AS TO THE ADMISSIBILITY OF

Application No. 26373/95
by Mohamoud ASKAR
against the United Kingdom

The European Commission of Human Rights sitting in private on 16 October 1995, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

Mr. H.C. KRÜGER, 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 28 November 1994 by Mohamoud ASKAR against the United Kingdom and registered on 1 February 1995 under file No. 26373/95;

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 Somali citizen born in 1965 and currently resident in Southall. He is represented before the Commission by Ms. Sonali Ghelani, a solicitor practising in London.

The facts as submitted by the applicant may be summarised as follows.

The applicant, born in 1965 in Northern Somalia, is a member of the Issaq tribe.

At the time of the outbreak of civil war in May 1988, the applicant worked as a civil servant in Hargeisa where he lived with his second wife, his sister and two half brothers. His first wife and their children whom he supported and visited on a regular basis lived nearby.

On the outbreak of the war, the applicant, as happened with many civil servants and soldiers of the Issaq tribe, was arrested and detained, first in Hageisa and then in a special security detention centre in Godka. He was released after eight months' detention in January 1989.

During his detention, his first wife and their children, his sisters and half-brothers and his second wife fled to Ethiopian refugee camps. On the applicant's release, he tried to join his family but was prevented from doing so. His second wife who had contracted malaria and jaundice travelled to Mogadishu for treatment where she succeeded in rejoining the applicant.

In December 1989, the applicant and his second wife left Somalia and on arrival in the United Kingdom on 3 December 1989, applied for asylum.

On 28 February 1990, the Home Office notified the applicant that he had been recognised as a refugee pursuant to the 1951 United Nations Convention relating to the status of refugees and its 1967 protocol.

On 19 June 1990, the applicant's father died in Germany. He had been a high ranking police officer in Somalia and his flight to Germany was regarded as a defection by the Somali authorities. This had repercussions on the family remaining in Somalia. One of the applicant's brothers was detained and killed in prison.

By letter dated 15 July 1990, the applicant applied to the Home Office Refugee and Special Case Unit for reunion with the members of his family living in Ethiopian refugee camps and Mogadishu. These included his mother, two sisters, seven brothers, his two sons and his daughter.

In December 1991, a report reached the applicant, now head of his family, that the members of the family previously in Somalia had escaped to the Harshin refugee camp in Ethiopia.

On 3 January 1992, the applicant requested the assistance of his Member of Parliament in his application for family reunion.

On 27 January 1992, in its first response to his request, the Home Office requested further information. Following a second request for information from the Home Office, the applicant's request was refused by letter dated 4 November 1992.

On 1 February 1993, the applicant appealed to the adjudicator on behalf of his family. His appeal has not yet been heard. It is being held in abeyance pending the outcome of another case, Abdi, before the Court of Appeal (see Relevant domestic law and practice below).

The applicant has heard since that his mother, one of his brothers and two of his children have been seriously ill. He is extremely worried about the high mortality rate in the Ethiopian refugee camp. As a result of his own experiences and the worry in respect of his family, the applicant, according to a psychological report dated 20 November 1993, suffers from a clinical depressive disorder and post traumatic stress disorder, with symptoms, inter alia, of insomnia, guilt, hypervigilance and hyperventilation syndrome.

Meanwhile, in June 1993, four of the applicant's brothers (sisters) aged 16, 14, 13, 11 who had fled to Germany with their father rejoined the applicant in the United Kingdom where they were granted

refugee status.

Relevant domestic law and practice

The policy letter of 17 May 1990 from the Home Office set out the following practice. As a general rule, applications for foreign nationals to come to the United Kingdom must be made at a United Kingdom diplomatic post overseas. However as a concession to the fact that many of those displaced by the war in Northern Somalia were unable to make such an application, in September 1988 the Ministers agreed to introduce a concession whereby the United Kingdom sponsor could present the case to the Home Office so that the visa applications could be determined before the applicants set out on the difficult and hazardous journey to the nearest British Embassy. This concession was to be restricted to relatives living in refugee camps in Ethiopia and Djibouti.

The policy letter took into account not only the immediate members of the sponsor's family (ie. spouse and minor children) but stated that, given the nature of the Somali family, there was the possibility of flexibility, and exceptionally there would be recognition of other relatives where he or she was a dependent member of the refugee's family before the refugee came to the United Kingdom.

A review of this concessionary policy took place and it was withdrawn with effect from 27 January 1994, a public statement being made to this effect in the House of Commons on 25 January 1994. It did not affect cases which had been raised with the Home Office prior to that date. It was explained that the concession was withdrawn since Ethiopia where most of the displaced Somalis were to be found had been at peace for nearly three years and the evidence was that Somali nationals could move about safely and it was open to applicants to seek entry clearance at posts in Addis Ababa, Nairobi or Djibouti in the normal way.

The Home Office has taken the view that decisions refusing to apply the concessionary facility to an applicant are not appealable to the Immigration Adjudicator and the Immigration Appeal Tribunal. Decisions however have been made in cases by Adjudicators and the Tribunal that such decisions are subject under the relevant legislation and rules to a right of appeal. The case of Suleiman Abdi which concerns the issue is pending before the Court of Appeal. It was anticipated that the case would be heard on 25 June 1995.

COMPLAINTS

The applicant complains of the interference with his right to respect for his family life. He refers to the gravity of the plight of Somali refugees in Ethiopia and the grave risks which he would face as a recognised refugee if he sought re-unification with his family by travelling to Ethiopia. He emphasises the urgency of the situation and the unacceptable delay in dealing with his application, which is disproportionate and is in itself an unjustifiable interference under Article 8 of the Convention.

The applicant submits that as a matter of English law the case involves rights under domestic law which, since they concern family life, are "civil" in character. The delay in determining the dispute as to his rights discloses a violation of Article 6 para. 1 of the Convention.

Alternatively, the applicant submits that there is a violation of Article 13 of the Convention.

THE LAW

1. The applicant complains that the delay in determination of his

application for the re-unification of his family in the United Kingdom interferes with his right to respect for his family life contrary to Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention provides as relevant:

> "1. Everyone has the right to respect for his ... 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 there is no right for an alien to enter or reside in a particular country as such guaranteed by the Convention. However exclusion of a person from a country in which his close relatives live could involve a violation of Article 8 (Art. 8) of the Convention (see eg. No. 12411/86, Dec. 4.3.87, D.R. 51, p. 245).

The Commission notes that the applicant's pending application before the United Kingdom authorities concerns his mother, two sisters, seven brothers and three of his children. Whether "family life" exists between relatives, particularly those of adult years, for the purposes of Article 8 (Art. 8) depends on the closeness of ties and the existence of elements of dependency, whether financial or emotional (see eg. No. 9492/81, Dec. 14.7.82, D.R. 30, p. 232 and 10375/83, Dec. 10.12.83, D.R. 40, p. 196). The Commission finds it unnecessary to determine whether the relationships of the applicant with the various relatives concerned in the application fall in each case within the protection offered by Article 8 (Art. 8) of the Convention as the application must in any case be rejected for the reasons set out below.

The applicant complains of the delay in the proceedings concerning his application to the Home Office for permission for his relatives to join him in the United Kingdom. He argues that having regard to the grave situation in which his relatives are living the matter should be dealt with urgently. The delay, from his first request of 15 July 1990 to date, is, he submits, excessive and disproportionate to such a degree as to disclose a violation of his right to respect for his family life.

The Commission recalls that delay in proceedings concerning matters of "family life" may raise issues under Article 8 (Art. 8) of the Convention. In the case of H. v. the United Kingdom, the Court found a violation of Article 8 (Art. 8) in respect of proceedings concerning the applicant mother's access to her child which lasted two years and seven months. However, the Court had regard in reaching that conclusion to the fact that the proceedings concerned a fundamental element of family life (whether the mother would be allowed to see her child again) and that they had a quality of irreversibility, lying within an area in which delay might lead to a de facto determination of the matter, whereas an effective respect for the mother's family life required that the question be determined solely in the light of all relevant considerations and not by mere effluxion of time (Eur. Court H.R. H. v. the United Kingdom judgment of 8 July 1987, Series A no. 120 p. 64, paras. 89-90; W. v. the United Kingdom, judgment of 8 July 1987, Series A no. 121, p. 29, para. 65 and R. v. the United Kingdom, judgment of 8 July 1987, Series A no. 121, p. 119, para. 70 and p. 121, para. 74).

The Commission finds that the present case is not comparable. The subject-matter of the proceedings concerns the granting of permission to enter the United Kingdom for members of the applicant's family, whom

the applicant has not seen for at least six years and with some of whom the nature of his ties has not been specified beyond the fact that, pursuant to Somali tradition, the applicant has on the death of his father become head of the extended family group. Further, it is not apparent that the delay in the proceedings has any prejudicial effect on their eventual determination or that the effect of the passage of time is such as to prevent the proper and fair examination of the merits of the case.

Consequently, the Commission finds that on the facts of this case the applicant's complaints fail to disclose a lack of respect for his family life.

It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains that the excessive delay in the proceedings is in violation of Article 6 para. 1 (Art. 6-1) of the Convention, which provides in its first sentence:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission recalls its constant case-law that this provision has no application to asylum, expulsion, deportation proceedings or the like (cf. No. 8118/77, Omkarananda v. Switzerland, Dec. 19.3.81, D.R. 25, p. 105, and No. 9990/92, Bozano v. France, Dec. 15.5.84, D.R. 39, p. 119). It follows that this part of the application must be rejected as being incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also invokes Article 13 (Art. 13) of the Convention, which provides that :

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls however that Article 13 (Art. 13) does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52).

The Commission finds that the applicant cannot be said, in light of its findings above, to have an "arguable claim" of a violation of his Convention rights.

It follows that this complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)