AS TO THE ADMISSIBILITY OF

Application No. 14543/89
by Viraj MENDIS
against the United Kingdom

The European Commission of Human Rights sitting in private on 13 March 1989, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 18 January 1989 by Viraj MENDIS against the United Kingdom and registered on 19 January 1989 under file No. 14543/89;

Having regard to:

- reports provided for in Rule 40 of the Rules of Procedure of the Commission;

- the Commission's decision of 20 January 1989 refusing the applicant's request for an indication under Rule 36;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Sri Lanka, of the majority Sinhalese ethnic origin. He was born in 1956 and was in detention in the United Kingdom awaiting removal to Sri Lanka when he lodged his application; on 20 January 1989 he was deported to Sri Lanka. He is represented before the Commission by Messrs. Winstanlay-Burgess,

solicitors, London.

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

The applicant was admitted to the United Kingdom in 1973 as a student, until October 1975. No further application was made for an extension of his leave and the applicant remained unlawfully in the United Kingdom. Inquiries as to his whereabouts remained unsuccessful until May 1984 when the Greater Manchester Police traced him. At that time he was unemployed, single and in receipt of unemployment benefit, residing in a local authority flat. The applicant married a British citizen on 25 July 1984. His solicitors requested the Home Office to allow the applicant to remain on the basis of the marriage and the applicant's claim that, although Sinhalese, he had openly opposed the dealings of the ruling majority with the Tamil minority in Sri Lanka and felt that he would be penalised because of this if returned to that country. His opposition in the United Kingdom to the Sri Lankan Government, expressed, for example, in two articles and participation in two demonstrations, would have been reported by the Sri Lankan High Commission staff.

The applicant and his wife were invited to attend an interview on 29 October 1984, but only the applicant appeared. The couple had separated and she declined to accompany him. At the interview the applicant confirmed that he was of Sinhalese extraction and that his parents lived untroubled with his brother and sister in Colombo. His brother worked for Air-Lanka at Colombo airport; other relatives lived near Colombo and he had no close relatives in the United Kingdom. The applicant's studies had been financed by his father, but when the applicant failed certain examinations his father could not afford to pay for him to retake that academic year, so the applicant had found work in a bakery. Since 1982 he had been living on public funds. He had married for fear of deportation, although he said that he had known his wife for a long time and would have married her anyway. When the wife was interviewed in November 1984 she stated that reconciliation was unlikely and that the marriage was one of convenience to help the applicant avoid deportation.

The Secretary of State, after reviewing the circumstances of the case, found that the applicant did not have a well-founded fear of persecution because of his political opinions about Sri Lanka. Accordingly the applicant was refused political asylum. The Home Secretary also refused the applicant leave to remain on the basis of his marriage. Notice of deportation was issued on 21 August 1985, against which the applicant appealed to an Adjudicator.

On 14 February 1986 the Adjudicator dismissed the applicant's appeal. He was satisfied that the applicant did not have a well-founded fear of persecution if removed to Sri Lanka, particularly in the light of an assurance provided by the High Commissioner for Sri Lanka to the Minister of State on 4 June 1985 to the effect that the applicant was not wanted in Sri Lanka for any offence, criminal or otherwise, and that he would be free to go to Sri Lanka without any impediment. The Adjudicator considered that the applicant's actions in openly and publicly espousing the Tamil separatist cause was a deliberate and cynical attempt to avoid deportation. On 16 July 1986 the Immigration Appeal Tribunal dismissed the applicant's further appeal, concluding "that both the decisions of the Secretary of State and the Adjudicator were reasonable, in accordance with the immigration rules and involved no wrong exercise of discretion."

Further representations were then made by the applicant's Member of Parliament to the Minister of State. However, he was unable to persuade the Minister to change his mind and on 18 December 1986 the deportation order against the applicant was signed. On 20 December 1986 the applicant took refuge in a Manchester church and a

campaign to defend the applicant's stay in the United Kingdom was organised. His case had the support of, inter alia, Amnesty International, the World Council of Churches and the British Refugee Council.

Judicial review of the earlier proceedings was refused by the High Court on 27 July 1987 and by the Court of Appeal on 17 June 1988. The House of Lords refused further leave to appeal on 21 December 1988. On 18 January 1989 the applicant was arrested with a view to immediate deportation.

During the various court proceedings, the basis for the applicant's asylum claim changed. In the end he claimed that his main fear for his safety stemmed from the extreme Sinhalese terrorist and insurrectionary force, the Janatha Vimukhei Peramuna (JVP), who might attempt to assassinate him as a traitor to his race for being "soft on" Tamils.

According to Professor Manor, an expert in Sri Lankan affairs, the security and political situation in Sri Lanka has deteriorated significantly since 1986, with around 670 political killings between 1 August 1987 and 15 October 1988. Professor Manor records that the JVP presents a major threat to the Sri Lankan Government and to anyone showing sympathy with the Tamil minority.

In a letter dated 18 January 1989, to the applicant's representatives, the Home Office expressed the following views on the case:

"At all times since the making of the deportation order against Mr. Mendis the Home Secretary has kept closely in touch with developments in Sri Lanka. He has seen many press articles including those appended to your letters, together with reports from organisations such as Amnesty International, material put forward in support of individual asylum applications and frequent situation reports from the Foreign and Commonwealth Office. Moreover, he has on several occasions since the making of the deportation order considered representations from various organisations and individuals on Mr. Mendis' behalf, in particular representations from the Bishop of Manchester and Mr. Litherland, MP. Few cases, if any, have received such careful consideration over such a protracted period of time. The Home Secretary takes the view that, while there is and has been considerable civil unrest in Sri Lanka, it has at no point been established that Mr. Mendis has a well-founded fear of persecution there within the terms of the 1951 United Nations Convention. He has reviewed the case again in the light of your letters, but has concluded that there are no grounds for altering his decisions to refuse refugee status and to make a deportation order against Mr. Mendis.

You have argued that 'the Secretary of State has seriously misjudged the overall position in Sri Lanka, possibly as a result of the poor advice he has received in this respect'. The Home Secretary does not accept that this is so. His initial decision was upheld by the applellate authorities and reviewed by the Divisional Court and the Court of Appeal, who concluded unanimously that there were no grounds for quashing the decision. He is satisfied that he has full and up to date information concerning recent developments in Sri Lanka and has taken this information fully into account in considering Mr. Mendis' case.

Your letter of 21 December refers to the opinions of Professor James Manor, but the Home Secretary does not accept his interpretation of the implications of

developments in Sri Lanka. In particular, the Home Secretary does not accept Professor Manor's allegation in the final enclosure to your letter that:

> 'the main source of terrorism on the island in recent years has been the state, and not insurgence from either community.'

The Home Secretary would point to the efforts of the Sri Lankan Government to curtail the activities of both Tamil militant groups and the JVP which, together with the calling and conduct of the recent elections in Sri Lanka and the ending of the state of emergency, provide firm indications of the Government's determination to uphold the rule of law.

The Home Secretary has, of course, taken into account the recently heightened activity of the JVP, who, in your view, now pose the most significant threat to Mr. Mendis' safety. He accepts that the rise of Sinhalese terrorism has added to the dangers and uncertainties of life in Sri Lanka. But the situation there is fluid and, for example, the period which has seen a deterioration of security in the South has also seen perceptible stabilisation in the North and East. Having carefully considered your representations in this matter, the Home Secretary does not consider that the activity of the JVP provides a sufficient basis for a well founded fear of persecution on the part of Mr. Mendis within the terms of the 1951 Convention.

The other points you have raised relate to Mr. Mendis' activity in this country before the decision to deport him was taken, ... The question of his activities in this country was dealt with very fully in the adjudicator's determination.... Having heard all the evidence the adjudicator concluded that the 'appellant's public and open espousal of the separatist cause was nothing more than a deliberate and cynical attempt on his part to place himself in such a position that he could not be deported to Sri Lanka'. Nothing in the material subsequently received has caused the Home Secretary to regard this as an erroneous assessment...

The Home Secretary has carefully considered, in the light of all the information at his disposal and everything in your letters, whether Mr. Mendis now has a well-founded fear of persecution within the meaning of the 1951 Convention and has concluded that there are no grounds for changing his original decision. Accordingly, arrangements will now be made to enforce the deportation order against Mr. Mendis who has now been detained..."

The applicant did not take action to find an alternative country of residence until shortly before his arrest. On 19 January 1989 the Freie Hansestadt Bremen, Germany, offered to take the applicant within a few days once the necessary administrative arrangements could be made. However, the Home Office were not fully satisfied with such a proposal and refused to delay the applicant's deportation further. He was returned to Sri Lanka on 20 January 1989.

COMPLAINTS

The applicant complains that his deportation to Sri Lanka put him at risk of assassination by the JVP because of his known support for the separatist demands of the Tamil minority. He thereby claims to be a victim of a violation of Article 3 of the Convention. He also complains of a breach of Article 13 of the Convention, there

being no right of appeal against the decision of the Home Secretary contained in the Home Office letter of 18 January 1989. In this respect reliance is placed on arguments put to the Commission in the pending case of 5 Tamils against the United Kingdom (Nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 January 1989 and registered on 19 January 1989. When lodging the application, the applicant requested that the Commission indicate to the Government, pursuant to Rule 36 of its Rules of Procedure, a stay in his deportation to Sri Lanka.

On 19 January 1989 the Rapporteur, pursuant to Rule 40 para. 2 (a) of the Commission's Rules of Procedure, requested certain information from the respondent Government, which was provided the same day.

On 20 January 1989 the Commission declined to make the Rule 36 indication requested by the applicant.

THE LAW

1. The applicant has complained that his deportation to Sri Lanka put him at risk of assassination by an extreme Sinhalese terrorist organisation called the Janatha Vimukhei Peramuna (JVP). He thereby claims that the United Kingdom Government have violated his rights under Article 3 (Art. 3) of the Convention.

The Commission recalls its case-law that, whilst the Convention does not guarantee a right, as such, to remain in a particular country, a person's deportation where there are serious reasons to believe that the individual will be subjected in the receiving State to severe ill-treatment may give rise to an issue under Article 3 (Art. 3) of the Convention which provides as follows:

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

However, it is only in exceptional circumstances that deportation will give rise to an issue under this provision, and the burden lies on the applicant to substantiate his fear that he will be exposed to treatment or punishment falling under the Article (see No. 10308/83, Altun v. Federal Republic of Germany, Dec. 3.5.83, D.R. 36 pp. 209-235; No. 10078/82, M v. France, Dec. 13.12.84, D.R. 41 p. 103; No. 10479/83, Kirkwood v. the United Kingdom, Dec. 12.3.84, D.R. 37 pp. 158-191 and No. 8581/79, Dec. 6.3.80, D.R. 29 p. 48).

It is not necessary to decide here the extents to which the Commission, in examining a case of this kind under Article 3 (Art. 3) of the Convention, may take into account an alleged danger arising, not from the public authorities of the receiving State, but from autonomous groups, because the Commission finds that the present case is anyway manifestly ill-founded.

The Commission has examined the arguments and material submitted by the applicant concerning his personal situation, security in Sri Lanka and the terrorist activities of the JVP. However, it finds no evidence to cast serious doubt on the conclusion of the various British immigration authorities that the applicant's fear of persecution is not well-founded. In particular, the Commission notes that it cannot be said that law and order have completely broken down in Sri Lanka, leaving civilians without any protection from terrorist attack; the applicant has been offered a haven in Bremen, Germany.

In these circumstances the Commission concludes that the applicant's complaint under Article 3 (Art. 3) of the Convention is manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also complained that he had no remedy under United Kingdom law for the Home Secretary's final refusal of asylum on 18 January 1989. He has invoked Article 13 (Art. 13) of the Convention which provides as follows:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, the right under Article 13 (Art. 13) only extends to Convention claims which are "arguable"; it does not require a remedy in domestic law for any supposed grievance under the Convention, no matter how unmeritorious (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A. No. 131, p. 23 para. 52). The Commission finds that the applicant's claim under Article 3 (Art. 3) of the Convention is not "arguable", as is reflected in the above decision to reject that aspect of the case as manifestly ill-founded, de plano. Accordingly the present case discloses no issue under Article 13 (Art. 13) of the Convention and the applicant's complaint concerning this provision is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)