AS TO THE ADMISSIBILITY OF

Application No. 19184/91
by S.N.
against Switzerland

The European Commission of Human Rights sitting in private on 10 April 1992, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Sir Basil HALL
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

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 20 November 1991 by S.N. against Switzerland and registered on 10 December 1991 under file No. 19184/91;

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

Particular circumstances of the case

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

The applicant, a Pakistani citizen born in 1958 in Sialkot in Pakistan, is a vendor currently residing at an unspecified place in Switzerland. Before the Commission he is represented by Mr. Th. Wenger, a lawyer practising in Berne.

I.

Until 1989 the applicant resided in Pakistan. He eventually left Pakistan on account of his conversion to the Christian faith.

According to a document issued by the "Young Christian Thinkers Association" on 12 May 1989, the applicant had been a member of that Association "since decade ... He is very religious and ... is very

active in all of our festival days and is full of brotherhood."

According to his submissions before the Commission, the applicant grew up at Sialkot in Pakistan as a Moslem. However, on 13 June 1989, the applicant married a Christian woman at the "Saint Joseph Church Catholic" in Sialkot. The applicant has confirmed this by submitting an excerpt of the "Marriage Register Book" as well as a letter of the Church concerned. For purposes of the marriage, the applicant converted to the Christian faith.

According to a warrant of arrest dated 15 June 1989, the Sialkot Court of Magistrate ordered the applicant's warrant of arrest, stating the offence of a "change of religion". In a pamphlet dated 18 June 1989, an Imam, a religious leader, in the suburb where the applicant lived, urged the population to kill the applicant on account of his conversion. The applicant's father, who disapproved of the marriage, disinherited the applicant and expelled him from his home.

According to subsequent submissions before the Swiss authorities, the applicant went to Karachi on 17 June 1989. According to other submissions he first resided for some days in a Christian suburb of Sialkot before going to Karachi.

II.

On 23 July 1989 the applicant left Pakistan for Switzerland where, on 28 July 1989, he applied for asylum.

On 2 August 1989 the Office of the Delegate for Refugees (Delegierter für das Flüchtlingswesen) questioned him as to his reasons for leaving Pakistan. The applicant referred to his marriage and the fact that the Imam had issued a threat of murder against him. The applicant also stated that he did not know to which Christian church he had converted, or what ceremony of baptism he had undergone.

On 22 August 1990 the applicant was questioned by the Berne Police Inspectorate (Polizeiinspektorat). He then stated that on 17 June 1989 he had gone to Karachi. He observed that he had pains in his ear for which reason he heard badly. Eventually the interview was terminated on account of the applicant's pains.

The applicant was again questioned on 6 December 1990. He explained inter alia how he had got to know his wife who lived in a Christian suburb in Sialkot. When questioned as to his previous statement that he had resided in Karachi from 17 June to 22 July 1989, he now stated that he had lived for 3 - 4 days in Sialkot and then travelled to Karachi. At his earlier interrogation he had been quite confused.

On 19 February 1991 the Federal Office for Refugees (Bundesamt für Flüchtlingswesen) dismissed the applicant's request for asylum. It found that according to established knowledge (gesicherte Erkenntnisse) of the Office, the persecution by the Imam constituted a criminal offence which is prosecuted by the authorities. It could not therefore be said that the Pakistani Government approved of these acts. Moreover, according to reliable sources, a Pakistani Christian could avoid any such molestations (Belästigungen) by moving to another village.

The applicant's appeal against this decision, in which he alleged persecution by different Moslem groups, was dismissed on 17 May 1991 by the Federal Department of Justice and Police (Eidgenössisches Justiz- und Polizeidepartement) which reiterated the reasons given by the previous instance and ordered the applicant to leave Switzerland.

III.

On 11 June 1991 the applicant obtained various documents in order to substantiate his claims.

He obtained in particular the warrant of arrest of 15 June 1989; the pamphlet of 18 June 1989 (see above, I.) and a "death slip" of the Sialkot hospital, confirming the death of his wife on 15 April 1991 due to "firearm injury". He also obtained undated letters from the "Saint Joseph Church Catholic", one apparently from 1989 stating that the applicant was "facing different problems in Pakistan", the other apparently from 1991 stating that "as soon as he married with a catholic girl he faced different kinds of problems such like Islamic Religious"; that his wife was killed "by unfair means"; and that the "Islamic Party in Pakistan is also seeking him". Finally, the applicant obtained a document of his father's lawyer in Pakistan dated 8 June 1991 according to which the father had disinherited his son.

The applicant then filed with the Federal Department of Justice and Police a request to reopen the proceedings. In support of his request he submitted the documents obtained.

The applicant's request was dismissed by the Federal Department of Justice and Police on 22 July 1991. The Department recalled that only new facts warranted reopening the proceedings. It found that the applicant had not demonstrated that the documents concerned were new in that they could not have been submitted in the appeal proceedings.

IV.

The applicant filed a new request with the Federal Department of Justice and Police for the reopening of the proceedings. Therein he referred to the fact that the Christians in Pakistan, 1.3% of the population, constituted a minority subjected to disadvantages and reprisals. Moreover, the applicant stated that he had been unaware of the various documents until he received them on 11 June 1991 for which reason he could not have submitted them before. The applicant also stated that he had heard from friends that his father had been among the persons involved in his wife's death.

This request was dismissed by the Federal Department of Justice and Police on 27 September 1991. It found, inter alia, that already in his original appeal the applicant had referred to his contacts with friends in Pakistan and to correspondence with his wife, for which reason it would have been possible for him to obtain the documents at issue beforehand. The Department further noted that the applicant, when questioned upon his arrival in Switzerland, had not been able to state to which Christian church he had converted. With reference to the warrant of arrest submitted by the applicant, the Department noted that "change of religion" was not a criminal offence.

On 30 September 1991 the Federal Office for Refugees informed the applicant that he was permitted to stay in Switzerland until 15 October 1991.

On 20 November 1991 the applicant introduced a hierarchical complaint (Aufsichtsbeschwerde) with the Federal Council (Bundesrat) against the decisions of the Federal Department of Justice and Police of 22 July and 27 September 1991. The Federal Council dismissed this complaint on 9 March 1992.

Relevant domestic law (Pakistan)

Section 295 of the Pakistani Penal Code refers to the offence of "Injuring or defiling (of a) place of worship, with intent to insult

the religion of any class". According to a Commentary to this provision, it may include any religious sect, however small in number.

Section 295-A refers to "deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs". Sections 295-B and 295-C concern the "defiling of the Holy Qur'an" and the "use of derogatory remarks ... in respect of the Holy Prophet". Section 296 mentions the offence of "disturbing religious assembly".

COMPLAINTS

The applicant complains under Article 3 of the Convention of his impending expulsion to Pakistan. He submits that according to the pamphlet of 18 June 1989 all Muslims have been asked to kill him on account of his conversion to the Christian faith. Such a clear intention also transpires from the death of his wife in April 1991. The applicant further refers to the warrant of arrest issued by the Pakistani authorities. It is unclear what sanction would be awaiting the applicant; one offence would be "insulting the Islam". As the example of Salmon Rushdie demonstrates, there is even the possibility of a death sentence. The expected punishment must be regarded as inhuman and thus contrary to Article 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 November 1991 and registered on 10 December 1991.

On 19 February 1992 the Commission decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and merits of the application. The Commission also decided to give an indication under Rule 36 of its Rules of Procedure.

The Government's observations were received by letter dated 20 March 1992. The applicant's reply was dated 8 April 1992.

THE LAW

The applicant complains under Article 3 (Art. 3) of the Convention of his impending expulsion to Pakistan. He submits that on account of his conversion to the Christian faith the local population has been asked to kill him. A warrant of arrest has been issued against him. As a result, upon his return to Pakistan he would risk inhuman punishment contrary to Article 3 (Art. 3).

The applicant states that when questioned on 2 August 1989 he had just undergone an operation and could not reply properly. The documents submitted, in particular of the "Young Christian Thinkers Association" and of the "Saint Joseph Church Catholic" are originals. On the other hand, the applicant is not in a position to comment on the authenticity of the warrant of arrest.

The applicant submits that the Koran prescribes the death penalty for apostasy, that religious courts in Pakistan will apply this penalty, and that this danger also exists with regard to State courts. Even in Switzerland a family relative put pressure on him in this respect. In the applicant's submissions, the Government insufficiently distinguish between original Christians, who can live safely in Pakistan, and converted Christians who risk reprisals such as the death penalty. The Government have failed to show where else in Pakistan the applicant could live in safety.

The respondent Government recall that the applicant is unable to state precisely where he resided in Pakistan in the period after he married and before he left Pakistan. The applicant is also unable to describe the ceremony of baptism or even to which Christian church he converted. Moreover, according to one document submitted by the applicant he has been an active member of a Christian association for years, whereas he later stated that he had recently converted to the Christian religion. The Government further doubt the authenticity of the warrant of arrest of 15 June 1989 and of the letters of the St. Joseph Church Catholic. They also state that in Pakistan neither the original nor a copy of a warrant of arrest is not handed out to the person concerned.

The Government submit that even the new Shariat Bill, as modified by the Pakistani Parliament in 1991, does not consider apostasy a crime. There is no mention in the Pakistani Penal Code of an offence of changing one's religion or of insulting the islam. While not contesting that there may be religious fanatics who create disorder on a local basis, the Government regard it as impossible that one Imam's threat can have an effect all over Pakistan. Thus, the applicant indubitably had the possibility to reside elsewhere in Pakistan.

The Government further refer to a report of the US Department of State and of the German Embassy in Pakistan. Both documents comment on the human rights situation in Pakistan in 1991. Neither document refers to any persecution by the Pakistani authorities on account of apostasy. According to the document of the US Department of State, conversions are permitted.

The Commission has constantly held that the right of an alien to reside in a particular country is not as such guaranteed by the Convention. However, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious fear of treatment contrary to Article 3 (Art. 3) of the Convention in the receiving State (see No. 12102/86, Dec. 9.5.86, D.R. 47 p. 286; mutatis mutandis Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 32 et seq., para. 81 et seq.).

The Commission further recalls that in its examination of a complaint under Article 3 (Art. 3) of the Convention it cannot solely consider the general situation in a country. Rather, it is for the applicant to substantiate such a danger with regard to his own situation in that country (see Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, to be published in Series A no. 215, para. 108).

In the present case, the applicant claims, with reference to a warrant of arrest, that upon his return to Pakistan he will be punished on account of his change of religion.

However, the Government call in question the authenticity of the warrant of arrest. The applicant is not in a position to comment on its authenticity.

The Commission has therefore examined the relevant domestic law in Pakistan. It observes that the Pakistani Penal Code does not refer to the offence of, or the punishment for, a change of religion. The applicant has not indicated any other Pakistani statute referring to this offence.

In so far as the applicant refers to the punishment provided for in the Koran, he has not furnished any information indicating that the Pakistani courts will impose it. On the other hand, the Commission notes the reports, submitted by the Swiss Government, of the US Department of State and of the German Embassy in Pakistan on the human rights situation in that country in 1991. Neither document refers to persecution on account of apostasy. Indeed, according to the former

document conversions are permitted.

It is true that the applicant has also referred to a pamphlet of an Imam, urging the population to kill the applicant on account of his change of religion. The Commission has therefore examined the circumstances concerning the applicant's residence in Pakistan.

The Commission observes in this context, first, that 1.3% of the population in Pakistan are Christians.

Next, the Commission notes that according to a document of the Young Christian Thinkers Association of 12 May 1989 the applicant had been an active member of that Association for ten years.

In the Commission's opinion, in the Sialkot suburb where the applicant lived, it must thus have been well known long before the applicant's marriage that he was an active participant in the Christian community, and that he was very close to the Christian faith. However, the applicant has not claimed that before his marriage he was subject to persecution on account of his religious beliefs.

Moreover, according to the applicant's submissions before the Swiss authorities, rather than going to Karachi on 17 June 1989, he still spent some days in Sialkot after the Imam had issued the pamphlet.

Furthermore, the applicant has not provided any information indicating that the threat issued by the Imam in Sialkot will be executed elsewhere, thus excluding a return to any other area of Pakistan.

Finally, the Commission notes the reasons given by the Swiss authorities according to which such a persecution threatened by the Imam would itself constitute a criminal offence subject to prosecution by the Pakistani authorities.

In the Commission's opinion, the applicant has therefore failed to show by means of concrete submissions concerning his situation that the treatment he must expect in Pakistan would render his expulsion contrary to Article 3 (Art. 3) of the Convention.

The application must therefore 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 Commission — President of the Commission

(H.C. Krüger) — (C.A. Nørgaard)