AS TO THE ADMISSIBILITY OF

Application No. 36336/97
by Lai Man KWONG
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

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 17 June 1996 by Lai Man KWONG against the United Kingdom and registered on 5 June 1997 under file No. 36336/97;

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 is a Chinese (Hong Kong) citizen, born in 1973. At present he lives in Hong Kong. He is represented before the Commission by Mr. D. Hodson, solicitor, of Oxford.

The applicant entered the United Kingdom in 1987 as a visitor and was subsequently granted extensions of stay. He failed however to renew his application and had been staying illegally since 28 September 1992. On 1 July 1993 he was interviewed by immigration officers, having been arrested by the police the previous day for criminal matters (see below). On the same date he was served with a notice of intention to deport him as an overstayer by virtue of Immigration Acts 1971 and 1988. The applicant appealed against this decision to an independent adjudicator. The appeal was dismissed on 7 March 1994, with leave to appeal to the Immigration Appeals Tribunal being refused on 12 May 1994. A deportation order was made against him on 5 July 1994. This order was served upon the applicant on 31 December 1994.

By that time investigations had been commenced in the criminal

case suggesting that the applicant had been recruited into a Chinese gang operating in Yorkshire. On 31 May 1995 the Leeds Crown Court convicted the applicant of conspiracy to blackmail. He was sentenced to 8 years' imprisonment. Upon his appeal against the sentence, on 4 March 1996 the Court of Appeal reduced the sentence to 6 years' imprisonment.

On 5 July 1995 he made a new application to be granted leave to remain, after completing his sentence, in the United Kingdom on the basis of his marriage of 26 June 1995. The above application was reviewed by immigration authorities. In response to their enquiries the applicant advised that the couple had first met while his future wife, a citizen of the United Kingdom, had visited him in prison on 24 December 1993.

The application was nonetheless dismissed. On 24 November 1995 the applicant was informed that the Secretary of State had found no circumstances justifying his stay. It was found that the deportation proceedings against the applicant had commenced some five months prior to the date on which he had first met his wife and thus, under domestic immigration policy guidelines, he could enjoy no concessions with a view to the deportation being revoked.

The applicant, through the MP for his constituency, requested the Secretary of State that his case would be again referred to the Immigration Appeals Tribunal. By a letter of 2 April 1996 the Secretary of State refusal the request, noting that the applicant's case had been "fully and fairly considered". In concluding the Secretary of State held inter alia that he was not persuaded that the deportation order against the applicant should be revoked given the applicant's "recent conviction ... relating to Triad activities".

After being released from prison on 16 September 1996, the applicant was removed from the United Kingdom.

COMPLAINTS

The applicant complains under Article 8 of the Convention that in deporting him to Hong Kong the United Kingdom acted contrary to domestic immigration provisions and failed to respect his family life in violation of the above provision of the Convention. He asserts that British immigration authorities had no sufficient regard to the effect of the deportation on his wife who does not speak the Chinese language, nor she has any family or other connections with Hong Kong. He alleges that his wife's life in Hong Kong might have a detrimental effect on her possible pregnancy and her health condition in general. The applicant further contends that his single criminal conviction did not entitle the U.K., in deporting him, to rely on the interests of national security, public safety, or the aim of the prevention of disorder or crime within the meaning of Article 8 para. 2 of the Convention.

THE LAW

The applicant complains that the United Kingdom, in deporting him to Hong Kong, failed to respect his family life in breach of Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention, insofar as relevant, provides as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic

society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission firstly recalls that the deportation of a married person does not necessarily interfere with his family life when the spouse has the possibility to follow him (mutatis mutandis, No. 11278/84, Dec. 1.7.85, D.R. 43, p. 216; No. 12461/86, Dec. 10.12.86, D.R. 51, p. 258).

The Commission notes that the applicant himself has strong connections with Hong Kong, having only arrived in the United Kingdom in 1987 as a visitor at the age of 14. The applicant, however, submits that his wife, who does not speak the Chinese language and has no family or other connections with Hong Kong, could not be expected to follow him and that to do so might have a detrimental effect on her health.

The Commission does not find it necessary to determine whether in the particular circumstances of this case the deportation of the applicant would interfere with his family life, since even if it did amount to such an interference the applicant's complaint should in any event be rejected for the following reasons.

The Commission considers that any interference with the applicant's right to respect for family life was in accordance with the law (Immigration Acts 1971 and 1988), and served the legitimate aims of "the prevention of disorder or crime" under the second paragraph of Article 8 (Art. 8) of the Convention.

The question remains whether the deportation in question was justified as being "necessary in a democratic society" for the purpose of achieving those aims and, in particular, whether the deportation of the applicant was a proportionate response in the particular circumstances of the case.

In this regard, the Commission notes in the first place that, as pointed out in the decision of the Secretary of State dismissing the renewed application to remain, the applicant met his future wife at a time when he was in the United Kingdom illegally and when deportation proceedings had already been commenced against him. Hence, when he later contracted the marriage, he must have been aware of the resulting insecurity. Thus the fact of the applicant's marriage cannot be regarded as having a decisive weight (see e.g., Eur. Court HR, Dalia v. France judgment of 19 February 1998, para. 54, to be published in Reports of Judgments and Decisions).

The Commission further notes that the applicant was convicted of a gang-related offence of conspiracy to blackmail and received an immediate custodial sentence of 8 years' imprisonment. Even though the sentence of imprisonment was subsequently reduced to 6 years, the fact of the applicant's conviction of such a serious offence, as well as the severity of the sentence imposed therefor, must be regarded as weighing heavily in the balance (see e.g., mutatis mutandis, Eur. Court HR, Boughanemi v. France judgment of 24 April 1996, Reports of Judgments and Decisions 1996-II, pp. 609-610, paras. 39-45; Eur. Court HR, Dalia judgment of 19 February 1998, para. 54, to be published in Reports of Judgments and Decisions).

In these circumstances the Commission finds that the deportation of the applicant to Hong Kong did not upset the fair balance to be struck by the United Kingdom authorities between the interest of the applicant's "right to respect for his family life" and the interest of "the prevention of disorder or crime" for the purpose of Article 8 para. 2 (Art. 8-2) of the Convention.

Accordingly, even assuming that there was an interference with the applicant's right to respect for family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention, the Commission considers that the applicant's deportation cannot be regarded as disproportionate to the legitimate aims pursued.

It follows that the above complaint 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
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber