AS TO THE ADMISSIBILITY OF

Application No. 28022/95
by Inderpal SINGH
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

Mrs. M.F. BUQUICCHIO, 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 7 July 1995 by Inderpal SINGH against the United Kingdom and registered on 25 July 1995 under file No. 28022/95;

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 applicant is an Indian national born in 1966 in the Punjab, India. The Commission has not been informed as to the present whereabouts of the applicant and whether or not he has in fact been deported. He is represented before the Commission by Malik Adams Solicitors. The facts as submitted by the applicant can be summarised as follows.

The applicant entered the United Kingdom illegally in about June 1994. Soon after, he made an application for political asylum in the United Kingdom on the basis that he was a member of the Khalso Commando Force, a Sikh Movement in India and, along with members of his family, had been arrested and tortured on numerous occasions.

On 7 December 1994 the Home Office Immigration and Nationality Department wrote to the applicant's solicitors requiring the applicant to attend for interview in respect of his application for asylum on 9 February 1995. On 8 December 1994 the applicant and several other immigrants were arrested at his place of employment. He was interviewed and then served with a notice, pursuant to which he was detained, in the following terms:

"I have considered all the information available to me and I am satisfied that you are an illegal entrant as defined in Section 33(1) of the Immigration Act 1971.

A. You are therefore a person who is liable to be detained pending the completion of arrangements for dealing with you under the Act* I propose to give directions for your removal from the United Kingdom in due course and details will be given to you separately.
B. I hereby authorise your detention in police cells/Group 4.
* paragraph 16 of Schedule 2 to the Act"

On 15 December 1994 the applicant's application for habeas corpus was joined with the habeas corpus applications of two other asylum seekers, (nos. 28021/95 and 28023/95 respectively). On 19 December 1994 the application was heard before the High Court and on 16 January 1995 judgment was given in favour of the applicant, the Judge ordering his release. The Secretary of State and the Immigration Officer appealed that decision and the matter was heard before the Court of Appeal on 20 January 1995. On 3 February 1995 the Court of Appeal allowed the appeal and overturned the decision of the Court below. On 4 July 1995 the House of Lords refused leave to appeal.

By letter of 3 September 1996 the applicant's representatives were asked to supply information as to the whether a decision had been taken by the authorities in respect of the applicant's application for asylum and if so, the content and date of that decision. Further, they were asked to state whether appeal or judicial review proceedings had been taken and to enclose any relevant decisions and to say whether the applicant had been deported or was still detained in the UK. They were asked to give all relevant dates and to enclose any relevant order(s).

The applicant's representatives wrote to the Commission on 9 October 1996 without providing any of the information requested and stating that the application did not relate to the merits of the asylum but to the question of detention only.

COMPLAINTS

1. The applicant complains that his detention in the United Kingdom pending the determination of his application for asylum is punishment and constitutes inhuman and degrading treatment within the meaning of Article 3 of the Convention.

2. The applicant further complains that he was deprived of his right to liberty as guaranteed by Article 5 of the Convention, his detention not falling within any of exceptions set out in Article 5 paragraph 1(a)-(f). As regards Article 5 para. 1(f), the applicant submits that he was a refugee seeking political asylum and that his application was still under consideration. As such, he submits that no action in relation to deportation or extradition was pending against him and his detention could not therefore fall within Article 5 para. 1(f).

3. The applicant contends that if his arrest and detention is found to fall within the scope of Article 5 para. 1(c), which he denies, he was deprived of his rights under Article 5 para. 3. He submits that he was arrested and detained by reason of an administrative decision and that no tribunal held jurisdiction to determine the matter on which he had allegedly been arrested. He contends that the authorities did not intend to bring him before a judge or judicial officer authorised by law to exercise judicial power.

4. The applicant further complains that he was detained from 27 October 1994 to 19 December 1994 and that the lawfulness of his detention was not therefore determined speedily within the meaning of Article 5 para. 4 of the Convention.

5. The applicant further complains that he was deprived of his right to compensation as guaranteed by Article 5 para. 5 of the Convention

in respect of the alleged violations of Article 5 paras. 1-4 referred to above.

6. The applicant further complains under Article 6, submitting that because he was not charged with any criminal offence, but detained as a result of an administrative act, he was deprived of all the rights guaranteed in Article 6. Further, he submits that by virtue of the arbitrary nature of the decision he must have been presumed guilty, contrary to Article 6.

THE LAW

1. The applicant complains that his detention pending the determination of his application for asylum was contrary to Article 3 (Art. 3) of the Convention. That provision provides as follows.

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

The case-law of the Convention organs establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see e.g. Eur. Court H.R., Ireland v. the United Kingdom, judgment of 18 January 1978, Series A no. 25, p. 65, para. 162).

The Commission notes that it is unable from the information supplied to ascertain how long the applicant was detained before his application for asylum was determined. In the circumstances the basis of the complaint cannot be considered to have been substantiated. Further, the Commission notes that the applicant has not alleged or shown that he suffered inhuman or degrading treatment in the course of detention, but claims only that detention pending the outcome of his application for asylum was in itself inhuman and degrading. The Commission considers that without more, such treatment cannot be regarded as reaching the threshold required to establish inhuman and degrading treatment within the meaning of Article 3 (Art. 3) of the Convention.

It follows that this part of the complaint must be dismissed as manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains that he was deprived of his right to liberty as guaranteed by Article 5 (Art. 5) of the Convention. Article 5 (Art. 5) provides, so far as relevant, as follows.

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
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> c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
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> f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the

provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Commission recalls that the exception provided by Article 5 para. 1(f) (Art. 5-1-f) extends to cover circumstances in which an individual, originally detained with a view to deportation, challenged the decision to deport or claims asylum and is kept in detention pending the outcome of the challenge or claim (see Eur. Court HR, Chahal v. United Kingdom judgment of 15 November 1996, para. 112 (Reports 1996)).

The Commission notes that the applicant was served with a deportation notice on 8 December 1994, on which date he was detained. The Commission therefore considers that, in principle, the applicant has been lawfully detained under Article 5 para. 1(f) (Art. 5-1-f) of the Convention as a "person against whom action is being taken with a view to deportation".

The Commission recalls that detention pending deportation may be rendered unlawful if the deportation proceedings are not conducted with the requisite diligence (cf. Eur. Court HR, Kolompar v. Belgium judgment of 24 September 1992, Series A no. 235, p. 55, para. 36, Application No. 7317/75, D.R. 6, p. 141).

The Commission observes however that it has not been provided with the relevant dates, and in particular the date on which the applicant's application for asylum was determined. It therefore considers that it has insufficient information to determine whether the proceedings were conducted with the requisite diligence. In the circumstances the Commission must conclude that the applicant's complaints have not been substantiated.

It follows that this part of the complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant further complains that he was deprived of his right to be brought promptly before a judge or other officer as guarantee by Article 5 para. 3 (Art. 5-3) of the Convention.

The Commission recalls that rights are only accorded under Article 5 para. 3 (Art. 5-3) to those detained in accordance with Article 5 para. 1(c) (Art. 5-1-c) of the Convention. The Commission notes that the applicant was detained for the purpose of deportation and not with a view to bringing him before a competent legal authority on reasonable suspicion of his having committed an offence or to prevent his committing an offence or fleeing after having done so. The Commission does not therefore consider that the applicant's detention fell within Article 5 para. 1(c) (Art. 5-1-c) and Article 5 para. 3 (Art. 5-3) is not therefore applicable in the circumstances of this case.

This part of the complaint must therefore be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further complains that he was detained from 27 October 1994 to 19 December 1994 and that the lawfulness of his detention was not therefore determined speedily within the meaning of Article 5 para. 4 (Art. 5-4) of the Convention.

The Commission recalls that the relevant application for habeas corpus was issued on 12 December 1994 and heard by the Court on 19 December 1994. It notes that the applicant was not in fact released until 16 January 1995, not 19 December 1994 as submitted, when a writ of habeas corpus was issued by the High Court.

The Commission observes that the basis for the applicant's habeas corpus application was that it was unlawful to detain asylum seekers pending the outcome of their asylum applications. The question raised complex issues of domestic and international law, the outcome of which would have affected the position of all asylum seekers held in detention, indeed, had it been upheld, it would have led to the release of all asylum seekers detained pending the outcome of their applications. In the circumstances, the Commission does not consider that it was unreasonable for the judge to take time to determine the complex issues of law that had been raised. Indeed, the fact that his decision was overturned by the Court of Appeal supports the contention that the answer to the legal arguments raised was not clear cut. The Commission therefore considers that the delay in determining the lawfulness of the applicant's detention cannot, in the very particular circumstances of this case, be considered unreasonable.

5. Insofar as the applicant invokes Article 5 para. 5 (Art. 5-5) in respect of his complaints under Article 5 paras. 1 to 4 (Art. 5-1, 5-2, 5-3, 5-4), the Commission recalls that the right to compensation under this provision presupposes that a violation of one of the other paragraphs of Article 5 (Art. 5) has been established either by a domestic organ or by the Convention organs (see eg. No. 7950/77, Dec. 4.3.80, D.R. 19, p. 213). In the present case however, the Commission has found above that the applicant's complaints disclose no appearance of a violation of Article 5 paras. 1 to 4 (Art. 5-1, 5-2, 5-3, 5-4) of the Convention.

It follows that these complaints must also therefore be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicant complains that he was deprived of his right to a fair trial under Article 6 (Art. 6), which, so far as relevant, provide as follows.

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission recalls its previous case law which establishes that Article 6 (Art. 6) is inapplicable to deportation proceedings since a decision as to whether an alien should be allowed to stay in a country is a discretionary act of a public authority and therefore of an administrative nature. The exercise of the discretionary powers of the immigration authorities or, as in this case, the Secretary of State, does not involve the determination of civil rights or obligations or of a criminal charge within the meaning of Article 6 (Art. 6) of the Convention (see No. 8118/77, Dec. 19.3.81, D.R. 25 p. 105).

It follows that Article 6 (Art. 6) is not applicable in the present case and this part of the application must be dismissed as incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber