AS TO THE ADMISSIBILITY OF

Application No. 21603/93
by Kagini SELVARATNAM
against Austria

The European Commission of Human Rights (Second Chamber) sitting in private on 18 May 1995, the following members being present:

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

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 31 March 1993 by Kagini SELVARATNAM against Austria and registered on 31 March 1993 under file No. 21603/93;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the decision of the Plenary Commission on 2 April 1993 not to apply Rule 36;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a national of Sri Lanka born in 1971 and of Tamil origin. Before the Commission she is represented by Mr. Herbert Pochieser, a lawyer practising in Vienna.

The applicant arrived in Austria on 11 December 1992. On 13 December 1992 she was arrested and detained with a view to expulsion.

On 18 December 1992 the applicant filed an asylum request and was interrogated by an officer of the Vienna Federal Police Department (Bundespolizeidirektion). She stated that in Sri Lanka she had to flee from shelling at all the places where she had stayed and that upon returning to Sri Lanka she feared being killed.

On 18 December 1992 the Federal Police Department issued a residence prohibition for five years against the applicant. It found that the applicant had illegally entered Austrian territory and had insufficient means of subsistence. Therefore her stay in Austria would

endanger public order and security, or would in any case be contrary to the public interest.

On 29 December 1992 the Federal Asylum Office (Bundesasylamt) dismissed her asylum request. It found that the applicant had not entered Austria directly, but via Rumania and Hungary, and could have found shelter from persecution already in these countries.

On 14 January 1993 the applicant, represented by counsel, applied to the Federal Police Department to declare that her deportation to Sri Lanka would be unlawful (Feststellung der Unzulässigkeit der Abschiebung). She submitted that she would risk persecution in Sri Lanka. She also applied for suspension of the enforcement of the residence prohibition and for the residence prohibition to be repealed. Furthermore, she applied to the Independent Administrative Tribunal (Unabhängiger Verwaltungssenat) for review of the lawfulness of her detention with a view to expulsion.

On 20 January 1993 the Independent Administrative Tribunal dismissed the applicant's request and found that her detention was lawful.

On 5 February 1993 the Federal Police Department dismissed the applicant's requests of 14 January 1993. The authority held, inter alia, that the request for suspension of the enforcement of the residence prohibition was lodged out of time.

On 3 March 1993 the Vienna Federal Security Authority (Sicherheitsdirektion) dismissed her appeal against the refusal to repeal the residence prohibition. The applicant's request for a declaration that her deportation was unlawful was rejected as having been lodged out of time. The applicant introduced a complaint with the Constitutional Court (Verfassungsgerichtshof) against these decisions.

On 25 March 1993 the Independent Administrative Tribunal dismissed a further request for review of the lawfulness of her detention with a view to expulsion.

On 28 March 1993 the Federal Police Department unsuccessfully tried to carry out the applicant's deportation to Sri Lanka. On 9 April 1993 she was released from detention.

On 14 April 1993 the Constitutional Court refused to deal with the applicant's complaint regarding the suspension of the execution of the residence prohibition and, on 3 May 1993, it also decided not to deal with her complaint regarding the refusal to repeal the residence prohibition. Upon the applicant's request the Constitutional Court referred these cases to the Administrative Court (Verwaltungsgerichtshof), before which they are apparently still pending.

On 4 October 1993 the Constitutional Court quashed the Independent Administrative Tribunal's decision of 20 January 1993, holding that the latter had not sufficiently considered the applicant's submissions.

It appears that proceedings before the Constitutional Court, regarding the Independent Administrative Tribunal's decision of 25 March 1993 on the applicant's detention with a view to expulsion, and regarding the Federal Security Authority's decision of 3 March 1993 on the applicant's request for a declaration that deportation to Sri Lanka was unlawful, are still pending.

On 20 February 1995 the applicant's lawyer informed the Commission that the applicant meanwhile had left Austria and is now living in Canada.

COMPLAINTS

Before the Commission the applicant complains under Articles 2 and 3 of the Convention that if she were to be deported to Sri Lanka she would risk being imprisoned under inhuman conditions, and tortured or even killed.

She further complains under Article 13 of the Convention that she had no effective domestic remedy to complain that her expulsion to Sri Lanka would violate her rights under the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The present application was introduced on 31 March 1993 and registered on the same day.

On 2 April 1993 the Commission rejected the applicant's request under Rule 36 of the Commission's Rules of Procedure for a stay of her deportation.

THE LAW

1. The applicant complains that if deported to Sri Lanka she would risk treatment contrary to Article 2 and 3 (Art. 2, 3) of the Convention.

Under Article 25 (Art. 25) of the Convention the Commission may only deal with an application if the applicant can claim to be a victim of a violation, by one of the High Contracting Parties, of rights set forth in the Convention or its Protocols.

On the question whether the applicant may still claim to be a victim of an alleged violation of Articles 2 and 3 (Art. 2, 3) of the Convention, the Commission observes that after the applicant's release from detention on 9 April 1993 no steps for the enforcement of the residence prohibition have been taken. The Commission notes further that the applicant meanwhile has left Austria and is now living in Canada.

In these circumstances the Commission concludes that the applicant's complaint under Articles 2 and 3 (Art. 2, 3) of the Convention is resolved in such a way that, in the particular circumstances of the present application, she is no longer able to claim to be a victim of a violation of the Convention within the terms of Article 25 para. 1 (Art. 25-1).

It follows that this part of the application is inadmissible under Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains under Article 13 (Art. 13) of the Convention that she had no effective domestic remedy to complain that her expulsion to Sri Lanka would violate her rights under the Convention.

The Commission recalls that Article 13 (Art. 13) of the Convention requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, p. 14, para. 31).

The Commission, having regard to the above findings, considers that the applicant's submissions do not give rise to a prima facie issue under Articles 2 and 3 (Art. 2, 3) of the Convention, and thus cannot be considered to be an arguable claim warranting a remedy under Article 13 (Art. 13) of the Convention.

It follows that this part of the application 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.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)