

AS TO THE ADMISSIBILITY OF

Application No. 27224/95
by R.O.
against Sweden

The European Commission of Human Rights sitting in private on
8 March 1996, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

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 9 January 1995 by
R.O. against Sweden and registered on 3 May 1995 under file No. 27224/95;

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 2 February 1996 and the observations in reply submitted by
the applicant on 6 March 1996;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Ugandan citizen, born in 1971 in the district of
Soroti in Uganda. He is currently in hiding in Sweden where he has
applied for political asylum. Before the Commission he is represented by
Gunnel Stenberg, a lawyer practising in Stockholm.

A. The particular circumstances of the case

The applicant left school in 1990 and started to work for the Ugandan Government as an informer. The reason for taking this job was that he wanted to be in a position where he could obtain information regarding Government activities aimed at the UPC (the Ugandan People's Congress) and the people of his home district.

On 2 September 1991, the applicant and another man were sent on a reconnaissance mission along the road to Soroti in order to see if the road was clear for a transport of arms. He knew that the arms in question were to be used against his people, and therefore transmitted the information about the transport to his organisation. The transport was ambushed and the weapons taken.

On 13 September 1991, somebody warned the applicant that soldiers were looking for him. The following day he left for his home village and spent the night at a friend's house. On the morning of 15 September they heard shots coming from the applicant's home. When he arrived there, he saw his father, mother and youngest sister lying dead. A witness, who had been hiding nearby, told the applicant that men in uniform had asked for him. When his parents denied having seen him, the uniformed men shot and killed them.

The applicant immediately left Uganda for Kenya. From there he continued to Tanzania, and from there to Lusaka in Zambia, where his elder brother had taken refuge before him. The brothers stayed in Zambia until the end of January 1992. Due to a change in Government in Zambia their residence permits were not renewed. Instead, they were taken by the Zambian authorities and kept in detention for two days. They were only set free because Mr. Okiror E. Oumo, the former ambassador of Uganda to Zambia, intervened and managed to help them to go to Kenya, where they eventually were allowed to stay for a month. They applied for asylum in Kenya but were refused and they therefore had to return to Uganda.

They entered Uganda via the airport at Entebbe on 1 March 1992. Having passed the passport control they were immediately arrested suspected of spying for the former Ugandan President, Milton Obote. They were taken in army jeeps to the Luzira prison.

In the prison the applicant and his brother were subjected to torture while being interrogated as to why they had been in Zambia, and with whom they had made contact there. The applicant's brother died as a result of the torture on 20 April 1992. The applicant was subjected to the following treatment: he was cut in the back with a sharp instrument which was connected to an electric source. A sharp metal rod was jabbed into his stomach and on his legs. He was also hit with fists to his head and face. He was kicked and hit with a blunt instrument against his legs. He was tied up hand and foot and, lying on the ground, he was forced to drag himself along using his knuckles.

At the end of June 1992 the applicant managed to escape from the Luzira prison. His brother-in-law was an officer working at the prison. He was married to the applicant's sister who had been active in the UPC and had disappeared. When the applicant's brother died this officer received his passport in the line of duty. He therefore also realised that the applicant was imprisoned there. He had the applicant transferred to another department of the prison and the torture stopped. He gave the applicant a small bottle which contained blood. On 23 June the applicant put the blood in his mouth and pretended to be very ill. He was carried to a waiting car in order to be taken to hospital as a dying man. On the way to the hospital the car stopped and the applicant was put in a coffin. The coffin was taken to a house in Kampala, and there the applicant hid until he left the country. According to the applicant the UPC helped him to leave the country. On 26 June 1992, he was again placed in the coffin. A car took him to the airport and parked in a secluded spot. The applicant was let out of the coffin, given his passport, a

ticket, some money, the address of a Ugandan lady in Sweden and told to board a plane for Brussels immediately. He came to Sweden late at night on the same day.

On arrival in Sweden the applicant first tried to locate the lady to whom he had been referred. He managed to do so and on 29 June 1992 his host took him to the local police station in Olofström, where he was told that he would have to go to the police in Kristianstad in order to apply for asylum there. The applicant went there on the same day, but was told to come back on the following day, 30 June, since there was no interpreter available. On 30 June 1992, the applicant applied for asylum referring to the above. He maintained that if returned to Uganda he would be subjected to imprisonment and torture.

On 19 August 1993, the National Immigration Authority (Statens Invandrarverk, the SIV) rejected the applicant's application for asylum on grounds of lack of credibility. The SIV stated that against his statement that he was wanted by the Ugandan authorities spoke the fact that he had been able to leave the country twice with a national passport. Furthermore, the SIV found that they could not believe the applicant's story about his flight from the Luzira prison because of the serious accusations which he claimed had been made against him. Thirdly, the SIV also referred to the fact that the applicant had been in Sweden for five days before he applied for asylum there.

The applicant appealed against this decision to the Aliens Appeals Board (Utlänningsnämnden). In his appeal to the Aliens Appeals Board he stated that the first time he left Uganda he was taken to the Kenyan border by a friend. The authorities there had obviously not yet received any warrant for his arrest. Before passing the border the applicant stayed for a couple of days with an old man. It was this man who entered the border control while the applicant stayed outside. Therefore he does not know whether or not any bribe was paid. After that the applicant passed the border.

Regarding the second time he left Uganda the applicant stated that he was helped to bypass the passport control by one of the persons accompanying him, who also was an officer in the army. The other person who accompanied him must at the same time have gone through the passport control with the passport. It was only later that the applicant was given his passport, the ticket and the money.

The applicant now also presented new evidence by way of a medical report made by Dr. Sten Jakobsson, at the Stockholm-based Centre for Treatment of Torture Victims (Centrum för tortyrskadade; CTD), dated 8 December 1993. The report concluded that it seemed very likely that the applicant had suffered torture in the manner he had stated, and that thereby he had received the mental and psychological injuries which had been documented. The report also stated that the applicant needed treatment for the injuries sustained and that this kind of treatment would probably not be available in Uganda.

In March 1994 the Aliens Appeals Board went to Uganda on a so-called investigation trip (utredningsresa) in order to clarify the circumstances prevailing there.

On 19 April 1994, the Aliens Appeals Board upheld the decision of the SIV including the reasons for that decision. The Board stated that the UPC was a legal party and also the biggest opposition party in Uganda, and that it is represented in Parliament. The Board therefore found reason to disbelieve the applicant's statements regarding his political activities and his flight from prison. Regarding the medical report by Dr. Jakobsson, the Board found that the findings were based on the applicant's own statements. In view of the Board's findings regarding the applicant's credibility in general, the Board stated that the injuries "could have emerged in some other way".

Subsequent applications were rejected by the Aliens Appeals Board on 12 July, 29 July and 15 August 1994 as they contained no relevant new information.

B. Relevant domestic law and practice

The basic provisions concerning the right of aliens to enter and remain in Sweden are found in the 1989 Aliens Act (Utlänningslagen). The Act also defines the conditions under which an alien can be expelled from the country, as well as procedures related to the enforcement of decisions under the Act. There are normally two instances which deal with matters concerning the right of aliens to enter and to remain in Sweden; the National Immigration Authority (the SIV) and the Aliens Appeals Board. In exceptional cases, the Government may determine whether or not an alien is allowed to remain in Sweden following the referral, by either the SIV or the Aliens Appeals Board, of an application for asylum or a residence permit. This may occur *inter alia* when it is deemed to be of special importance in order to obtain guidelines for the application of the Act.

Under Chapter 8 Section 1 of the Act an alien, who has been refused entry or who shall be expelled, may never be sent to a country where there is firm reason to believe that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture. Nor may he or she be sent to a country where there is no protection from being sent to a country where such danger exists.

Furthermore, an application for a residence permit by an alien, who is to be refused entry or expelled under an order which has acquired legal force, may be granted under Chapter 2 Section 5 b of the Aliens Act if it is based on circumstances which have not previously been examined in the case concerning his or her refusal of entry or expulsion and if (1) the alien was entitled to asylum in Sweden, or (2) it would otherwise be in conflict with humanitarian requirements to enforce the decision on refusal of entry or expulsion.

When considering a residence permit application from an alien, who is to be refused entry or expelled under an order which has acquired legal force, the Aliens Appeals Board may decide, pursuant to Chapter 8 Section 10 of the Act, to stay the enforcement of the order made previously. According to Chapter 8 Section 10 in fine, the SIV may decide to stay enforcement in other situations if there are particular reasons for such a decision.

Finally, under Chapter 8 Section 13 of the Act, the enforcing authority, i.e. a police authority, is to notify the SIV if it finds that enforcement cannot be carried out or that further information is needed. In such a case, the SIV may decide on the question of enforcement or take such other measures as are necessary.

COMPLAINTS

The applicant complains, under Article 3 of the Convention, that he would face a real risk of being subjected to treatment contrary to that provision if he were returned to Uganda. He submits that the written evidence he has produced, in particular the report of the CTD and a letter of 17 June 1994 from the former ambassador Mr. Oumo, show that there are substantial grounds for believing this to be true.

The applicant also complains of a violation of Article 13 of the Convention in that the remedy provided by law - the appeal to the Aliens Appeals Board - has not proved effective in this case.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 9 January and registered on 3 May 1995.

On 8 December 1995, the Commission decided, pursuant to Rule 36 of the Commission's Rules of Procedure, to indicate to the respondent Government that it was desirable in the interest of the parties and the proper conduct of the proceedings not to deport the applicant to Uganda until the Commission had had an opportunity to examine the application. The Commission further decided, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to communicate the application to the respondent Government.

On 25 January 1996, the Commission prolonged the indication under Rule 36 until 8 March 1996.

The Government's observations were submitted on 2 February 1996 after an extension of the time-limit fixed for that purpose. The applicant's observations in reply were submitted on 6 March 1996.

THE LAW

1. The applicant complains of his impending expulsion to Uganda stating that he fears ill-treatment on account of his previous activities there. He invokes Article 3 (Art. 3) of the Convention which reads as follows:

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

In particular the applicant maintains that the democratisation process now taking place in Uganda has been subject to many delays which to a significant extent are caused by President Museveni and his reluctance to relinquish power. Although the UPC members are included in the Government the applicant contends that persecution and harassment of UPC members continues as the UPC is still regarded as a real political danger to the present President. Thus, the applicant maintains that the political situation in Uganda today is far from stable.

As to his own situation the applicant maintains that there are strong grounds for believing that he would face a risk of treatment contrary to Article 3 (Art. 3) of the Convention if returned to Uganda. It has been established that he has already been subjected to such treatment previously and his fears of a continuation are linked to the fact that he allegedly has connections to the former President Milton Obote and is a friend of the former ambassador Okiror Oumho.

The Government point out that there appears to have been a considerable improvement in Uganda during recent years with regard to the overall security in the country as a result of the increase in political stability and the corresponding decrease in military activity. Regular guerilla warfare has decreased as well, and certain groups have announced that they have abandoned their insurgency, leaving only attacks by bandits lacking ideological background and cause. Furthermore, the Government maintain that the human rights situation has improved and alleged Government-linked disappearances, torture or killings have remained unproven and unsubstantiated, whereas several prominent Ugandans have returned from exile.

As regards the applicant's allegation of torture the Government do not dispute the findings in the available medical opinions. However, even assuming that the applicant's story is correct the Government contend that having regard to the general situation in Uganda, it is unlikely that he would risk persecution or harassment if he returned today. Finally, the Government maintain that the applicant's health situation is not of a kind which could prevent the enforcement of an expulsion order, but it remains a factor always to be taken into consideration at the time of enforcement.

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to asylum

is not protected in either the Convention or its Protocols (Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 3) of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be expelled (ibid., p. 34, para. 103). A mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Article 3 (Art. 3) (ibid., p. 37, para. 111).

In the present case the Commission recalls that the activities to which the applicant has referred were aimed at assisting the UPC which is a legal political party and today represented in the Ugandan Parliament. Furthermore, the Commission notes that the Aliens Appeals Board, prior to taking its decision in the applicant's case, visited Uganda in order to obtain first hand information on the situation there.

In these circumstances, the Commission shares the Swedish authorities' doubts as to whether the applicant would today, on account of his previous actions as described by him, face a real risk of treatment contrary to Article 3 (Art. 3), if returned to Uganda. Thus, the Commission considers, on the evidence before it concerning the applicant's purported background and the current situation in Uganda, that it has not been established that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention if expelled to that country.

Moreover, the Commission recalls that Chapter 8, Section 1 of the Aliens Act imposes an absolute obligation on the enforcement authority in Sweden to refrain from expelling an alien should the human rights situation in the receiving country constitute a firm reason to believe that he or she would be in danger of being subjected to capital or corporal punishment, or torture, in that country.

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

2. The applicant also complains that the remedy provided by law - an appeal to the Aliens Appeals Board - did not prove effective in his case. He invokes Article 13 (Art. 13) of the Convention which reads:

"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."

The Commission notes that an appeal against the National Immigration Authority's decision concerning asylum lies with the Aliens Appeals Board which has the power to decide the matter regardless of the outcome in the previous proceedings. The mere fact that an appeal for reasons of substance is not successful does not mean that this remedy is not "effective" within the meaning of Article 13 of the Convention.

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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(S. TRECHSEL)