AS TO THE ADMISSIBILITY OF

Application No. 18631/91
by Mayingi ZATUNDA
against the United Kingdom

The European Commission of Human Rights sitting in private on 11 December 1991, the following members being present:

MM.J.A. FROWEIN, Acting President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H.G. SCHERMERS
Mrs.G. H. THUNE
SirBasil HALL
Mrs.J. LIDDY
MM.J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

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 2 August 1991 by Mayingi ZATUNDA against the United Kingdom and registered on 5 August 1991 under file No. 18631/91;

Having regard to:

- reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the written observations of the Government submitted on 30 August and 29 November 1991;

- the applicant's written observations in reply submitted on 9 September and 6 December 1991;

- the parties' oral submissions at the hearing on 11 December 1991;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Zaire, born in 1967 and, at the

time of lodging his application, he was detained at HM Prison Pentonville, London, awaiting his removal back to Zaire after the refusal of his asylum application. He was represented before the Commission by Ms. Nuala Mole of Interights, London.

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

A.The particular circumstances of the case

On 15 December 1990 the applicant arrived in the United Kingdom (hereafter referred to as the UK). He immediately applied for asylum as an Angolan in order to prevent a return to Angola.

The immigration officer noted that the applicant held a Zairean passport issued on 21 November 1990. The passport contained a counterfeit UK visa and a Zambian transit visa. The officer understood the applicant to have said that he spent 12 hours in Zambia, whereas he later claimed to have said two hours. The applicant was then interviewed in French with the aid of an interpreter. (The applicant claimed before the Commission that much confusion was subsequently generated by the interpretation because his French, as used by Europeans, was poor, and a Lingala interpreter would have been needed for the first two interviews.)

At the first interview the applicant stated that he had lived in Angola from 1977 until 1985 and also from September 1990 for one month. While in Angola on this last occasion he said that he felt "morally threatened". He therefore went to Zaire to visit his brothers and sisters. He stated that he feared returning to Angola, but that he had no fear of returning to Zaire.

The Immigration Officer referred the details of the application to the Home Office Asylum Division. Advice was sought as to whether the applicant might be returned to Zambia. It was also considered that as a Zairean passport holder, the applicant could be returned to Zaire, a country to which the applicant had no fear of returning.

At the request of the Asylum Division the applicant was re-interviewed on the same day (15 December 1990) to check whether he was content to return to Zaire. During the interview (which was conducted in French), the applicant stated that he was an Angolan citizen. But he could not produce evidence of his Angolan nationality. He stated that he had been born in Zaire of Angolan parents. He claimed to have gone to Angola from Zaire at the age of 10 and remained there until 1985. He said he was last in Angola in September 1990 for one month. He stated that he had then voluntarily gone to Zaire to visit his brothers. It was noted by the interviewing officer that the applicant did not speak Portuguese (as one would expect of an Angolan) and that he had not done military service in Angola. He stated that he had eight brothers and sisters: five in Angola and three in Zaire. He said that his eldest sister organised and paid for the entire trip as he had no money of his own. He stated that this was his first Zairean passport and that he had never held an Angolan passport. He said he had never travelled before and that he had been in Zambia for only 12 hours before coming to the UK. The applicant stated that he had two maternal uncles in the UK: one had been there since January 1990 and the other for only two months. Both were Zairean nationals who had claimed political asylum. He confirmed that he had no fear of returning to Zaire, only a fear of returning to Angola. When asked why he should not return to Zaire if he had no fear, he said that truthfully he wanted to remain in the UK to learn English. (The applicant claimed before the Commission that he did not say this so simply. He said that he had stated that if he were permitted to remain in the UK he would learn English.) He stated several times on different occasions that he had "no problems" in Zaire either socially, politically or professionally. (He apparently meant that prior to his

arrest he had had no problems.) He said he worked as a garage mechanic in Zaire. He claimed that his only problem was that if he decided to visit his brother in Angola, there were troubles there and this might put him in danger. At the conclusion of the interview, the applicant confirmed that he had understood all the questions put to him and that he had nothing further to add. (The applicant asserted to the Commission that he had tried to explain that he was indeed Zairean and not Angolan, as previously claimed, but language difficulties only succeeded in confusing matters further.) The applicant was then served with a notice advising him that the Secretary of State was satisfied that he could be returned to Zaire.

On 20 December 1990 the applicant was again interviewed but this time in the Central African dialect of Lingala with the aid of an interpreter. On this occasion, the applicant stated that he was a Zairean citizen and not an Angolan. He said that his (counterfeit) UK visa and the Zambian transit visa had been obtained on his behalf by an agent. He said that he did not know if they were genuine or forged. He said that he had been in Zambia for only two hours before coming to the UK. His air ticket showed the date of 4 December 1990 for travel from Libreville to Lusaka, Zambia. He could not offer any explanation for this date (a day which he would subsequently claim to have spent in detention in Zaire). He stated that he had never lived in Angola. He was unable to name the agent who he claimed had organised his trip. He said that he had been at school in Epom, Zaire until 1988. He said that he was a trainee mechanic from 1988 to 1989 in Ozacaf, Zaire. From January 1990 until November 1990 he said he had been a mechanic/driver for a company called JBM in Kinshasa, Zaire.

The applicant stated that until 15 November 1990 he had been employed as a mechanic in Kinshasa. He claimed to be a member of the Union pour la Démocratie et le Progrès Social (UDPS), as is his uncle. His father was a UDPS sympathiser. The UDPS is the major opposition political party to the present regime. Although it has been officially recognised, Government persecution of its members continues to be commonplace in Zaire. The applicant explained that he joined the UDPS on 2 February 1989 after he had become convinced of the need for political change. At that time the UDPS was still an illegal organisation. The applicant learned about the true political situation in Zaire from foreign newspapers. He described it as bad and corrupt and pointed out that many people have disappeared or been killed under the current regime. From the beginning of 1990 until the time of his arrest, the applicant stated that he attended many UDPS meetings and many demonstrations in Kinshasa against the Government. Beyond his participation in public protests, the applicant worked regularly for the UDPS recruiting new members within his local party in the Ndjilli district of Kinshasa. He was also involved in canvassing area support, explaining the true political situation in Zaire and distributing UDPS leaflets to the general public.

He recounted that on the morning of 15 November 1990 he had known that a large demonstration had been planned by the UDPS. As a UDPS member, the applicant would normally have attended such a demonstration, but since he had commitments at work that day, he decided not to attend the rally. Around 10 am the applicant returned to his home to collect some equipment. When he entered his house, he found his uncle there with a bad wound to his head that he had received at the demonstration. Fearing for his uncle's life, the applicant immediately put him in the car and drove as quickly as he could to the nearest hospital. While driving along the Boulevard du 30 juin, the applicant came up behind a line of about five official cars. Just as the applicant came up behind the motorcade, the line of cars slowed to allow a stream of protesters to cross the road up ahead. The applicant attempted to pass the line of cars, but instead hit the front right hand side of a Mercedes. The applicant lost consciousness on impact

and came to as he was being dragged out of his car by extremely agitated special guards. He was told that the car he had hit belonged to Commandant Bolozi, who is Chief of the Brigade Mobile, the Zairean security forces, and brother-in-law of President Mobutu Sese Seko. The guards thought the applicant had tried to assassinate the Commandant, their suspicions being confirmed by the UDPS literature which they found in the applicant's car and the context of the anti-Government demonstration that day.

The applicant alleged that the guards beat him up and took him to the military prison of the Brigade Mobile in Kinshasa. They left his uncle behind in the car. When the applicant arrived at the prison, he was beaten up by four or five soldiers using fists, boots and "weble" belts. The applicant explained that these belts are made of a heavy fabric and have a metal buckle at each end.

The applicant claimed that he was detained in the prison for 28 days. During his time in prison he was frequently tortured and he was questioned extensively about his involvement with the UDPS, and about the UDPS leaders. He was held in solitary confinement in a totally dark windowless cell. He slept on the floor and had only a tin as a toilet. The prison guards did not give him any food at all, but he managed to survive because his mother was able to reach him in the prison and to bring him food.

The applicant alleged that he was beaten by the guards almost every day of his imprisonment. Usually the beatings were administered by two or three guards who came to his cell and beat him with their fists, boots, belts and with truncheons that the applicant believes to have been made of rubber. Sometimes a soldier sat on the applicant to hold him steady while the others beat his back. On one occasion two days after the applicant was arrested, he stated that he was held down by two soldiers while a third set fire to some plastic and allowed the hot molten material to drip onto the applicant's left leg, burning his skin. On 6 December 1990 the applicant's mother was able to visit him in his cell. She told him that she had heard that he was to be executed on 15 December. She told him that the family would do everything that they could to help him, but that she did not know exactly what this would be.

The applicant said that at 11 pm on 13 December 1990 a guard took him from his cell. The guard avoided the front gate of the prison where there were other guards and offices, and took the applicant to a small back door. The applicant left the prison by the door, and it was locked behind him. Outside there was a tall older man waiting for him with a new white Range Rover. The man told the applicant that he had been sent by the applicant's family to collect him. The applicant got into the back seat of the car. The man had brought some clean clothes which the applicant changed into. They drove to the airport. When they arrived there the man gave the applicant an Angolan identity card and then the two went through immigration control and boarded a plane to Lubumbashi. The flight arrived in Lubumbashi at 3 am and the man then drove the applicant to a house which appeared to belong to the man's family. The two spent the night at the house and then they left for the airport again at 10 pm. At Lubumbashi airport the two boarded a flight for Lusaka, Zambia. The applicant was still using the Angolan identity card. When they arrived in Lusaka, the man explained that Lusaka was not a safe haven, since it was so close to Zaire. He told the applicant that he would have to fly on to the UK. He gave the applicant a Zairean passport for this purpose, and told him to seek asylum when he arrived and to use the Angolan identity card, since it might be dangerous to present himself as Zairean. The flight from Zambia arrived in the UK on 15 December 1990. The applicant said that when he had arrived in London he had been afraid to state that he was really Zairean. The ticket for the flight had been issued in Paris on 22 October 1990. It showed that he had booked a flight in his name from Libreville, Gabon, to Lusaka, Zambia, and onwards to London, UK,

for 4 December 1990, a day when he was supposedly in detention.

Following these interviews the Home Office Asylum Division made enquiries of the Foreign and Commonwealth Office to establsh if Commandant Bolozi had suffered serious injuries in a car accident in November 1990. The Foreign and Commonwealth Office contacted the British Embassy in Kinshasa. The Embassy advised that Commandant Bolozi was alive and well and that there was no evidence that he had been involved in a car accident or suffered any serious injury at this time.

The case was referred to UKIAS (the United Kingdom Immigrants Advisory Service). Shortly thereafter, on 7 February 1991, Hackney Law Centre made representations on behalf of the applicant. They said that the applicant had had very little time to think about his situation on arrival in the UK. They said he did not know where he was going when he was put on the aircraft. He was therefore frightened. They said he had been detained from 15 November 1990 until 13 December 1990, and had been tortured. They said that he feared being returned to Zaire so he had sought leave to enter as a student.

The Secretary of State did not believe the applicant's claims in view of the inconsistencies revealed at the interviews: During the course of the two interviews on 15 December 1990 the applicant had claimed to be a citizen of Angola. During both interviews he had also stated on several occasions that he feared returning to Angola where there were troubles, but had no fear of returning to Zaire. Immediately following these interviews the applicant was served with a notice stating that his application for asylum in the UK on the basis of a fear of return to Angola would not be considered on the grounds that he could be returned to Zaire. Only after the service of this notice did the applicant produce a new and wholly inconsistent account. The timing of his change of account and the previously expressed willingness to travel to Zaire cast very grave doubt on the credibility of the new story. The new story centred upon the account of the car accident in which Commandant Bolozi was said to have been seriously injured and to have ordered the applicant's immediate arrest. The Foreign and Commonwealth Office could find no evidence in Zaire that the Commandant had had such an accident or suffered any injuries. This cast even further doubt on the applicant's credibility. The applicant had also stated that the UDPS is a legal organisation in Zaire and it was known that it was to be allowed to contest free elections in the near future. It was not therefore accepted that membership of the UDPS gave rise to any well-founded fear of persecution, or any risk of torture or inhuman or degrading treatment or punishment. It was also considered that the applicant's vague account of his escape from detention, acquisition of forged documents, flight to Zambia and then on to the UK within two days was wholly implausible. The applicant's failure to seek asylum in Zambia also cast doubt on his claim to have fled Zaire as a victim of persecution. The Secretary of State was satisfied, on the basis of his knowledge of the policies and practices of the Zambian authorities, that they would have considered any such application in accordance with Zambia's obligations under the 1951 United Nations Convention relating to the Status of Refugees.

According to the Government, the inconsistencies between the accounts given in the interviews on 15 December 1990 and the interview on 21 December 1990 were wide-ranging. These included:

- the applicant's nationality;
- the country he claimed to fear;
- his social, political and professional history;
- his place of residence throughout his life;
- the place of residence of his siblings;
- the method of organising his trip to the UK;
- his reason for coming to the UK;
- the organiser of his trip to the UK; and

- his possession of a ticket for a flight on 4 December 1991, a date on which he claimed to have been detained.

In view of the inconsistencies the Secretary of State concluded that the applicant's claims lacked credibility and he advised the applicant on 8 March 1991 that he was minded to refuse the asylum application.

On 19 March 1991 the Hackney Law Centre made further representations on the applicant's behalf. They stated that the applicant had been interviewed in French on 15 December 1990 and that he did not properly understand the French that was being spoken by the interpreter. They claimed that this had led to the initial confusion. Their client claimed he had not said he would be in danger if returned to Angola. However, he had admitted that he had said that he was Angolan because an agent had told him to say this. The interview on 20 December was in Lingala which the applicant had understood. However, the Secretary of State noted that the applicant had confirmed at the conclusion of the interviews on 15 December 1990 that he had understood all the questions that had been put to him and that he had nothing to add.

Hackney Law Centre also gave further details of the alleged car accident. The applicant did not now claim to have seen Commandant Bolozi. He had lost consciousness as a result of the impact. When he regained consciousness he recognised the soldiers as being members of Commandant Bolozi's bodyguard. They later accused him of attempting to kill Commandant Bolozi. The applicant now said he had no personal knowledge of whether Commandant Bolozi was injured and he only received this information from the soldiers who took him away. However, the Secretary of State noted that this entirely new version of the car accident had emerged only after the applicant had been informed that information from the Foreign and Commonwealth Office cast doubt on the credibility of his first account. The Hackney Law Centre also provided a more detailed account of the applicant's alleged escape from detention and flight from Zaire.

On 21 March 1991 the applicant was again interviewed. He said that an agent had given him the idea to say that he was Angolan. He confirmed that he had not personally seen Commandant Bolozi, but that he had been told by the police that the car belonged to "authority". He now said that his family (and not only his sister) in conjunction with the agent organised his trip. He also said that he had not claimed asylum in Zambia because it is a frontier country with Zaire and he would be sent back to Zaire for that reason.

The Secretary of State then again considered the totality of the evidence. He remained of the view that the applicant's claim wholly lacked credibility. On 15 April 1991 a letter setting out the reasons for refusal of the application was sent to the applicant.

Representations were made on the applicant's behalf by Frank Dobson MP on 8 April 1991. These concerned only the continued detention of the applicant. A reply rejecting these representations was sent on 10 July 1991. Diane Abbot MP also made representations on 6 June 1991. A reply was sent by the Home Office Minister on 8 July 1991 to the effect that Ms Abbot's representations would be taken into account as part of the Secretary of State's further consideration of the case. Chris Smith MP made representations on 19 April 1991. These were rejected in a reply sent on 30 April 1991.

Hackney Law Centre subsequently made available to the Secretary of State a copy of an unsigned letter which the applicant claimed to have received from Zaire. The letter stated that the applicant's father had been killed "because of your problems". It did not explain the circumstances of the death. The letter stated that it was hand-delivered. There was no evidence that it had been written in

Zaire. The letter stated that the applicant's wife and child had "escaped" and advised the applicant not to return as "they" were still looking for him. This was dated 2 April 1991 (and thus post-dated the Secretary of State's letter of 8 March 1991 informing the applicant that he was minded to refuse his application).

On 4 June 1991 Hackney Law Centre made available to the Secretary of State a report of a medical examination of the applicant which had taken place on 30 May 1991 prepared by Dr C.G. Timmis of the Medical Foundation for the Care of Victims of Torture. Doctor Timmis stated that the applicant's scars were "clear evidence that he has been the subject of maltreatment by severe beatings such as he describes" and that "he has also undergone extreme recent mental distress".

Hackney Law Centre also made available to the Secretary of State a document alleged to be the death certificate of the applicant's father. This gave the cause of death as "Emotion" resulting from "Tension". The Law Centre also stated that the translation of these words means "Shock and High Blood Pressure". They also advised the Secretary of State on 16 July 1991 that the applicant claimed to have received a telegram from Kinshasa within the last week stating that his mother had died. The cause of death was not known.

The Secretary of State carefully reconsidered the applicant's claim in the light of this new evidence. It was accepted that Doctor Timmis' report was evidence that the applicant had suffered some physical and non-accidental injuries in the past. The report had indicated that the medical evidence was compatible with the applicant's account. However, the Secretary of State found the applicant to be a man of little credibility and that the evidence could have had other explanations. The Secretary of State did not therefore consider that the report materially advanced the applicant's claim.

After reconsidering the totality of the evidence the Secretary of State remained of the view that he did not believe the applicant's accounts of how he came to be arrested in Zaire and how he came to leave Zaire. In addition, he continued to believe that if the applicant did have a well-founded fear of persecution in Zaire, he would have sought asylum at the first opportunity in Zambia. On 18 July 1991 Hackney Law Centre were advised of this decision and that arrangements would be made for the removal of the applicant to Zaire.

Directions were subsequently given for the removal of the applicant to Zaire on 7 August 1991. This information was passed to the Hackney Law Centre on 24 July 1991. They notified the immigration authorities that they would not be making further representations.

On 5 August 1991 Hackney Law Centre informed the Secretary of State that an application had been made to the Commission on behalf of the applicant on the basis that the United Kingdom Government would be in breach of Article 3 of the Convention if the applicant were sent back to Zaire. They requested that the Secretary of State reconsider the applicant's case in the light of that application. The Secretary of State agreed to defer temporarily the applicant's removal pending the Commission's consideration of the case.

Following the deferral the Secretary of State carefully reviewed the applicant's claim to asylum. The Secretary of State noted that the applicant had made no attempt to seek leave to move for judicial review of the decision to refuse asylum. The issue at the heart of the refusal of the applicant's claim to asylum was his personal credibility. Given the applicant's lack of credibility, the Secretary of State was unable to accept without corroborative evidence, inter alia, that the applicant had ever been a member of the UDPS or that the medical report of the Medical Foundation for the Care of the Victims of Torture showed how and when the applicant had been injured, who had inflicted the injuries or for what reason. The Secretary of State

noted that this medical report had given details of the applicant's claims after interviewing the applicant with the help of a French interpreter, not a Lingala interpreter. He considered that these matters could only be assessed by returning to the applicant's own account which was deemed wholly inconsistent. The Secretary of State did not believe that these injuries occurred in the manner described by the applicant.

The Secretary of State, having reviewed all aspects of the applicant's claim and all the evidence, did not believe that the applicant had a genuine fear of returning to Zaire. In addition, the Secretary of State was not satisfied that the applicant would be persecuted by reason of his claimed political opinion if he did return to Zaire. Furthermore, the Secretary of State did not consider that the applicant would be ill-treated in any way for any reason if he returned to Zaire. Finally, the Secretary of State did not believe the applicant's accounts of the alleged car accident, and did not therefore accept that this alleged incident would give rise to any action by the Zairean authorities, including the military, against the applicant if he returned to Zaire.

The applicant was advised orally by counsel that he had no prospects of a successful application for judicial review against the Secretary of State's decision.

B. The relevant domestic law and practice

The relevant domestic law and practice for asylum seekers in the UK is set out in full in the Commission's Report in the case of Vilvarajah and Others v. the United Kingdom (Application No. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, Vilvarajah, Skandarajah, Sivakumaran, Navratnasingam and Rasalingam v. the United Kingdom, Comm. Report 8.5.90, paras. 106-132).

Paragraphs 16 and 73 of the Statement of Changes in Immigration Rules HC 169 contain the practical application of the UK's obligation to grant leave of entry to refugees under the United Nations Convention and Protocol relating to the Status of Refugees. If an asylum application is refused there is a right of appeal to immigration appellate authorities under Section 13 of the Immigration Act 1971, but such a right may in general only be exercised from outside the UK. Section 17 of the 1971 Act also enables appeal against the designated country of destination if the appellant can find another country to accept him. Judicial review of the Secretary of State's decision to refuse asylum will lie if he has left out of account a factor that should have been taken into account, or he has taken into account a factor he should have ignored, or if he came to a conclusion so unreasonable that no reasonable authority could have reached it (cf. Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 K.B. 223). Compassionate, exceptional leave may be granted by the Secretary of State in the exercise of his unfettered discretion in this field, should a person not qualify for full refugee status. In theory judicial review might lie on the aforementioned "Wednesbury" principles if such leave were refused. Asylum seekers may be assisted by the United Kingdom Immigrants Advisory Service and by Members of Parliament, as was seen in the present case.

COMPLAINTS

The applicant complained that he will be seriously ill-treated again if he is returned to Zaire. He invoked Article 3 of the Convention and relied on, inter alia, the Soering and Vilvarajah and Others cases (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, and Nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, Vilvarajah, Skandarajah, Sivakumaran, Navratnasingam and

Rasalingam v. the United Kingdom, Comm. Report 8.5.90). He also complained that, contrary to Article 13 of the Convention, he had no effective remedy in the UK for his Article 3 claim.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 August 1991 and registered on 5 August 1991. A request was made that the Commission indicate to the respondent Government, under Rule 36 of the Rules of Procedure, a stay in the applicant's removal to Zaire.

On 5 August 1991 the President of the Commission examined the question of the admissibility of the application and decided, in accordance with Rules 34 paragraph 3 and 48 paragraph 2 (b) of the Rules of Procedure, that notice should be given to the respondent Government of the application and that the parties be invited to submit their written observations on the case. The President also decided to give precedence to the application in accordance with Rule 33 of the Rules of Procedure. It was unnecessary to deal with the applicant's request under Rule 36 as the Government undertook to defer the applicant's removal pending the Commission's examination of the case.

The Government submitted their observations on admissibility and merits on 30 August 1991, to which the applicant replied on 9 September 1991.

On 13 September 1991 the Commission decided to invite the parties to submit further observations orally at a hearing, pursuant to Rule 50 (b) of the Rules of Procedure. The hearing was held on 11 December 1991, the President of the Commission having granted the applicant legal aid on 28 November 1991 for his legal representation at the hearing. Pre-hearing briefs were submitted by the Government on 29 November 1991 and the applicant on 6 December 1991. The parties were represented at the hearing as follows:

For the Government :

Mrs. Audrey GloverAgent
Mr. Michael Baker, QCCounsel
Mr. Clive Osborne, Home OfficeAdviser
Mr. Edward Sprunt, Home OfficeAdviser
Ms. D. OramAdviser

For the applicant :

Mr. Ian Macdonald, QC
Ms. Nuala Mole, Executive Director, Interights
Ms. Carol Blakemore, SolicitorHackney Law Centre

The hearing was held on the same day as a hearing in a similar application, No. 18715/91 Kiasi Bangula v. the United Kingdom. The general issues common to both cases were dealt with at the latter hearing.

THE LAW

1.The applicant has complained that he will be seriously ill-treated if he is returned to Zaire and he alleged that the United Kingdom Government would be in breach of Article 3 (Art. 3) of the Convention if they were to send him back to that country.

Article 3 (Art. 3) of the Convention provides as follows:

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

The Government have first contended that the applicant has not exhausted domestic remedies because he did not seek judicial review before the High Court of the Secretary of State's decision to refuse the applicant asylum and to return him to Zaire. The applicant replied that judicial review would not lie in a case like his where the key issue was the applicant's credibility. He was advised by counsel that he had no prospects of success before the High Court.

However, the Commission does not consider it necessary to determine this question because, even assuming that the applicant may be said to have complied with the requirements of Article 26 (Art. 26) of the Convention, it anyway finds the application manifestly ill-founded for the reasons given below.

The Commission recalls the constant case-law of the Convention organs "that expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he was returned" (Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, para. 103, to be published in Series A no. 215).

The Commission's assessment of the risk of ill-treatment to which the applicant may be exposed must be made in the light of all the material placed before it. This assessment must be a rigorous one in view of the absolute character of Article 3 (Art. 3) of the Convention (ibid. paras. 107-108).

The Commission notes that the British asylum authorities have considered the applicant's claims carefully. After each modification of his allegations and the submission of new material, such as medical evidence obtained six months after his arrival in the UK, his case has been fully reviewed. However, the Secretary of State concluded that the inconsistencies in the applicant's story were so serious that they made it incredible. The Commission agrees with the Government. The Commission is particularly struck by the inconsistencies over the issue dates of the applicant's passport and aeroplane tickets, including the fact that one ticket showed that he had booked a flight in his name from Libreville to Lusaka, and onwards to London, for 4 December 1990, a day when he was supposedly in detention. There is also unexplained confusion over the applicant's itinery (route and chronology) to the UK. The applicant has modified his story depending on the grounds of refusal given by the Secretary of State. His explanation that various inconsistencies were due to initial language and interpretation difficulties are belied by the fact that he apparently had no such difficulties when recounting his case-history to the doctor of the Medical Foundation for the Care of Victims of Torture, when he spoke French with the assistance of a French interpreter, which is how the applicant's first interviews with the asylum authorities had been conducted.

In the circumstances of the present case the Commission finds that the applicant has not shown substantial grounds that he faces a real risk of serious ill-treatment if he is returned to Zaire. It follows that this aspect of the case is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2.The applicant also complained that he had no effective domestic remedy for his Article 3 (Art. 3) complaint, contrary to Article 13 (Art. 13) of the Convention, which 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 persons acting in an official capacity."

However, according to the constant case-law of the Convention organs, "Article 13 (Art. 13) cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the Convention" (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23 para. 52).

The Commission has found the applicant's substantive complaint under Article 3 (Art. 3) of the Convention to be manifestly ill-founded and, in the light of the reasons for this decision, it also finds that the applicant has no arguable claim under Article 3 (Art. 3) warranting an effective domestic remedy pursuant to Article 13 (Art. 13) of the Convention. It follows that this aspect of the case is also manifestly ill-founded, 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.

Deputy Secretary to the Commission | Acting President of the Commission

(J. RAYMOND) (J.A. FROWEIN)