AS TO THE ADMISSIBILITY OF

Application No. 43363/98
by C. N.
against Switzerland

The European Commission of Human Rights sitting in private on 18 September 1998, the following members being present:

MM J.-C. GEUS, Acting President
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
M.A. NOWICKI
B. CONFORTI
N. BRATZA
I. BÉKÉS
D. ŠVÁBY
G. RESS
A. PERENIČ
P. LORENZEN
K. HERNDL
E. BIELIŪNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs M. HION
MM R. NICOLINI
A. ARABADJIEV

Mr M. de SALVIA, 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 31 August 1998 by C. N. against Switzerland and registered on 9 September 1998 under file No. 43363/98;

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 Nigerian citizen born in 1961, is a student and restaurant worker residing in Weesen in Switzerland. Before the Commission he is represented by Mr K. Rüst, a lawyer working for an advisory body for asylum seekers (Rechtsberatungsstelle für Asylsuchende) in St. Gallen.

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

The applicant left Nigeria on 13 January 1992, travelling through Belgium and a further country of which he did not know the name to Switzerland where on 29 January 1992 he applied for asylum.

On 31 January and on 18 February 1992 he was heard by the Swiss authorities. He claimed that in Nigeria he had been the leader of a student union at the Enugu State University. During a student demonstration in November 1991, he had been arrested as being responsible for damages caused. On 2 January 1992, a policeman had helped him to flee. He had spent five days hiding at his previous address with his brother. Subsequently, he hid with his uncle, later he was able to travel to Lagos and to board a ship. He claimed that he had been forced to flee, as student demonstrations were punished with life imprisonment.

On 28 February 1992 the Federal Office for Refugees (Bundesamt für Flüchtlinge) dismissed the applicant's request, as his submissions did not appear credible. On the one hand, he had disclosed a lack of knowledge of the university situation in Nigeria. On the other hand, the applicant would hardly have hidden at his own address if the police were looking for him. In any event, if the demonstration had caused damages, it was legitimate if the police undertook investigations. Finally, the Federal Office was unaware that the offence at issue resulted in life imprisonment.

On 18 March 1993 the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission) dismissed the applicant's appeal. To the extent that he had submitted a copy of the Nigerian newspaper "Satellite" of 19 February 1992 from which

it transpired that he was being searched by the police, the Asylum Appeals Commission expressed doubts as to the authenticity of these statements, as the police would hardly make its intentions known by publishing them, only one year later, in the newspaper. Moreover, the Swiss Embassy in Lagos had established that according to the relevant legislation the demonstrations at issue were not punished with life imprisonment.

The applicant then filed a request for the reopening of the previous proceedings which was dismissed by the Asylum Appeals Commission on 2 May 1995, as the applicant had failed to submit relevant new elements of information. It was not considered relevant that the copy of the newspaper was in fact dated 19 February 1992 and therefore not a year after the applicant had fled.

A second request for reopening was dismissed on similar grounds by the Asylum Appeals Commission on 25 September 1995.

On 30 January 1996 the Federal Office for Refugees dismissed the applicant's request for reconsideration, as the information submitted by the applicant - inter alia, copies of reports of the International Commission of Jurists, of Amnesty International, and of the United Nations - could already have been submitted in the previous proceedings. On 1 February 1996 the applicant filed a request to be recognised as refugee. As a result, the Swiss Embassy in Lagos was requested to undertake further inquiries. The latter concluded in its report that there were no indications that the applicant was wanted by the Nigerian authorities.

On 29 July 1998 the Swiss Asylum Appeals Commission dismissed the applicant's request which it regarded as a request for reconsideration of its previous decision. It considered, on the one hand, that the applicant was in fact asking for a reconsideration of the legal grounds of its previous decision which was inadmissible. On the other hand, no relevant new information had been submitted which would justify such reconsideration. Reference was also made to the inquiries undertaken by the Swiss Embassy in Lagos. The Asylum Appeals Commission further considered that nearly seven years had elapsed since the demonstration which made a prison sentence appear most unlikely.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention of his imminent expulsion to Nigeria, alleging that these is a real risk that upon his return the police would arrest and detain him. The applicant refers to the inhuman conditions in Nigerian prisons.

2. Under Article 13 of the Convention the applicant complains that he did not have an effective remedy at his disposal to complain about the decision of the Federal Office for Refugees of 28 February 1992. He submits that the evidence submitted was not properly considered.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 31 August 1998.

On 4 September 1998 the Acting President of the Commission decided not to apply Rule 36 of the Commission's Rules of Procedure.

The application was registered on 9 September 1998.

THE LAW

The applicant complains under Article 3 of the Convention of his imminent expulsion to Nigeria where there is a real risk that he will be arrested and detained. He refers to the inhuman conditions in the Nigerian prisons.

Article 3 of the Convention states:

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

a) The Commission notes that the final decision in the applicant's case was given by the Swiss Asylum Appeals Commission on 18 March 1993. The subsequent decisions concern the applicant's various requests for the reopening and reconsideration of this decision. An issue arises, therefore, whether the applicant has complied with the requirement under Article 26 of the Convention as to the time-limit of six months.

According to the Commission's case-law, where in such cases against Switzerland there has been a significant change in the political situation on which the final decision is based, the applicant will be expected to file a request for reconsideration of the previous decision (see No. 18079/91, Dec. 4.12.91, DR 72 p. 263).

In the present case, however, the Swiss Asylum Appeals Commission found that in his various requests for reopening and reconsideration of the final decision, the applicant had failed to submit any relevant new information.

The Commission need nevertheless not resolve this issue since this complaint is in any event inadmissible as being manifestly ill-founded for the following reasons.

b) 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 of the Convention in the country to which the person is to be expelled (see Eur. Court HR,

Chahal v. United Kingdom judgment of 15 November 1996, Reports of Judgments and Decisions, 1996, p. 1831, paras. 72 et seq.).

Nevertheless, 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 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 incidences referred to by the applicant occurred seven years ago, and he has not submitted any recent information according to which he is wanted by the Nigerian police. The Commission also notes that according to the inquiries undertaken by the Swiss Embassy in Lagos the demonstrations at issue were not punished with life imprisonment, and that there were no indications that the applicant was wanted by the Nigerian authorities.

The Commission further notes the domestic authorities' conclusion according to which the applicant's submissions did not appear credible. For instance, it appeared unlikely that, after fleeing from prison, the applicant would have hidden at his own address.

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

This part of the application is, therefore, manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. Under Article 13 of the Convention the applicant complains that he did not have an effective remedy at his disposal to complain about the decision of the Federal Office for Refugees of 28 February 1992. In his view, the evidence submitted was not properly considered. This provision states:

"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 that Article 13 of the Convention requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see Eur. Court HR, Powell and Rayner v. United Kingdom judgment of 21 February 1990, Series A no. 172, p. 14, para. 31).

In the present case, the Commission has just found that the complaints under Article 8 of the Convention are manifestly ill-founded. The Commission finds that the

applicant's submissions in this respect do not raise any prima facie issue under the Convention. As a result, no arguable claim can be maintained in respect of a violation of this provision.

It follows that the remainder of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M. de SALVIA
Secretary
to the Commission

J.-C. GEUS
Acting President
of the Commission