AS TO THE ADMISSIBILITY OF

Application No. 16631/90
by S.T.
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 31 March 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
J.-C. GEUS
M. NOWICKI

Mr. K. ROGGE, Secretary to the Second 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 18 May 1990 by S.T. against the Netherlands and registered on 23 May 1990 under file No. 16631/90;

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, a Yugoslav citizen, was born in 1974 in Banja Luka, Bosnia-Herzegovina, and resides at present in Rotterdam, the Netherlands. Before the Commission she is represented by Mrs. E.J.M. Habets, a lawyer practising in Schiedam, the Netherlands.

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

The applicant is the natural daughter of Mrs. M. and Mr. T., both Yugoslav citizens. The applicant has been recognised by her father, but there are no contacts between them. The applicant's mother emigrated from Yugoslavia to the Netherlands in January 1974. She returned to Yugoslavia to give birth to the applicant. When, some months later, the applicant's mother returned to the Netherlands she entrusted the care of the applicant to her parents, who reside in Banja Luka. According to Yugoslav national law the applicant's mother is responsible for the applicant's care until she will have reached the age of eighteen.

In 1977 the applicant's mother married a Yugoslav national in the Netherlands. Out of this marriage a son was born in 1983. The marriage was dissolved in 1984 and the son remained with his mother.

The applicant was raised by her grandparents in Banja Luka. Her mother visited her every summer and kept in contact with the applicant by letters and by telephone. According to the applicant her mother sent clothes and money to the applicant on at least three occasions. In 1985 the applicant spent a holiday with her mother in the Netherlands.

Allegedly due to problems in the grandparents' family the applicant, on 21 August 1989, moved to the Netherlands and took up residence with her mother in Rotterdam.

On 31 October 1989 the applicant applied for a residence permit for family reunification with her mother. The application was rejected on 3 January 1990 by the Head of the local police of Rotterdam.

On 13 February 1990 the applicant, assisted by a lawyer, filed an appeal with the Deputy Minister of Justice, who on 13 February 1990 refused suspensive effect to this appeal. Following a hearing before the Advisory Commission for Aliens Affairs (Adviescommissie voor Vreemdelingenzaken) the Deputy Minister, in accordance with the advice of the Advisory Commission, rejected the appeal on 15 May 1990.

The Deputy Minister considered, inter alia, that the applicant had never in fact formed a part of the family her mother had created in the Netherlands, but was raised in the family of her grandparents in Yugoslavia, where also two brothers and a sister of her mother live, who could possibly take care of the applicant. The Deputy Minister observed that the applicant's mother's only income is social security benefits and did not find it established that the applicant's mother had in fact financially or otherwise contributed to the applicant's upbringing.

Insofar as the applicant relied on Article 8 of the Convention the Deputy Minister held that the refusal to grant the applicant a residence permit did not constitute an interference with the applicant's family life within the meaning of Article 8 of the Convention with her mother as it can be continued in the same way as it was prior to the applicant's arrival in the Netherlands. The Deputy Minister added that, even if there had been an interference with the applicant's family life, this interference should be considered as being justified in the interest of the economic well-being of the country within the meaning of para. 2 of Article 8 of the Convention.

Pursuant to Section 34 para. 1(b) of the Aliens Act (Vreemdelingenwet) no appeal lies against the Deputy Minister's decision of 15 May 1990.

On 20 October 1990 the applicant voluntarily returned to Yugoslavia and on 4 April 1991 again entered the Netherlands, where she still resides with her mother.

The applicant's representative has been informed on 30 November 1992 by the Ministry of Justice that, due to the recent events in former Yugoslavia, the applicant might qualify for the Temporary Arrangement for the Care of Displaced Persons (Tijdelijke Regeling Opvang Ontheemden), but that under this Arrangement the applicant's expulsion would only be stayed as long as the situation in former Yugoslavia remains unchanged.

COMPLAINTS

The applicant complains under Article 8 of the Convention that the Dutch authorities' refusal to grant her a residence permit unjustly interferes with her right to respect for her family life with her mother.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 May 1990 and registered on 23 May 1990.

On 2 July 1991 the Commission decided to communicate the application to the respondent Governemnt and invite them to submit written observations on the admissibility and merits of the application.

The Government's observations were submitted on 18 October 1991 and the applicant submitted observations in reply on 13 December 1991.

On 7 January 1992 the Commission referred the application to the Second Chamber.

THE LAW

The applicant complains that the Dutch authorities' refusal to grant her a residence permit unjustly interferes with her right to respect for her family life with her mother. She invokes Article 8 (Art. 8) of the Convention, which provision guarantees to everyone the right to respect for his private and family life, his home and his correspondence.

The Government submit that in the fifteen years prior to the applicant's request for a residence permit the applicant and her mother enjoyed no real "family life". In any event the refusal to admit the applicant to the Netherlands does not prevent her family life from continuing in the form it had taken before her arrival.

The applicant states that it has always been her mother's intention to be reunited with her daughter in the Netherlands and she finds no justification for the interference with her right to respect for her family life with her mother.

The Commission first recalls that the Convention does not guarantee a right to enter or reside in a particular country. However, in view of the right to respect for family life ensured by Article 8 (Art. 8) of the Convention, the expulsion of a person from a country in which his close relatives reside may raise an issue under this provision (cf. No. 13654/88, Dec. 8.9.88, D.R. 57 p. 287).

However, the Commission notes the information given to the applicant by the Ministry of Justice from which it appears that in view of the current situation in Bosnia-Herzegovina the Netherlands authorities, under the Temporary Arrangement for the Care of Displaced Persons, are prepared to stay the expulsion of persons to former Yugoslavia as long as the current situation there remains unchanged and that the applicant has been informed that she may benefit from this Arrangement.

In these circumstances the Commission considers that the applicant cannot at present claim to be a victim within the meaning of Article 25 (Art. 25) of the Convention of an interference with her right to respect for her family life under Article 8 (Art. 8) of the Convention.

It follows that the application must be rejected as being incompatible ratione personae 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, by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber | President of the Second Chamber

(K. ROGGE) | (S. TRECHSEL)