AS TO THE ADMISSIBILITY OF

Application No. 35602/97
by P. K.
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 P. K. against Switzerland and registered on 10 April 1997 under file No. 35602/97;

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 born in 1961, is a restaurant employee residing in Burgdorf in Switzerland. Before the Commission he is represented by Mr W. Egloff, a lawyer practising in Bern.

The applicant entered Switzerland in 1984. He filed a request for asylum claiming that he had been tortured by the Sri Lankan authorities on account of his membership in a Tamil opposition

movement. In 1990, while the proceedings were still pending, he was granted the right to reside (Aufenthaltsbewilligung) in Switzerland whereupon he withdrew his request.

In 1990 the applicant married a Sri Lankan citizen who also obtained the right to reside in Switzerland. Two children were born, a son in 1991, and a daughter in 1992. Both children obtained the right to reside in Switzerland.

In 1993, the applicant, who had been gainfully employed since 1986, became unemployed in view of economic difficulties of the company where he worked. He remained unemployed until 1996 when he found employment as a restaurant employee.

Meanwhile, on 4 December 1995 the Aliens' Police (Fremdenpolizei) of the Canton of Bern refused to prolong the applicant's residence authorisation as he was no longer employed. The refusal also extended to the residence authorisations of the applicant's family.

The applicant's appeal (Verwaltungsbeschwerde) to the Police and Military Department (Polizei- und Militärdepartement) of the Canton of Bern was dismissed on 30 April 1996. The Department found, inter alia, that there was a public interest in keeping foreigners away from Switzerland who were unemployed and depended on social benefits. The Department referred, inter alia, to S. 5 of the Federal Act on Residence and Domicile of Foreigners (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer) according to which the residence authorisation will always be limited in time (ist stets befristet); it also referred to the Federal Court's published case-law according to which there is no right to a renewal of a residence authorisation (see ATF <Arrêts du Tribunal Fédéral> 109 Ib 179).

The applicant filed a further appeal (Verwaltungsgerichts-beschwerde) with the Administrative Court (Verwaltungsgericht), claiming that the refusal to renew his residence authorisation breached Article 8 of the Convention. The appeal was dismissed by the Court on 16 August 1996 on the grounds, inter alia, that Article 8 of the Convention could only be invoked if one of the family members had a right to reside in Switzerland, based either on Swiss nationality, or on a right to domicile (Niederlassungsbewilligung). However, none of the members of the applicant's family met these conditions.

The applicant's administrative law appeal (Verwaltungsgerichts-beschwerde) was dismissed by the Federal Court (Bundesgericht) on 22 January 1997 which upheld the decision of the lower court. The Federal Court found in particular that the Court's judgment in the case of Gül v. Switzerland (Eur. Court HR, judgment of 19 February 1996, Reports of Judgments and Decisions 1996-I, p. 159ff) did not lend itself to a different conclusion in respect of the applicability of Article 8 of the Convention.

The applicant and his family have been ordered to leave Switzerland by 30 April 1997.

COMPLAINTS

The applicant complains that the prohibition to continue his family life in Switzerland breaches Article 8 of the Convention. The centre of family life has always been in Switzerland where both adults are well established. Moreover, the children were born in Switzerland and have never lived in another country; an expulsion for them would be an expedition into the unknown. The applicant submits that his unemployment, and the fact that he has received social benefits which he must repay, cannot serve to justify his expulsion. The applicant cannot be expected to return to Sri Lanka where more than ten years ago he was tortured and where currently a civil war is raging.

THE LAW

The applicant complains that the prohibition to continue his family life in Switzerland breaches Article 8 (Art. 8) of the Convention. This provision states, insofar as relevant:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that no right of an alien to reside in a particular country is as such guaranteed by the Convention. However, the expulsion of a person from a country where close members of his family are living may amount to an infringement of the right to respect for his private and family life guaranteed in Article 8 para. 1 (Art. 8-1) of the Convention (see Eur. Court HR, Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, p. 18, para. 36; No. 9203/80, Dec. 5.5.81, D.R. 24, p. 239).

In the present case, the Commission notes that the refusal of the Swiss authorities to prolong the applicant's residence authorisation in Switzerland also affected his wife and children. The applicant submits that his family cannot be expected to follow him to Sri Lanka. An issue arises therefore whether there was an interference with the applicant's right to respect for his private and family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. However, the Commission need not resolve this issue, since, even if there was such an interference, it would be justified under Article 8 para. 2 (Art. 8-2) of the Convention.

The Commission notes that the Swiss authorities, in particular the Police and Military Department of the Canton of Bern in its decision of 30 April 1996, referred in respect of the applicant's expulsion, inter alia, to S. 5 of the Federal Act on Residence and Domicile of Foreigners according to which the residence authorisation will always be limited in time; it also referred to the Federal Court's published case-law according to which there is no right to a renewal of a residence authorisation.

The interference was therefore "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

Moreover, when refusing to grant the applicant a new residence permit, the Swiss authorities relied on the fact that the applicant had lost his employment. The interference was therefore imposed "in the interests of ... the economic well-being of the country" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

Finally, the Commission has examined whether the measure was "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention, as interpreted in the Convention organs' case-law (see Eur. Court HR, Berrehab v. Netherlands judgment of 21 June 1988, Series A no. 138, p. 15, para. 27).

The Commission considers that the applicant has not demonstrated that he and his family cannot lead their private and family life elsewhere, in particular in Sri Lanka. On the one hand, his wife can be expected to follow him to Sri Lanka. His children, on the other hand, who are currently aged 5 and 6 years, respectively, are still of

an adaptable age, and the applicant has not sufficiently made out any difficulties which they would experience upon their return to Sri Lanka.

Taking into account the margin of appreciation which is left to Contracting States in such circumstances (see Eur. Court HR, Berrehab judgment, loc. cit., p. 15, para. 28), the Commission considers that any interference with the applicant's right to respect for his private and family life would be justified under Article 8 para. 2 (Art. 8-2) of the Convention in that it could reasonably be considered "necessary in a democratic society ... for the economic well-being of the country".

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