AS TO THE ADMISSIBILITY OF

Application No. 32164/96
by Sydney OSAWE
against Switzerland

The European Commission of Human Rights sitting in private on 24 October 1996, the following members being present:

Mrs. G.H. THUNE, Acting President
Mr. S. TRECHSEL
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

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 24 January 1996 by Sydney Osawe against Switzerland and registered on 8 July 1996 under file No. 32164/96;

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 Nigerian citizen born in 1969, is a student currently residing in Chavornay in Switzerland. Before the Commission he is represented by Mr C. Brügger, a lawyer practising at Tavannes.

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

The applicant left Nigeria in 1995. Via Benin and Italy he reached Switzerland where he requested asylum.

The applicant was then questioned as to his request by various Swiss authorities. He claimed in particular that in Nigeria he had

been a member of the Social Democratic Party (SDP) and presided at a Student Association at the Nigeria Technology College. When the President of the SDP was arrested, he had organised student meetings at secret places. Subsequently, together with other students he had demonstrated against the government. He had then been arrested and interrogated. A military court had convicted him in 1994 and sentenced him to eight years' imprisonment whereupon he fled the country.

The applicant's request for asylum was dismissed by the Federal Office of Refugees (Bundesamt für Flüchtlinge) on 16 August 1995. He was ordered to leave Switzerland by 15 October 1995.

In its decision the Office noted in particular various inconsistencies in the applicant's submissions before the different authorities. It also found that the applicant's submissions contradicted its own general experience. The Office pointed out, for instance, that, while the applicant claimed that after his conviction by a military court he had remained in a police cell in Nigeria, the Office recalled that a person convicted in such circumstances in Nigeria was brought to a military prison.

The applicant's further appeal was dismissed on 26 September 1995 by the Swiss Asylum Appeals Commission (Schweizerische Asylrekurs-kommission). In respect of Article 3 of the Convention the Commission found that neither the general situation in Nigeria nor the applicant's circumstances showed a concrete risk militating against his return to his home country.

COMPLAINTS

The applicant complains under Article 3 of the Convention that upon his return to Nigeria he will be submitted to inhuman treatment and torture. In support of his claims the applicant has submitted three letters, two of Nigerian lawyers' offices and one of a Nigerian trade company, all of which claim that the applicant is wanted by the authorities. Two letters are undated. One letter of 24 March 1996 also states he has been "sentenced to death by (a) firing squad".

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 January 1996.

On 1 February 1996, the President, and on 5 July 1996, the Commission decided not to apply Rule 36 of the Commission's Rules of Procedure.

The application was registered on 8 July 1996.

THE LAW

The applicant complains under Article 3 (Art. 3) of the Convention that upon his return to Nigeria he will be submitted to inhuman treatment and torture.

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

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

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 2 or 3 (Art. 2, 3) of the Convention in the country to which the person is to be expelled (see No. 10564/83, Dec. 10.12.84, D.R. 40 p. 262, and mutatis mutandis Eur. Court HR, Soering v. United Kingdom

judgment of 7 July 1989, Series A no. 161, p. 32 et seq., paras. 81 et seq.).

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 the applicant has submitted three letters, two of Nigerian lawyers' offices and one of a Nigerian trade company all of which claim that the applicant is wanted by the authorities. One letter also states that he has been "sentenced to death by (a) firing squad".

In the Commission's opinion, however, these documents, two of which are undated, are of an entirely private nature and have been written as references supporting the applicant's claims. They cannot suffice to substantiate the applicant's fears that, upon his return to Nigeria, he would risk treatment contrary to Article 3 (Art. 3) of the Convention.

The Commission has further had regard to the decisions of the Federal Office for Refugees of 16 August 1995 and of the Swiss Asylum Appeals Commission of 26 September 1995. The Commission notes that the authorities carefully examined the applicant's allegations, though they concluded that the applicant's submissions were contradictory, and that neither the general situation in Nigeria nor the applicant's circumstances showed a concrete risk militating against his return to his home country.

Thus, the applicant has failed to show that upon his return to Nigeria he would face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention.

The application is therefore 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