AS TO THE ADMISSIBILITY OF

Application No. 19088/91
by B.S.
against Switzerland

The European Commission of Human Rights sitting in private on 13 December 1991, the following members being present:

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

Mr.J. RAYMOND, Deputy 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 5 November 1991 by B.S. against Switzerland and registered on 18 November 1991 under file No. 19088/91;

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

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

The applicant, an Indian citizen and Sikh born in 1969, resides at Bern in Switzerland. Before the Commission he is represented by Mr. W. Ilg, a lawyer practising in Bern.

On 26 November 1990 the applicant left India and, on 30 November 1990, entered Switzerland. On the same day he applied for asylum. The applicant was questioned by the Swiss authorities as to his request for asylum on 7 December 1990 and 13 June 1991. He claimed that in Punjab in India he had been ill-treated as he was a Sikh. Thus he had frequently been remanded in custody by the Indian police who had attempted to find out the whereabouts of his brother who had supported the "All India Sikh Students Federation". At his last arrest he had been threatened with death if upon the next search he was again found at his home.

On 19 July 1991 the Federal Office for Refugees (Bundesamt für Flüchtlinge) dismissed the applicant's request. It considered inter alia that according to information provided by human rights organisations as well as upon inquiries on the spot (Abklärungen vor Ort) basic human rights were protected in India which the Swiss authorities therefore regarded as a "safe country". Moreover, assuming that there was a danger this would be local or regional; in view of the constitutional right in India to residence it would then be possible to live elsewhere in the country, and there were no indications in the concrete case which would rule out a possibility to do so.

The applicant appealed against this decision to the Federal Department of Justice and Police (Eidgenössisches Justiz- und Polizeidepartement), submitting in particular the letter of an Indian lawyer of 30 July 1991. The letter stated that members of the party "Khalistan Commando Force" to which the applicant belonged were being persecuted according to a decision of Parliament. The applicant had been accused of various offences, and several warrants of arrest had been issued against him, as he was regarded as a terrorist. The letter warned the applicant that upon his return to India his life would be endangered.

On 14 October 1991 the Federal Department dismissed the appeal. In its decision it recalled that India was considered a "safe country". Moreover, when questioned by the authorities, the applicant had not appeared credible; thus, he had only after repeated questioning (immer erst auf Nachfragen) mentioned instances of ill-treatment such as torture in detention. The Federal Department further found that the documents submitted by the applicant in support of his allegations contradicted the statements he made to the Swiss authorities.

On 29 October 1991 the Police Directorate (Polizeidirektion) of the Canton of Bern ordered the applicant to leave Switzerland by 31 December 1991.

COMPLAINTS

The applicant complains under Article 3 of the Convention of his impending expulsion to India. He submits that before his departure from India he suffered psychological terror there; upon his return he would risk danger and inhuman treatment.
Under Article 6 of the Convention the applicant complains that he was not heard by an independent and impartial tribunal established by law.

Under Article 13 of the Convention the applicant complains that he had no effective remedy in Switzerland. He submits in particular that the Federal Department of Justice and Police is not a sufficiently independent body.

THE LAW

1.The applicant complains that if expelled to India he will be subjected to inhuman treatment contrary to Article 3 (Art. 3) of the Convention, which states:

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

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).

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, Series A no. 215, para. 108).

In the present case the Commission notes that the only evidence submitted by the applicant concerning his own situation is the translation of a letter of 30 July 1991 sent to him by an Indian lawyer. However, the letter does not contain sufficient reasons why criminal proceedings are pending against him or why warrants of arrest have been issued against him as an alleged terrorist. Above all, the letter is not accompanied by any supporting documents.

Moreover, to the extent that the applicant may be understood to be complaining that as a Sikh he will be subject to particular dangers upon his return to Punjab, he has not sufficiently explained why he cannot reside elsewhere in India, particularly, as the Swiss authorities pointed out, since he can benefit from the right under the Indian Constitution to reside anywhere in the country.

Thus, the applicant has failed to show by means of concrete submissions concerning his situation that the treatment in India would render his expulsion contrary to Article 3 (Art. 3) of the Convention.

This part of 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.

2.The applicant further complains under Article 6 para. 1 (Art. 6-1) of the Convention that he did not have access to a tribunal within the meaning of this provision to decide on his case.

However, the Commission recalls its case-law according to which a decision as to whether an alien should be allowed to stay in a country or be expelled does not involve either the determination of the alien's civil rights or obligations or of a criminal charge within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see No. 8118/77, Dec. 19.3.81, D.R. 25 p. 105).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3.Insofar as the applicant complains under Article 13 (Art. 13) of the Convention that he did not have an effective remedy, the Commission recalls its case-law according to which the domestic appeal introduced by the applicant satisfies the requirements of Article 13 (Art. 13) in that it warrants sufficiently independent proceedings before the Federal Department of Justice and Police (see No. 12573/86, Dec. 6.3.87, D.R. 51 p. 283). It follows that this complaint is 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.

Deputy Secretary to the Commission President of the Commission

(J. RAYMOND) (C.A. NØRGAARD)