CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 44667/98
by Iyadurai LOGANATHAN
against Germany

The European Court of Human Rights (Fourth Section) sitting on 8 December 1998 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr G. Ress,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, S*ection Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 14 September 1998 by Iyadurai LOGANATHAN against Germany and registered on 25 November 1998 under file No. 44667/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

Commented [Note1]: Please check if public or not. If not, put initials only. Name and, in capital letters, surname ; corporative name in capital letters ; no translation of collective names.

Commented [Note2]: First letter in capital letters plus the article according to normal speech.

Commented [Note3]: In small letters.

THE FACTS

The applicant, born in 1955, is a citizen of Sri Lanka. He is currently staying in Wuppertal. He is a kitchen helper by profession.

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

The applicant entered Germany on 5 September 1994. On 13 September 1994 he filed a request for asylum. In the course of his questioning by the Federal Office for Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*), he submitted that in 1991 his house had been destroyed by the armed forces. He also stated that in 1993 (later corrected as 1994) he had been arrested by the armed forces and detained several months on the - false - suspicion of having supported the Liberation Tigers of Tamil Eelam (LTTE). He had allegedly been tortured in the course of his detention. His release had been arranged by a friend who had subsequently brought him to an office of the Red Cross. He feared that upon his return he would again be arrested by the armed forces or, if he returned to his home town, he risked to be forced to support the LTTE.

On 27 September 1994 the Federal Office for Refugees dismissed the applicant's request for asylum and ordered him to leave Germany voluntarily, warning him that he would otherwise be expelled.

On 22 April 1998 the Düsseldorf Administrative Court (*Verwaltungsgericht*) dismissed the applicant's action challenging the decision of 27 September 1994.

In its detailed judgment, the court found that the applicant had failed to show that he had left Sri Lanka on account of political persecution or that he risked to be exposed to such persecution in case of his return. The court considered in particular that the applicant's submissions regarding his personal situation in Sri Lanka was not credible, as there were major contradictions in his statements. In this respect, the court noted the contradictions in his indications as to exact dates, varying even in months and years, which could not be explained by alleged disturbances of memory. Furthermore, his explanations concerning his release and his leaving the country were incredible. Finally, his statements about his activities in support of the LTTE were contradictory.

The court had regard to case-law and reports of the German Foreign Office (*Auswärtiges Amt*) relating to the general situation in Sri Lanka. It noted that on the Jaffna peninsula the total number of interferences with liberty and security of Tamils, by security forces, did not justify the conclusion that any Tamil faced a real risk of being subjected to such action. In the court's view, similar considerations applied to the region of Colombo and the southern and western parts of Sri Lanka. The court noted that in Colombo the security forces regularly carried out 'cordon and search operations' and, on a random basis, arrested Tamils in order to find LTTE activists and supporters. Cases of lengthy detention, ill-treatment in the course of the detention or disappearance had occurred. However, the number of such cases, considering the number of Tamils living in this area, did not justify the conclusion that every Tamil faced a real risk of persecution. The applicant's submissions as to his personal situation did not disclose any special circumstances. There were no reasons to assume that the applicant would

face a real risk for life, limb or liberty in the whole territory. In this respect, the court took into account that the security forces, by means of administrative measures, attempted to avoid that Tamils originating from the northern parts of Sri Lanka would take a lawfully residence in Colombo. They thereby intended to make these persons move back to their home towns. Taking into account the increasingly stable control of the Sri Lankan armed forces in large areas of the Jaffna peninsula and the reconstruction measures, there was no risk of death or serious injuries even if the applicant, upon his return to Sri Lanka, were to take residence in the north.

On 5 August 1998 the North-Rhine Westphalia Administrative Court of Appeal (*Oberverwaltungsgericht*) refused to allow his appeal. The Court of Appeal dismissed the applicant's complaint that his submissions about his alleged activities for the LTTE had not duly been taken into account. In this respect, the Court of Appeal noted that the Administrative Court had regarded these statements as incredible.

The applicant did not lodge a constitutional complaint (*Verfassungsbeschwerde*) with the Federal Constitutional Court (*Bundesverfassungsgericht*), pursuant to Article 93 §1 (4)(a) of the Basic Law (*Grundgesetz*) in conjunction with sections 90 *et seq.* of the Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*).

COMPLAINTS

The applicant submits that, in case of his expulsion to Sri Lanka, he risks being arrested by the Sri Lankan security forces on account of his previous activities in support of the LTTE. According to him, his expulsion would therefore amount to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

THE LAW

The applicant complains under Article 3 of the Convention of his envisaged expulsion to Sri Lanka. He submits that, on account of his previous activities in supporting the LTTE and the general situation in Sri Lanka, there is a real risk that he will be arrested and subjected to ill-treatment upon his return to Sri Lanka.

Article 3 of the Convention states:

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

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 of the Convention in the country to which the person is to be expelled (*cf.* Eur. Court HR, Chahal v. the United Kingdom judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, p. 1831, §§ 72 *et seq*.). Nevertheless, 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 of the Convention (*cf.* Eur. Court HR,

Vilvarajah and others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 37, § 111).

The Court notes at the outset that the applicant did not lodge a constitutional complaint with the Federal Constitutional Court regarding his envisaged expulsion. In this respect, the Court recalls that, although the prohibition of torture or inhuman or degrading treatment contained in Article 3 of the Convention is absolute in expulsion cases as in other cases, applicants invoking that Article are not for that reason dispensed as a matter of course from exhausting domestic remedies that are available and effective (*cf.* Eur. Court HR, Bahaddar v. the Netherlands judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 263, § 45). The question therefore arises whether or not the applicant has complied with Article 35 § 1 of the Convention. However, the Court is not required to resolve this matter as the application is, in any event, inadmissible for the following reasons.

The Court, having examined the circumstances of the present case as they have been submitted by the applicant, notes that his submissions regarding his past situation in Sri Lanka, in particular his alleged activities on behalf of the LTTE, his alleged arrest and ill-treatment by the security forces police and the circumstances release and travelling to Germany are not conclusive. Moreover, he has not submitted any specific information according to which he is wanted by the Sri Lankan police or security forces.

The Court further notes the German authorities' conclusion according to which the applicant's submissions did not appear credible. In particular, his allegations were contradictory. Moreover, the Administrative Court, having regard to German case-law and to reports of the German Foreign Office, reached the conclusion that the general situation in the various areas of Sri Lanka did not give rise to a real risk of persecution and ill-treatment on account of belonging to the group of Tamils.

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

The application is, therefore, manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Matti Pellonpää
President