AS TO THE ADMISSIBILITY OF

Application No. 33829/96
by Morm'ali BANKAR
against Switzerland

The European Commission of Human Rights sitting in private on 5 December 1996, the following members being present:

Mrs. G.H. THUNE, Acting President
Mr. S. TRECHSEL
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
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

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

Having regard to the application introduced on 22 August 1996 by Morm'ali Bankar against Switzerland and registered on 14 November 1996 under file No. 33829/96;

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, a former Bangladeshi and now Pakistani citizen born in 1954, is a writer residing in Chur in Switzerland. Before the Commission he is represented by Mr D. Gallup, a lawyer residing in Washington D.C. in the United States of America.

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

The applicant left Pakistan and entered Switzerland in 1990 where he applied for asylum. In the proceedings leading to the decision of 25 November 1993 of the Federal Office for Refugees (Bundesamt für

Flüchtlinge) the applicant was represented by a lawyer.

The applicant was questioned by the Swiss authorities on 14 August and 22 November 1990 and 5 May 1993, submitting, inter alia, that criminal proceedings were pending against him in Pakistan for illegal entry in Pakistan in 1984, that a warrant of arrest had been issued against him, that in July 1990 he had been ill-treated by the police for political activities, and that he had also had contacts with the Soviet secret service.

On 23 July 1993 the Swiss authorities filed questions with the Swiss Consulate General in Karachi as to the applicant's situation in Pakistan. The Consulate General replied, inter alia, that the warrant of arrest submitted by the applicant was forged; and that previous proceedings against the applicant, who had assisted in illegal immigration in the Middle East and in Europe, had been terminated. The Consulate stated that the applicant might be known in Pakistan for his former criminal activities, mainly forging documents, though there were no indications that he was wanted on political grounds. It was also pointed out that during the asylum proceedings in Switzerland the applicant had returned to Pakistan.

On 25 November 1993 the Federal Office for Refugees dismissed the applicant's request for asylum. It found, inter alia, that a fear of persecution could not be maintained as the applicant had left Pakistan with his own passport and identity card.

On 17 January 1994 the applicant filed an appeal with the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission).

On 4 February 1994 the applicant was permitted to consult documents submitted by the Swiss Consulate General in Karachi.

On 27 November 1995 the applicant's lawyer informed the applicant that he would no longer represent him, inter alia, as he was "not used to taking orders from (his) clients".

On 12 December 1995 the Federal Office for Refugees filed its observations on the applicant's appeal.

On 14 December 1995 the applicant was granted the possibility to comment on the observations of the Federal Office for Refugees, though he did not make use thereof.

On 28 February 1996 the Swiss Asylum Appeals Commission dismissed his appeal. The Appeals Commission found in particular that the applicant was now relying mainly on his membership in the East Pakistan Rehabilitation Campaign which defended human rights and was apparently not tolerated by the Government. However, originally the applicant had not mentioned this organisation at all to the Swiss authorities; rather, he had mentioned other organisations and the Soviet secret service with which he had had contact. The Appeals Commission further noted that the Swiss Consulate General had information according to which during the asylum proceedings the applicant had visited Pakistan; the applicant himself, when confronted with this information, had denied it but had not been able to state where he had been in Switzerland at the relevant time. However, as the applicant had been able to enter Pakistan, the Appeals Commission found that he could not maintain grounds of persecution.

The Appeals Commission concluded that there was no indication that the applicant, upon his return to Pakistan, would be subjected to treatment contrary to Article 3 of the Convention.

The applicant was ordered to leave Switzerland by 30 April 1996.

COMPLAINTS

The applicant complains under Articles 2 and 3 of the Convention of the Swiss authorities' refusal to grant him asylum and of his imminent return to Pakistan where he will suffer persecution and his life may be endangered. He submits that he was arrested in 1984/85 for some months for illegal entry into Pakistan and that these proceedings are still pending. He refers to the possibility of ten years' imprisonment. He alleges that he was arrested and tortured by the police between 1984 and 1990.

Under Article 1 of Protocol No. 7 to the Convention, the applicant complains that he was not represented by a lawyer throughout most of the review proceedings.

The applicant also invokes Articles 1, 5 and 10 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 22 August 1996.

On 12 September 1996 the Commission decided not to apply Rule 36 of the Commission's Rules of Procedure.

The application was registered on 14 November 1996.

THE LAW

1. The applicant complains under Articles 2 and 3 (Art. 2, 3) of the Swiss authorities' refusal to grant him asylum and of his imminent return to Pakistan where he will suffer persecution and his life may be endangered.

The Commission considers that these complaints fall to be examined under Article 3 (Art. 3) of the Convention which states:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

According to the Convention organs' case-law, the right of an alien to reside in a particular country is not as such guaranteed by the Convention. Nevertheless, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious and well-founded fear of treatment contrary to Article 3 (Art. 3) of the Convention in the country to which the person is to be expelled (see Eur. Court HR, Chahal v. the United Kingdom judgment of 15 November 1996, paras. 72 ff).

However, the mere possibility of ill-treatment on account of the unsettled general situation in a country is in itself insufficient to give rise to a breach of Article 3 (Art. 3) of the Convention (see Eur. Court HR, Vilvarajah and others v. United Kingdom judgment of 30 October 1991, Series A no 215, p. 37, para. 111).

The Commission has examined the circumstances of the present case as they have been submitted by the applicant.

It notes that the Swiss authorities, in particular the Federal Office for Refugees in its decision of 25 November 1993 and the Swiss Asylum Appeals Commission in its decision of 28 February 1996, carefully examined the applicant's case. In particular, during the asylum proceedings the authorities also filed questions with the Swiss Consulate General in Karachi in Pakistan.

As a result, the Swiss authorities, when refusing the applicant's request, demonstrated various contradictions in his submissions before the domestic authorities which called in question their credibility.

It was furthermore considered that the warrant of arrest submitted by the applicant was forged. It was also noted that the applicant had been able to leave Pakistan with his own identity card and his passport. Subsequently, while the asylum proceedings were pending in Switzerland, he had been able to revisit his country.

Moreover, before the Commission the applicant has not submitted any material, or made any further claims, which indicate that these findings were incorrect. The applicant has also not sufficiently substantiated his claims that he was ill-treated between 1984 and 1990.

As a result, the applicant has failed to show that upon his return to Pakistan he would face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention.

It follows that there is no appearance of a violation of Article 3 (Art. 3) of the Convention. This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Under Article 1 of Protocol No. 7 (P7-1) to the Convention, the applicant complains that he was not represented by a lawyer throughout most of the review proceedings.

Article 1 of Protocol No. 7 (P7-1) states, insofar as relevant:

"1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

...

(c) to be represented ... before the competent authority or a person or persons designated by that authority."

In the present case the Commission notes that the applicant was represented in the proceedings before the Federal Office for Refugees. In the subsequent appeal proceedings he was represented by a lawyer until 27 November 1995. While represented, the applicant filed the appeal with the Swiss Asylum Appeals Commission, and was permitted to consult documents submitted by the Swiss Consulate General in Karachi.

The applicant has not shown that after 27 November 1995 he complained of the lack of legal representation to the Appeals Commission. In particular, he failed to do so when on 14 December 1995 he was granted the possibility to comment on the observations of the Federal Office for Refugees.

This part of the application is therefore also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Insofar as the applicant also relies on Articles 1, 5 and 10 (Art. 1, 5, 10) of the Convention, the Commission finds no issue under these provisions. The remainder of the application is therefore 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.

H.C. KRÜGER	G.H. THUNE
Secretary	Acting President
to the Commission	of the Commission