AS TO THE ADMISSIBILITY OF

Application No. 31411/96
by Naksije FEHRATI
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 26 March 1996 by Naksije FEHRATI against Austria and registered on 7 May 1996 under file No. 31411/96;

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 is a citizen of the former Yugoslav Republic of Macedonia, born in 1975. In the proceedings before the Commission she is represented by Mr. W. Lenneis, a lawyer practising in Vienna.

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

On 30 December 1993 the applicant married her husband, who lives in Austria and has a residence and working permit. In April 1994 a son was born to them.

In December 1994 the applicant arrived in Austria. At that time she did not have a residence permit (Aufenthaltsbewilligung) under the Aliens Residence Act (Aufenthaltsgesetz), which is necessary for settling down in Austria.

On 17 May 1995 the applicant, represented by her husband, filed a request for a residence permit with the Austrian Consulate in Bratislava (Slovak Republic).

On 7 June 1995 the Vienna Regional Governor (Landeshauptmann), to whom the request had been referred, dismissed her request. He found that, having regard to the annual quota system for the issuing of

residence permits and the fact that the quota for 1995 had been exhausted, the applicant did not yet fulfil the criteria for a priority case. A residence permit could therefore not be granted.

On 25 September 1995 the Federal Minister for Internal Affairs (Bundesmister für Inneres) dismissed the applicant's appeal against the Regional Governor's decision. The Minister found that the applicant had not made her request for a residence permit, as required by the Aliens Residence Art, from abroad and before she had entered Austria. Her request had therefore to be dismissed on this ground. The good administration of immigration rules made it indispensable that requests for a residence permit be made before entering Austria.

On 10 November 1995 the applicant filed a complaint with the Constitutional Court (Verfassungsgerichtshof) in which she complained that the refusal of a residence permit violated her right to respect for her family life as guaranteed by Article 8 of the Convention. She also requested that suspensive effect be granted to her complaint.

On 19 December 1995 the Constitutional Court refused to grant suspensive effect, as it found that the decision complained of was not one which could be enforced.

On 27 February 1996 the Constitutional Court declined to deal with the applicant's complaint and remitted the case to the Administrative Court (Verwaltungsgerichtshof).

It appears that until now no residence prohibition (Aufenthaltsverbot) or deportation order (Ausweisungsbescheid) have been issued against the applicant or that other measures for her removal from Austria have been taken.

COMPLAINTS

The applicant complains that the refusal by the Constitutional court to grant suspensive effect to her complaint against the decision of the Federal Minister for Internal Affairs violates her right to respect for her family life as guaranteed by Article 8 of the convention, as it exposed her to the risk of being expelled to her country of origin.

THE LAW

The applicant complains about the refusal by the Constitutional Court to grant suspensive effect to a complaint lodged by her which concerns the refusal of a residence permit. She relies on Article 8 (Art. 8) of the Convention, which guarantees to everyone "the right to respect for his private and family life, his home and his correspondence".

The Commission recalls that no right of an alien to enter or to reside in a particular country, nor a right not to be expelled from a particular country, is as such guaranteed by the Convention (see No. 12461/86, Dec. 10.12.86, D.R. 51 pp. 258, 264). However, in view of the right to respect for private and family life ensured by Article 8 (Art. 8) of the Convention, the exclusion of a person from a country in which his immediate family resides may raise an issue under this provision of the Convention (see Eur. Court HR, Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, p. 18, para. 36; No. 13654/88, Dec. 8.9.88, D.R. 57 pp. 287, 289).

Nevertheless, an applicant can only claim to be a victim of an alleged violation of Article 3 (Art. 3) of the Convention, or, as in the instant case, of Article 8 (Art. 8), within the meaning of Article 25 para. 1 (Art. 25-1) if an expulsion order has been made against him, the mere refusal or annulment of a residence permit not being sufficient to meet this requirement (Eur. Court HR, Vijayanathan and

Pusparajah v. France judgment of 27 August 1992, Series A no. 241-B, p. 87, para. 46; No. 27646/95, Dec. 16.1.96, unpublished; No. 28604/95, Dec. 26.2.96, unpublished).

In the present case, the Vienna Regional Governor merely refused to issue the applicant a residence permit. The applicant does not submit that a residence prohibition or deportation order had been issued against her or that any other measure aimed at her removal from Austria has been taken.

In these circumstances the applicant cannot claim to be a victim of an alleged violation of Article 8 (Art. 8) of the Convention in respect of the refusal of a residence permit.

It follows that the application is 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.

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