AS TO THE ADMISSIBILITY OF

Application No. 40900/98
by John KARARA
against Finland

The European Commission of Human Rights sitting in private on 29 May 1998, the following members being present:

MM S. TRECHSEL, President
J.-C. GEUS
M.P. PELLONPÄÄ
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs M. HION
MM R. NICOLINI
A. ARABADJIEV

Mr M. de SALVIA, 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 6 April 1998 by John KARARA against Finland and registered on 24 April 1998 under file No. 40900/98;

Having regard to the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 13 and 28 May 1998 and the observations in reply submitted by the applicant on 25, 27 and 28 May 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a citizen of Uganda born in 1963, is detained facing deportation from Finland. He is represented by Mr Matti Wuori, a lawyer in Helsinki.

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

1. The deportation proceedings

The applicant arrived in Finland in 1991, having married a Finnish citizen, Z. In 1993 and 1995 the applicant's requests for a further residence permit were refused, given his criminal behaviour. He had been convicted on five counts of attempted manslaughter for having raped several women and having had other sexual contacts, knowing that he had contracted an HIV infection. He had been sentenced to over eleven years' imprisonment.

The applicant has been treated against his HIV infection since 1992. In 1995 the applicant and Z divorced. They have no children together.

On 23 December 1997 the Ministry of the Interior ordered the applicant's deportation to Uganda and prohibited him from returning to Finland until further notice. The Ministry noted that the applicant no longer held a valid visa or residence permit in Finland; that he had no bonds to the country; and that he had repeatedly infringed Finnish law, thereby demonstrating that he was a danger to the safety of others. Moreover, his return to Uganda would not subject him to inhuman treatment within the meaning of Article 3 of the Convention or to persecution within the meaning of the 1991 Aliens Act (ulkomaalaislaki, utlänningslag 378/1991). Nor would he be sent on to an area where he could face such treatment or persecution.

The applicant appealed to the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen), arguing that his deportation would place him at an immediate risk of dying, given his HIV infection, and subject him to treatment contrary to Article 3 of the Convention. He invoked two medical opinions. In his opinion of 26 November 1997 Dr. M considered that an interruption of the applicant's medication would result in an acceleration of his illness. In his opinion of 21 January 1998 Dr. R noted that the applicant's state of health was good and that his infection was not showing any significant symptoms. Should his medication be interrupted, his illness would progress to the stage which it had reached in February 1997, i.e. to a "symptomatic" stage of HIV infection which was not yet the stage of AIDS. A patient in a comparable situation in February 1997 would run a 40 % risk of reaching the AIDS stage within three years.

In his appeal the applicant also invoked an affidavit by the manager of a support centre for AIDS patients, indicating that as long as he was staying in Finland, the applicant would be provided with the necessary socio-psychological support in order to cope with his illness.

The applicant also invoked a certificate of 8 February 1998 issued by Dr. T, a psychotherapist, indicating that as from 1996 the applicant had been seeking treatment against his depression. Before replying to the applicant's appeal on 11 March 1998 the Ministry consulted a further expert. According to Dr. S, the basic AZT treatment against HIV/AIDS would be available in Uganda. Its price had also gone down. The possibility to obtain further medication would depend on the patient's financial circumstances. The patient's position in his or her village and the possible assistance by relatives were also of relevance to the success of the basic treatment. In Finland HIV patients were normally treated with two or three medicines. The need for treatment should be determined before deporting an HIV patient to Uganda.

In his rejoinder of 2 April 1998 the applicant also opposed his deportation on the grounds that he was a refugee from Rwanda. Having joined the Rwandan Patriotic Forces in 1990, he had fought against the then Government of the country. He had deserted from the movement after two months of service.

In his rejoinder the applicant also adduced a supplementary opinion by Dr. R. This opinion of 31 March 1998 stated that during 1998 the applicant's basic medication would be replaced by a therapy combining three drugs, this being the medication practice in Finland. The interruption of either the ongoing or the planned medication would result in the loss, probably within a few months, of the care achievements so far.

In his rejoinder the applicant also requested an oral hearing before the Supreme Administrative Court.

On 17 April 1998 the Supreme Administrative Court dismissed both the applicant's request for an oral hearing and his appeal as a whole. As regards the medical grounds invoked, the Court noted that the applicant would probably not, in Uganda, receive the same level of treatment against his illness as in Finland. His state of health would therefore possibly deteriorate and his illness could accelerate towards the AIDS stage. Considering, however, the information available on the applicant's current state of health, his deportation would not constitute inhuman or degrading treatment proscribed by Article 3 of the Convention. As regards the applicant's alleged background in Rwanda, the Supreme Administrative Court did not find his submissions credible. His allegation that the deportation would discriminate against him on the basis of his race and colour had not been substantiated and the Supreme Administrative Court found no indication of treatment contrary to Article 14 of the Convention.

2. The disclosure of the Supreme Administrative Court's decision

Following the judgment of the European Court of Human Rights in Z v. Finland (Eur. Court HR, judgment of 25 February 1997, Reports of Judgments and Decisions, 1997-I) the Chancellor of Justice (valtioneuvoston oikeuskansleri, justitiekansler i statsrådet) requested a reopening of the criminal proceedings against the present applicant in so far as the Court of Appeal had ordered that its case-file, including notably Z's medical records, should be kept confidential for a period of ten years.

In its decision of 19 March 1998 the Supreme Court (korkein oikeus, högsta domstolen) acceded to this request and ordered that the case-file should be kept confidential for a period of forty years. This conclusion was reached on the grounds that the Act on the Publicity of Court Proceedings (laki oikeudenkäynnin julkisuudesta, lag om offentlighet vid rättegång 945/1984) had been applied in a manifestly incorrect manner, regard being had to the requirements of Article 8 of the Convention. Furthermore, the Supreme Court, apparently ex officio, ordered that during this forty-year period the names and personal identity numbers of the parties to the proceedings should not be revealed to outsiders. Z had not been considered a party to the proceedings.

In its decision of 17 April 1998, dismissing the applicant's appeal against the deportation order, the Supreme Administrative Court referred to the applicant by name and mentioned, inter alia, his HIV infection. Reference was also made to the applicant's conviction of repeated violent offences as well as to his sentence. In the copy of

the decision which was made available to the public the information about the applicant's state of health appearing in the medical opinion of 21 January 1998 had been deleted.

According to the applicant, the Supreme Administrative Court's decision was widely reported in media.

3. The detention proceedings

On 3 April 1998 the applicant was released on parole but, in pursuance of section 46 of the Aliens Act, immediately detained by the Helsinki District Court (käräjäoikeus, tingsrätten) with a view to his deportation. In such a matter the District Court may be composed of a single judge and shall review the detention at least every two weeks (sections 48 and 51). On 14 April 1998 the applicant's detention was reviewed by Judge H, who had also been presiding over the criminal trial against him in 1992.

COMPLAINTS

1. The applicant complains that his deportation to Uganda would result in an irrevocable deterioration of his state of health and subject him to inhuman and degrading treatment in violation of Article 3 of the Convention. He is dependent not on the basic AZT medication against HIV/AIDS but on an antiretroviral therapy combining two drugs (and in the future most likely three). Because of the limited availability and the high cost of such medication in Uganda (or Rwanda if he were to be returned by Uganda to that country) he would no longer receive adequate treatment against his illness. Furthermore, he would lack socio-psychological support, as he has no relatives or friends either in Uganda or Rwanda. He also refers to his desertion from the Rwandan Patriotic Forces which would subject him to a risk of punishment and other reprisals.

2. The applicant also complains that his deportation would violate his rights under Article 8 of the Convention, as he would be separated from his friends and acquaintances in Finland.

3. Under Article 8 the applicant also complains that the Supreme Administrative Court's disclosure to the public of his identity and illness, as mentioned in its decision of 17 April 1998, failed to respect his private life within the meaning of Article 8 of the Convention.

4. The applicant furthermore complains that his deportation would also discriminate against him on the basis of his race and thus violate Article 14 of the Convention.

5. The applicant also complains of the denial of an oral hearing before the Supreme Administrative Court. He invokes Article 6 of the Convention and Article 1 (c) of Protocol No. 7.

6. Finally, the applicant complains that Judge H's review of his detention for deportation purposes was not in accordance with Article 6 of the Convention, as the same judge had presided over the trial against him in 1992.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 April 1998 and registered on 24 April 1998.

On 20 April 1998 the President of the Commission decided to indicate to the respondent Government, in accordance with Rule 36 of the Rules of Procedure, that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Commission not to deport the applicant to Uganda until the Commission had been able to examine the application no later than 24 April 1998.

On 24 April 1998 the Commission decided to communicate to the respondent Government the applicant's complaint under Article 3 of the Convention concerning his forthcoming deportation to Uganda as well as his complaint under Article 8 concerning the disclosure to the public of the Supreme Administrative Court's decision of 17 April 1998. The Commission also prolonged the above-mentioned indication under Rule 36 until 29 May 1998.

The Government's written observations were submitted on 13 May 1998. The applicant replied on 25 May 1998. Additional observations were submitted by the applicant on 27 and 28 May 1988 and by the Government on 28 May 1998.

On 29 May 1998 the Commission granted the applicant legal aid.

THE LAW

1. The applicant complains that, given his HIV infection, his deportation to Uganda would result in an irrevocable deterioration of his state of health and subject him to inhuman and degrading treatment in violation of Article 3 (Art. 3) of the Convention. If removed from Uganda to Rwanda, his desertion from the Rwandan Patriotic Forces would subject him to a risk of punishment and other reprisals.

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

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

The Government consider the complaint "ill-founded". In a previous case (No. 2267/1997) the Supreme Administrative Court indeed quashed a deportation order issued in respect of a person in an advanced stage of AIDS. The Government recall, however, that on 21 January 1998 the applicant's state of health was considered good and his infection had not shown any significant symptoms. An interruption of his medication would not yet trigger off the AIDS stage of the infection. In any case, so the Government argue, the progression of the applicant's illness cannot be predicted with certainty, given the individual differences. His medical condition is much better than that of applicant D, who was expected to die of AIDS within a year from the moment his application was examined by the European Court of Human Rights (see Eur. Court HR, judgment of 2 May 1997, Reports of Judgments and Decisions, 1997-III, pp. 784-785, para. 15).

The Government concede that in Uganda the applicant would probably not receive the same level of treatment against his illness as in Finland. This could lead to an acceleration of his illness, if he were to be deported. However, the receiving State has taken measures in order to improve the treatment of HIV patients. To that end it is committed to the extensive campaign by the United Nations (UNAIDS) which requires, inter alia, that medication be provided at a reduced price. Uganda has also reserved hospital beds for HIV patients and the first specialised hospital will be opened in June 1998.

Finally, the Government recall that the applicant never sought asylum with reference to his alleged activities against the Rwandan Government. Up to the appeal proceedings before the Supreme Administrative Court the applicant consistently indicated that he was a citizen of Uganda and did not seek protection against his possible forced return to Rwanda. The Government therefore consider the allegation that he could be returned to the latter country to lack credibility. Even if he were to be returned to Rwanda, the prison sentence which he might face in that country is not in itself sufficient for establishing a real risk that he would be treated contrary to Article 3 (Art. 3) of the Convention.

The applicant submits that the situation in respect of care facilities for AIDS patients is notoriously out of control in Uganda. The authorities give priority to preventive measures and treatment of mothers and children. As a social outcast the applicant would have no means of receiving proper care, whether medical or psychological. His return to Uganda would therefore have a decisive negative impact on his chances of survival.

Finally, as for the alleged risk of ill-treatment due to his

background in Rwanda, the applicant contends that immediately after requesting a visa to enter Finland he began his involvement with the Rwandan Patriotic Forces which lasted about two months. On account of his desertion from that movement he could face up to ten years in prison as well as reprisals further endangering his life and limb. This risk should also be assessed against his background as a Tutsi.

The Commission recalls at the outset that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. The Commission recalls that Article 3 (Art. 3) prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Its guarantees therefore apply irrespective of the reprehensible nature of the conduct of the person in question (see the above-mentioned D v. the United Kingdom judgment, pp. 791-792, paras. 46-47).

The Convention organs are not prevented from scrutinising an applicant's claim under Article 3 (Art. 3) where the source of the risk of proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, do not in themselves infringe the standards of that Article. In any such contexts the Commission must subject all the circumstances surrounding the case to a rigorous scrutiny, especially the applicant's personal situation in the deporting State (ibid., pp. 792-793, paras. 49-50; No. 23634/94, Dec. 19.5.94, D.R. 77-A, p. 133).

(a) Against this background the Commission will first determine whether the applicant's deportation to Uganda would be contrary to Article 3 (Art. 3) in view of his present medical condition.

In the case of D v. the United Kingdom the Court found that the applicant's return to St. Kitts would violate Article 3 (Art. 3), taking into account his medical condition. The Court noted that the applicant was in the advanced stages of AIDS. An abrupt withdrawal of the care facilities provided in the respondent State together with the predictable lack of adequate facilities as well as of any form of moral or social support in the receiving country would hasten the applicant's death and subject him to acute mental and physical suffering. In view of those very exceptional circumstances, bearing in mind the critical stage which the applicant's fatal illness had reached and given the compelling humanitarian considerations at stake, the implementation of the decision to remove him to St. Kitts would amount to inhuman treatment by the respondent State in violation of Article 3 (Art. 3). The Court nevertheless emphasised that aliens who have served their prison sentences and are subject to expulsion cannot in principle claim any entitlement to remain on the territory of a Contracting State in order to continue to benefit from medical, social or other forms of

assistance provided by the expelling State during their stay in prison (see pp. 793-794, paras. 51-54 of the judgment).

In a recent application the Commission has found that the deportation to the Democratic Republic of Congo (formerly Zaire) of a person suffering from a HIV infection would violate Article 3 (Art. 3), where the infection had already reached an advanced stage necessitating repeated hospital stays and where the care facilities in the receiving country were precarious (B.B. v. France, Comm. Report 9.3.98, pending before the Court).

In the light of all the material before it the Commission finds that the present applicant's illness has not yet reached such an advanced stage that his deportation would amount to treatment proscribed by Article 3 (Art. 3), taking also into account the conditions in Uganda.

(b) The Commission will next determine whether there is a real risk that the applicant's deportation to Uganda would be contrary to Article 3 (Art. 3) in view of his alleged activities within the Rwandan Patriotic Forces.

The Commission recalls that the protection afforded by Article 3 (Art. 3) is equally absolute when the person to be removed from a respondent State would run a real risk of treatment contrary to that provision in the light of his or her previous activities in the receiving State (see, e.g., Eur. Court HR, Chahal v. the United Kingdom judgment of 15 November 1996, Reports of Judgments and Decisions, 1996-V, pp. 1831 et seq.).

The Commission notes that the allegation relating to the applicant's activities within the Rwandan Patriotic Forces was first made in the proceedings before the Supreme Administrative Court in which he sought to have the deportation order quashed. It can be left open whether the applicant has, in respect of this aspect of the complaint, exhausted domestic remedies as required by Article 26 (Art. 26) of the Convention. This aspect is at any rate also manifestly ill-founded, as no evidence has been adduced in respect of the applicant's purported activities in Rwanda and the risk that he might be removed from Uganda to that country and there face ill-treatment. Substantial grounds have thus not been adduced for believing that the applicant would, if deported, run a real risk of being treated contrary to Article 3 (Art. 3) in view of his alleged activities against the Rwandan Government.

(c) Accordingly, there is no indication that the applicant's deportation to Uganda would violate Article 3 (Art. 3) of the Convention on either of the two grounds invoked.

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

2. The applicant also complains that his deportation would violate his rights under Article 8 (Art. 8) of the Convention, as he would be separated from his friends and acquaintances in Finland.

Article 8 (Art. 8) provides, as far as relevant, as follows:

"1. Everyone has the right to respect for his private and family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that the expulsion of a person from a country in which close members of his family live may amount to an unjustified interference with his right to respect for his family life within the meaning of Article 8 (Art. 8) (see, e.g., Eur. Court HR, Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, pp. 19-20, paras. 43-46). Whether removal of a family member from a Contracting State is incompatible with the requirements of Article 8 (Art. 8) will depend on a number of factors such as whether there are insurmountable obstacles to taking up family life in another country (cf., e.g., No. 11333/85, Dec. 17.5.85, D.R. 43, p. 227).

The Commission notes that the applicant is divorced and has no children in Finland. There is thus no indication that his deportation would interfere with his "family life" within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. Even assuming that his deportation would interfere with his "private life" in the light his relationships with friends and acquaintances in the respondent State, this complaint is in any case inadmissible for the reasons below.

It has not been argued that the applicant's deportation would not be "in accordance with the law" or that it would not pursue a legitimate aim such as the prevention of crime or the protection of the rights and freedoms of others. The necessity criterion in Article 8 para. 2 (Art. 8-2) implies the existence of a pressing social need and, in particular, requires that the measure must be proportionate to the legitimate aims pursued. It has to be determined whether a fair balance has been struck between the applicant's right to respect for his

private life and the legitimate interests of the State which furthermore must be afforded a certain margin of appreciation (see, e.g., Eur. Court HR, Boughanemi v. France judgment of 24 April 1996, Reports of Judgments and Decisions, 1996-II, pp. 609-610, paras. 41-42).

The Commission recalls that the applicant has been convicted of a number of serious offences committed in Finland, including five counts of attempted manslaughter, and sentenced to over eleven years' imprisonment. Taking into account the respondent State's margin of appreciation, the Commission concludes that the Finnish authorities have reasonably been entitled to pursue the above-mentioned legitimate aim by ordering the applicant's deportation after having struck a fair balance between the relevant interests. The assumed interference with the applicant's right to respect for his private life can therefore be considered justified under Article 8 para. 2 (Art. 8-2) of the Convention. Accordingly, there is no appearance of a violation of that provision on the point in question.

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

3. Under Article 8 (Art. 8) the applicant also complains that the Supreme Administrative Court's disclosure to the public of his identity and illness, as mentioned in its decision of 17 April 1998, failed to respect his private life within the meaning of Article 8 (Art. 8) of the Convention.

The Government submit that this complaint is inadmissible for non-exhaustion of domestic remedies. The applicant never requested that his name and the information relating to his health be kept confidential by the Supreme Administrative Court. Had he made such a request, the Court would have had to examine the matter. In the alternative, the Government consider the complaint manifestly ill-founded, as the Supreme Administrative Court in fact took into account the need to keep the medical information pertaining to the applicant confidential. In the circumstances of the case the fact that the applicant's illness was mentioned in general terms in the Supreme Administrative Court's decision was not contrary to Article 8 (Art. 8).

The applicant concedes that he did not request that any part of the Supreme Administrative Court's decision be ordered to be kept confidential. However, referring to the highly intimate nature of his case, he did request an oral hearing, following which he would have sought to have most of the material protected against publicity. Moreover, in his rejoinder to the Supreme Administrative Court he argued that he had already been stigmatised by the negative publicity surrounding his conviction and sentence. It must have been clear from

the terms of those submissions that he did not consent to any further publicity. Instead of inviting him to finalise his pleadings in writing the Supreme Administrative Court dismissed his request for an oral hearing in its decision regarding the merits of his appeal. He was therefore prevented from further substantiating his pleadings on the point of publicity.

The applicant furthermore argues that in light of the Supreme Court's decision of 19 March 1998 pertaining to the underlying criminal proceedings against him, he had no reason to suspect that his identity or personal identity number would be disclosed to the public in the deportation proceedings. The Supreme Court's decision ordered that the names and personal identity numbers of the parties to the criminal proceedings should not be disclosed to the public. As this decision must also be respected by other courts, the applicant could legitimately expect the Supreme Administrative Court to consider ex officio the need for confidentiality also in the deportation proceedings.

The Commission considers that it is not required to decide whether or not the facts alleged by the applicant in respect of this grievance disclose any appearance of a violation of the provision invoked as, under Article 26 (Art. 26) of the Convention, it may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law.

It is true that in a State where the Convention is directly applicable (such as Finland) the domestic courts are competent to examine of their own motion whether the Convention has been complied with. The Commission recalls, however, that this possibility does not absolve an applicant from the obligation of raising the relevant complaint at least in substance before those courts (see, e.g., Eur. Court HR, Cardot v. France judgment of 19 March 1991, Series A no. 200; No. 11244/87, Dec. 2.3.87, D.R. 55, p. 98; No. 11425/85, Dec. 5.10.87, D.R. 53, p. 76; No. 11921/86, Dec. 12.10.88, D.R. 57, p. 81; No. 7367/76, Dec. 10.3.77, D.R. 8, p. 185).

The Commission notes that in his submissions to the Supreme Administrative Court the applicant failed to request that any part of the Supreme Administrative Court's decision should be kept confidential. His request for an oral hearing cannot be construed as such a request. Nor could he take it for granted that he would be given an opportunity to submit such a request at a later stage. Moreover, given that the Supreme Court's decision of 19 March 1998 was not made in the deportation proceedings but by a different tribunal in the context of a reopening of the criminal proceedings against him, he was not absolved from his duty under Article 26 (Art. 26) to request confidentiality in an unequivocal manner before the Supreme Administrative Court.

An examination of the application does not therefore disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the remedy at his disposal.

It follows that this complaint must be rejected pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

4. The applicant furthermore complains that his deportation would also discriminate against him on the basis of his race and thus violate Article 14 (Art. 14) of the Convention. This provision reads, in so far as relevant, as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... race, colour, ..."

The Commission finds no indication that the deportation order in respect of the applicant was issued and upheld on discriminatory grounds. Nor is there any indication that the enforcement of the deportation order would contain discriminatory elements. Accordingly, there is no indication of any violation of Article 14 (Art. 14), read in conjunction with any of the other provisions invoked in respect of the applicant's deportation.

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

5. The applicant also complains of the denial of an oral hearing before the Supreme Administrative Court. He invokes Article 6 (Art. 6) of the Convention which guarantees, inter alia, the right to a fair and public hearing by an independent and impartial tribunal in the determination of someone's civil rights and obligations.

The applicant also invokes Article 1 (c) of Protocol No. 7 (P7-1-c) which guarantees that an alien lawfully resident in the territory of a Contracting State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law. He or she shall be allowed, inter alia, to be represented for these purposes before the competent authority.

(a) The Commission recalls its constant case-law according to which Article 6 (Art. 6) of the Convention has no application to asylum, expulsion, deportation proceedings or the like (see, e.g., No. 8118/77, Dec. 19.3.81, D.R. 25, p. 105, and No. 9990/92, Dec. 15.5.84, D.R. 39, p. 119).

(b) The Commission furthermore notes that when the deportation proceedings began the applicant was no longer in possession of a residence permit and thus not "lawfully resident" in the territory of the respondent State within the meaning of Article 1 (c) of Protocol No. 7 (P-1-c). This provision is therefore also inapplicable in the instant case.

(c) It follows that this complaint must be rejected as being incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2).

6. Finally, the applicant complains that Judge H's review of his detention for deportation purposes was not in accordance with Article 6 (Art. 6) of the Convention, as the same judge had presided over the trial against him in 1992.

The Commission finds that Judge H's decision to prolong the applicant's detention for deportation purposes did not involve any determination of his "civil rights or obligations" or of any "criminal charge" against him (cf. Keus v. the Netherlands, Comm. Report 4.10.89, paras. 82-83, Eur. Court HR, Series A no. 185-C, pp. 80-81; No. 10600/83, Dec. 14.10.85, D.R. 44, pp. 155, 164). Accordingly, Article 6 (Art. 6) of the Convention is not applicable in respect of this complaint either.

It follows that this complaint must also be rejected 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

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| M. de SALVIA | S. TRECHSEL |
| Secretary | President |
| to the Commission | of the Commission |