AS TO THE ADMISSIBILITY OF

Application No. 35438/97
by Elyas CHAMMAS
against Switzerland

The European Commission of Human Rights sitting in private on 30 May 1997, the following members being present:

Mrs. G.H. THUNE, Acting President
Mr. S. TRECHSEL
Mrs. J. LIDDY
MM. G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
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
Mrs. M. HION
MM. R. NICOLINI
A. ARABADJIEV

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 18 March 1997 by Elyas Chammas against Switzerland and registered on 25 March 1997 under file No. 35438/97;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 5 May 1997 and the observations in reply submitted by the applicant on 16 May 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Syrian citizen born in 1965. He is currently residing in Switzerland. Before the Commission he is represented by Mr Kurt Sintzel, a lawyer practising in Zurich.

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

The applicant left Syria on 17 October 1990 and travelled via Italy to Switzerland where he requested asylum on 22 October 1990.

The applicant was questioned by the Swiss authorities on 23 October 1990 and 16 January 1992. He submitted, inter alia, that he was an Aramean Christian and a member of the right-wing Baath party which ruled in Iraq. In view thereof he had been tortured in Syria and detained for eight months in 1985. Subsequently, he had occasionally been arrested for a few hours and questioned. When his party friends had been arrested in 1990, he had fled Syria.

The applicant's request for asylum was dismissed on 9 March 1992 by the Federal Office for Refugees (Bundesamt für Flüchtlinge) which expressed doubts as to the credibility of the applicant's statements. Thus, the applicant had been unable sufficiently to describe the political aims of the Baath party. Moreover, it did not appear credible that the applicant, as a member of this party, had been released from detention after only eight months. The Federal Office further noted that the applicant had been able to leave Syria with a passport, and indeed in 1990 had spent holidays in Italy and Jordan. The Office was not convinced by the applicant's statement that he had obtained a passport by means of bribery.

The applicant filed an appeal on 9 April 1992 which was dismissed by the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission) on 13 November 1996, the decision being served on 26 November. The Appeals Commission found that the applicant had failed to comment sufficiently on the points raised by the Federal Office for Refugees.

On 28 November 1996 the Federal Office for Refugees ordered the applicant to leave Switzerland by 28 February 1997.

On 17 January 1997 the applicant's lawyer filed a request with the Swiss Asylum Appeals Commission for the reopening of its decision of 13 November 1996. The lawyer included a letter of the Swiss Section of Amnesty International, dated 17 September 1996 and addressed to one Mr R.M. of the Counselling Service for Asylum Seekers (Beratungsstelle für Asylsuchende). The letter read as follows:

<Translation>

"Dear Mr M.

We would like to state the following as to the situation of Syrian asylum-seekers who are returning to Syria. (Particular attention shall be given to the situation of Syrian-Orthodox Syrians.)

Risks upon Return of Asylum-Seekers to Syria

Syrians, who are seeking political asylum, are automatically regarded as opponents of the régime. The mere fact that they have left the country with the aim of seeking asylum in another country is considered a sign of opposition against the Syrian Government. If the asylum-seeker has been or is associated with a prohibited political organisation, he risks detention and torture upon his return. It transpires from recent reports that torture is still systematically applied in Syria.

In the case of former detainees the fact that they have sought asylum is considered proof of continuing prohibited activity for the opposition, leading to a danger of reprisals.

Syrians are prohibited from leaving the country without permission. The Government refuses to grant authorisations to supposed opponents of the régime. Those who wish to leave Syria to seek asylum in another country are often forced to suppress their identity or to have forged documents prepared.

Asylum-seekers who leave Syria unlawfully, i.e. without permission or with forged documents, normally risk arrest and detention. If an asylum-seeker whose request is refused is sent back to Syria, he risks a prison sentence between one month and two years on account of forging documents or of false identity (S. 452 of the Syrian Criminal Code). According to S. 427 of the Criminal Code the punishment can be raised. Thus, the punishment can amount to seven years' forced labour on account of falsifying the seal of Syrian authorities. The falsification of seals of public authorities is punished with imprisonment of one to three years (S. 428 of the Syrian Criminal Code).

If the returning asylum-seeker is accompanied by security officers of the expelling State, his request for asylum will hardly remain unnoticed by the Syrian authorities. Asylum-seekers who have spent some time abroad must upon return to Syria expect with certainty that they shall be questioned extensively by the Syrian security authorities. We would add that the Syrian Secret Service has as its duty the surveillance of Syrian communities abroad. The Syrian authorities could therefore already have been made aware of the request for asylum of returning persons.

The situation of Syrian-Orthodox Christians

Amnesty International is not aware of any documented cases in which Syrian nationals of Christian faith have been subjected to political persecution merely on account of their beliefs.

Christians were persecuted mostly because they were also active in the political opposition.

According to unconfirmed reports, Christians in Syria suffer disadvantages and are discriminated against, but these measures do not attain the level of severity of human rights violations.

As regards the return of Syrian-Orthodox Christians whose requests have been refused, we would refer to the above.

Cases of returning asylum-seekers

We have only little information as to the destiny of asylum-seekers who have returned to Syria. However, in the past years we have registered numerous cases of unsuccessful asylum-seekers who, upon their return to Syria, were arrested and detained. According to our experience, members of prohibited movements will often have to expect persecution. We would mention some cases among many:

On 20 October 1995 an asylum-seeker was expelled from Switzerland to Syria. Witnesses report that he was arrested immediately upon his arrival at Damascus airport. His family has since (December 1995) not received any signs of life from him. Amnesty fears that he is in danger of torture and of disappearing.

In 1995 three Syrian-Kurdish asylum-seekers were expelled from Austria to Syria. According to certain reports, they were arrested immediately after their arrival in Syria. In December 1995 there was

no information as to their whereabouts.

On 5 March 1996 H.K. was expelled by the Romanian authorities to Syria. He was arrested upon his arrival in Syria. According to certain reports, he has repeatedly been tortured.

Sincerely,

Amnesty International
Swiss Section

R.M.
Refugee Team"

In his request for reopening of the proceedings the applicant's lawyer pointed out that "only in December of last year had (the applicant) obtained the Report of Amnesty International". He submitted that the applicant would be treated as mentioned in the report.

On 24 February 1997 the Swiss Asylum Appeals Commission rejected the applicant's request for reopening of the proceedings. The decision stated, inter alia:

<Translation>

"In the present case the applicant has completely failed substantially to explain why it was not possible for him to obtain knowledge of the report of Amnesty International during the regular proceedings. It is true that according to his submissions the facts at issue are derived from a report of Amnesty International of 17 September 1996 (i.e. before the decision of the Asylum Appeals Commission was pronounced on 13 November 1996). However, he does not explain at all why it was impossible, or could not be expected from him, to obtain the report earlier on. The mere fact that he has received the report only after the decision of the Asylum Appeals Commission cannot in itself suffice in view of the facts explained above."

As to the substance of the applicant's request the decision stated:

"It can nevertheless be stated that the applicant's submissions would lead to the conclusion that in principle no more expulsions would be possible to Syria. In this respect it must be said that the Asylum Appeals Commission relies for its determination of the situation on various documentations, including as a rule publications of Amnesty International. Finally it should be added that the Swiss Federal Council has so far not contemplated provisionally accepting groups of Syrian nationals in Switzerland. The Asylum Appeals Commission has equally not reached an analogous conclusion in its constant consideration of the situation concerning individual expulsions to Syria."

According to a News Release of Amnesty International of 25 March 1997, there has been a growing trend of improvements in human rights in Syria over the last few years. Thus, approximately 2,000 political prisoners have been released since 1995, including prisoners of conscience. There has also been a significant decrease in arbitrary political arrests, detention and torture.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention of his expulsion to Syria. He cannot reside in any other European country. Upon his return to Syria he would risk detention and torture or inhuman treatment. The applicant refers expressly to the report of Amnesty International of 17 September 1996.

2. The applicant also complains under Article 6 of the Convention of the formalistic manner in which the Asylum Appeals Commission dealt with his request for reopening of the proceedings. After his appeal in 1992, the proceedings lasted four years until the Asylum Appeals Commission gave its decision. During this time he could not be expected to undertake research with regard to a possible negative decision. The applicant also complains that he could not properly explain himself before the Asylum Appeals Commission.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 March 1997 and registered on 25 March 1997.

Rule 36 of the Commission's Rules of Procedure was applied on 24 March 1997 by the Acting President, and on 17 April 1997 by the Commission.

On 17 April 1997 the Commission also decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 5 May 1997. The applicant replied on 16 May 1997.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the Convention of his expulsion to Syria. He cannot reside in any other European country. Upon his return to Syria he would risk detention and torture or inhuman treatment. The applicant refers expressly to the report of Amnesty International of 17 September 1996.

Article 3 (Art. 3) of the Convention states:

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

a) The Government contend that the applicant has not complied with the requirement under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies. It transpires from the decision of the Asylum Appeals Commission of 24 February 1997 that the applicant had not explained why he could not have obtained knowledge of the Report of Amnesty International during the regular proceedings. Thus, the facts which he invoked could no longer be qualified as being new, and a request for reopening of the proceedings was therefore inadmissible. The Government point out that insofar as the Asylum Appeals Commission nevertheless dealt with the letter of Amnesty International, it did not do so in a sufficiently concrete manner in respect of his personal situation.

The applicant submits that the Asylum Appeals Commission was too formalistic when it rejected his request for reopening of the proceedings. In fact, it transpires from the decision of 24 February 1997 that the Asylum Appeals Commission did not share his views as to his expulsion to Syria. Thus, the considerations of the Asylum Appeals Commission constitute an obiter dictum amounting to a decision on the merits.

Under Article 26 (Art. 26) of the Convention "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

In the present case, the Swiss Asylum Appeals Commission dismissed the applicant's appeal on 13 November 1996. Subsequently,

the applicant requested, with reference to the letter of Amnesty International, the reopening of the proceedings.

According to the Commission's case-law, if in such proceedings in Switzerland new facts are obtained after the final decision of the Asylum Appeals Commission, a request for reopening of the proceedings may be considered an effective remedy (see No. 18079/91, Dec. 4.12.91, D.R. 72, p. 263). Nevertheless, there is no exhaustion of domestic remedies where a remedy is not admitted because of a procedural mistake (see No. 6878/75, Dec. 6.10.76, D.R. 6, p. 79).

It is true that in the present case the applicant's request for reopening of the proceedings was declared inadmissible by the Asylum Appeals Commission on 24 February 1997. Thus, the applicant had failed to explain why he had not been able to submit the letter of Amnesty International already during the regular proceedings.

However, the Commission notes the applicant's explanations before the Asylum Appeals Commission according to which he had only obtained the letter of Amnesty International after the final decision of 13 November 1996. There is furthermore no indication that the applicant had in fact been in possession of the letter before 13 November 1996 and that he had purposely withheld it during the regular proceedings before the Asylum Appeals Commission.

In any event, in its decision of 24 February 1997 the Asylum Appeals Commission, after explaining why the request was inadmissible, in fact proceeded to discuss, albeit briefly, the merits of the applicant's request.

The applicant's complaints cannot therefore be rejected under Article 26 (Art. 26) of the Convention for non-exhaustion of domestic remedies.

b) The Government further contend that the application is manifestly ill-founded. Doubts arise as to the credibility of the applicant's submissions. It is recalled that according to the decision of the Asylum Appeals Commission of 13 November 1996, the applicant had only insufficiently demonstrated his affiliation in Syria to the Baath party. Furthermore, had he really been punished for his support of that party, he would have been subjected to a more severe sanction than eight months' imprisonment. It also did not appear credible if he stated that despite his persecution he suffered no disadvantages from 1985 to 1990 when he lived in Syria, or that he was able to leave Syria via Damascus airport with all the necessary documents, particularly as the security services are very strict at that airport.

The Government also point out that in the same year when the applicant left Syria for Switzerland he was able twice to travel abroad, once to Jordan and once to Italy. This would hardly have been possible for a person allegedly persecuted by the authorities. Moreover, it is recalled that the letter of Amnesty International only envisaged difficulties upon the return of asylum-seekers who left Syria unlawfully. Thus, the dangers mentioned therein, if any, would not apply to the applicant who was able to leave the country lawfully.

Finally, the Government refer to the situation in Sweden, Germany and the Netherlands. These countries regularly send Syrian asylum-seekers back to Syria without any difficulties having become apparent.

The applicant contends that his expulsion to Syria would breach Article 3 (Art. 3) of the Convention. In his case, the Swiss authorities insufficiently examined the particular circumstances in Syria. Thus, the applicant knew about the Baath party as much as one generally knows about a party programme. Personal reasons led him to join a wing of the Baath party. The fact that he was released after eight months of imprisonment is not extraordinary. In the following

years the applicant was placed under surveillance, but he was not persecuted, as the situation had calmed down in the country, and there was a more relaxed atmosphere. For this reason, he could travel twice abroad. In 1990, when the situation in Syria deteriorated and his friend was arrested, he could leave the country as he obtained a passport with the help of his father and by means of bribery.

The applicant submits that while in Syria he was detained for eight months, and tortured. In view of the situation there today, he must expect, upon his return, renewed persecution contrary to Article 3 (Art. 3) of the Convention. Complete proof is not possible. In his case, there is a concrete, serious and substantial danger of persecution.

The applicant recalls that the letter of Amnesty International points out the risks for returning Syrian asylum-seekers, such as the applicant. These persons are automatically regarded as opponents of the régime and, therefore, risk torture. The mere fact that they left the country is regarded as a form of resistance. It may be true that the sanctions mentioned in the Report of Amnesty International in case of unlawful departures from Syria do not apply to the applicant who left Syria with a passport. However, if he has to return to Syria, he will have to obtain the necessary documents for his return. The Syrian authorities will thus certainly become aware of him, and he can therefore no longer enter his home country as a normal citizen.

The applicant contests the Government's submissions according to which various countries have sent Syrian asylum-seekers back to Syria without any problems. These submissions contradict the letter of Amnesty International where reference is made to persons who in the past years were arrested at Damascus airport upon their return to Syria. Some of them have completely disappeared. These are serious circumstances which can also affect the applicant.

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. 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.

The Commission notes at the outset that the applicant has not provided any substantiation whatsoever for his claims that in view of his support of the Baath party he had been tortured and detained on remand for eight months, and that for this reason he would again risk treatment contrary to Article 3 (Art. 3) of the Convention upon his return to Syria. In this context, the Commission further notes that in their decisions the Swiss authorities expressed doubts as to the credibility of the applicant's statements.

The Commission has next examined the letter of Amnesty International of 17 September 1996 which describes the situation of Syrian asylum-seekers who are returning to Syria. It is stated therein that the mere fact that these persons have left the country with the aim of seeking asylum in another country is considered a sign of opposition against the Syrian Government.

However, this letter then points out that a concrete risk of arrest and detention arises for asylum-seekers who have left Syria unlawfully. In the present case, the Commission need not decide whether the applicant, who allegedly obtained a forged passport to travel to Switzerland, left Syria unlawfully in 1990. It suffices to point out that in the same year the applicant was able twice to travel as a regular tourist to other countries, namely Jordan and Italy.

Insofar as the applicant refers to the concrete cases of ill-treatment mentioned in the letter of Amnesty International, it is not stated therein whether these cases concerned persons who had left Syria unlawfully. The Commission further notes the Government's submissions according to which Syrian asylum-seekers have been returned from Sweden, the Netherlands and Germany to Syria without any difficulties. In this respect the Commission also recalls its decision in the case of H. v. Sweden where it considered that no real risk of treatment contrary to Article 3 (Art. 3) of the Convention had been established in the case of the expulsion of a Syrian asylum-seeker from Sweden to Syria (see No. 22408/93, Dec. 5.9.94, D.R. 79-A, p. 85).

Finally, the Commission notes the News Release of Amnesty International of 25 March 1997 according to which there has been a growing trend of improvements in human rights in Syria over the last few years.

As a result, the applicant has failed to show that upon his return to Syria he would face a real risk of being subjected to treatment contrary to 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. The applicant also complains of the formalistic manner in which the Asylum Appeals Commission dealt with his request for reopening of the proceedings. After his appeal in 1992, the proceedings lasted four years until the Asylum Appeals Commission gave its decision. The applicant also complains that he could not properly explain himself before the Asylum Appeals Commission.

The Commission has examined this complaint under Article 1 of Protocol No. 7 (P7-1) to the Convention which states in para. 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:
>
> (a) to submit reasons against his expulsion,
> (b) to have his case reviewed, and
> (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority."

However, even assuming that the applicant was "lawfully resident" in Switzerland within the meaning of this provision, the Commission finds that the applicant's complaints do not disclose any appearance of a violation of the rights set out in Article 1 para. 1 of Protocol No. 7 (P1-1-1). In this respect the application is therefore also 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
Secretary
to the Commission

G.H. THUNE
Acting President
of the Commission