AS TO THE ADMISSIBILITY OF

Application No. 34772/97
by Mahmoud MAMOU and Others
against Hungary

The European Commission of Human Rights sitting in private on 20 May 1997, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
C.L. ROZAKIS
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
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 4 February 1997 by Mahmoud MAMOU and Others against Hungary and registered on 4 February 1997 under file No. 34772/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 20 February 1997 and the observations in reply submitted by the applicants on 17 March 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicants are Syrian passport-holders of Kurdish origin (see complete list in the Annex). They submit that they have been deprived

of their Syrian citizenship and that their status in Syria is that of stateless "foreigners". At the time of lodging their application, they were detained at the Budapest Ferihegy International Airport Community Accommodation Centre (Közösségi Szállás). In the proceedings before the Commission they are represented by Mr. J. Somogyi, a lawyer practising in Budapest.

A. Particular circumstances of the case

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

On 25 December 1996 the applicants, coming from Damascus, Syria, arrived at the Budapest Ferihegy International Airport. At the passport control, the Hungarian immigration authority established that their visas had already been reported stolen. Subsequently the applicants were informed that they would be returned to Syria. The applicants, assisted by an interpreter, signed the decision of the Budapest Border Guard Directorate (Budapesti Határor Igazgatóság) to that effect and waived their right to appeal. On the same day Dr. S., a lawyer acting on behalf of the Mahatma Gandhi International Human Rights Organisation, contacted the applicants.

On 26 December 1996 the applicants brought a request for asylum. On the same day they were committed to the Community Accommodation Centre.

The applicants allege that at the Community Accommodation Centre they were all - men, women and children together - lodged in three rooms of an overall ground surface of approximately 30 square metres, packed with bunk beds. They were allegedly controlled by armed guards and they were not allowed to leave the premises of the Centre.

On 27 December 1996 the Border Guard Directorate, pending the asylum proceedings, suspended the enforcement of the applicants' deportation to Syria.

On 30 December 1996 the Hungarian authorities heard the applicants, represented by Dr. S., with a view to clarifying their situation, if returned to Syria. The authorities informed Dr. S. that the decision of 25 December could only be challenged before the court, since the applicants had already waived their right to appeal.

After having interviewed the applicants, on 10 January 1997 the Hungarian Branch Office of the United Nations High Commissioner for Refugees ("UNHCR") dismissed the applicants' request for asylum on the ground that their allegations lacked credibility. The applicants' appeals were to no avail.

On 31 January 1997 the Office for Refugee and Migration Matters (Menekültügyi és Migrációs Hivatal) and the Ministry of Foreign Affairs (Külügyminisztérium) approved the applicants' deportation to Syria. On the same day the Directorate ordered the applicants' deportation.

Upon the announcement of the deportation order, the applicants insisted that they would not leave Hungary for any Arab country. As a consequence, and in compliance with the indication of the Commission of 4 February 1997 under Rule 36 of its Rules of Procedure, the applicants' deportation, which was scheduled for 5 February 1997, did not eventually take place.

On 5 February 1997 Dr. S. brought an action on behalf of the applicants before the Pest Central District Court (Pesti Központi Kerületi Bíróság) challenging the Directorate's deportation order. The proceedings are still pending.

Meanwhile the applicants were committed to the Refugee Reception

Camp (Menekülteket Befogadó Állomás) in Bicske. On 20 February 1997 the Ministry of the Interior (Belügyminisztérium) established that the applicants had left the camp by undoing the fence.

In their submissions of 25 March 1997, the Government stated that the applicants had meanwhile left Hungary.

In his submissions of 3 April 1997, the applicants' representative confirmed that the applicants had left Hungary and were now staying in Bonn, Germany.

B. Relevant law

1. Geneva Convention relating to the Status of Refugees

The Geneva Convention entered into force in respect of Hungary in 1989. Upon deposit of its instrument of accession to the Convention, Hungary made a declaration according to which, in meeting the obligations under the Convention, Hungary would apply version (a) of Chapter B (1) of Article 1 of the Convention (European territory). Chapter B (1) reads as follows:

> "B. (1) For the purposes of this Convention, the word "events occurring before 1 January 1951" in Article 1, section A, shall be understood to mean either
>
> (a) "events occurring in Europe before 1 January 1951"; or
>
> (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention."

On the basis of this declaration and an agreement between the Government of Hungary and the United Nations High Commissioner for Refugees ("UNHCR"), signed in Geneva on 4 October 1989, UNHCR proceeds in cases of non-European refugees. If UNHCR recognises an applicant applying for refugee status as a refugee and requests the Hungarian authorities to grant a residence permit to such a person, the Hungarian authorities as a rule issue the residence permit or, upon request of UNHCR, are ready to prolong the period of such a permit automatically at any time.

According to the general practice, the Hungarian authorities as a rule give notice without delay to UNHCR representatives whenever a non-European applicant applies for refugee status in Hungary.

2. Aliens Act

According to S. 2 para. 3 of the Aliens Act (a külföldiek beutazásáról, magyarországi tartózkodásáról és bevándorlásáról szóló 1993. évi LXXXVI. törvény), the Aliens Act does not apply to any foreigner requesting asylum - until his request is finally dismissed -, nor to any foreigner recognised as refugee by the Hungarian authorities. Section 32 para. 1 of the Act prohibits the expulsion or return of foreigners to a country where they would be exposed to the danger of persecution for reasons connected with their race, religion, national, social affiliation or political views, furthermore, where there is a serious risk that foreigners, upon their return, would be exposed to torture, inhuman treatment or degradation.

Section 35 provides as follows: An expulsion order, taken in pursuance of the Aliens Act, can be appealed within three days from its announcement. The enforcement of the expulsion order can be ordered in advance, inter alia, if the alien does not have any income and accommodation or if such a measure is necessitated by the interests of public order or the security of the Republic of Hungary. The enforcement in advance of the expulsion order shall not be ordered, if

the alien, in his appeal, renders it probable that his expulsion would infringe his human rights or freedoms, guaranteed by the Republic of Hungary in an international treaty; in such a case, the first instance authority - unless it quashes its order - shall immediately refer the appeal and the case-file to the second instance authority, which shall decide within eight days. The review of an expulsion order, taken at second instance, can be requested from the court within eight days from the announcement of the order.

According to Section 50 para. 1, the court shall give precedence to cases concerning the review of decisions taken by the alien administration in pursuance of the Aliens Act, save the decisions dismissing a request for immigration.

COMPLAINTS

1. The applicants complain under Article 3 of the Convention that their deportation to Syria would expose them to the risk of being subjected to torture, or to inhuman and degrading treatment or punishment. They submit that they were persecuted by the Syrian authorities on account of their Kurdish origin.

2. The applicants complain about their detention at the Community Accommodation Centre between 25 December 1996 and the end of January 1997. They consider that their detention was unlawful in that no formal decision was taken in the matter. They further complain that they could not have the lawfulness of their detention reviewed and there was no remedy available in this respect. The applicants also complain that the conditions of their detention at the Community Accommodation Centre amounted to a breach of their right to respect for their private and family life. They invoke Article 5 paras. 1 and 4 and Articles 8 and 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced and registered on 4 February 1997.

Also on 4 February 1997 the President of the Commission decided to apply Rule 36 of the Commission's Rules of Procedure and to communicate the complaint under Article 3 of the Convention to the respondent Government, pursuant to Rule 34 para. 3 and Rule 48 para. 2 (b) of the Rules of Procedure, for observations on its admissibility and merits.

The Government's written observations were submitted on 20 February 1997. The observations in reply by the applicants were submitted on 17 March 1997.

On 6 March 1997 the Commission decided to prolong the indication under Rule 36.

On 25 March 1997 the Government submitted supplementary observations.

On 3 April 1997 the applicants' representative submitted supplementary observations.

On 17 April 1997 the Commission decided not to prolong the indication under Rule 36.

THE LAW

1. The applicants complain under Article 3 (Art. 3) of the Convention that their deportation to Syria would expose them to the risk of being subjected to torture, or to inhuman and degrading treatment or punishment.

Article 3 (Art. 3) of the Convention reads as follows:

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

The Government submit that the applicants have not yet exhausted all domestic remedies available to them, their action being pending before the District Court. Moreover, the Government consider the application unfounded. The Hungarian authorities proceeded in conformity with Article 3 (Art. 3) of the Convention when, relying upon the findings and the decisions of UNHCR, they decided to return the applicants to Syria. UNHCR, when examining the applications for refugee status, also assessed the relevant issues arising under Article 3 (Art. 3) and found the applicants' allegations lacking credibility in this respect. Finally, referring to the fact that the applicants have meanwhile left Hungary, the Government request the Commission to strike the application out of its list of cases.

The applicants submit that they have exhausted the domestic remedies. There was no remedy available against the decision of 31 January 1997. Their court action cannot be regarded as an effective remedy, as it would not warrant a postponement of the deportation. Moreover, the decisions of UNHCR were, in their view, wrong, their account of persecution in Syria having been substantiated. Furthermore, in his submissions of 3 April 1997, the applicants' representative stated that the applicants had left Hungary and had fled to Germany, after having been contacted and threatened by an officer of the Syrian Embassy in Hungary in the Bicske camp.

The Commission considers that it need not examine the parties' arguments as to the exhaustion of domestic remedies, since this part of the application is in any event inadmissible for the following reasons.

The Commission recalls that the expulsion of an asylum seeker may give rise to an issue under Article 3 (Art. 3) where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be returned (Eur. Court HR., Vilvarajah and Others v. United Kingdom judgment of 30 October 1991, Series A no. 215, p. 34, para. 103).

In the present case the Commission notes that the applicants have left the territory of Hungary. The complaint concerning their envisaged deportation from Hungary to Syria has, therefore, become without object. The Commission finds that in these circumstances the applicants can no longer claim to be victims of a violation of their rights under Article 3 (Art. 3) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants complain about their detention at the Community Accommodation Centre between 25 December 1996 and the end of January 1997. They consider that their detention was unlawful in that no formal decision was taken in the matter. They further complain that they could not have the lawfulness of their detention reviewed and there was no remedy available in this respect. The applicants also complain that the conditions of their detention at the Community Accommodation Centre amounted to a breach of their right to respect for their private and family life. They invoke Article 5 paras. 1 and 4 and Articles 8 and 13 (Art. 5-1, 5-4, 8, 13) of the Convention.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of the above complaints and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the

Rules of Procedure, to give notice of these complaints to the respondent Government.

For these reasons, the Commission

DECIDES TO ADJOURN the examination of the applicants' complaints under Articles 5, 8 and 13 of the Convention concerning their detention;

unanimously,

DECLARES INADMISSIBLE the applicants' complaint about their envisaged expulsion to Syria.

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission

ANNEX

List of applicants

(1) Mr. Mahmoud MAMOU, born in 1978.

(2) Ms. Samira MAMOU, born in 1966, the first applicant's fiancee.

(3) Mr. Habib MOHAMMED, born in 1968.

(4) Mrs. Samira ABDO, born in 1971, and her four minor daughters, (5) Midia, (6) Kulestin, (7) Sonya and (8) Vian.

(9) Mr. Mohammed SAADALLAH, born in 1968, and his wife, (10) Ms. Charou WANSEH, born in 1968, moreover, their four minor children, (11) Huzni, (12) Varoz, (13) Alzi and (14) Saadallah.

(15) Mr. Hussein CHACHOU, born in 1966.