AS TO THE ADMISSIBILITY OF

Application No. 22443/93
by M.S.
against Austria

The European Commission of Human Rights sitting in private on 10 September 1993, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA

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 1 November 1992 by M.S. against Austria and registered on 11 August 1993 under file No. 22443/93;

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, born in 1957, is of Serbian origin. When lodging his application, he was serving a prison term in the prison of Graz.

The applicant was convicted by the Vienna Regional Court (Landesgericht) of having committed a robbery and sentenced to five years' imprisonment. The conviction was confirmed by the Vienna Court of Appeal (Oberlandesgericht) on 13 February 1989. It appears that his expulsion upon his release was ordered. While serving this term of imprisonment, the applicant was convicted of unlawful coercion and of having caused damage to property and sentenced to further two and a half months' imprisonment, his date of release being 5 October 1993.

On 9 March 1993 the Graz Regional Court dismissed the applicant's request for a conditional release.

The applicant also submits that his request with the Graz Federal Police Department (Bundespolizeidirektion) dated 15 February 1993 not

to be expelled to former Yugoslavia, has not yet been decided upon.

COMPLAINTS

The applicant complains about his expulsion to former Yugoslavia upon his release from detention. He submits that the whereabouts of his family in former Yugoslavia are unknown to him. He also fears that he might be involved in the civil war in former Yugoslavia. He states that he accepts to leave Austria after having been granted the right to stay for a period of one week in order to settle his personal matters. He does not invoke any provision of the Convention.

THE LAW

The applicant complains about his expulsion to former Yugoslavia.

The Commission recalls that the Convention does not grant to aliens the right of residence in a Contracting State. However, expulsion may, in exceptional circumstances, involve a violation of the Convention where there is a serious 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 H.R., Vilvarajah and others judgment of 30 October 1991, Series A no. 215, p. 34, para. 102).

In the present case, the Commission, even assuming that the applicant complied with the conditions under Article 26 (Art. 26) of the Convention, finds that his submissions relate to the general situation in former Yugoslavia and do not disclose any indication of a particular personal risk of torture or inhuman or degrading treatment upon his return (cf. Eur. Court H.R., Vilvarajah and Others judgment, loc. cit., p. 34, para. 103, and p. 36, paras. 107 and 108).

It follows that the application 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.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)