AS TO THE ADMISSIBILITY OF

Application No. 35603/97
by N. S.
against Switzerland

The European Commission of Human Rights sitting in private on 17 April 1997, the following members being present:

Mrs. G.H. THUNE, Acting President
Mr. S. TRECHSEL
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
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 April 1997 by N. S. against Switzerland and registered on 10 April 1997 under file No. 35603/97;

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, a Sri Lankan citizen of Tamil origin born in 1949, resides in Herzogenbuchsee in Switzerland. Before the Commission he is represented by Mr. M. Buser, a lawyer practising in Bern.

The applicant entered Switzerland in 1983 where he requested asylum. He withdrew his request in 1990 after he was granted a residence permission.

On 30 March 1992, in the course of a fight in Herzogenbuchsee,

the applicant killed another Tamil citizen, K.K. The crime was witnessed by K.K.'s nephew, Th.K., a leading figure of the Solothurn group in Switzerland of the LTTE (Liberation Tigers of Tamil Eelam). As a result, the applicant was sentenced to seven years' imprisonment and ten years' banishment (Landesverweisung) from Switzerland.

On 28 November 1996 the applicant was prematurely released from imprisonment and his banishment suspended on probation. Previously, on 26 November 1996 the applicant had filed a request for asylum.

On 10 December 1996 the applicant was questioned by the Federal Office for Refugees (Bundesamt für Flüchtlinge) as to his request for asylum. The applicant submitted, on the one hand, that before he had left Sri Lanka his restaurant had twice been destroyed. On the other hand, he pointed out that, as he had killed a member of the Tamil Tigers, he could expect a vendetta by the other members. Such a threat had been uttered by Th.K. and had been overheard by the applicant's son.

The applicant's request was dismissed on 30 December 1996 by the Federal Office for Refugees which also ordered the applicant to leave Switzerland before 31 January 1997. Insofar as the applicant feared a vendetta upon his return, the Office noted that K.K. had been a member of the TELO (Tamil Eelam Liberation Organisation), rather than the LTTE, and it was known that the two movements were hostile towards each other. Moreover, K.K. had been expelled from the TELO in 1987. The Federal Office thus found it unlikely that the applicant would become the victim of a vendetta.

The applicant filed an appeal with the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission). He requested that the appeal be granted suspensive effect. He also applied for legal aid.

On 17 February 1997 the Asylum Appeals Commission dismissed his request for suspensive effect, inter alia, as the applicant had insufficiently substantiated a danger of vendetta upon his return to Sri Lanka. In view of the lack of prospects of success of the appeal, the Asylum Appeals Commission also dismissed the applicant's request for legal aid and imposed costs of 450 Swiss Francs (CHF) on the applicant if he wished to pursue his appeal.

The applicant failed to pay the costs, and on 10 March 1997 the Asylum Appeals Commission declared his appeal inadmissible.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he risks inhuman treatment upon his expulsion to Sri Lanka. He submits that he will be threatened with murder as he has killed the uncle of Th.K. In view of the civil war in Sri Lanka and the violence employed by the LTTE, it would be simple for Th.K. to organise the applicant's death.

THE LAW

The applicant complains that, if he is expelled to Sri Lanka, he risks treatment contrary to Article 3 (Art. 3) of the Convention.

Article 3 (Art. 3) of the Convention states:

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

In the present case, the Swiss Asylum Appeals Commission on

10 March 1997 declared the applicant's appeal inadmissible as he had failed to pay the costs imposed. However, according to the Commission's case-law, there is no exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention where a domestic appeal is not admitted because of a procedural mistake (see No. 6878/75, Dec. 6.10.76, Le Compte v. Belgium, D.R. 6, p. 79).

An issue arises, therefore, whether the applicant has complied with the requirement under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies. However, the Commission need not resolve this issue since the application would in any event be inadmissible for the following reasons.

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 (Art. 3) of the Convention in the country to which the person is to be expelled (see Eur. Court HR, Chahal v. United Kingdom judgment of 15 November 1996, paras. 72 ff).

However, 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 (Art. 3) of the Convention (see Eur. Court HR, Vilvarajah and others v. United Kingdom judgment of 30 October 1991, Series A no 215, p. 37, para. 111).

The Commission has examined the circumstances of the present case as they have been submitted by the applicant. It notes that in the domestic proceedings the applicant pointed out that his son had overheard Th.K. who had referred to a vendetta against the applicant.

In the Commission's opinion, however, this statement alone cannot suffice to substantiate the applicant's fears that, upon his return, he would risk treatment contrary to Article 3 (Art. 3) of the Convention, or that the risk, if any, would be greater in Sri Lanka than in Switzerland.

The Commission has further had regard to the decision of the Federal Office for Refugees of 30 December 1996. The Commission notes that the Federal Office carefully examined the applicant's allegations, but concluded that the applicant's submissions lacked credibility. It noted in particular that the victim, K.K., had been a member of the TELO, rather than of the LTTE, and it was known that the two movements were hostile towards each other. Moreover, K.K. had been expelled from the TELO in 1987.

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 (Art. 3) of the Convention.

The application would therefore also be 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.

H.C. KRÜGER	G.H. THUNE
Secretary	Acting President
to the Commission	of the Commission