AS TO THE ADMISSIBILITY OF

Application No. 22869/93
by Rasheed Haje TUGAR
against Italy

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

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

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 21 October 1993 by Rasheed Haje TUGAR against Italy and registered on 4 November 1993 under file No. 22869/93;

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

a) Particular circumstances of the case

The applicant is an Iraqi national, born in 1963 and currently residing in Kurdistan. He was previously a commercial photographer and a mine clearer by profession.

Before the Commission, he is represented by Ms Françoise J. Hampson, senior lecturer in law in Colchester (U.K.).

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

The applicant was trained as a mine-clearer by the Mine Advisory Group, a non-governmental organisation which trains mine-clearers, conducts mine clearing operations under contract and advises on all issues concerning mines.

In 1982, the Iraqi Minister of Foreign Affairs stipulated a contract with the Italian company V. M. based in Castenedolo, regarding the supply by V.M. to Iraq of 5.750.000 anti-personnel mines to be delivered before December 1983.

By judgment of 20 February 1991, the Brescia Court found V.M. and other companies guilty inter alia of illegal arm trafficking to Iraq.

In April 1993, the applicant was working on clearing the Nawberka minefield in the Chowman valley in Iraq; this area was heavily mined by Iraq in 1985, at the time of the Iran-Iraq war, with anti-personnel mines of Italian origin which do not contain any self-detonating or self-neutralising mechanism.

On 26 April 1993, while working on that field the applicant stepped on a mine. He was immediately taken to hospital, where he was amputated his lower right leg as a consequence of the severe injury he had suffered.

b) Relevant domestic law

1. Before 1990, there was no specific law in Italy regulating the export of weapons. Only Law no. 786 of 25 July 1956, confirming decree 476 of 6 July 1956 which created a rule applicable to goods in general and therefore to weapons and mines too, applied. According to this law, it was only possible to export mines after having obtained a licence from the Ministry of Foreign Trade in accordance with a ministerial decree of 10 January 1975, upon the advice of a ministerial body composed of representatives and experts from various ministries. All procedures about the export of arms and mines were secret and the executive had a very wide discretion in this matter, the only constraint being Italy's international obligations.

2. The export of weapons is now regulated by Law no. 185 of 9 July 1990 and, in the case of high technology weapons, decree no. 313 of 14 July 1990 of the Ministry of Foreign Trade. As to anti-personnel mines, Law no. 185/90 prohibits the export of weapons contrary to Italy's international commitments and in cases where "there is not an adequate guarantee as to the final destination of the weapon". It also forbids the export of weapons to countries declared guilty of violating international conventions on human rights.

COMPLAINTS

1. The applicant complains under Article 2 of the Convention that he suffered a life-threatening injury as a result of:

a) either the Italian Government knowingly allowing the supply of an "indiscriminate" weapon (anti-personnel mine with no self-detonating or self-neutralising mechanism) or of a weapon which was likely to be used "indiscriminately";

b) or the Italian Government failing to protect him, by means of an effective arms transfer licensing system, from the harm which would result from the supply by others (Italian private companies) of an "indiscriminate" weapon which was likely to be used "indiscriminately" and where it was known or ought to be known that such supply was taking place.

The applicant does not consider that Italy is directly responsible for the use of the Italian mines made by Iraq. He considers though that Italy failed, having supplied Iraq with lethal weapons, to comply with its positive obligations under Article 2 of the Convention to "protect the right to life".

The applicant, referring in particular to the Soering Judgment (cf. Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, para. 85), draws a parallel with the expulsion cases, and maintains that the alleged violation derives from his exposure by Italian authorities to the risk of "indiscriminate" use of anti-personnel mines by Iraq. He maintains that Italy should have either not supplied Iraq with any "indiscriminate" anti-personnel mines or enacted

an effective arms transfer licensing system in order to watch over the "indiscriminate" supply by Italian private companies to Iraq of mines not containing any self-detonating mechanism.

2. The applicant further alleges a violation of Article 13 of the Convention on account of the lack of any independent national authority before which his complaints can be brought with any prospect of success.

THE LAW

1. The applicant complains of the life-threatening injury he suffered due to the lack of protection of his right to life by Italy; he alleges that the Italian Government sold or allowed to sell, and in any event did not regulate the sale of anti-personnel mines not containing any self-detonating or self-neutralising mechanism, thus failing to secure his right to life as guaranteed by Article 2 (Art. 2) of the Convention.

The Commission first notes that the applicant's complaint is directed against Italy, although there has been no direct interference with the invoked rights by the Italian authorities, the anti-personnel mines having been placed by the Iraqi authorities on the Iraqi territory. It is undisputed that the placing of the mines is not in itself a matter for which the respondent Government are responsible under the Convention.

The applicant essentially complains about the absence under Italian law, at the time when the Italian mines were sold to Iraq, of any effective arms transfer licensing system. Had such system existed, the applicant argues, Italy would have not supplied a country like Iraq, which has been condemned for extraordinary violations of human rights and humanitarian obligations, with so many anti-personnel mines, which moreover do not contain any self-detonating or self-neutralising system.

The alleged violation therefore concerns the failure by Italy to adopt an effective arms transfer licensing system, thus exposing the applicant to the risk of "indiscriminate" use of such arms by Iraq.

The Commission observes in this respect that no right to have the transfer of arms regulated or other such measures taken by a High Contracting Party is as such guaranteed by the Convention.

It is true, as the applicant has pointed out, that in the Soering judgement the Court has held that, although no right not to be extradited is as such protected by the Convention, "(...) in so far as a measure of extradition has consequences adversely affecting the enjoyment of a Convention right, it may, assuming that the consequences are not too remote, attract the obligations of a Contracting State under the relevant Convention guarantee" (cf. Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 33, para. 85).

However, the Commission considers that the circumstances of the present case are entirely different from those prevailing in extradition or expulsion cases. The decision to expel or to extradite is in itself clearly an act of "jurisdiction" on the part of the Contracting State concerned, for which it is responsible under the Convention (cf. No. 7597/76, Dec. 2.5.78, D.R. 14, p. 117). Such act of jurisdiction may directly expose a particular individual to a particular and immediate risk.

In the present case, however, the applicant's injury can not be seen as a direct consequence of the failure of the Italian authorities to legislate on arms transfers. There is no immediate relationship between the mere supply, even if not properly regulated, of weapons and the possible "indiscriminate" use thereof in a third country, the

latter's action constituting the direct and decisive cause of the accident which the applicant suffered.

It follows that the "adverse consequences" of the failure of Italy to regulate arms transfers to Iraq are "too remote" to attract the Italian responsibility.

The Commission recalls in this respect that neither the Convention governs the actions of States not Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention standards on other States (cf. Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 33, para. 86; No. 7597/76, Dec. 2.5.78, D.R. 14, p. 117).

In conclusion, the Commission finds that the injuries suffered by the applicant are exclusively attributable to Iraq, and that the use of anti-personnel mines - even if delivered by Italy - made by Iraq can in no way engage any responsibility of the Italian Government under Article 2 (Art. 2) of the Convention.

It follows that this complaint is incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (b)(Art. 27-2-b).

2. The applicant further invokes Article 13 (Art. 13) of the Convention on account of the lack of any independent national authority before which his complaints can be brought with any prospect of success.

Article 13 (Art. 13) of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by a person acting in an official capacity".

The Commission recalls however that Article 13 (Art. 13) does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (cf. Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52).

The Commission finds that the applicant cannot be said, in light of its findings above, to have an "arguable claim" of a violation of his Convention rights.

It follows that this complaint must be dismissed as 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 First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)