

AS TO THE ADMISSIBILITY OF

Application Nos. 23895/94, 23987/94 and 23988/94
by M.F.K., S. EL ZEINA and A. SALEH
against the Netherlands

The European Commission of Human Rights sitting in private on
28 November 1994, the following members being present:

MM. C.A. NØRGAARD, President
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS

Mr. H.C. KRÜGER, 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 28 March 1994 by
M.F.K. against the Netherlands and registered on 15 April 1994 under
file No. 23895/94; the application introduced on 20 April 1994 by Samer
EL ZEINA against the Netherlands and registered on 27 April 1994 under
file No. 23987/94; and the application introduced on 20 April 1994 by
Abdo SALEH against the Netherlands and registered on 27 April 1994
under file No. 23988/94;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of
the Commission;
- the observations submitted by the respondent Government on
13 June 1994 and the observations in reply submitted by the
applicants on 13 September 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicants are Lebanese nationals and they were all born in 1969. The first applicant is married to the third applicant's sister; the second and third applicants' wives are sisters. The first applicant resides at Goes, the Netherlands, and the second and third applicants reside at Zetten, the Netherlands. Before the Commission they are represented by Mr. P. Bouman, a lawyer practising in Helmond, the Netherlands.

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

The applicants lived in Sidon in the south of Lebanon and, between 1983 and 1985, worked as bodyguard and driver for Ahmad Zaarour who was adviser to the then President of the Lebanese Parliament, Kamal Al-Assaad. Mr. Al-Assaad supported and actively sought a peace agreement with Israel. The third applicant, who was a cousin of Mr. Zaarour, worked full time for the latter, whereas the first and second applicants only worked for him on a free lance basis.

After the Israeli troops had left Lebanon in 1985, the applicants left Sidon for a few months because they feared reprisals from anti-Israel militia which might consider them collaborators. The first and third applicants went to stay with family in Beirut, the second applicant went to family in Tripoli.

On his return to Sidon the first applicant was arrested and detained by the Al-Shaab Al-Nassiri militia on suspicion of collaboration with the Israelis. Following an intervention by the militia's leader, Mustafa Saad, he was released after ten days. He subsequently joined the Al-Shaab Al-Nassiri militia and worked for them until 1990.

The second applicant also joined the anti-Israel Al-Shaab Al-Nassiri militia on return to Sidon to avoid suspicion of collaboration. He worked for them until 1987.

Because the third applicant is a Shiite Muslim and not a Sunni Muslim like the first and second applicants, he joined the Amal militia to avoid suspicion of collaboration. However, although he worked for them, they arrested him in 1986 and detained him for 22 days, during which he was questioned about his collaboration with Israel and he was allegedly tortured. He was released after an aunt had spoken on his behalf to Amal leader Nabih Berri, whom she knew. He stopped working for Amal in 1986.

In 1992 Kamal Al-Assaad returned to Lebanon, which he had left in 1987, to take part in the parliamentary elections. At the request of Ahmad Zaarour all three applicants actively supported Mr. Al-Assaad in his election campaign in the south of Lebanon. The third applicant printed pamphlets, pictures and banners and all three applicants were involved in the publicity campaign. They also visited people, whose names had been supplied by Mr. Zaarour, to persuade them to vote for Mr. Al-Assaad and they helped organise transport for people in order to enable them to attend election rallies.

In September 1992 Mr. Al-Assaad lost the elections and left for France.

In December 1992 the third applicant's father told him that he had been informed by a cousin, who was a bodyguard for the Hezbollah leader, that he had seen the third applicant's name on a list of people wanted by Hezbollah because of suspected collaboration with Israel. The third applicant stayed at home for two weeks in his house in a village outside Sidon, in an area where Hezbollah are not active. When nothing happened he went back to work in Sidon but after two days he noticed his car was being followed. After another warning from his cousin that the situation was very serious, he went to Beirut.

The third applicant's brother arranged for him and his wife to leave the country. On 22 April 1993, carrying forged passports, they travelled by aeroplane to the Czech Republic.

On 28 April 1993 the second applicant was arrested by Hezbollah and detained for two days, during which he was questioned about the whereabouts of the third applicant, whom Hezbollah wanted to find and kill. During questioning the second applicant was allegedly beaten. As at that time he was unaware of the third applicant's flight, the second applicant denied all knowledge of his whereabouts. Upon his release he was given 24 hours to find the third applicant.

The second applicant went to the third applicant's parents where he was informed of what had happened. The third applicant's brother then arranged for the second applicant and his wife to leave the country in the same way as the third applicant. They joined the third applicant and his wife in the Czech Republic on 6 May 1993 and on 10 May 1993 they travelled together by car to the Netherlands and applied for asylum and a residence permit on 16 June 1993.

At the time of the second applicant's arrest by Hezbollah the first applicant was in Syria on a business trip. Upon his return on 16 May 1993 he learned that Hezbollah were looking for him and he decided to leave the country. He first went to Beirut with his wife and after also obtaining the assistance of the third applicant's brother, they travelled to the Czech Republic on 28 May 1993. After a few days they travelled to the Netherlands, where they arrived on 4 June 1993 and where they applied for asylum and a residence permit on 21 June 1993.

The applicants and their wives were interviewed by officials of the Ministry of Justice (Ministerie van Justitie). On 30 June 1993 the first applicant's wife stated, inter alia, that before leaving Lebanon she and her husband stayed in an area of Beirut where Hezbollah have no influence.

On 12 July 1993 the Deputy Minister of Justice (Staatssecretaris van Justitie) rejected the applicants' requests for asylum. The Deputy Minister held, inter alia, that the first applicant could not be considered a refugee, as it had not been shown that he was wanted by Hezbollah, since, according to the second applicant's statements to the Dutch authorities, Hezbollah were solely interested in finding the third applicant. With regard to the second applicant the Deputy Minister observed that Hezbollah could not have been seriously interested in him, given that they released him after only two days. The Deputy Minister found that the third applicant's statement to the Dutch authorities concerning Hezbollah's interest in him lacked credibility as it differed from his wife's statement.

With regard to all three applicants the Deputy Minister was of the opinion that the situation in Lebanon was such that they could reside in a part of the country where Hezbollah have no influence. The Deputy Minister found no other basis on which the applicants could be granted a Dutch residence permit.

On 6 August 1993 the applicants requested the Deputy Minister to review (herziening) the decision of 12 July 1993. This request was denied suspensive effect on 30 August 1993 for the second and third applicants and on 6 September 1993 for the first applicant; the applicants were ordered to leave the Netherlands within fourteen days.

The applicants subsequently started summary proceedings (kort geding) before the President of the Regional Court (Arrondissementsrechtbank) of The Hague, requesting an injunction on their expulsion until their request for revision had been decided by the Deputy Minister.

On 29 October 1993 the President of the Regional Court rejected the second and third applicants' request for an injunction. He considered the situation in Lebanon was not such that all Lebanese should be regarded as refugees. The President noted that neither applicant had been able to produce any kind of evidence to substantiate their statements. With regard to the second applicant the President observed that his activities during Mr. Al-Assaad's election campaign had been fairly limited in duration as well as content.

On 24 November 1993 the President of the Regional Court also rejected the first applicant's request for an injunction. The President observed that the first applicant's fear was not based on objective data but on hearsay, whereas his wife had stated to be unaware of the fact that her husband was wanted by Hezbollah.

In all three summary proceedings the President of the Regional Court considered that, even assuming the applicants were wanted by Hezbollah, they could reside in a part of Lebanon where Hezbollah have no influence. The President, finally, did not find it established that the applicants, if expelled, would run a real risk of exposure to treatment contrary to Article 3 of the Convention and found no other reason for granting the requested injunctions.

In the first applicant's summary proceedings the President of the Regional Court refused for procedural reasons to consider a message by telefax dated 20 November 1993 by a Mr. Samir Zaarour, the son of Ahmad Zaarour, who, until 1985, had worked for the Lebanese parliament with its President Mr. Al-Assaad. Samir Zaarour was granted asylum in Switzerland. The message contains information about the applicants' activities at the time they were working for Mr. Al-Assaad in the eighties and about the third applicant in particular, who was apparently sent on secret missions by Samir Zaarour. The message also expresses Samir Zaarour's conviction that the applicants would face serious problems in Lebanon.

The applicants' appeals against the President's decisions are still pending but have no suspensive effect on their expulsion.

The first applicant has also submitted an undated written declaration by Mr. Mustafa Saad, stating that the first applicant has left Lebanon for security and political reasons and his return is at this moment impossible.

COMPLAINTS

The applicants complain that the Netherlands authorities, by expelling them to Lebanon, would expose them to a serious risk of being killed or ill-treated by Hezbollah because this organisation suspects them of collaboration. In this respect they invoke Articles 2 and 3 of the Convention.

The applicants further allege a breach of Articles 9 and 10 of the Convention. They are of the opinion that they will not be able to speak freely about their political opinions or about their opinions regarding the civil war without serious consequences.

They finally submit that since their cases were not judged on the merits in Dutch summary proceedings and since they are not allowed to await the outcome in the Netherlands of either their asylum proceedings or their pending appeal against the refusal of an injunction, they are denied an effective remedy within the meaning of Article 13 in conjunction with Article 6 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The applications were introduced on 28 March and 20 April 1994 respectively and registered on 15 April and 27 April 1994 respectively.

In the case of the first applicant, the Commission decided on 15 April 1994 to apply Rule 36 of the Commission's Rules of Procedure until the end of its next session and the application was subsequently communicated to the Government, inviting them to submit their observations on the admissibility and merits of the application. On 27 April 1994 the President of the Commission decided to apply Rule 36 and to communicate the applications with regard to the second and third applicants.

The application of Rule 36 in the cases of all three applicants was prolonged on 19 May, 6 July, 8 September and 21 October 1994.

The Government's submissions were submitted on 13 June 1994 and the applicants' observations in reply were submitted, after an extension of the time-limit, on 13 September 1994.

THE LAW

1. The applicants complain that their expulsion to Lebanon amounts to inhuman or degrading treatment contrary to Article 3 (Art. 3) of the Convention, which reads:

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

They also invoke Article 2 para. 1 (Art. 2-1) of the Convention which provides:

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

The Government submit that the applicants have been completely unable to substantiate their claim that upon return to Lebanon they would be subjected to torture or to inhuman or degrading treatment. They further submit, following an investigation into the situation in Lebanon by the Netherlands diplomatic mission concerned and a comparison made by the Ministry of Foreign Affairs (Ministerie van Buitenlandse Zaken) of the findings of this investigation with other information derived from both governmental and non-governmental sources, that it appears that there are alternative places where the applicants could settle in Lebanon, where the Lebanese Government could offer effective protection from any illegal action on the part of Hezbollah.

The applicants submit in the first place that it cannot be required of refugees to provide evidence of an alleged fear of persecution. They are of the opinion that their motives for flight are consistent and that they have made their fear of persecution sufficiently plausible. In this respect they refer to written statements made on their behalf by Lebanese politicians.

The applicants deny that it would be possible for them to settle elsewhere in Lebanon. They refer to a letter of Amnesty International of 15 March 1994, in which it is stated:

<TRANSLATION>

"Hezbollah are much more than a resistance movement in the south of the country. They are also an important political force in Lebanon and have at their disposal a semi-governmental civil service in social, educational and legal fields. In late August 1992 Hezbollah took part in parliamentary elections resulting in the Hezbollah-faction becoming the largest faction in the parliament. [...] Hezbollah have always been guilty of serious

violations of human rights. Persons considered deserters by Hezbollah therefore run the risk of becoming a victim of arrest, torture and execution."

The Commission has constantly held that the right of an alien to reside in a particular country is not as such guaranteed by the Convention. However, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious fear of treatment contrary to Articles 2 and 3 (Art. 2, 3) of the Convention in the country to which the person is to be expelled (cf. No. 10564/83, Dec. 10.12.84, D.R. 40 p. 262; *mutatis mutandis* Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 32 ff., para. 81 ff.).

In the present case the applicants have, in the first place, referred to their position as persons regarded as collaborators with Israel by Hezbollah. They claim that those suspected of collaboration face arrest, torture and/or execution by Hezbollah.

The Commission recalls that the mere possibility of ill-treatment on account of the unsettled general situation in a country is in itself insufficient to give rise to a breach of Article 3 (Art. 3) of the Convention (cf. Eur. Court. H.R., *Vilvarajah and others* judgment of 30 October 1991, Series A no. 215, p. 37, para. 111).

The Commission observes that the applicants' allegation with regard to their being wanted by Hezbollah has remained unsubstantiated. Although the Commission can in general agree with the applicants that people threatened with expulsion should not be required to provide absolute proof that they, if expelled, will be exposed to a treatment contrary to Articles 2 and 3 (Art. 2, 3) of the Convention, it finds that their submissions do not show substantial grounds for believing that they would face a real risk of treatment contrary to Articles 2 and 3 (Art. 2, 3) of the Convention.

In this respect the Commission notes that the written statements made on behalf of the applicants by Lebanese politicians are very vague. Moreover, Mr. Samir Zaarour appears to have left Lebanon in or shortly after 1985, whereas the applicants' alleged problems stem mainly from their activities during Mr. Al-Assaad's election campaign in 1992.

It also appears that the first applicant has had no indication of being wanted by Hezbollah other than his assumption that if the third applicant appeared on a Hezbollah list of suspected collaborators then the same would apply to him. With regard to the second applicant the Commission recalls that he was released after two days of detention by Hezbollah, allegedly on the condition that he would lead them to the third applicant. It appears therefore unlikely that Hezbollah are directly interested in the second applicant.

The Commission observes that the third applicant seems to have been the politically most active of the three applicants. His name is the only one to have allegedly been seen to feature on a Hezbollah list of suspected collaborators. However, the Commission fails to see why the applicants cannot settle in a part of Lebanon where Hezbollah have no influence. In this respect the Commission has had regard to the statement of the first applicant's wife to the Dutch authorities that she and her husband stayed in Beirut for a while in an area where Hezbollah have no influence and to the Government's submission that an investigation has indicated that there are such areas. This conclusion is not disputed in the letter of Amnesty International of 15 March 1994 submitted by the applicants.

In these circumstances the Commission considers that the grounds the applicants have presented in support of their claim are not sufficient for the conclusion that their expulsion to Lebanon would

constitute a violation of Article 3 (Art. 3) of the Convention.

The Commission further finds there is no appearance of a violation of Article 2 (Art. 2) of the Convention.

The Commission, therefore, finds that the applications, in this respect, are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants further complain that their expulsion to Lebanon would violate their rights under Articles 9 and 10 (Art. 9, 10) of the Convention, as in Lebanon they cannot freely express their political opinions.

Article 9 (Art. 9) of the Convention guarantees the right to freedom of thought, conscience and religion. Article 10 (Art. 10) of the Convention guarantees the right to freedom of expression.

The Commission is of the opinion that the applicants' expulsion raises no issue under these provisions.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicants finally complain that they have been denied an effective remedy within the meaning of Article 13 in conjunction with Article 6 (Art. 13+6) of the Convention.

Article 6 (Art. 6) of the Convention, insofar as relevant, reads:

"1. In the determination of his civil rights and obligations (...) everyone is entitled to a fair and public hearing (...) by an independent and impartial tribunal established by law. (...)"

Article 13 (Art. 13) of the Convention, in so far as relevant, provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority (...)."

As regards Article 6 (Art. 6) of the Convention the Commission recalls that, according to its constant case-law, proceedings concerning political asylum, a request for a residence permit or expulsion of an alien do not involve a determination of civil rights and obligations or of a criminal charge (cf. No. 13162/87, Dec. 9.11.87, D.R. 54 p. 211; No. 9285/81, Dec. 6.7.82, D.R. 29 p. 205; No. 9990/82, Dec. 15.5.84, D.R. 39 p. 119).

The Commission finds, therefore, that this complaint must be rejected as being incompatible *ratione materiae* with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

According to the constant case-law of the Convention organs it is necessary for the applicability of Article 13 (Art. 13) of the Convention to have an arguable claim in terms of the Convention (Eur. Court. H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, para. 52). The Commission considers that the applicants cannot be said to have had an arguable claim under Article 6 (Art. 6) of the Convention and, in any case, noting that the President of the Regional Court in summary proceedings had regard to their complaint under Articles 2 and 3 (Art. 2, 3) of the Convention, finds that these summary proceedings constitute an effective remedy within the meaning of Article 13 (Art. 13) of the Convention.

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

For these reasons, the Commission, unanimously,

DECIDES TO JOIN APPLICATION Nos. 23895/94, 23987/94 AND 23988/94,

and, by a majority,

DECLARES THE APPLICATIONS INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)