AS TO THE ADMISSIBILITY

Application No. 13162/87
by V. P.
against the United Kingdom

The European Commission of Human Rights sitting in private on 9 November 1987, the following members being present:

MM. C. A. NØRGAARD, President
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
Mrs. G. H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ
Mr. C.L. ROZAKIS
Mrs. J. LIDDY

Mr. J. RAYMOND, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 August 1987 by V. P. against the United Kingdom and registered on 26 August 1987 under file No. 13162/87;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Sri Lanka, of Tamil racial origin, born in 1963, who at the time of lodging his application was detained at H.M. Detention Centre Latchmere, England, pending his deportation from the United Kingdom back to Sri Lanka, and who has in the meanwhile been returned to Sri Lanka.

He is represented before the Commission by Messrs. Winstanley-Burgess, Solicitors, London.

The facts of the case, as submitted by the applicant's representatives, may be summarised as follows:

The applicant's father is the Assistant Commissioner of the Agricultural Service in Mullaittivu. He was arrested twice in 1986. First he was taken to the Elephant Pass army camp and detained for a few hours of questioning. Secondly, he was arrested in April by the army and detained at the Mullaittivu army camp for two days. His jeep, which was given to him by the Agricultural Service for official

purposes, had been taken by Tamil militants. He was released on the return of the jeep. The applicant states that it is possible that his father had connections with the Tamil militants, but he does not have any details of this activity.

In September 1985, following a landmine explosion in Urella, the applicant's village, the security forces rounded up the entire village and arrested most of the young men. A cooperative store owner and his two sisters were killed. The applicant went into hiding during this period. The security forces had moved into Vasavillan at that time, about 3 1/4 miles from his house, and it became increasingly difficult for young Tamil men to live in the area.

After the news reached Jaffna of the massacres in Batticaloa at the end of 1986, the applicant's father made arrangements for the applicant to leave Sri Lanka. He left Jaffna on 6 January 1987 by bus to Colombo and stayed with his sister in Colombo until 20 January 1987.

He paid an agent living in Colombo 50,000 rupees for an airline ticket and a forged United Kingdom visa. He did not know it was a forgery until he was so informed by the Immigration authorities at Heathrow airport. He flew to Kuala Lumpur on 20 January 1987 where he stayed with a friend until 12 February 1987 when the agent arranged his departure for the United Kingdom via Bangladesh. He was in Dhaka airport for four hours, arriving in the United Kingdom on 13 February 1987, where he applied for political asylum.

The applicant was interviewed twice by the United Kingdom Immigration Service. Once for 25 minutes on 13 February 1987 at Heathrow and once for 25 minutes at Erlestoke House on 15 March 1987. The questions asked were how he left Jaffna and Colombo, details about the agents used, passport details, costs, family details, the political affiliation of his father and himself, employment and study prospects in Sri Lanka and his relations in the United Kingdom.

It seems that the application for political asylum was refused and the applicant's removal from the United Kingdom was ordered. A stay of removal directions was obtained from the Divisional Court in London and on 24 February 1987 a full Divisional Court granted leave to bring judicial review after a two day hearing. On 2 March 1987 the Home Office conceded that a fresh decision would be made and that representations would be entertained and should be lodged by 18 March 1987. The applicant was kept in detention throughout the proceedings.

On 20 August 1987 the applicant was served with notice of the Secretary of State's refusal of political asylum, the relevant part of which reads as follows:

> "You have applied for asylum in the United Kingdom on the grounds that you hold a well-founded fear of persecution in Sri Lanka for reasons of race, religion, nationality, membership of a social group or political opinion. When interviewed by the immigration officer you said that you were afraid to live in Sri Lanka because of the troubles and you feared arrest and detention. Although you personally had not been harassed or arrested your father had been arrested at the end of 1985 and detained for two days. When UKIAS (the United Kingdom Immigrants Advisory Service) submitted Notices of Interviews their representatives had conducted with you, it was stated that your father had been arrested on two occasions in 1986, once for a few hours and once for two days. It was further stated that the security forces had moved into Vasavillan about three and a quarter miles from your house and it became increasingly difficult for young Tamil men to live in the area.
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> However it has been established after three further interviews that you left Sri Lanka in 1983 and travelled to Europe. You

claimed asylum first in West Germany and then in Switzerland but in both cases you left the country before a decision was reached on your asylum application. You travelled to France and on 11 June 1985 you were arrested in the company of five others for possession of 3.2 kilos consisting of heroin and other substances. You were found guilty and sentenced to two years' imprisonment and (permanently banished?) from French territory. You were deported to Sri Lanka on your release from prison on or around 15 November 1985 (?). You lived in Sri Lanka without incident before your departure to Kuala Lumpur and thence to the United Kingdom. It is also relevant that you lived in Sri Lanka without incident prior to your departure to Europe in 1983.

In conclusion you have not claimed to have personally suffered ill treatment, harassment or persecution in Sri Lanka and the Secretary of State having considered the individual circumstances of your case and in addition the situation in Sri Lanka has indicated that you have not established a well-founded fear of persecution in Sri Lanka.

Even if the Secretary of State were of the opinion that you are a refugee you would be excluded from the benefit of the 1951 United Nations Convention relating to the status of refugees as there are strong reasons for considering you have committed a serious non-political crime outside the United Kingdom before coming to this country, namely possession of heroin. Since you do not otherwise qualify for leave to enter the United Kingdom, the Immigration Service has been instructed to arrange for your removal to Sri Lanka, to which country you are returnable under para. 10 schedule 2 of the 1971 Immigration Act."

The applicant's representatives claim not to have been notified of this refusal, but were informed by the media of the applicant's imminent removal from the country, together with certain other Sri Lankan Tamils. On the afternoon of the refusal, the assistant to the applicant's Member of Parliament requested the Home Secretary's Office to defer removal so that the Member of Parliament could make representations, so that legal aid could be sought for judicial review and so that such a review application could be lodged in the Divisional Court. These requests were refused.

An application for judicial review was nevertheless made to the Divisional Court on 21 August 1987. That application was refused. The applicant then sought to exercise his right to renew his application before the Court of Appeal, the Court of Appeal having been warned during the course of the afternoon that it was likely that the application would be made. Unfortunately, late in the afternoon, it became apparent that a full Court of Appeal could not be constituted, it being the holiday period. The Home Office refused to agree to defer the removal (set for the evening of 22 August 1987) until such a Court could be constituted during the course of the following week.

During the evening of 21 August 1987, the applicant's representatives prepared a second application for judicial review, this time of the Secretary of State's refusal to defer removal so that a fully constituted Court of Appeal could hear the application for leave. This application was put before the duty judge at his home late on the morning of 22 August 1987. The application was adjourned; the duty judge made an order staying the removal of the applicant. The representatives took this order to Heathrow Airport following the hearing, and the removal of the applicant was stayed.

The renewed application for leave to move for judicial review came before a fully constituted Court of Appeal at 11.00 hrs on 26 August 1987. It was refused in the applicant's case and he was

returned to Sri Lanka on 28 August 1987.

COMPLAINTS

1. The applicant's complaint is that he has been denied any effective or independent review of the Secretary of State's decision to refuse asylum. The applicant refers to the view held by the Office of the United Nations High Commissioner for Refugees (UNHCR) that it is for a Government to recognise a refugee, it does not declare him to be one. Accordingly, a genuine refugee will not cease to be one merely because the Government of the day declares him not to be such.

The Executive Committee of the UNHCR's programme (28th Session October 1977) issued certain requirements including one that applicants for refugee status should have a reasonable time to appeal against an adverse decision for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.

The Government has previously argued to the Home Affairs Committee of the House of Commons that asylum applicants at the airport did not need appeal rights since there are a number of safeguards. These safeguards were representations by Members of Parliament, judicial review and the referral procedure organised by UKIAS. The Committee recommended the extension of appeal rights but this extension was rejected by the Government on the basis that the safeguards were satisfactory. Since that time, the House of Lords has limited its own jurisdiction in refugee cases to a supervisory one only. The courts will only intervene if there is evidence of gross unreasonableness.

The Government has declared in the House of Commons that applicants can no longer expect to have their cases referred to UKIAS. The Government has also sought to limit Members of Parliament's ability to intervene on behalf of asylum claimants and in the present case the MP's right to intervene.

In respect of this grievance the applicant invokes Article 3 of the Convention.

2. The applicant also complains of a breach of Article 8 of the Convention concerning an allegedly unjustified interference with his right to respect for private life since he claims to have a genuine and well-founded fear of persecution if returned to Sri Lanka.

3. Finally the applicant complains of a breach of Article 6 of the Convention for, if refugee status is a "civil right", there is no possibility of a fair hearing by an independent and impartial tribunal.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced and registered on 26 August 1987. It was lodged with three other Tamil cases (Applications Nos. 13163/87, 13164/83 and 13165/87), accompanied by a request under Rule 36 of the Commission's Rules of Procedure that the Commission indicate to the respondent Government the desirability of a stay of the removal measures until the Commission had had a chance to examine the admissibility of the applicant's case. The Acting President of the Commission decided not to indicate any interim measures to the parties. The Deputy Secretary to the Commission informed the respondent Government, pursuant to Rule 41 of the Rules of Procedure, of the introduction of the application and of a summary of its objects.

THE LAW

1. The applicant has complained that the procedure for dealing with his request for political asylum in the United Kingdom violated Article 3 (Art. 3) of the Convention, which provides as follows:

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

However, according to the constant case-law of the Commission and the Court, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) (Eur. Court H.R., Ireland v. United Kingdom judgment of 18 January 1978, Series A no. 25 para. 162). The Commission finds that no severe ill-treatment has been meted out to the applicant whilst in the United Kingdom and, in particular, that the applicant has not been subjected to treatment contrary to Article 3 (Art. 3) by virtue of the political asylum procedure, however frustrating or disappointing the outcome of those procedures may have been for him (cf. mutatis mutandis No. 7994/77 Kotälla v. the Netherlands, Dec. 6.5.78, D.R. 14 p. 238).

The Commission also refers to its constant case-law concerning cases of political asylum:

> " ... even though the questions of extradition, expulsion and the right to asylum do not figure, as such, amongst those rights which govern the Convention, the Contracting States have none the less agreed to restrict the free exercise of their rights under general international law, including their right to control the entry and exit of foreigners, to the extent and within the limits of the obligations they have accepted under the Convention (cf. mutatis mutandis the decision of 30 June 1959 on the admissibility of application No. 434/58, Yearbook 2, p. 373). Consequently, the expulsion or extradition of an individual could, in certain exceptional cases, prove to be in breach of the Convention and particularly of Article 3 (Art. 3), whilst there are serious reasons to believe that he could be subjected to such treatment prohibited by the said Article 3 (Art. 3) in the State to which he must be sent."
> (No. 6315/73, X. v. the Federal Republic of Germany, Dec. 30.9.74, D.R. 1 p. 73)

The applicant has raised the question of his fear of persecution if returned to Sri Lanka in the context of Article 8 (Art. 8) of the Convention, which guarantees, inter alia, the right to respect for private life, subject to certain limited exceptions.

The Commission finds the applicant's reliance on Article 8 (Art. 8) of the Convention misplaced and has considered the substance of his complaint in the light of Article 3 (Art. 3) of the Convention.

The Commission notes the reasons for the Secretary of State's refusal of the applicant's asylum request: The applicant himself has not suffered ill-treatment in Sri Lanka and nor have his family. Even though his father was arrested twice no allegation has been made that he was ill-treated whilst detained. The Commission also notes that the applicant has not submitted any evidence to contradict the Secretary of State's conclusions or in any other way substantiated his claim that he is likely to face persecution on return to Sri Lanka.

In the light of the above considerations, the Commission concludes that the present case does not disclose any appearance of a breach of Article 3 (Art. 3) of the Convention, either in respect of the asylum procedures in the United Kingdom or in respect of the alleged fear of persecution on return to Sri Lanka. These aspects of the application are, therefore, manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also complained of an absence of a fair hearing by an independent and impartial tribunal, in accordance with Article 6 para. 1 (Art. 6-1) of the Convention, as regards his request for political asylum. He suggests that the political asylum procedures in the United Kingdom give rise to a determination of a civil right within the meaning of this provision.

However, the Commission has constantly held that the procedures followed by public authorities to determine whether an alien should be allowed to stay in a country or should be expelled are of a discretionary, administrative nature, and do not involve the determination of civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (cf. e.g. No. 7729/76, Agee v. the United Kingdom, Dec. 17.12.86, D.R. 7 p. 164 and No. 8118/77, Omkaranda and the Divine Light Zentrum v. Switzerland, Dec. 19.3.81, D.R. 25 p. 105). The Commission finds that political asylum applications fall within this category of procedures which do not determine civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Accordingly the Commission must reject this aspect of the application as being incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(J. RAYMOND) (C.A. NØRGAARD)