AS TO THE ADMISSIBILITY OF

Application No. 27406/95
by S. V.
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 6 September 1995, the following members being present:

MM. H. DANELIUS, President
S. TRECHSEL
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 March 1995 by S. V. against Switzerland and registered on 24 May 1995 under file No. 27406/95;

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, a citizen of former Yugoslavia born in 1975, is a student residing at Gettnau in Switzerland. Before the Commission he is represented by his father.

Before travelling to Switzerland the applicant lived in the Kosovo province of former Yugoslavia. According to his subsequent submissions before the Swiss authorities, he participated in political activities against Serbian rule, for instance in a demonstration in 1991. In 1994 the Serbian police had searched for him in view of his military service, but also on account of the activities of his father as a police officer.

In May 1994 he travelled via Albania to Switzerland where he requested asylum.

On 22 July 1994 the Federal Office for Refugees (Bundesamt für Flüchtlinge) dismissed the applicant's request as his submissions were contradictory and improbable. The Office noted for instance that although the applicant claimed to be wanted by the authorities in his home town, he had frequently returned home, and he had even postponed

his departure to Switzerland for some months in order to await the conclusion of his cousin's studies. The Office found it improbable that the police had looked for his father in 1994 for activities which had taken place in 1991.

The applicant's appeal was dismissed by the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission) on 15 November 1994. After dealing with various procedural complaints - for instance, that the applicant's father had not been present when the Swiss authorities had spoken with the applicant - the Appeals Commission considered that the applicant had not sufficiently made out a concrete risk of inhuman treatment upon his return to former Yugoslavia, and that his Albanian origin could not in itself suffice to prevent his return. The Appeals Commission also saw no reason to depart from the considerations of the Federal Office for Refugees. It noted for instance the contradiction that in the domestic proceedings he had first stated that he had only participated in a demonstration against the Serbs in 1991; only later had he claimed that he belonged to the political forces aiming at the independence of Kosovo.

The applicant was ordered to leave Switzerland by 31 May 1995.

COMPLAINTS

The applicant complains under Article 3 of the Convention that upon his return to former Yugoslavia he will be submitted to torture and imprisonment without a fair trial. In this respect he submits that he belongs to a population group which is being persecuted by the Serbs.

The applicant submits that at home his father was a police captain. Eventually, 250 police officers were suspended from service, and many fled abroad. Hundreds of officers have meanwhile been imprisoned. According to recent news, even relatives of police officers are subject to torture. In support of his submissions the applicant presents copies of newspaper articles and refers to the statements of other police officers who have fled to Switzerland.

Under Articles 6 and 8 of the Convention the applicant complains of the unfairness of the asylum proceedings, in particular that the applicant's father had not been present when the applicant was questioned by the Swiss authorities.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 22 March 1995 and registered on 24 May 1995.

On 24 May 1995 the Commission (Second Chamber) decided not to apply Rule 36 of the Commission's Rules of Procedure.

THE LAW

The applicant complains under Article 3 (Art. 3) of the Convention that upon his return to former Yugoslavia he will be submitted to torture and imprisonment without a fair trial. In this respect he submits that he belongs to a population group which is being persecuted by the Serbs. He also submits that the authorities are searching for his father who was a police officer, and that many other police officers have been imprisoned.

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 H.R., Soering 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 H.R., Vilvarajah and others 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 proceedings before the Commission the applicant refers mainly to the persecution of police officers in former Yugoslavia, among them his father. However, the applicant has not provided any evidence which would confirm these allegations.

The Commission has further had regard to the decisions of the Federal Office for Refugees of 22 July 1994 and of the Swiss Asylum Appeals Commission of 15 November 1994. The Commission notes that the authorities carefully examined the applicant's allegations, though they concluded that the applicant's submissions were contradictory and improbable, and that he had not credibly established a danger of persecution upon his return to former Yugoslavia.

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

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Insofar as the applicant complains under Article 6 (Art. 6) of the Convention about unfairness of the asylum proceedings, the Commission recalls that the decision whether an alien should be allowed to stay in a country or be expelled does not involve the determination either 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). This part of the application is therefore incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

Insofar as the applicant complains under Article 8 (Art. 8) of the Convention that his father was not present when the applicant was questioned by the Swiss authorities, the Commission finds no separate issue under this provision. The remainder of the application is therefore also 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.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)