AS TO THE ADMISSIBILITY OF

Application No. 22696/93
by Patrick LUMUMBA
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 12 October 1994, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, 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 2 September 1993 by Patrick LUMUMBA against Sweden and registered on 28 September 1993 under file No. 22696/93;

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 Kenyan citizen, born in 1959 and currently serving a prison sentence at Tidaholm, Sweden. He is a boxer by profession. Before the Commission he is represented by Mr. Carl Magnus Lilienberg, a lawyer practising in Stockholm.

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

Particular circumstances of the case

In the beginning of the 1980s the applicant entered Sweden. In 1981 he was expelled, his request for a residence and work permit having been rejected. In 1982 the applicant was granted a short-term residence and work permit and re-entered Sweden. This permit was subsequently extended. From 1983 to 1990 he lived with a Swedish woman. In 1985 a daughter was born to them. In 1990 his relationship with the woman ended and his request for a permanent residence permit in Sweden was rejected.

In November 1983 the District Court (tingsrätten) of Karlstad convicted the applicant of assault and violation of domiciliary peace and sentenced him to one month's imprisonment.

In April 1985 the Svea Court of Appeal (Svea hovrätt) convicted

the applicant of assault and illegal threat and sentenced him to four months' imprisonment.

In December 1990 the Court of Appeal of Western Sweden (Hovrätten för västra Sverige) convicted him of drunken driving and driving without a driving licence and sentenced him to one month's imprisonment.

On 3 May 1991 the District Court (tingsrätten) of Stockholm convicted the applicant of assault, malicious damage as well as of aggravated arson in combination with gross negligent manslaughter and sentenced him to ten years' imprisonment. The District Court also issued a deportation order and prohibited him from returning to Sweden. It considered that in spite of the fact that his daughter was resident in Sweden his ties to Sweden were not particularly strong. His knowledge of Swedish was very limited, he had no permanent employment and no financial means to support himself. On 27 September 1991 the Svea Court of Appeal confirmed the applicant's conviction, but reduced the sentence to six years' imprisonment. In maintaining the deportation order and prohibition on return the Court of Appeal had special regard to the applicant's criminal behaviour in Sweden, his weak ties to that country and his lack of permanent employment there. On 8 November 1991 the Supreme Court (Högsta domstolen) refused him leave to appeal.

Subsequently the applicant lodged a petition with the Government, requesting that the deportation order be revoked or that the prohibition on his return be of only limited duration. He referred to his close relationship with his daughter which would be interrupted if the deportation order would be enforced. On 22 April 1993 the Government rejected the petition.

The applicant is to be released on parole in November 1994.

Relevant domestic law

Under the 1989 Aliens Act (utlänningslag 529/89) an alien can be deported on account of his criminal behaviour on certain conditions prescribed in Chapter 4, Sections 7 and 10. When considering whether to order an alien's deportation the Court shall take into account his living and family conditions as well as the duration of his stay in Sweden (Section 10, subsection 1).

A prohibition on return may be issued either for a certain period of time or indefinitely (Chapter 4, Section 14). An alien who has been prohibited from returning to Sweden may, nevertheless, be granted a permit to visit the country for extremely important purposes. For particular reasons, such a permit may be granted at the request of someone other than the alien himself (Section 15).

If a judgment or a decision ordering the deportation of an alien on account of his criminal behaviour cannot be enforced, the Government may revoke the judgment or decision either wholly or partly (Chapter 7, Section 16).

COMPLAINT

The applicant complains that his deportation to Kenya and the related prohibition on his return to Sweden would, if enforced, violate his right to respect for his family life. He claims to have a close and continuous relationship with his daughter. As his relationship with the mother of his daughter has ended, it is allegedly not possible for his daughter to follow him to any other country. The enforcement of the deportation order and the prohibition on return would therefore result in a permanent disruption of his relationship with his daughter. He invokes Article 8 of the Convention.

THE LAW

The applicant complains of his imminent deportation to Kenya and prohibition on return to Sweden and refers to his relationship with his daughter in the last-mentioned country. He invokes Article 8 (Art. 8) of the Convention which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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 recalls that the Contracting States are in principle free to control the entry, residence and expulsion of aliens. Expulsion of a person from a country in which close members of his family live may, however, amount to an unjustified interference with his right to respect for his family life as guaranteed by Article 8 (Art. 8) of the Convention (e.g., Eur. Court H.R., Moustaquim judgment of 18 February 1991, Series A no. 193, pp. 19 et seq., paras. 43 et seq.).

The Commission considers that the applicant's deportation from Sweden and the related prohibition on his return to that country would interfere with his right to respect for his family life due to his relationship with his daughter residing in Sweden. It must next be examined whether this interference would be justified under the terms of para. 2 of Article 8 (Art. 8-2). Under that paragraph such an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the aims enumerated in para. 2 and it must be "necessary in a democratic society" for that aim or those aims. The necessity criterion implies the existence of a pressing social need and, in particular, requires that the measure be proportionate to the legitimate aim pursued (the above-mentioned Moustaquim judgment, pp. 18 et seq., paras. 37 et seq.). Regard should further be had to the margin of appreciation afforded to the Contracting States (Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, pp. 15-16, para. 28).

The Commission is satisfied that the deportation order was issued "in accordance with the law". It also considers that the enforcement of the deportation order would pursue a legitimate aim under Article 8 para. 2 (Art. 8-2), namely the interest of public safety and the prevention of crime and disorder. As regards the question whether the interference was "necessary in a democratic society" in pursuit of the above- mentioned aims, the Commission takes note of the applicant's criminal record in Sweden. One of his offences must be considered particularly serious, namely the aggravated arson combined with gross negligent manslaughter. The Commission further observes that, while the applicant would, as a general rule, be prohibited from returning to Sweden following the enforcement of the deportation order, this would not prevent him or his daughter from applying for a short-term permit enabling him to visit her there.

Taking into account the margin of appreciation left to the Contracting States, the Commission concludes that the enforcement of the deportation order would be justified under Article 8 para. 2 (Art. 8-2) of the Convention in that it can reasonably be considered as "necessary in a democratic society" in pursuance of the above-stated aims. Accordingly, the enforcement of the deportation order would not violate Article 8 (Art. 8).

It follows that the application must 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)