AS TO THE ADMISSIBILITY OF

Application No. 17547/90
by K.
against Switzerland

The European Commission of Human Rights sitting in private on 7 March 1991 , the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
MM. L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 7 December 1990 by K. against Switzerland and registered on 12 December 1990 under file No. 17547/90;

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

The applicant, a Yugoslav citizen born in 1964, resides at Sion in Switzerland. The applicant is married and has two children.

On 22 December 1989 the applicant left Yugoslavia with his family by car. They entered Switzerland on 24 December 1989. On the same day the applicant applied for asylum for himself and his family.

On 24 January 1990 the applicant was questioned by the Swiss authorities as to his request. He stated that in November 1987, while performing his military service in Yugoslavia, he had been sentenced to thirty days' imprisonment on account of political activities in the troops. Following the applicant's hunger strike, his sentence was reduced to five days.

The applicant further informed the Swiss authorities that in November 1988 he had organised a strike, lasting four days, in a factory in Kosovo though he had not suffered any consequences. Later, he told the Swiss authorities that his aim during this strike had actually been not to work.

The applicant also stated that in 1989 he had engaged in propaganda for a Kosovan republic though he was never caught by the police. On the other hand, on 19 December 1989 he was apprehended by the police, though he managed to escape. He then left Yugoslavia.

On 2 February 1990 the Delegate for Refugees (Delegierter für das Flüchtlingswesen) dismissed the applicant's request. The applicant's appeal was dismissed on 18 October 1990 by the Federal Department of Justice and Police (Eidgenössisches Justiz- und Polizeidepartement). The Department found that the applicant's claims as to his persecution in Yugoslavia were not sufficiently well-founded.

Thus, the Department noted that shortly after the applicant had been sentenced to imprisonment during his military service, he had been able to obtain a passport. Moreover, he had made contradictory statements as to the strike at the factory. Insofar as he had engaged in propaganda, he had himself admitted that he had never been caught. Finally, the Department noted that the applicant had left Yugoslavia with an official exit stamp in his passport.

The applicant and his wife were ordered to leave Switzerland by 15 December 1990.

COMPLAINTS

The applicant complains of the imminent expulsion of his family and himself to Yugoslavia. He claims that, as he is of Albanian origin, he will upon his return be persecuted by the Yugoslav authorities. The applicant appears to rely on Article 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 7 December 1990 and registered on 12 December 1990.

On 14 December 1990 the Commission decided not to apply Rule 36 of the Commission's Rules of Procedure.

THE LAW

1. The applicant complains that if he is expelled to Yugoslavia he will be subjected to inhuman treatment contrary to Article 3 (Art. 3) of the Convention which states:

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

The Commission has constantly held that the right of an alien to reside in a particular country is not as such guaranteed by the Convention. However, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious risk of treatment contrary to Article 3 (Art. 3) of the Convention in the receiving State (see No. 12102/86, Dec. 9.5.1986, D.R. 47 p. 286).

In the present case the applicant has not provided any substantiation with regard to the complaints he is now raising before the Commission.

Insofar as the applicant may be understood as referring to the submissions he made before the Swiss authorities, the Commission notes that the latter found various inconsistencies in the applicant's statements. In particular, the Swiss authorities considered that shortly after the applicant had been sentenced to imprisonment during his military service he was able to obtain a passport. The Swiss authorities further noted that his statements as to the reasons for organising a strike had been contradictory, that he had never been caught when engaging in propaganda and that he had been able to obtain an official exit stamp in his passport.

As a result, the Commission considers that the applicant's submissions raise doubts as to their accuracy.

In view of the above, the Commission cannot find the circumstances to be such as to warrant the conclusion that the applicant's expulsion would be contrary to Article 3 (Art. 3) of the Convention on account of a risk of ill-treatment in Yugoslavia.

The application must therefore be rejected as being 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.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)