AS TO THE ADMISSIBILITY OF

Application No. 35688/97
by Houssin BOUHALI
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 3 December 1997, the following members being present:

Mrs J. LIDDY, President
MM M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

Mrs M.F. BUQUICCHIO, 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 22 March 1997 by Houssin BOUHALI against the United Kingdom and registered on 21 April 1997 under file No. 35688/97;

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 an Algerian national born in 1957 and at the time of his application residing with his wife in London. He is represented before the Commission by Mrs S. Bouhali, his wife.

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

The applicant attempted repeatedly to enter and remain in the United Kingdom. On two occasions, July 1979 and August 1981, he was refused leave to enter. On 18 November 1988 he arrived in the United Kingdom and he was granted six months leave to enter. Then on 18 November 1988 an application for leave to remain was made on his behalf and was refused. Subsequently he appealed against the refusal and the appeal was dismissed. On 13 October 1991 he went to Geneva. In March 1992 he made an application through the British Embassy in Ankara, for a visa to enter the United Kingdom. In the meantime he returned to Algeria and remained there for four months until he could arrange to travel by ship to Spain in July 1992. He spent one week in

Spain and on 13 July 1992 he travelled to France and remained there until he came to the United Kingdom on 26 August 1995.

The applicant arrived in the United Kingdom on 26 August 1995 using a forged French identity card. He was therefore later deemed by the British immigration authorities to be an illegal entrant having entered in breach of section 3(1)(a) of the Immigration Act 1971.

The applicant came to the notice of the authorities on 4 October 1995 when he made an application for asylum stating that he lived in Saida and that he felt scared there because he believed that the Algerian authorities suspected him of being a member of a political party or group involved in illegal terrorist activities abroad. However, the applicant admitted that he had never attended rallies or demonstrations, and that neither himself nor any member of his family has ever been involved in any political activity or experienced any harassment, persecution or detention at the hands of the Algerian authorities. He stated that the situation in Algeria was getting really bad and that people were getting killed.

On 26 February 1996 his request for asylum was rejected by the Home Secretary on the ground that on the basis of his submissions, he had not demonstrated that he was likely to be of adverse interest to the authorities if he were to be returned to Algeria. The Home Secretary recognised that the political situation in Algeria had deteriorated following the postponement of the second round of national elections in 1991 and the imposition of a State of Emergency in early 1992. Further, he recognised that there had been a considerable amount of terrorist activity resulting in the death of large numbers of Algerian and foreign citizens. However, he was not of the view that the deterioration of the general situation in Algeria would, in itself, give the applicant a claim to refugee status within the terms of the 1951 United Nations Convention. It was further noted that the applicant had departed from Algeria through the normal channels in possession of a valid passport, issued to him in his true identity and that it was extremely unlikely that he would have been able to travel freely if he were of adverse interest to the Algerian authorities. The Home Secretary further observed that when the applicant returned to Algeria in 1992 he experienced no problems entering Algeria, and residing there for four months in no apparent danger. Taking account of all the circumstances, including the applicant's previous immigration history showing him to be trying repeatedly to enter the United Kingdom, and the need to maintain a firm and fair immigration control, the Secretary of State concluded that the right course of action would be to pursue illegal entry action against him.

On 1 March 1996 the applicant filed an appeal with the Special Adjudicator.

On 9 April 1996, after being served with notice as an illegal entrant, the applicant married S., a British citizen, whom he had known for over a year.

In a decision delivered on 9 October 1996, the Special Adjudicator refused the applicant's appeal against the refusal of asylum, finding that he could not claim to fall within the provisions of the 1951 Convention due to the situation in Algeria. The Adjudicator also declined to make a recommendation for leave to be granted on compassionate grounds due, inter alia, to his previous immigration history and the fact that he had only married in April. On 30 October 1996 the applicant's application for leave to appeal to the Immigration Appeal Tribunal was refused as it had not been submitted by 18 October 1996, the required date in accordance with Rule 13 (2) of the Immigration Asylum Appeals (Procedure) Rules.

The applicant's wife had already six children of her own, named as L. (aged 23), D. (aged 21), N. (aged 19), Z. (aged 16), K. (aged 9),

J. (aged 7), and one foster child, A. 19. She had recently separated from her previous husband due to his violent behaviour towards her and the children.

The applicant refers, inter alia, to medical reports from the Royal Free Hospital and by Counselling Services which indicated that the children had behavioural and emotional difficulties following the separation of their parents. J. had difficulties in terms of bed-wetting, severe temper tantrums and weight loss and his sister, K., was having difficulties in adjusting, inter alia, to the feeling of being let down by her father. The reports and other materials stated that since the applicant got married to the mother, the family had been contained emotionally by the security of having a husband and a father-figure and the children, especially K. and J., had responded enthusiastically to the routine being established and bonded very strongly with the applicant, improving considerably. Now, facing the prospect of the applicant's deportation they were said to be showing, once again, behavioural problems and extreme anxiety.

Moreover, the applicant refers in particular to the Counselling Services reports which indicate that before their marriage, his wife had been receiving weekly counselling for depression and that she had suffered a severe recurrent depressive illness exacerbated by the tragic neonatal death of premature twins and subsequently by a feud with another family which involved sustained and very upsetting harassment. The reports suggested that if the applicant was deported, this would add to her existing state of mind and might worsen her state chronically requiring psychiatric treatment. The applicant's wife who is the family's only breadwinner, was said to have become clinically depressed again.

The applicant finally refers to a story in the Guardian of 10 May 1997, which reported the killing of an Algerian asylum seeker who was returned to Algeria from the United Kingdom after his application for asylum had been refused. He further relies on a number of other newspaper reports in 1997 on the situation in Algeria generally which illustrated that the terrorist activity resulting in the death of large numbers of Algerian citizens remained endemic, and drew attention to terrorist bombings in his home town of Saida.

The applicant's Member of Parliament made representations about the risk to the applicant as a returning asylum seeker and the situation in Algeria to the Home Secretary. By letter dated 30 April 1997, the Home Secretary maintained his decision, referring, inter alia, to the recent statement of the United Nations High Commission for Refugees which did not oppose the return of asylum-seekers to Algeria, where their cases had been subject to thorough examination in an asylum procedure.

Directions for removal were issued and a date for deportation set for 17 April 1997. The applicant's removal was adjourned until 8 July 1997 and then to 17 October 1997.

COMPLAINTS

The applicant complains that his proposed deportation to Algeria by the British authorities would expose him to a serious risk of being killed or tortured due to the political situation and widespread violence that exists. He invokes Articles 2 and 3 of the Convention. In addition the applicant complains of violation of Articles 11, 12, 14, and Article 5 of Protocol no. 7 of the Convention. The deportation of the applicant is alleged to disrupt the stable family unit which the applicant is alleged to have brought together with a sense of normality which had been lacking since the separation of the children's parents.

THE LAW

1. The applicant complains that his expulsion to Algeria would expose him to a serious risk of being killed or ill-treated. He invokes Articles 2 and 3 (Art. 2, 3) of the Convention, which read, as relevant:

Article 2 (Art. 2)

"1. Everyone's right to life shall be protected by law. No-one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".

Article 3 (Art. 3)

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

The Commission recalls the case-law of the Convention organs according to which the right of an alien to reside in a particular country is not as such guaranteed by the Convention. However, the decision of a Contracting State to expel or extradite a person may give rise to an issue under Article 3 (Art. 3) of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he is to be returned. A mere possibility of ill treatment, however, is not in itself sufficient to give rise to a breach of this provision (Eur. Court HR, Chahal v. the United Kingdom judgment of 15 November 1996, p. 24, para. 86; cf. Eur. Court HR, Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 34, paras. 102-103).

As regards the allegations as to risk to life, the Commission recalls that Article 2 (Art. 2) contains two separate though interrelated basic elements. The first sentence of paragraph 1 sets forth the general obligation that the right to life shall be protected by law. The second sentence of this paragraph contains a prohibition of intentional deprivation of life, delimited by the exceptions mentioned in the second sentence itself and in paragraph 2 (Bahaddar v. the Netherlands, No. 25894/94 Comm. Report 13.9.96, p. 13, para. 76; cf. No. 17004/90, Dec. 19.5.92, D.R. 73, p. 155).

The Commission finds nothing to indicate that the expulsion of the applicant would amount to a violation of the general obligation contained in the first sentence of paragraph 1. As to the prohibition of intentional deprivation of life, the Commission does not exclude that an issue might be raised under Article 2 (Art. 2) in circumstances in which the expelling State knowingly puts the person concerned at such high risk of losing his life as for the outcome to be a near-certainty. The Commission considers, however, that a "real risk" - within the meaning of the case-law concerning Article 3 (Art. 3) - of loss of life would not as such necessarily suffice to make expulsion an "intentional deprivation of life" prohibited by Article 2 (Art. 2), although it would amount to inhuman treatment within the meaning of Article (Bahaddar op. cit. para. 78).

The Commission does not find that the facts of the case disclose a risk of the level of near-certainty for the purposes of Article 2 (Art. 2).

With regard to the applicant's submissions that he fears torture or ill-treatment contrary to Article 3 (Art. 3), the Commission does not find that substantial grounds have been shown for believing that upon expulsion the applicant faces a real risk of being subjected to such treatment. It notes the findings of the Secretary of State and Special Adjudicator that the applicant could not claim asylum on

political grounds and that his fears were based on the general state of unrest and violence in Algeria.

The Commission observes that according to the domestic authorities the general situation in Algeria had deteriorated and that there had been a considerable amount of terrorist activity resulting in the death of large numbers of Algerian and foreign citizens. The Commission finds however, that the general situation Algeria, or in particular in the applicant's home town of Saida, at present is not such that an expulsion would amount to a violation of Article 3 (Art. 3). The Commission also bears in mind that the applicant has never been involved in any political activity or experienced any harassment, persecution or detention at the hands of the Algerian authorities.

The applicant has raised before the Commission the allegation that as an asylum-seeker he would be subject to attack on return. However, the Commission finds that this allegation as submitted is based on a single incident reported in a newspaper and that there is no substantiation that asylum-seekers are per se a target for any group or faction in Algeria.

Accordingly there has not been any substantiation of the existence of a specific risk of treatment contrary to Article 3 (Art. 3) of the Convention and this complaint must also be rejected as manifestly ill founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Although the applicant has not expressly invoked Article 8 (Art. 8) of the Convention the Commission has examined his complaints complaint under this provision which provides as relevant:

> "1. Everyone has the right to respect for his private and family life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety ..."

The applicant has submitted that his removal will disrupt the family life established between himself and his wife and her children.

The Commission recalls, first of all, that the duty imposed by Article 8 (Art. 8) cannot be considered as extending to a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country (see Eur. Court HR, Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment of 28 May 1985, Series A no. 94, p. 34, para. 68). However whilst a right to enter or remain in a particular country is not as such guaranteed by Article 8 (Art. 8) of the Convention (see inter alia No. 9213/80, Dec. 5.5.81, D.R. 24, p. 239; and No. 25439/94, Dec. 5.4.95, D.R. 81-B, p. 142), the exclusion or removal of a person from a country where his close relatives reside or have the right to reside may raise issues under Article 8 (Art. 8) (see inter alia No. 9088/80, Dec. 6.3.82, D.R. 28, p. 160; No. 9285/81, Dec. 6.7.82, D.R. 29, p. 205; No. 23938/94, Dec. 23.10.95, unpublished; No. 24381/94, Dec. 31.8.94, unpublished; and No. 25073/94, Dec. 28.2.96, unpublished). Whilst the extent of a State's obligations to admit to its territory spouses or relatives of resident persons will vary according to the particular circumstances of the persons involved, an important issue may be whether there are insurmountable obstacles to the spouse having a right of residence following the spouse affected by the decision or order, such as difficulties of language, or where there is little or no prospect that the former will be able to adapt or integrate within the culture or society of the latter's country (see Eur. Court HR,

Beldjoudi v. France, judgment of 26 March 1992, Series A no. 234, p. 28, paras. 77-78). Moreover, whether removal or expulsion of a family member from a Contracting State is incompatible with the requirements of Article 8 (Art. 8) will depend on a number of factors: the extent to which family life is effectively ruptured, or whether there are factors of immigration control (eg. history of breaches of immigration law) weighing in favour of exclusion (see eg. Nos. 9285/81, Dec. 6.7.82, D.R. 29 p. 205 and 11970/86, Dec. 13.7.87 unpublished).

An important though not decisive consideration will also be whether the marriage, albeit manifestly not one of convenience, was contracted at a time when the parties were aware that the immigration status of one of them was such that the persistence of the marriage within the host state would from the outset be precarious. The Commission considers that where this is a relevant consideration it is likely to be only in the more exceptional circumstances that the removal of the non-national spouse will constitute a violation of Article 8 (Art. 8) (cf. Eur. Court HR, Abdulaziz, Cabales and Balkandali, loc. cit., p. 34, para. 68; No. 9285/81, loc. cit.; No. 24381/94, loc. cit.; No. 25073/94, loc. cit.).

The Commission notes the applicant's arguments that his threatened deportation has had an effect on the children who have bonded with him as father figure and that his anticipated deportation had allegedly caused his wife to become clinically depressed. However, the Commission observes that the problems of mental health facing the applicant's wife appear to derive from her previous marital problems and other traumatic events. Likewise, many of the problems facing the children derive from their history, their parents' troubled marriage and subsequent divorce. The Commission also notes the ages of the children at the relevant time of the marriage, three of whom are now adults and the short duration of the marriage.

Moreover, the Commission recalls that the applicant married in April 1996 when he had already been subject to immigration proceedings and an illegal entrant order had been served. He must accordingly be taken to have been aware of his precarious immigration status and the risk posed to relationships intervening before eventual deportation. The situation of the family therefore flows from the choice exercised by the applicant rather than from any direct interference by the State with their family relationships.

The Commission therefore finds that there are no elements concerning respect for family or private life which in this case outweigh the valid considerations relating to the proper enforcement of immigration controls. It concludes that the anticipated removal does not disclose a lack of respect for the applicant's rights to family or private life as guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention.

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.

3. The applicant further invokes Article 12 (Art. 12) of the Convention which provides:

> "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right".

The Commission notes that the applicant married his wife unhindered. Furthermore, for the same reasons given above in respect of Article 8 (Art. 8) of the Convention, the Commission finds that Article 12 (Art. 12) of the Convention also does not impose a general obligation upon Contracting States to respect a married couple's choice of the place where they wish to found a family or to accept non-

national spouses for settlement to facilitate that choice.

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

4. The applicant also complains that his rights under Article 14 (Art. 14) of the Convention have been violated in the proceedings on his request for asylum. Article 14 (Art. 14) provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Having examined the submissions of the applicant, the Commission finds no indication that the applicant has been subject to any difference of treatment in respect of the enjoyment of any of the rights guaranteed under the Convention.

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

5. The applicant also invokes Article 11 (Art. 11), which guarantees, inter alia, freedom of association and Article 5 of Protocol No. 7 (P7-5) of the Convention, which guarantees equality between spouses. The Commission finds that the facts as submitted by the applicant do not disclose any appearance of a violation of Article 11 (Art. 11) of the Convention and this complaint must therefore be rejected as manifestly ill founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. As regards the applicant's complaint under Article 5 of Protocol No. 7 (P7-5), the Commission recalls that the United Kingdom is not a Contracting Party to the Protocol. This complaint must therefore be rejected as incompatible pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO Secretary to the First Chamber	J. LIDDY President of the First Chamber