AS TO THE ADMISSIBILITY OF

Application No. 35149/97
by Vinothiny KANAGARATNAM
against Switzerland

The European Commission of Human Rights sitting in private on 7 April 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
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
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 28 January 1997 by Vinothiny Kanagaratnam against Switzerland and registered on 4 March 1997 under file No. 35149/97;

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, a Sri Lankan citizen born on 25 November 1979, is a pupil residing at an unspecified address in Switzerland. Before the Commission she is represented by Mr H.P. Roth, a legal adviser practising in Baar in Switzerland.

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

Until 1994 the applicant, who is of Tamil origin, lived in the northern province Elalai West in Sri Lanka. The house of her family was destroyed, and she had to live in a refugee camp, later with an uncle. Eventually, she lost all contacts with her family. The applicant was requested to join an underground organisation, whereupon out of fear she left Sri Lanka on 14 April 1994 and travelled to Switzerland.

In Switzerland, where the applicant lived with her four siblings, she filed a request for asylum, referring to the civil war in Sri Lanka and claiming persecution by the underground organisation. Her request was dismissed on 27 July 1994 by the Federal Office for Refugees (Bundesamt für Flüchtlinge), inter alia, as the applicant had the possibility, upon return to Sri Lanka, to live in other parts of the country. The decision noted that, as a minor, the applicant was entitled to file a request for asylum, but also had to bear the consequences of a negative decision. The applicant was ordered to leave Switzerland by 30 September 1994.

On 21 October 1996 she filed a request for reconsideration of the proceedings (Wiedererwägungsgesuch), claiming that the Federal Office had not sufficiently considered, inter alia, that she was a minor. The applicant claimed that she did not know where her parents were, and that it could not be expected of a girl of seventeen to be set out (ausgesetzt) in Colombo without a social network.

The request was dismissed by the Federal Office on 1 November 1996, the latter finding that it had in its previous decision sufficiently considered that the applicant was a minor. The Federal Office further noted that the applicant should report to the competent authorities which would organise her return trip to Sri Lanka.

The applicant's appeal against this decision was dismissed by the Federal Asylum Appeals Commission (Schweizerische Asylrekurskommission) on 25 November 1996. The Commission found that the Federal Office had sufficiently considered the applicant's minor age in that it had asked the Swiss Embassy in Colombo to take the necessary measures to take care of the applicant.

On 20 December 1996 the applicant filed a request for reopening the proceedings (Revision). In her statement she referred to an assurance given by the Federal Office for Refugees, namely that

<Translation>

> "upon her arrival in Colombo she would be fetched by a collaborator of the Swiss Embassy and brought to the Red Cross Home. Moreover, the Embassy had made an agreement with the director of a local convent school (Klosterschule) according to which (the applicant) would be accepted by this convent school".

However, the applicant claimed that this assurance did not sufficiently consider the well-being of a child.

The applicant's request was dismissed by the Asylum Appeals Commission on 9 January 1997.

COMPLAINTS

The applicant complains that she does not know where her family is in Sri Lanka. If she returns to Colombo, she will in view of her age most likely be subjected to prostitution and other sexual

encroachments (Übergriffe) and thus to degrading treatment contrary to Article 3 of the Convention and also Section 22 of the United Nations Convention on the Rights of the Child.

The applicant submits that she did not file an appeal against the decision of 27 July 1994 as she did not understand its relevance (da sie dessen Bedeutung nicht verstand).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 28 January 1997.

On 4 February 1997 the Acting President decided not to apply Rule 36 of the Commission's Rules of Procedure.

The application was registered on 4 March 1997.

THE LAW

The applicant complains under Article 3 (Art. 3) of the Convention that upon her return to Sri Lanka she will in view of her age most likely be subjected to prostitution and thus to degrading treatment contrary to Article 3 (Art. 3) of the Convention.

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

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

The Commission need not examine whether the applicant has complied with the requirements under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies, as the application is in any event inadmissible for the following reasons.

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. the United Kingdom judgment of 15 November 1996, paras. 72ff, to be published in Reports 1996). In this regard, the situation of minors requires further attention (see mutatits mutandis Eur. Court HR, Nsona v. the Netherlands judgment of 28 November 1996, para. 103, to be published in Reports 1996).

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. the 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, on the one hand, that the applicant has not provided any substantiation as to the alleged circumstances awaiting her as a minor upon her return to Sri Lanka.

On the other hand, the Commission notes that the applicant is already seventeen and will be of age on 25 November 1997. Moreover, the authorities are willing to organise her return trip to Sri Lanka and also to provide the necessary care upon her arrival. Thus, the applicant herself confirmed in her statement of 20 December 1996 that,

upon her arrival in Colombo, she would be fetched by a collaborator of the Swiss Embassy and brought to a Red Cross Home. Furthermore, an agreement had been concluded according to which a local convent school would accept the applicant.

As a result, the applicant has failed to show that upon her return to Sri Lanka she would face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention.

The application is therefore 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	G.H. THUNE
Secretary	Acting President
to the Commission	of the Commission