convention.

On 24 March 1994 the appeal was refused. The adjudicator considered that the appeal should be examined under paragraph 59 of the Immigration Rules. As the applicant had been absent for more than

two years from the United Kingdom, paragraph 58 did not apply.

The adjudicator took into consideration a number of factors in favour of the applicant's application. First, the applicant's brother, who was his only close relative, was in Scotland. The applicant's children, who were United Kingdom nationals, had also established themselves there. Secondly, the applicant had spent a significant portion of his life in the United kingdom during which he married and raised a family. Thirdly, the civil war in Bosnia had dire consequences for the applicant and his family and their situation in Poland was unhappy.

However, in the adjudicator's view, a number of factors unfavourable to the applicant existed as well. First, the applicant had not spent "most of his life" in the United Kingdom. Secondly, there was no evidence that during the period he spent in Yugoslavia the applicant had ever indicated that he intended to return to the United Kingdom. Thirdly, in the course of the interview at the United Kingdom Consulate in Warsaw the applicant had mentioned work credits and a pension scheme as his motive for securing entry to the United Kingdom. Fourthly, there was no evidence of contact between the applicant and his brother during the period the applicant spent in Yugoslavia.

Taking all the above into consideration, the adjudicator considered that the factors adverse to the applicant outweighed those in his favour. On balance, the adjudicator considered that the decision of the Entry Clearance Officer not to exercise discretion in favour of the applicant under paragraph 59 of the Immigration Rules was, on the basis of the information before the Officer, justified. Nevertheless, in the light of the compassionate circumstances which existed in the applicant's case, the adjudicator recommended that the Secretary of State should exercise his discretion outside the Immigration Rules and allow the applicant to enter the United Kingdom and resume his life there with his family. The adjudicator considered that the Secretary of State would "no doubt also bear in mind the provisions of Article 8 of the European Convention on Human Rights".

On 25 April 1994 the applicant was informed that the Secretary of State had considered the adjudicator's recommendation and decided not to accept it.

On 20 May 1994 the applicant was refused leave to appeal by the Immigration Appeal Tribunal on the ground that the conclusions of the adjudicator were fully supported by the evidence and there was no misdirection in law. He was informed that he did not have a right to appeal to the Court of Appeal or the Court of Session. He could apply, however, for judicial review.

On 10 June 1994 the applicant asked the Secretary of State to reconsider his case. On 30 June 1994 the applicant was informed that the Secretary of State had decided not to reverse his earlier decision.

The applicant's wife is currently in Germany where her sister resides. His children attend college in Scotland and live in a local authority flat.

The applicant continues to live with his parents-in-law in Poland. He claims that he cannot find work because he does not speak Polish and that the living conditions in the house of his parents-in-law are difficult, since 12 persons have to share three rooms.

It appears that the applicant has also applied to the United Kingdom Consulate in Warsaw for a visitor's visa and that his application remains pending.

b) Relevant domestic law

Paragraphs 58 and 59 of the Immigration Rules (H.C. 251) provide as follows:

> "A passenger returning to the United Kingdom from overseas (except one who received assistance from public funds towards the cost of leaving this country) is to be admitted for settlement on satisfying the immigration officer that he had indefinite leave to enter or remain in the United Kingdom when he last left, that he has not been away for longer than two years, and that he now seeks admission for the purpose of settlement.
>
> A passenger who has been away from the United Kingdom too long to benefit from the preceding paragraph may nevertheless be admitted if, for example, he has lived here for most of his life."

COMPLAINTS

The applicant complains that the authorities' refusal to allow his application for re-entry to the United Kingdom amounts to a breach of his right to respect for his private and family life under Article 8 of the Convention. He stresses that, before his children left for the United Kingdom, the family had always lived together and that his case is the only one where someone who had lived in the United Kingdom for 18 years was not re-admitted.

THE LAW

The applicant complains that the authorities' refusal to allow his application for re-entry to the United Kingdom amounts to a breach of his right to respect for his private and family life under Article 8 (Art. 8) of the Convention.

The Commission recalls that Article 8 (Art. 8) of the Convention provides that everyone has the right to respect for his private and family life.

The Commission further recalls that, in accordance with its case-law, the right of a foreigner to enter or remain in a territory of a High Contracting Party is not guaranteed as such by the Convention (No. 10375/83, Dec. 10.12.84, D.R. 40 p. 196). Moreover, the refusal of a High Contracting Party to grant a residence permit to an alien who had lived in its territory for 18 years in the past did not in itself amount to an infringement of his private life within the meaning of Article 8 (Art. 8) of the Convention (No. 1855/63, Dec. 24.4.65, Yearbook 8 p. 200).

Nevertheless, in accordance with the Commission's case-law, the exclusion of a person from a country in which his close relatives reside may raise an issue under Article 8 (Art. 8) of the Convention. However, in examining cases of this nature the Commission's first task is to consider whether a sufficient link exists between the relatives concerned to give rise to the protection of Article 8 (Art. 8) of the Convention (No. 10375/83, Dec. 10.12.84, D.R. 40 p. 196).

Although this will depend on the circumstances of each particular case, the Commission has already considered that the protection of Article 8 (Art. 8) did not cover links between adult brothers who had been living apart for a long period of time and who were not dependent on each other (No. 8157/78, Dec. 5.12.79, unpublished). Moreover, the relationship between a parent and an adult child would not necessarily acquire the protection of Article 8 (Art. 8) of the Convention without evidence of further elements of dependency, involving more than the normal, emotional ties (No. 10375/83, Dec. 10.12.84, D.R. 40 p. 196).

The Commission notes that, at the time when the applicant made

his application for an entry clearance, his only close relative in the United Kingdom was his brother from whom the applicant had been separated since 1975. The applicant has not submitted any evidence that he depended financially on him.

However, when the applicant's appeal was examined, both his children had established themselves in the United Kingdom and this was taken into consideration by the adjudicator when reviewing the Entry Clearance Officer's decision. When examining, therefore, whether the United Kingdom authorities' refusal to grant the applicant an entry clearance amounts to an interference with his right to respect for his family life, the Commission must also take into account the presence of his children in that country.

However, the Commission notes that both children are adults. Although it is claimed that until their arrival in the United Kingdom the children had lived with the applicant, there is no indication that the applicant depends on them financially. It must be noted in this connection that both children are students who depend themselves on the support of a Scottish local authority.

As regards, finally, the applicant's wife, the Commission notes that, although she was present in the United Kingdom when the applicant's appeal was examined, she had been admitted on the basis of a visitor's visa and has since departed. Her temporary presence in the United Kingdom could not create any right for the applicant under Article 8 (Art. 8) of the Convention to return to the United Kingdom.

In these circumstances, the Commission considers that it has not been shown that there exist sufficient links between the applicant and his relatives residing in the United Kingdom to give rise to the protection of Article 8 (Art. 8) of the Convention.

In the light of all the above, the Commission concludes that there is no appearance of a breach of the applicant's right to respect for his private and family life within the meaning of Article 8 (Art. 8) of the Convention. The application must, therefore, be rejected as 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 Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)