Application No. 16249/90
by B.
against Switzerland

The European Commission of Human Rights sitting in private on 1 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 21 December 1989 by B. against Switzerland and registered on 7 March 1990 under file No. 16249/90;

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 facts of the case, as submitted by the applicant, may be summarised as follows:

The applicant, a Zaire citizen born in 1929, is a former Zaire diplomat residing at Zurich in Switzerland. He is currently employed as a labourer in a building firm in Zurich. Before the Commission he is represented by Mr. H. Hegetschweiler, a lawyer practising at Hedingen in Switzerland.

The applicant is married and has six children. The wife was born in 1945, the children in 1959, 1961, 1963, 1969, 1977 and 1983 respectively. The situation of the three children born in 1959, 1961 and 1963 is not at issue in the present application; the child born in 1959, an adult daughter, now resides at Rome in Italy. The child born in 1961, a son, entered Switzerland independently in 1982 where he was granted asylum in 1985. The child born in 1963, a son, was granted temporary residence in Switzerland together with the applicant in 1987.

In 1977 the applicant was posted as a diplomat at the Zaire Embassy at Bangui in the Central African Republic. A dispute then

arose with his superior, the Ambassador, who was allegedly an influential member of the same tribe as the President of Zaire. Thus, the Ambassador accused the applicant of treason, as he had withdrawn certain documents concerning the military assistance of Zaire by the Central African Republic.

As a result, the applicant left the diplomatic service in 1978 and went into hiding. In 1978 he also sent some of his children to Italy, where they commenced school. In 1982, the applicant's wife went to Italy. The family members living in Italy are supported by a caritative organisation.

On 1 June 1983 the applicant left Zaire. On 4 June 1983 he entered Switzerland where he applied for asylum in view of the disputes with his superior. On 4 January 1984 the applicant's son, born in 1963, entered Switzerland and requested asylum, claiming that he was also endangered in Zaire.

On 27 November 1984 the Swiss Federal Office for Police Affairs (Bundesamt für Polizeiwesen) dismissed the requests. The applicant then filed an appeal (Beschwerde) which the Federal Department of Justice and Police (Eidgenössisches Justiz- und Polizeidepartement) dismissed on 2 December 1986. In its decision the Department considered a report prepared by the Swiss Representation at Kinshasa in Zaire which concluded that the applicant had not been charged with any criminal offences. The Department nevertheless decided not to expel the applicant nor his son, as the Zaire authorities might consider the applicant's lengthy absence as hostile conduct.

As a result, on 21 January 1987 the Delegate for Refugees (Delegierter für das Flüchtlingswesen) decided, with the applicant's consent, to fix a temporary residence (Internierung) within the Canton of Zurich for the applicant and his son born in 1963. The applicant occasionally had the possibility, upon application for an entry visa to Italy and a reentry visa to Switzerland, temporarily to visit his family in Rome.

On 19 May 1987 the applicant requested the Delegate for Refugees to permit his wife and children born in 1959, 1969, 1977 and 1983 to enter Switzerland. He explained that he was not allowed to leave Switzerland; he would also hardly receive an entry visa for Italy. On the other hand, as his wife and children had no possibility to enter Switzerland, the family was permanently separated. The applicant also requested the permission to reside (Aufenthalts-bewilligung) in Switzerland.

On 4 July 1988 the Zurich Aliens' Police (Fremdenpolizei) dismissed the applicant's request with reference inter alia to a statement of the Delegate for Refugees of 9 June 1988 according to which in the long term the applicant could be expelled.

The applicant's appeal (Beschwerde) against this decision was dismissed by the Council of State (Regierungsrat) of the Canton of Zurich on 7 December 1988. The Council of State considered inter alia that any right under Article 8 of the Convention of the family to follow the applicant could only exist to the extent that the applicant had the permission to reside in Switzerland, which he did not have.

On 14 August 1989 the Federal Court (Bundesgericht) rejected the applicant's administrative law appeal (Verwaltungsgerichtsbeschwerde).

On 30 August 1989 the Delegate for Refugees invited the Zurich Director of Police (Polizeidirektor) to reconsider the decision of the Council of State of 7 December 1988 and to grant the applicant a residence permit. The Delegate considered in particular that the applicant could no longer be expected to return to Zaire.

On 3 November 1989 the Zurich Police Direction (Polizeidirektion) dismissed the request of the Delegate for Refugees, finding no relevant new facts warranting a reconsideration of the situation.

COMPLAINTS

In his application the applicant complained under Article 8 of the Convention of the separation from his family, in particular his wife and his children born in 1969, 1977 and 1983. He submitted that it was only possible for his family to live together in Switzerland. Thus, as the Swiss authorities themselves had pointed out, the applicant would be persecuted in Zaire. It could also not be expected of his wife to make the same request in Italy, as the Italian authorities would most likely refer to the possibility of the family reuniting in Switzerland; in particular, the wife and children had no permission at all to reside in Italy, whereas the applicant and his one son had a provisional permission to stay in Switzerland, and the other son was even a recognised refugee.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 21 December 1989 and registered on 7 March 1990.

By letter of 12 June 1990 the applicant informed the Commission that on 5 April 1990 the Zurich Aliens' Police had granted him an annual residence permission. On 6 June 1990 the Aliens' Police informed the applicant that his wife and the children born in 1977 and 1983 had permission to join the applicant in Switzerland. In a separate decision of 1 June 1990 the Aliens' Police refused the two daughters born in 1959 and 1969 to enter Switerland as they were no longer minors.

The applicant informed the Commission in his letter of 12 June 1990 that he maintained his application. He submitted with regard to the daughter born in 1969 that when he originally asked for permission for his family to enter Switzerland she was still a minor. The applicant left it to the Commission to decide whether or not the application had become obsolete with regard to those family members who had received permission to join him in Switzerland.

THE LAW

1. In his application the applicant originally complained under Article 8 (Art. 8) of the Convention of the separation from his family. He complained in particular that the Swiss authorities refused to let his wife and his children born in 1969, 1977 and 1983 join him in Switzerland.

The Commission concludes from the applicant's subsequent letter of 12 June 1990 to the Commission that he maintains his application with regard to the refusal of the Swiss authorities to let his daughter, born in 1969, join him in Switzerland. With regard to the other members of the family the applicant leaves it to the Commission to decide whether or not the application has become obsolete.

2. Insofar as the applicant complains under Article 8 (Art. 8) that the Swiss authorities refuse to let his daughter, born in 1969, join her father in Switzerland, the Commission recalls that there is no right to enter, remain or reside in a particular country guaranteed as such by the Convention. However, if a person is refused entry to a country where his close family resides, an issue may arise under Article 8 (Art. 8) of the Convention (see No. 10375/83, Dec. 10.12.84, D.R. 40 p. 196).

In examining such cases the Commission must first consider whether a sufficient link exists between the relatives concerned as to give rise to the protection of "family life" under Article 8 (Art. 8) of the Convention. Generally, this protection involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, the father and his 21 year old daughter in the present case, would not necessarily acquire the protection of Article 8 (Art. 8) without evidence of further elements of dependency, involving more than the normal, emotional ties (see No. 10375/83, ibid.)

However, in the present case it has not been shown that the applicant's daughter is economically dependent on the applicant. Moreover, the Commission notes that the applicant had the possibility of applying for a visa to visit family members in Italy, and he has not shown that this would not be possible in the future.

In these circumstances the Commission does not find it established that there exists a sufficiently close link between the applicant and his daughter which could be deemed to require the protection afforded by Article 8 (Art. 8) to family life. As a result there is no appearance of an interference with the applicant's right to respect for family life within the meaning of this provision. In this respect the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. As regards the other members of the applicant's family, in particular his wife and the children born in 1977 and 1983, the Commission notes that the Swiss authorities have permitted them to join the applicant in Switzerland and that the applicant leaves it to the Commission to decide whether or not his application has become obsolete.

The Commission considers that the factual basis of this part of the applicant's petition has now been resolved, within the meaning of Article 30 para. 1 (a) and (b) (Art. 30-1-a, 30-1-b) of the Convention. Moreover, the Commission finds no reasons of a general character affecting respect for Human Rights, as defined in the Convention, which require the further examination of this aspect of the case by virtue of Article 30 para. 1 (Art. 30-1) in fine of the Convention.

For these reasons, the Commission, by a majority,

DECLARES INADMISSIBLE the applicant's complaints concerning his daughter, born in 1969;

DECIDES TO STRIKE THE APPLICATION OFF ITS LIST OF CASES with regard to the applicant's complaints concerning the remaining family members.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)