AS TO THE ADMISSIBILITY OF

Application No. 25946/94
by Antonio SIM
against Finland

Application No. 25947/94
by Bernardo UNGSON
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 28 June 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN

Mrs. S. DOLLÉ, Acting 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 applications introduced on 25 October 1994 by Antonio Sim and Bernardo Ungson against Finland and registered on 14 December 1994 under file Nos. 25946/94 and 25947/94 respectively;

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 cases, as submitted by the applicants, may be summarised as follows.

Application No. 25946/94

The applicant is a citizen of the Philippines, born in 1957. He is a engineer. Before the Commission he is represented by Ms. Johanna Ojala, a lawyer in Helsinki.

The applicant entered Finland in April 1987, having been offered an apprenticeship as well as a three-month residence and work permit to this effect. This permit was later prolonged until October 1988. In the autumn of 1987 the applicant met Ms. A., who is also a citizen of the Philippines.

After the applicant's request for a residence permit for holiday reasons to be valid as from October 1988 had been rejected he returned to his country of origin. By virtue of a fresh residence and work permit he returned to Finland in February 1990, having been offered further short-term employment. He and A. worked in different cities in addition to which he worked shifts. They therefore cohabited only during the weekends. The further residence and work permit was later prolonged until August 1991, when the applicant's contract of

employment expired. Following this expiry the applicant and A. allegedly lived together permanently, A. supporting the couple.

The applicant's subsequent requests for a two-year residence permit were rejected in August and September 1991. In October 1991 and March 1992 the applicant again requested a residence permit. These requests were refused on 6 April 1992 and the refusal was eventually upheld by the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen) in December 1992 by virtue of a refusal to reopen the proceedings.

In January 1993 the applicant lodged a further request for a residence permit, this time referring to his cohabitation with A. This request was rejected by the Aliens Centre (ulkomaalaiskeskus, utlänningscentralen) of the Ministry of the Interior (sisäasiainministeriö, inrikesministeriet) in May 1993 and the applicant was ordered to be expelled. In rejecting the request the Aliens Centre had regard to population registration records showing that the applicant was not living with A.

In the subsequent appeal proceedings the applicant invoked witness statements and other evidence showing that he had been permanently cohabiting with A. since August 1991.

On 19 November 1993 the Supreme Administrative Court quashed the Aliens Centre's decision and referred the matter back for a new examination.

On 18 February 1994 the Aliens Centre maintained its refusal of the applicant's request for a residence permit. It noted the applicant's claim that he had been cohabiting with another non-national in a marriage-like manner but found that three further persons had also been living with them. It concluded that the applicant had developed no such strong ties to Finland which would warrant the granting of a residence permit. It furthermore noted, inter alia, that he had been able to remain in the country because he had made use of various remedies. Finally, it noted that part of the applicant's submissions had been lodged in "a rare language" (Tagal). While apparently being unable to take account of the contents of these submissions, the Centre considered that he had been free to make his submissions in English or Finnish.

The Aliens Centre finally ordered the applicant's expulsion and also prohibited him from re-entering Finland or entering another Nordic country during a period of three years.

On 25 October 1994 the Supreme Administrative Court upheld the Aliens Centre's decision.

It appears that the applicant was expelled on 8 December 1994.

The applicant's partner A. has resided permanently in Finland as from the beginning of the 1980's and holds a temporary residence permit.

Application No. 25947/94

The applicant is a citizen of the Philippines, born in 1962. He is a technician. Before the Commission he is represented by the above-mentioned Ms. Ojala.

The applicant entered Finland in April 1987 for an apprenticeship, having been granted a three-month residence and work permit to this effect. This permit was later prolonged until October 1988. In the autumn of 1987 the applicant met Ms. S., who is also a citizen of the Philippines. In April 1988 they started cohabiting.

After the applicant's request for a residence permit for holiday reasons valid as from October 1988 had been rejected he returned to his country of origin. By virtue of a fresh residence and work permit he returned to Finland in February 1990. He and S. worked in different cities in addition to which he worked shifts. They therefore lived together only during the weekends. His residence and work permit was later prolonged until August 1991, when his contract of employment was to expire. Following this expiry the applicant and S. lived together permanently, S. supporting the couple.

The applicant's subsequent requests for a two-year residence permit were rejected in August and September 1991.

In October 1991 and March 1992 the applicant requested a residence permit. These requests were refused on 6 April 1992 and the refusal was eventually upheld by the Supreme Administrative Court in December 1992 by virtue of a refusal to reopen the proceedings.

In January 1993 the applicant lodged a further request for a residence permit, this time referring to his cohabitation with S. This request was rejected by the Aliens Centre in May 1993 and the applicant was ordered to be expelled. In rejecting the request the Aliens Centre had regard to population registration records showing that the applicant was not living with S.

In the subsequent appeal proceedings the applicant invoked witness statements and other evidence showing that he had been permanently cohabiting with S. since August 1991.

On 19 November 1993 the Supreme Administrative Court quashed the Aliens Centre's decision and referred the matter back for a new examination.

On 18 February 1994 the Aliens Centre maintained its refusal of the applicant's request for a residence permit. It noted the applicant's claim that he had been cohabiting with another non-national but considered that he had developed no such strong ties to Finland which would warrant the granting of a residence permit. It furthermore noted, inter alia, that he had been able to remain in the country because he had made use of various remedies. Finally, it noted that part of the applicant's submissions had been lodged in "a rare language" (Tagal). While apparently being unable to take account of the contents of these submissions, the Centre considered that he had been free to make his submissions in English or Finnish.

The Aliens Centre finally ordered the applicant's expulsion and prohibited him from re-entering Finland or entering another Nordic country during a period of three years.

On 25 October 1994 the Supreme Administrative Court upheld the Aliens Centre's decision.

It appears that the applicant was expelled on 8 December 1994.

The applicant's partner S. appears to have resided permanently in Finland as from 1983 and holds a permanent residence permit.

COMPLAINTS

1. The applicants complain that their expulsion violated their right to respect for their respective family lives and homes. They submit that, although they, only in 1993, invoked family grounds in support of their requests for a residence permit, they had been permanently cohabiting with A. and S., respectively as from August 1991. They invoke Article 8 of the Convention.

2. The applicants furthermore complain that their expulsion discriminate against them in their capacity as cohabiting partners of A. and S., if the applicants are compared with spouses in a situation similar to theirs. They invoke Article 14 of the Convention.

THE LAW

1. The Commission considers it convenient to join the applications under Rule 35 of its Rules of Procedure.

2. The applicants complain that their expulsion violated their right to respect for their respective family lives and homes. They invoke Article 8 (Art. 8) of the Convention which, in so far as it is relevant, reads as follows:

> "1. Everyone has the right to respect for his ... family life [and] his home ...
> 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 the Contracting States are in principle free to control the entry, residence and expulsion of aliens. Expulsion of a person from a country in which close members of his family live may nevertheless amount to an unjustified interference with his right to respect for his family life as guaranteed by Article 8 (Art. 8) of the Convention (e.g., Eur. Court H.R., Moustaquim judgment of 18 February 1991, Series A no. 193, pp. 19 et seq., paras. 43 et seq.).

The Commission further recalls that the notion of "family life" in Article 8 (Art. 8) is not confined solely to marriage-based relationships. It may thus encompass other de facto "family ties" where parties are living together outside marriage (e.g., Eur. Court H.R., Kroon and Others v. the Netherlands judgment of 27 October 1994, Series A no. 297-C, para. 30).

The Commission observes that at the time of their expulsion from Finland the applicants were cohabiting with A. and S., respectively. It will therefore assume that their expulsion interfered with their right to respect for their family lives with their respective partners within the meaning of Article 8 para. 1 (Art. 8-1). Under Article 8 para. 2 (Art. 8-2) such an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the aims enumerated in paragraph 2 (Art. 8-2) and it must be "necessary in a democratic society" for that aim or those aims. The necessity requirement implies the existence of a pressing social need and, in particular, requires that the measure be proportionate to the legitimate aim pursued (the above-mentioned Moustaquim judgment, pp. 18 et seq., paras. 37 et seq.). Regard should further be had to the margin of appreciation afforded to the Contracting States (Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, pp. 15-16, para. 28).

The Commission is satisfied that the applicants' expulsion were "in accordance with the law". It also considers that it pursued a legitimate aim under Article 8 para. 2 (Art. 8-2) such as the economic well-being of the country.

As regards the question whether the applicants' expulsion was "necessary in a democratic society" in pursuit of the above-mentioned aim, the Commission observes that up to August 1991 the applicants

lived and worked in Finland by virtue of short-term permits to this effect. Given their precarious residential status in Finland at the time when they established their assumed respective family lives, the Commission finds that the applicants could not legitimately expect to be able to pursue such family life there. This finding is valid irrespective of whether the family life was established in August 1991 or even earlier. It is true that the applicants' respective partners A. and S. were lawfully and permanently resident in Finland at the relevant time. It has not been shown, however, that they would have lacked a practical and reasonable opportunity of accompanying or following the applicants back to the Philippines, in particular since A. and S. themselves are citizens of that country (cf., e.g., No. 11333/85, Dec. 17.5.85, D.R 43 p. 227; No. 20002/92, Dec. 5.4.95, unpublished). Finally, although the applicants are, in principle, prohibited from re-entering Finland before the end of 1997, they are not prevented from visiting A. and S. there after having been issued with a visa to this effect. There is no indication that requests to this effect would be refused.

In these particular circumstances and taking into account the margin of appreciation left to the Contracting States, the Commission concludes that the interference, if any, with the applicants' respective family lives was 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 respondent State. Accordingly, there is no appearance of a violation of Article 8 (Art. 8).

The Commission finds no separate issue with regard to the alleged lack of respect for the applicants' homes.

3. The applicants furthermore complain that their expulsion discriminate against them in their capacity as cohabiting partners of A. and S., if the applicants are compared with spouses in a situation similar to theirs. They invoke Article 14 (Art. 14) of the Convention which reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 14 (Art. 14) complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 (Art. 14) does not presuppose a breach of those provisions - and to this extent it is autonomous -, there can be no room for its application unless the facts at issue fall within the ambit of one of more of the latter.

In the present case the Commission has found no appearance of a violation of Article 8 (Art. 8). The applicants' present complaint nevertheless falls within the ambit of that provision and Article 14 (Art. 14) therefore applies.

The Commission recalls that a difference of treatment of persons in a similar situation is discriminatory if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Contracting States nevertheless enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (e.g., Eur. Court H.R., Karlheinz Schmidt v. Germany judgment of 18 July 1994, Series A

no. 291-B, paras. 22 et seq.).

The Commission has considered whether, because of their expulsion, the applicants were treated differently on account of their status as non-nationals cohabiting in a marriage-like manner with non-nationals lawfully and permanently settled in the country, compared with non-nationals, who have contracted marriage with equally lawfully and permanently settled non-nationals. It observes that the applicants' requests for residence permits on account of their cohabitation with A. and S., respectively, were in essence rejected because of the applicants' lack of sufficiently strong ties to Finland and because the applicants had only in January 1993 referred to their alleged family life with A. and S., respectively. It cannot find sufficient substantiation of the applicants' complaint that their expulsion discriminated against them in their capacity as cohabitants of A. and S., respectively.

In these circumstances the Commission cannot find any appearance of a violation of Article 14 in conjunction with Article 8 (Art. 14+8).

4. It follows that the applications as a whole must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO JOIN APPLICATIONS NOS. 25946/94 AND 25947/94; and

DECLARES THE APPLICATIONS INADMISSIBLE.

Acting Secretary to the First Chamber	President of the First Chamber
(S. DOLLÉ)	(C.L. ROZAKIS)