ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

THE CASE LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS RELATING TO IMMIGRATION, ASYLUM AND EXTRADITION

RELEVANT EXTRACTS FROM THE DECISIONS

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Joanna Stevens

ILPA · 115 OLD STREET · LONDON EC1V 9JR · TELEPHONE: 071 250 1671 · FAX: 071 253 3832

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THE CASE LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS RELATING TO IMMIGRATION, ASYLUM AND EXTRADITION

INTRODUCTION

Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that High Contracting Parties shall secure the rights and freedoms contained within the Convention "to everyone within their jurisdiction."[1] According to Article 14 this must be "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Despite this general principle, Article 2 of the Fourth Protocol regarding freedom of movement, freedom to choose ones own residence, and freedom to leave any country, does not apply to aliens *unlawfully* within the jurisdiction of a State. Article 3 of the Fourth Protocol, providing freedom from individual or collective expulsion and the right to enter, applies only to nationals. Article 4 of the Fourth Protocol, however, prohibits the collective expulsion of aliens and Article 1 of the Seventh Protocol provides protection from the arbitrary expulsion of individual aliens *"lawfully resident* in the territory."[2]

A general right to enter or remain in a Contracting State is not guaranteed to non-nationals under the Convention or its Protocols. Aliens have generally had to show, therefore, that such a refusal would conflict with provisions of the Convention which apply to both aliens and nationals alike (such as Article 3 or Article 8). Accordingly the Commission held very early on that:[3]

> a State which signs and ratifies the European Convention on Human Rights must be understood as agreeing to restrict the free exercise of its rights under general international law, including the right to control the entry and exit of foreigners to the extent and within the limits of the obligations it has accepted under the Convention.

All 12 EC member-States have signed and ratified the European Convention. Although not every EC member-State has ratified all the protocols, and certain articles of the Convention and its protocols have been subject to reservations or interpretive declarations by certain EC

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[1]This is distinct from the European Social Charter which provides protection to aliens "only in so far as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned."

[2]Italics mine.

[3]Appl. no. 434/58, YB 2, p. 354, 372.;

States,[4] every article has been ratified without reservation by *at least one* EC member-State. It is clear, therefore, that any common immigration policy of the 12 member-States must be in accordance with the obligations contained in the European Convention and its protocols. The following contains excerpts from the Admissibility Decisions and Reports of the European Commission of Human Rights, together with pertinent extracts from the Judgements of the European Court of Human Rights, relating to the entry and exit of non-nationals. The relevant published case-law of the Commission and Court is covered up until 31 August 1992. Many extracts from previously unpublished Commission Decisions on Admissibility are also included.

[4] A list of ratifications, and reservations and declarations, of the relevant articles are contained in Annex I and II.

1. 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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
a. in defence of any person from unlawful violence;
b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
c. in action lawfully taken for the purpose of quelling a riot or insurrection.

1. *Soering Case*

1/1989/161/217 Series A , no. 161.

Concurring Opinion of Judge De Meyer

7 July 1989

Extract: The applicant's extradition to the United States of America would not only expose him to inhuman or degrading treatment or punishment. It would also, and above all, violate his right to life.
Indeed, the most important issue in this case is not "the likelihood of the feared exposure of the applicant to the 'death row phenomenon'", but the very simple fact that his life would be put in jeopardy by the said extradition.
The second sentence of Article 2 § 1 of the Convention, as it was drafted in 1950, states that "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".
In the circumstances of the present case, the applicant's extradition to the United States would subject him to the risk of being sentenced to death, and executed, in Virginia for a crime for which that penalty is not provided by the law of the United Kingdom.
When a person's right to life is involved, no requested State can be entitled to allow a requesting State to do what the requested State is not itself allowed to do.
If, as in the present case, the domestic law of a State does not provide the death penalty for the crime concerned, that State is not permitted to put the person concerned in a position where he may be deprived of his life for that crime at the hands of another State.
That consideration may already suffice to preclude the United Kingdom from surrendering the applicant to the United States.
There is also something more fundamental.
The second sentence of Article 2 § 1 of the Convention was adopted, nearly forty years ago, in particular historical circumstances, shortly after the Second World War. In so far as it still may seem to permit, under certain conditions, capital punishment in time of peace, it does not reflect the contemporary situation, and is now overridden by the development of legal conscience and practice.
Such punishment is not consistent with the present state of European civilisation.
De facto, it no longer exists in any State Party to the Convention.
Its unlawfulness was recognised by the Committee of Ministers of the Council of Europe when it adopted in December 1982, and opened for signature in April 1983, the Sixth Protocol to the Convention, which to date has been signed by sixteen, and ratified by thirteen, Contracting States.
No State Party to the Convention can in that context, even if it has not yet ratified the Sixth Protocol, be allowed to extradite any person if that person thereby incurs the risk of being put to death in the requesting State.
Extraditing somebody in such circumstances would be repugnant to European standards of justice, and contrary to the public order of Europe.

The applicant's surrender by the United Kingdom to the United States could only be lawful if the United States were to give absolute assurances that he will not be put to death if convicted of the crime he is charged with.
No such assurances were, or can be, obtained.
The Federal Government of the United States is unable to give any undertaking as to what may or may not be decided, or done, by the judicial and other authorities of the Commonwealth of Virginia.
In fact, the Commonwealth's Attorney dealing with the case intends to seek the death penalty (5) and the Commonwealth's Governor has never commuted a death sentence since the imposition of the death penalty was resumed in 1977.
In these circumstances there can be no doubt whatsoever that the applicant's extradition to the United States would violate his right to life.

1. 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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
a. in defence of any person from unlawful violence;
b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
c. in action lawfully taken for the purpose of quelling a riot or insurrection.

1. *X v. Belgium*

Appl. no. 4763/ 71, CD 37 p. 157 (158).

Admissibility Decision

2 April 1971

Extract: The applicant claims that he faces the danger of expulsion to Morocco, where his political past exposes him to the risk of reprisals...
From the information supplied by the applicant, however, the Commission notes that no expulsion order has been served on him and that nothing indicates that any step will be taken particularly since, in accordance with a practice generally followed by the Belgian authorities, the applicant will, on completion of his sentence, be escorted to the frontier of his choice.
Secondly, the file does not indicate that the Moroccan authorities have applied for extradition of the applicant or that any such move is imminent.
Examination of this application by the Commission does not therefore give any indication that the rights and freedoms guaranteed by the Convention, and particularly Article 2 and 3 have been violated.

2. *Lynas v. Switzerland,*

Appl. no. 7317/75, DR 6, p. 141 (165).

Admissibility Decision

6 October 1976

Extract: The applicant alleges that by extraditing him to the United States the Swiss authorities are exposing his life to danger owing to the reprisals to be feared from the CIA...
His allegations on this matter, which were put before the Swiss authorities at a comparatively late stage, are based essentially on the evidence of a person whose exact relations with the applicant have not been clarified. The Commission does not consider that these uncorroborated declarations constitute satisfactory prima facie evidence. The examination of this complaint therefore discloses no appearance of a violation of the rights and freedoms guaranteed by the Convention in particular in Articles 2 and 3.

3. *X v. Netherlands*

Appl. no. 8088/77, np, DS 1 p. 150.

Admissibility Decision

15 December 1977

Extract: The Commission first notes that whatever the applicant's state of health might have been shortly before and at the moment of his extradition, it had been brought about by the applicant himself by his own hunger and thirst strike. Of course it should be understood that, even in these circumstances, every act by the Dutch authorities which would have had a direct beating upon the applicant's physical condition and present a threat to his life could be contrary to the Convention, in particular to Articles 2 and 3 thereof...

4. *H v. Spain,*

Appl. no. 10227/82, np, Supplement to DS 1 (2.1.2) p. 1.

Admissibility Decision

15 December 1983

Extract: The applicant has complained that the granting of the application of the United States Government for his extradition means certain death for him. He invokes Article 2 of the Convention...
The Commission notes that the judicial death penalty is expressly recognised in Article 2 of the Convention. The Commission also notes, however, that in the present case the applicant is not likely to face the death penalty, even assuming that he were to be found guilty of a capital offence, in view of the undertaking presented by the Public Prosecutor of the 6th Circuit Florida to the Audiencia Nacional that the death penalty would not be requested in the applicant's case.
The Commission finds, therefore, that the applicant's complaint does not disclose any appearance of a violation of Article 2 of the Convention...

5. *Soering Case*

1/1989/161/217 Series A , no. 161.

Concurring Opinion of Judge De Meyer

7 July 1989

(See Article 2 Court Cases)

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

1. *Abdulaziz, Cabales and Balkandali Case*

15/1983/71/107-109 Series A , no. 94, §§ 90-91.

Court Judgment

28 May 1985

Extract: 90. The applicants claimed to have been subjected to degrading treatment, in violation of Article 3...
In their view, the discrimination against them constituted an affront to human dignity. They also referred to Mr. and Mrs. Cabales' lengthy separation and to the anxiety and stress undergone by Mrs. Abdulaziz and Mrs. Balkandali.
The Government contested this claim on various grounds. According to the Commission, Article 14 incorporated a condemnation of the degrading aspects of sexual and other forms of discrimination and no separate issues arose under Article 3.
91. The Court observes that the difference of treatment complained of did not denote any contempt or lack of respect for the personality of the applicants and that it was not designed to, and did not, humiliate or debase but was intended solely to achieve the aims referred to in paragraphs 75, 76, 78 and 81 above (see the Albert and Le Compte Judgment of 10 February 1983, Series A, Vol. 58, p. 13, para. 22). It cannot therefore be regarded as "degrading".
There was accordingly no violation of Article 3.[unanimous]

2. *Berrehab Case*

3/1987/126/177 Series A , no. 138, §§ 30-31.

Court Judgment

21 June 1988

Extract: 30. The applicants maintained that the refusal to grant Mr. Berrehab a new residence permit after the divorce and his resulting deportation infringed Article 3...
In the Commission's view, the facts of the case did not show that either of the applicants underwent suffering of a degree corresponding to the concepts of "inhuman" or "degrading" treatment.
31. The Court shares this view and finds that there has been no violation of Article 3. [unanimous]

3. *Soering Case*

1/1989/161/217 Series A , no. 161, §§ 80-111.

Court Judgment

7 July 1989

Extract: 80. The applicant alleged that the decision by the Secretary of State for the Home Department to surrender him to the authorities of the United States of America would, if implemented, give rise to a breach by the United Kingdom of Article 3 of the Convention...
81. The alleged breach derives from the applicant's exposure to the so-called "death row phenomenon". This phenomenon may be described as consisting in a combination of circumstances to which the applicant would be exposed if, after having been extradited to Virginia to face a capital murder charge, he were sentenced to death...
84. The Court will approach the matter on the basis of the following considerations.
85. As results from Article 5 § 1 (f), which permits "the lawful ... detention of a person against whom action is being taken with a view to ... extradition", no right not to be extradited is as such protected by the Convention. Nevertheless, in so far as a measure of extradition has consequences adversely affecting the enjoyment of a Convention right, it may, assuming that the consequences are not too remote, attract the obligations of a Contracting State under the relevant Convention guarantee (see, mutatis mutandis, the Abdulaziz, Cabales and Balkandali judgment of 25 May 1985, Series A no. 94, pp. 31-32, §§ 59-60 - in relation to rights in the field of immigration). What is at issue in the present case is whether Article 3 can be applicable when the adverse consequences of extradition are, or may be, suffered outside the jurisdiction of the extraditing State as a result of treatment or punishment administered in the receiving State...
86. ...In the instant case it is common ground that the United Kingdom has no power over the practices and arrangements of the Virginia authorities which are the subject of the applicant's complaints. It is also true that in other international instruments cited by the United Kingdom Government for example the 1951 United Nations Convention relating to the Status of Refugees (Article 33), the 1957 European Convention on Extradition (Article 11) and the 1984 United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Article 3) the problems of removing a person to another jurisdiction where unwanted consequences may follow are addressed expressly and specifically.
These considerations cannot, however, absolve the Contracting Parties from responsibility under Article 3 for all and any foreseeable consequences of extradition suffered outside their jurisdiction.
87. In interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 90, § 239). Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, inter alia, the Artico judgment of 13 May 1980, Series A no. 37, p. 16, § 33). In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with "the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society" (see the Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, p. 27, § 53).
88. Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 in time of war or other national emergency. This absolute prohibition of torture and of inhuman or degrading treatment or punishment under the terms of the Convention shows that Article 3 enshrines one of the fundamental values of the democratic societies making up the Council of Europe. It is also to be found in similar terms in other international instruments such as the 1966 International Covenant on Civil and Political Rights and the 1969 American Convention on Human Rights and is generally recognised as an internationally accepted standard.
The question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture or to inhuman or degrading treatment or punishment would itself engage the responsibility of a Contracting State under Article 3. That the abhorrence of torture has such implications is recognised in Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that "no State Party shall ... extradite a person where there are substantial grounds for believing that he would be in danger of being subjected to torture". The fact that a specialised treaty should spell out in detail a specific obligation attaching to the prohibition of torture does not mean that an essentially similar obligation is not already inherent in the general terms of Article 3 of the European Convention. It would hardly be compatible with the underlying values of the Convention, that "common heritage of political

traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3, Would plainly be contrary to the spirit and intendment of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article.

89. What amounts to "inhuman or degrading treatment or punishment" depends on all the circumstances of the case (see paragraph 100 below). Furthermore, inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. As movement about the world becomes easier and crime takes on a larger international dimension, it is increasingly in the interest of all nations that suspected offenders who flee abroad should be brought to justice. Conversely, the establishment of safe havens for fugitives would not only result in danger for the State obliged to harbour the protected person but also tend to undermine the foundations of extradition. These considerations must also be included among the factors to be taken into account in the interpretation and application of the notions of inhuman and degrading treatment or punishment in extradition cases.

90. It is not normally for the Convention institutions to pronounce on the existence or otherwise of potential violations of the Convention. However, where an applicant claims that a decision to extradite him would, if implemented, be contrary to Article 3 by reason of its foreseeable consequences in the requesting country, a departure from this principle is necessary, in view of the serious and irreparable nature of the alleged suffering risked, in order to ensure the effectiveness of the safeguard provided by that Article (see paragraph 87 above).

91. In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention...

92. The extradition procedure against the applicant in the United Kingdom has been completed, the Secretary of State having signed a warrant ordering his surrender to the United States' authorities (see paragraph 24 above); this decision, albeit as yet not implemented, directly affects him. It therefore has to be determined on the above principles whether the foreseeable consequences of Mr Soering's return to the United States are such as to attract the application of Article 3. This inquiry must concentrate firstly on whether Mr Soering runs a real risk of being sentenced to death in Virginia, since the source of the alleged inhuman and degrading treatment or punishment, namely the "death row phenomenon", lies in the imposition of the death penalty. Only in the event of an affirmative answer to this question need the Court examine whether exposure to the "death row phenomenon" in the circumstances of the applicant's case would involve treatment or punishment incompatible with Article 3...

98. ...Whatever the position under Virginia law and practice (as to which, see paragraphs 42, 46, 47 and 69 above), and notwithstanding the diplomatic context of the extradition relations between the United Kingdom and the United States, objectively it cannot be said that the undertaking to inform the judge at the sentencing stage of the wishes of the United Kingdom eliminates the risk of the death penalty being imposed. In the independent exercise of his discretion the Commonwealth's Attorney has himself decided to seek and to persist in seeking the death penalty because the evidence, in his determination, supports such action (see paragraph 20 in fine above). If the national authority with responsibility for prosecuting the offence takes such a firm stance, it is hardly open to the Court to hold that there are no substantial grounds for believing that the applicant faces a real risk of being sentenced to death and hence experiencing the "death row phenomenon".

99. The Court's conclusion is therefore that the likelihood of the feared exposure of the applicant to the "death row phenomenon" has been shown to be such as to bring Article 3 into play...
100. As is established in the Court's case-law, ill-treatment, including punishment, must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see the above-mentioned Ireland v. the United Kingdom judgment, Series A no. 25, p. 65, § 162; and the Tyrer judgment of 25 April 1978, Series A no. 26, pp. 14-15, §§ 29 and 30)...
In this connection, account is to be taken not only of the physical pain experienced but also, where there is a considerable delay before execution of the punishment, of the sentenced person's mental anguish of anticipating the violence he is to have inflicted on him...
101. Capital punishment is permitted under certain conditions by Article 2 § 1 of the Convention...
103. ...Subsequent practice in national penal policy, in the form of a generalised abolition of capital punishment, could be taken as establishing the agreement of the Contracting States to abrogate the exception provided for under Article 2 § 1 and hence to remove a textual limit on the scope for evolutive interpretation of Article 3. However, Protocol No. 6, as a subsequent written agreement, shows that the intention of the Contracting Parties as recently as 1983 was to adopt the normal method of amendment of the text in order to introduce a new obligation to abolish capital punishment in time of peace and, what is more, to do so by an optional instrument allowing each State to choose the moment when to undertake such an engagement. In these conditions, notwithstanding the special character of the Convention (see paragraph 87 above), Article 3 cannot be interpreted as generally prohibiting the death penalty.
104. That does not mean however that circumstances relating to a death sentence can never give rise to an issue under Article 3. The manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3. Present-day attitudes in the Contracting States to capital punishment are relevant for the assessment whether the acceptable threshold of suffering or degradation has been exceeded.
Length of detention prior to execution
106. The period that a condemned prisoner can expect to spend on death row in Virginia before being executed is on average six to eight years (see paragraph 56 above). This length of time awaiting death is, as the Commission and the United Kingdom Government noted, in a sense largely of the prisoner's own making in that he takes advantage of all avenues of appeal which are offered to him by Virginia law. The automatic appeal to the Supreme Court of Virginia normally takes no more than six months (see paragraph 52 above). The remaining time is accounted for by collateral attacks mounted by the prisoner himself in habeas corpus proceedings before both the State and Federal courts and in applications to the Supreme Court of the United States for certiorari review, the prisoner at each stage being able to seek a stay of execution (see paragraphs 53-54 above). The remedies available under Virginia law serve the purpose of ensuring that the ultimate sanction of death is not unlawfully or arbitrarily imposed.
Nevertheless, just as some lapse of time between sentence and execution is inevitable if appeal safeguards are to be provided to the condemned person, so it is equally part of human nature that the person will cling to life by exploiting those safeguards to the full. However well-intentioned and even potentially beneficial is the provision of the complex of post-sentence procedures in Virginia, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death.
ii. Conditions on death row
107. ...The stringency of the custodial regime in Mecklenburg, as well as the services (medical, legal and social) and the controls (legislative, judicial and administrative) provided for inmates, are described in some detail above (see paragraphs 61-63 and 65-68). In this connection, the United Kingdom Government drew attention to the necessary

requirement of extra security for the safe custody of prisoners condemned to death for murder. Whilst it might thus well be justifiable in principle, the severity of a special regime such as that operated on death row in Mecklenburg is compounded by the fact of inmates being subject to it for protracted period lasting on average six to eight years.

iii. The applicant's age and mental state

108. At the time of the killings, the applicant was only 18 years old and there is some psychiatric evidence, which was not contested as such, that he "was suffering from [such] an abnormality of mind ... as substantially impaired his mental responsibility for his acts" (see paragraphs 11, 12 and 21 above).

Unlike Article 2 of the Convention, Article 6 of the 1966 International Covenant on Civil and Political Rights and Article 4 of the 1969 American Convention on Human Rights expressly prohibit the death penalty from being imposed on persons aged less than 18 at the time of commission of the offence. Whether or not such a prohibition be inherent in the brief and general language of Article 2 of the European Convention, its explicit enunciation in other, later international instruments, the former of which has been ratified by a large number of States Parties to the European Convention, at the very least indicates that as a general principle the youth of the person concerned is a circumstance which is liable, with others, to put in question the compatibility with Article 3 of measures connected with a death sentence...

109. ...Although it is not for this Court to prejudge issues of criminal responsibility and appropriate sentence, the applicant's youth at the time of the offence and his then mental state, on the psychiatric evidence as it stands, are therefore to be taken into consideration as contributory factors tending, in his case, to bring the treatment on death row within the terms of Article 3.

iv Possibility of extradition to the Federal Republic of Germany

110. For the United Kingdom Government and the majority of the Commission, the possibility of extraditing or deporting the applicant to face trial in the Federal Republic of Germany (see paragraphs 16, 19, 26, 38 and 71-74 above), where the death penalty has been abolished under the Constitution (see paragraph 72 above), is not material for the present purposes. Any other approach, the United Kingdom Government submitted, would lead to a "dual standard" affording the protection of the Convention to extraditable persons fortunate enough to have such an alternative destination available but refusing it to others not so fortunate.

This argument is not without weight. Furthermore, the Court cannot overlook either the horrible nature of the murders with which Mr Soering is charged or the legitimate and beneficial role of extradition arrangements in combating crime. The purpose for which his removal to the United States was sought, in accordance with the Extradition Treaty between the United Kingdom and the United States, is undoubtedly a legitimate one. however, sending Mr Soering to be tried in his own country would remove the danger of a fugitive criminal going unpunished as well as the risk of intense and protracted suffering on death row. It is therefore a circumstance of relevance for the overall assessment under Article 3 in that it goes to the search for the requisite fair balance of interests and to the proportionality of the contested extradition decision in the particular case (see paragraphs 89 and 104 above).

111. For any prisoner condemned to death, some element of delay between imposition and execution of the sentence and the experience of severe stress in conditions necessary for strict incarceration are inevitable...However, in the Courts view, having regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3. A further consideration of relevance is that in the particular instance the legitimate purpose of extradition could be achieved by another means which would not involve suffering of such exceptional intensity or duration.

Accordingly, the Secretary of State's decision to extradite the applicant to the United States would, if implemented, give rise to a breach of Article 3. [unanimous]

4. *Cruz Varas and others Case*

46/1990/237/307 Series A , no. 201, §§ 69-84.

Court Judgment

20 March 1991

Extract: 69. In its Soering judgement of 7 July 1989 the Court held that the decision by the Contracting State to extradite a fugitive may give rise to an issue under Article 3, where substantial grounds have been shown for believing that person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country (Series A no. 161, p. 35, § 91)...

70. Although the present case concerns expulsion as opposed to a decision to extradite, the Court considers that the above principle also applies to expulsion decisions and a fortiori to cases of actual expulsion...

74. The Court recalls that under the Convention system, the establishment and verification of the facts is primarily a matter for the Commission (Articles 28 § 1 and 31). Accordingly it is only in exceptional circumstances that the Court will use its powers in this area. The Court is not, however, bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it.

75. In determining whether substantial grounds have been shown for believing the existence of a real risk of treatment contrary to Article 3 the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained proprio motu (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25 p. 64, § 160).

76. Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to t.he Contracting State at the time of the expulsion; the Court is not precluded, however, from having regard to information which comes to light subsequent to the expulsion. This may be of value in confirming or refuting the appreciation that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears.

b. Whether the first applicant's expulsion exposed him to a real risk of inhuman treatment

77. The Court takes note of the medical evidence submitted by the applicants and, in particular, the evidence of Dr Jacobsson who found that the first applicant's physical injuries and demeanour while recounting his experiences were consistent with his allegations (see paragraphs 26 and 39-40 above). Having regard to Dr Jacobsson's experience in examining victims of torture, this evidence supports the view that the applicant has at some stage in the past, been subjected to inhuman or degrading treatment. According to the Commission the only plausible explanation for this treatment is that it was carried out by persons for whom "the then Chilean regime" was responsible. There is no element in the material before the Court, however, apart from the first applicant's allegations, which provides direct evidence for this conclusion

78. Moreover, even if allowances are made for the apprehension that asylum-seekers may have towards the authorities and the difficulties of substantiating their claims with documentary evidence, the first applicant's complete silence as to his alleged clandestine activities and torture by the Chilean police until more than eighteen months after his first interrogation by the Växjö Police Authority casts considerable doubt on his credibility in this respect (see paragraphs 14-22 above)... His credibility is further called into question by the continuous changes in his story following each police interrogation and by the fact that no material has been presented to the Court which substantiates his claims of clandestine political activity on behalf of or in collaboration with members of the FPMR (ibid.). On the contrary the evidence points in the opposite direction (see paragraphs 41-43 above).

79. The Court also notes that in the course of his stay in Chile subsequent to his expulsion the applicant was apparently unable to locate any witnesses or adduce any other evidence which might have corroborated to some degree his claims of clandestine political activity.

80. In any event, a democratic evolution was in the process of taking place in Chile which had led to improvements in the political situation and, indeed, to the voluntary return of refugees from Sweden and elsewhere (see paragraphs 34 and 51 above).

81. The Court also attaches importance to the fact that the Swedish authorities had particular knowledge and experience in evaluating claims of the present nature by virtue of

the large number of Chilean asylum-seekers that had come to Sweden since 1973. The final decision to expel the applicant was taken after thorough examinations of his case by the National Immigration Board and by the Government (see paragraphs 14-33 above).
82. In the light of these considerations the Court finds that substantial grounds have not been shown for believing that the first applicant's expulsion would expose him to a real risk of being subjected to inhuman or degrading treatment on his return to Chile in October 1989. Accordingly there has been no breach of Article 3 in this respect...
84. In the present case the first applicant was considered to be suffering from a post-traumatic stress disorder prior to his expulsion and his mental health appeared to deteriorate following his return to Chile (see paragraphs 27 and 411 above). However, it results from the finding in paragraph 82 that no substantial basis has been shown for his fears. Accordingly the Court does not consider that the first applicant's expulsion exceeded the threshold set by Article 3...
For these reasons, the Court holds by eighteen votes to one that there has been no breach of Article 3.

5. *Vilvarajah and others Case*

45/1990/236/302-306 Series A , no. 215, §§ 101-116.

Court Judgment

30 October 1991

Extract: 101. The applicants alleged that their removal to Sri Lanka in February 1988 amounted to inhuman and degrading treatment in breach of Article 3...
107. In its Cruz Varas judgment of 20 March 1991 the Court noted the following principles relevant to its assessment of the risk of ill-treatment (Series A no. 201, pp. 29-31, §§ 75-76 and 83):
(1) In determining whether substantial grounds have been shown for believing the existence of a real risk of treatment contrary to Article 3 the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained proprio motu;
(2) Further, since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion; the Court is not precluded, however, from having regard to information which comes to light subsequent to the expulsion. This may be of value in confirming or refuting the appreciation that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears;
(3) Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum, is, in the nature of things, relative; it depends on all the circumstances of the case.
108. The Court's examination of the existence of a risk of ill-treatment in breach of Article 3 at the relevant time must necessarily be a rigourous one in view of the absolute character of this provision and the fact that it enshrines one of the fundamental values of the democratic societies making up the Council of Europe (see the Soering judgment of 7 July 1989, Series A no. 161, p. 34, § 88). It follows from the above principles that the examination of this issue in the present case must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka in the light of the general situation there in February 1988 as well as on their personal circumstances.
109. In the light of the Commission's report and the observations thereon by the applicants and the Government it seems clear that by February 1988 there was an improvement in the situation in the north and east of Sri Lanka - the main areas of disturbance. The IPFK had, in accordance with the Accord of July 1987, taken over from the Sinhalese dominated security forces in these areas and the major fighting at Jaffna had ended.
Although large parts of the country remained quiet, occasional fighting still took place in the north and east of Sri Lanka between units of the IPKF and Tamil militants who rejected the

Accord. In these areas there was a persistent threat of violence and a risk that civilians might become caught up in the fighting (see paragraphs 74-75 above).
110. Nevertheless, the UNHCR voluntary repatriation programme which had begun to operate at the end of December 1987 provides a strong indication that by February 1988 the situation had improved sufficiently to enable large numbers of Tamils to be repatriated to Sri Lanka notwithstanding the continued existence of civil disturbance. It also appears that many others returned by their own means (see paragraph 76 above).
111. The evidence before the Court concerning the background of the applicants, as well as the general situation, does not establish that their personal position was any worse than the generality of other members of the Tamil community or other young male Tamils who were returning to their country. Since the situation was still unsettled there existed the possibility that they might be detained and ill-treated as appears to have occurred previously in the cases of some of the applicants (see paragraphs 10, 22 and 33 above). A mere possibility of ill-treatment, however, in such circumstances, is not in itself sufficient to give rise to a breach of Article 3.
112. It is claimed that the second, third and fourth applicants were in fact subjected to ill-treatment following their return (see paragraphs 28-29, 43 and 56 above). Be that as it may, however, there existed no special distinguishing features in their cases that could or ought to have enabled the Secretary of State to foresee that they would be treated in this way.
113. In addition, the removal to Sri Lanka of the fourth and fifth applicants without identity cards is open to criticism on the basis that it was likely to make travelling more difficult for them because of the existence of numerous army checkpoints. It cannot be said however that this fact alone exposed them to a real risk of treatment going beyond the threshold set by Article 3.
114. The Court also attaches importance to the knowledge and experience that the United Kingdom authorities had in dealing with large numbers of asylum seekers from Sri Lanka, many of whom were granted leave to stay, and to the fact that the personal circumstances of each applicant had been carefully considered by the Secretary of State in the light of a substantial body of material concerning the current situation in Sri Lanka and the position of the Tamil community within it (see the above-mentioned Cruz Varas judgment, Series A no. 201, p. 31, § 81, and paragraphs 5, 17, 34, 46, 57, 77-79 and 97 above).
115. In the light of these considerations the Court finds that substantial grounds have not been established for believing that the applicants would be exposed to a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 3 on their return to Sri Lanka in February 1988.
116. Accordingly, there has been no breach of Article 3. [by eight votes to one]

6. *Beldjoudi Case*

55/1990/246/317 Series A , no. 234-A.

Separate Opinion of Judge De Meyer

26 March 1992

Extract: Like the majority of my colleagues, I consider that there would be a violation of the applicants' fundamental rights "in the event of the decision to deport Mr Beldjoudi being implemented".
But which right or rights are these?
Our colleague Mr Martens was right to wonder whether the case did not concern their right to respect for their private life just as much as their right to respect for their family life. I agree to a great extent with his observations.
It seems to me, however, that ultimately, bearing in mind the circumstances mentioned in paragraphs 77 and 78 of the judgment, the deportation of Mr Beldjoudi, with respect to both applicants, would not merely constitute an unacceptable interference with their private and family life, but would actually be inhuman treatment.
This would be so, not indirectly because of what might await them in Algeria - that is not the point in issue here - but directly, in that Mr Beldjoudi would be ejected, after over forty

years, from a country which has always in fact been "his" since birth, even though he does not possess its "nationality".
While it is true, as the documents in the case show, that Mr Beldjoudi has already been convicted of numerous offences, mostly comparatively serious ones, and is now once more under suspicion of having committed others, he can be sufficiently punished for these by the criminal law.

7. *Vijayanathan and Pusparajah Case*

75/1991/327/339-400 Series A , no. 241-B, §§ 43-47.

Court Judgment

27 August 1992

Extract: 43. The Government's principal arguments, as before the Commission, were that Mr Vijayanathan and Mr Pusparajah were not victims and had not exhausted domestic remedies.
44. They argued that the applicants could not become victims until the end of a process which had nothing automatic about it, as was shown by the limited number of expulsions of Sri Lankans of Tamil origin (83 in 1990) compared with the number (2,400) of rejections of requests for asylum (see paragraph 31 above). No measure for their removal had been taken and their repatriation, which would be subject to the strict control of the administrative court, was still hypothetical; even if such a measure were to be taken, the circular of 25 October 1991 (see paragraph 31 above), which had been adopted precisely in the light of recent decisions of the Conseil d'Etat and the European Commission of Human Rights, removed any ambiguity as to the effectiveness of the system for protection of unsuccessful asylum seekers. Finally, the possible return of the applicants to their own country would in the present circumstances not be arbitrary or unreasonable, In view of the assessment of the general situation in Sri Lanka and having regard to the analyses of the individual cases.
45. The Commission considered that the applicants could not be regarded as faced with an imminent decision of removal to Sri Lanka. The risk of such a decision being adopted and irreversibly enforced was diminished by the existence of the appeal with suspensive effect provided for in section 22 bis of the Order of 2 November 1945 as amended (see paragraph 26 above). Such an appeal admittedly had deficiencies - inter alia in the event of service of the expulsion order being followed by notification of the country of destination but there was no reason to believe that the applicants would not be in a position to raise effectively before the administrative court arguments based on the risks of ill-treatment in Sri Lanka.
46. The Court notes to begin with the difference between the present case and the cases of Soering v. the United Kingdom and Vilvarajah and Others v. the United Kingdom (judgments of 7 July 1989 and 30 October 1991, Series A nos. 161 and 215). In the former the Home Secretary had already signed the warrant for Mr Soering's extradition to the United States; in the latter the deportation of the applicants to Sri Lanka had taker place during the proceedings before the Commission. It should also be noted that despite the direction to leave French territory (see paragraphs 10 and 15 above), not enforceable in itself, and the rejection of the application for exceptional leave to remain brought by Mr Pusparajah. (see paragraph 15 above), no expulsion order has been made with respect to the applicants. If the Commissioner of Police were to decide that they should be removed, the appeal provided for in section 2 bis would be open to them, with all its attendant safeguards; if they were to attempt to bring such an appeal at present, the courts appealed to would probably declare it inadmissible as being premature or devoid of purpose.
In short, the objection is well-founded. Mr Vijayanathan and Mr Pusparajah cannot, as matters stand, claim "to be the victim[s] of a violation" within the meaning of Article 25 § 1 of the Convention...
For these reasons, the Court unanimously holds that it is unable to consider the merits of the case.

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

1. *P v. Belgium*[1]

Appl. no. 984/61, CD 6 p. 39 (40).

Admissibility Decision

29 May 1961

Extract: the application appears to raise the question whether deportation of an alien can in some exceptional circumstances constitute inhuman and degrading treatment within the meaning of Article 3 of the Convention.

2. *Nazih-Al-Kuzbari v. Federal Republic of Germany,*

Appl. no. 1802/ 63, CD 10 p. 26 (36); YB 6, p. 462 (480).

Admissibility Decision

26 March 1963

Extract: in its Decision on the Admissibility of Application Nos. 984/61 (P v. Belgium, Collection of Decisions 6, p. 39) and 1465/62 (S v. the Federal Republic of Germany, Collection of Decisions 9, p. 630) the Commission held that "the deportation of a foreigner to a particular country might in exceptional circumstances give rise to the question whether there has been 'inhuman treatment' within the meaning of Article 3 of the Convention; whereas similar considerations might apply to cases where a person is extradited to a particular country in which, due to the very nature of the regime of that country or to a particular situation in that country, basic human rights such as are guaranteed by the convention, might be either grossly violated or entirely suppressed.

3. *X v. Austria and Yugoslavia*

Appl. no. 2143/ 64, CD 14 p. 15 (24); YB 7 p. 314 (330).

Admissibility Decision

30 June 1964

Extract: the disputed extradition did not take place in circumstances which would cast doubt on its compatibility with the Convention, especially as it had been expressly approved by the Austrian judicial authorities and agreed to by the Office of the United Nations High Commissioner for Refugees.

4. *X v. Federal Republic of Germany*

[1]Original French - translation: *Digest of Strasbourg Case-law*, vol. 1, p. 118, Council of Europe, Strasbourg, (1982)

Appl. no. 3040/ 67, CD 22 p. 133 (138); YB 10 p. 518 (528).

Admissibility Decision

7 April 1967

Extract: whereas, however, an examination of the present case as it has been submitted does not disclose any appearance of such exceptional circumstance; whereas, in this connection the Commission has noted that the Applicant was extradited to Jugoslavia [sic] in view of the charges of theft bought against him by the Jugoslavian authorities; and whereas there is no indication that the principle of speciality, which applies in extradition case, would not be respected by the Jugoslavian courts in the criminal proceedings against the Applicant.

5. *X v. Federal Republic of Germany*

Appl. no. 4162/ 69, CD 32 p. 87 (95); YB 13 p. 806 (824).

Admissibility Decision

17 December 1969

Extract: whereas, the question whether or not the decision of the German authorities was covered by the Geneva Convention of 1951 on the Status of Refugees is not at issue as such to be examined by the Commission; whereas it is true that the applicant alleges that if expelled to Poland, he will be prosecuted on certain charges; whereas the Commission notes that, with the exception of the crime of subversion all the said offences are held to be offences in almost all the countries of the Council of Europe; whereas, even supposing that the applicants allegations were well-founded, it could hardly be maintained that the punishment for these offences as such would constitute a violation of Article 3; whereas, as regards the applicant's allegation that he would be prosecuted for subversion, the applicant has not submitted any proof in this respect in spite of regular requests by the Commission; and whereas, in particular, the applicant does not allege that he expects discriminatory treatment by the Polish authorities by reason of his political opinion, his religion or his race; whereas an examination of the case as it has been submitted, including an examination made *ex officio*, does not therefore disclose any appearance of a violation by the Federal Government of the rights and freedoms set forth in the Convention; whereas, in these circumstances, the applicants expulsion to Poland would not constitute a violation of Article 3.

6. *X v. Federal Republic of Germany*

Appl. no. 4314/ 69, CD 32 p. 96 (97); YB 13 p. 900 (904).

Admissibility Decision

2 February 1970

Extract: whereas, it follows that the obligation to perform military service must in principle be regarded as being compatible with the provisions of the Convention with the result that the applicant's expulsion to Egypt can in no way be considers to constitute inhuman within the meaning of Article 3 of the Convention on the ground that he would be obliged to serve in the Egyptian army.

7. *Twenty Five Applications v. the United Kingdom (Groups I and II)*

Appl. nos. 4403/ 70 etc, CD 36 p. 92 (118); YB 13 p. 928 (922, 996).

Admissibility Decision - (Admissible - to Committee of Ministers)

10 October 1970

Extract: Whereas, however, the applicants have alleged that their treatment by the United Kingdom authorities amounted, in all the circumstances to degrading treatment within the meaning of Article 3 of the Convention; in particular that in refusing to admit them to the United Kingdom or to allow them to remain there permanently, the actions of the United Kingdom authorities amounted to treating them as "second-class citizens"...
Whereas, however, the Commission is of the opinion that, quite apart from any consideration of Article 14, discrimination based on race could, in certain circumstances, of itself amount to degrading treatment within the meaning of Article 3 of the Convention;
Whereas the Commission considers that it is generally recognised that a special importance should be attached to discrimination based on race, and that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity; whereas, therefore, differential treatment of a group of persons on the basis of race might be capable of constituting degrading treatment in circumstances where differential treatment on some other ground, such as language, would raise no such question.

8. *X v. Belgium*

Appl. no. 4763/ 71, CD 37 p. 157 (158).

Admissibility Decision

2 April 1971

Extract: The applicant claims that he faces the danger of expulsion to Morocco, where his political past exposes him to the risk of reprisals...
From the information supplied by the applicant, however, the Commission notes that no expulsion order has been served on him and that nothing indicates that any step will be taken particularly since, in accordance with a practice generally followed by the Belgian authorities, the applicant will, on completion of his sentence, be escorted to the frontier of his choice.
Secondly, the file does not indicate that the Moroccan authorities have applied for extradition of the applicant or that any such move is imminent.
Examination of this application by the Commission does not therefore give any indication that the rights and freedoms guaranteed by the Convention, and particularly Article 2 and 3 have been violated.

9. *X v. Belgium*

Appl. no. 5012/ 71, CD 40 p. 53 (62).

Admissibility Decision

15 December 1971

Extract: The applicant X told the Commission that he was afraid of being handed over to the Algerian authorities, the purpose of his application being to prevent his extradition to that country where, he claimed he might be subjected to treatment incompatible with Article 3 of the Convention.

As far as the present application is concerned, the Commission emphasises that its task is not to decide whether, in view of the special circumstances of the case, extradition of the applicant would constitute inhuman and degrading treatment within the meaning of Article 3.
In fact, the Commission notes that, following the request for extradition of the applicant submitted by the Algerian Government on . . June 1971, a second request for extradition was submitted by the French Government on . . October 1971. In view of the request for extradition submitted by the French Government, the Commission thus considers that the application henceforth appears devoid of substance, particularly since, as the defending Government pointed out in its second memorandum of 8 December 1971, "When he appeared before the Public Prosecutor in Brussels, the applicant formally asked to be handed over to the French authorities and declared his willingness, in this connection, to forgo the guarantees and formalities attaching to extradition" (quoted from the memorandum).

10. *X v. Belgium*

Appl. no. 5399/ 72, CD 40 p. 72 (73-74).

Admissibility Decision

31 May 1972

Extract: The applicant complains that he was expelled from Belgium and successively refused admission by several states, none of which was prepared to let him enter.
The Commission considers that this situation might raise certain problems in respect of Article 3 of the Convention, but points out that it does not have to decide upon questions of this type in the present instance.
In fact, following the latest developments in this case, the Commission considers that the application is completely unfounded, since the applicant has again been authorised to reside in Belgium.

11. *X and Y v. United Kingdom*

Appl. no. 5302/ 71, CD 44 p. 29 (45).

Admissibility Decision

11 October 1973

Extract: The Commission considers that treatment can only be regarded as "degrading" within the meaning of Article 3 when it reaches a certain level of severity. The Commission has examined the article and its relationship with questions of citizenship and immigration and it does not consider that the present facts fall within its scope. The substance of the applicants' complaint is that they have not been allowed to enter the country of which they are citizens and that, therefore, they have run the risk of losing some of their assets. They may lose some money but this does not mean degradation. They were, therefore, not "degraded" by being obliged to remain in India and wait for permission to enter the United Kingdom.

12. *X and others v. United Kingdom*

Appl. nos. 6211-6213/73. 6215/73, 6222/73. 6230/73, 6243/73, np, DS 1 p. 136.

Admissibility Decision

14 December 1973

Extract: The applicants have all complained that the provisions of the 1971 Act, authorising their removal from the United Kingdom, constitute inhuman or degrading treatment and so amount to a violation of Article 3 of the Convention. The Commission does not consider that this is so. Even had the applicants entered the United Kingdom legally, which they did not, it would not of itself constitute inhuman or degrading treatment to revoke their permission to stay and to send them back to India. Given that they entered secretly and never had any proper permission to stay, it cannot be considered that their expulsion was a violation of Article 3

13. *Brückmann v. Federal Republic of Germany*

Appl. no. 6242/73, CD 46 p.202 (209); YB 17 p. 458 (476).

Admissibility Decision - (Admissible - Friendly settlement)

27 May 1974

Extract: The applicant also complains that her proposed transfer to the German Democratic Republic, and her continued detention in West Berlin for that purpose, violate Article 3 of the Convention which prohibits inhuman treatment. It is stated on her behalf that, according to a medical certificate, there is a danger of her committing suicide in view of her possible transfer to the German Democratic Republic; that she has, in fact, already twice attempted to commit suicide; and that she started a hunger strike on 6 May 1974...
The Commission finds that the present complaint, too, raises complex questions of law and fact, which cannot be determined at the stage of admissibility but require an examination of the merits.

14. *X v. Netherlands*

Appl. nos. 5351/72, 6579/74, CD 46 p. 71 (81).

Admissibility Decision

18 July 1974

Extract: With regard to the applicant's complaint that his expulsion would violate Article 3, since he would be exposed to inhuman and degrading treatment in Rumania, ...the Commission notes, however, that in spite of the Netherlands authorities' request the Rumanian authorities refuse to issue the applicant with a passport allowing him to return to his country of origin... The Commission thus concludes that, in practice, the applicant cannot be sent back to Rumania... This complaint is manifestly ill-founded within the meaning of Article 27 (2) of the Convention

15. *X v. Federal Republic of Germany*

Appl. no. 6315/73, YB 17 p. 480 (488).

Admissibility Decision

30 September 1974

Extract: The applicant has informed the Commission of his fears of being handed over to the Algerian authorities, the object of his application being to prevent his expulsion to a country where, according to him, he risks subjection to treatment contrary to Article 3 of the Convention.
The applicant equally objects to his transfer to France and, in this connection, asserts that the French authorities would immediately proceed to expel him to Algeria...
Certainly the Commission must examine, in view of the particular circumstances of the case, whether the applicant's eventual expulsion to Algeria would constitute inhuman and degrading treatment within the meaning of Article 3 of the Convention...
However, in the present case, a direct expulsion to Algeria appears to be out of the question. Indeed, after negotiations between the German and the French authorities, the French Home Secretary expressed his agreement in August 1974, to the readmission to France of this Algerian citizen...
Furthermore the Commission points out that, according to the file, no request for extradition of the applicant has been made by the Algerian authorities. The question remains however of whether a possible decision by the French authorities to expel the applicant to Algeria after his deportation to France, may amount to a breach of Article 3 of the Convention for which the Government of the Federal Republic of Germany might be held responsible...
Having considered all the elements of the case file, the Commission is of the opinion that, in the particular circumstances of the present case, the Government of the Federal Republic of Germany may not be held responsible, within the frame of their obligations under the Convention, of a possible decision affecting the applicant taken at a later stage by the French Government.

16. *Becker v. Denmark*

Appl. no. 7011/75, DR 4 p.215 (233); YB 19 p. 416 (450).

Admissibility Decision

3 October 1975

Extract: The Commission also confirms that it has frequently held that expulsion, and considering this case holds that, repatriation of a person may in certain exceptional circumstances raise an issue under the Convention and in particular under Article 3, namely where there are serious reasons to believe that the person concerned will be subjected, in the state to which he is to be sent, to treatment which is in violation of this article (see also Application Nos. 4314/69 (Yearbook 13, p. 902) and 5012/71 Collection 40, p 62)...
The Commission recognises that it is not within the power of the respondent Government to give guarantees as to what should not happen to the children in South Vietnam, nor is it reasonable or even feasible to require guarantees as suggested by the applicant.
The Commission is satisfied that the respondent Government, concurrently with the examination of this application. have taken measures which in the circumstances must be considered reasonable to ensure as far as possible that the safety of the children, if they are repatriated, will not be jeopardised. The Commission has, in reaching this opinion, taken into account the declarations by the respondent Government that instructions have in the meantime been issued that an enquiry should be made into the individual cases in order to qualify whether the persons should be granted residence permits or whether they should be repatriated.
In particular, it appears that members of the group over the age of 15 who do not want to be repatriated may expect to remain in Denmark. Further, residence permits may also be granted to somewhat younger children if their maturity or other circumstances warrant that their own wishes be taken into consideration. Concerning the younger children there will be an enquiry in order to ascertain whether there are decisive reasons for non-repatriation. It will be taken into account whether any of the younger children are so closely connected by

family or other personal ties with older children or adults who are expected to remain in Denmark that a separation would be contrary to their interests.
Furthermore, the Commission has taken into account that the respondent Government has established contact with the United Nations High Commissioner for Refugees in order to avail itself of its facilities to repatriate the children to South Vietnam. Ex *officio* the Commission observes that, although the High Commissioner is not in a position to give formal guarantees as to the future of the children in South Vietnam, it has pointed to "the amnesty" which follows admission of the children by the Vietnamese authorities. In addition the High Commissioner is in a position, through its office in Saigon, to offer financial support to those children who could be in a needy situation after their return.
Furthermore, it seems to the Commission hardly probable that the High Commissioner would lend its assistance to a repatriation of the children if their fate were at stake.
Concerning these children, who nevertheless would be repatriated because there are no special circumstances which militate against their repatriation, the Commission takes note that the respondent Government have accepted a special responsibility for them also after their return to South Vietnam, and will continue to be represented by the Danish Red Cross. The Government is also making efforts to work out practical arrangements for their return between the South Vietnamese and the Danish Red Cross, which organisations will also follow up their re-establishment in their homeland.
Having regard to the details now available, it follows that there are no serious reasons to believe that the children would face treatment contrary to Article 3 involving the Danish Government's international responsibility under the Convention - on their return to Vietnam and that therefore the allegation under Article 3 is manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

17. *X v. Federal Republic of Germany*

Appl. no. 7334/76, DR 5 p. 154 (155).

Admissibility Decision

9 March 1976

Extract: But even if the new story were true, it would not render the applicant's deportation to Jordan incompatible with Article 3 of the Convention. Criminal prosecution for desertion from the army is not, in the Commission's opinion, an inhuman treatment within the meaning of this provision (principle already established by the Commission for other cases of criminal prosecution, cf. Application No. 4162/69, CD 32, p. 87).

18. *X v. Denmark*

Appl. no. 7237/75, DR 5 p. 144 (148-149).

Admissibility Decision

21 May 1976

Extract: The Commission takes note that the applicant has withdrawn his application.
However, the Commission has regard to the. general interest in the application and, in this connection, it notes that the information provided by the Danish Government threw new light on the position of the applicant in that it then appeared less serious in view of the fact that he was recommended by the Baghdad University and that he had obtained an exit permit from Iraq without difficulty.
The Commission adds in particular that the Danish authorities before deciding the applicant's case obtained an independent opinion from the Danish Refugee Assistance Organisation. Moreover it was open to the applicant to go to another country other than Iraq

and the Danish authorities were prepared to assist him in the solution of any practical problems relative to his departure.
The Commission recalls that after his attempted suicide on .. November 1975 the applicant submitted medical evidence showing that a. he was being kept in a closed ward since he presented a severe suicidal risk, but b. if he were permitted to remain in Denmark (having been granted asylum) he would probably recover within a few weeks. c. If he did not get a residence permit, it was most likely that his condition would become increasingly worse and he would have to stay in hospital, and a protracted stay in hospital would tend to cause further deterioration of his mental state.
Here, the Commission observes that the Ministry of Justice was still considering the applicant's request for a reconsideration of his case and on 31 March 1976 the respondent Government informed the Commission that the Danish Minister of Justice had decided to grant the applicant a permit for residence in Denmark, and that the decision had been taken in the light of the medical evidence as to the applicant's present state of health.
The Commission consequently finds that the applicant's grievance and the object of his application have been adequately met, and there are no reasons of a general character affecting the observance of the Convention which would necessitate a.further examination of the complaints before the Commission.

19. *X v. Federal Republic of Germany*

Appl. no. 7333/76, np, DS 1 p.143.

Admissibility Decision

7 October 1976

Extract: The German Government has submitted an Embassy Report from Accra according to which the applicants fear of political persecution is unfounded...
The applicant, who was invited to submit his observations in reply to the Government's observations has not put forward anything to contradict the above Embassy Report. He has only repeated that he is still afraid of political persecution. Even if one takes into account the obvious difficulty for the applicant to produce concrete evidence of political persecution in Ghana. if there were any, this is not sufficient to discredit the above Embassy Report.
The Commission has therefore come to the conclusion that the applicant's fear of political persecution in Ghana because of his alleged political activities in 1972 is not justified.

20. *X v. Federal Republic of Germany*

Appl. no. 7621/76, np, DS 1 p. 143-4.

Admissibility Decision

7 October 1976

Extract: The applicant in the present case has not stated that he does not want to return to Korea. But he referred to his bad state of health and open social security claims which in his view would render his deportation at the present time an inhuman treatment .
The Commission has therefore examined the above complaints under Article 3 of the Convention which prohibits *inter alia* inhuman or degrading treatment.
The Commission finds that the information submitted by the Government, which has not been contradicted by the applicant although he was invited to present his comments in reply, shows that the applicant suffers only from minor infirmities and that there is no question of a serious disease or grave disablement as a consequence of the working accidents he had suffered in 1972. In particular there is nothing affecting the applicant's fitness for transport.

21 *Agee v. United Kingdom*

Appl. no. 7729/76, DR 7 p. 164 (172-173).

Admissibility Decision

17 December 1976

Extract: The Commission observes firstly that it has constantly held that the right of an alien to reside in the territory of a High Contracting Party is not as such guaranteed by the Convention. Furthermore it is clearly implied by Art. 5 (1) (f) of the Convention and Arts. 3 and 4 of Protocol No. 4 thereto that the High Contracting Parties intended to reserve to themselves the power to deport aliens from their territory...
No question appears to arise in the present case of the applicant being in danger of suffering treatment in violation of Article 3 in the country of destination if, for instance, he is deported to the United States, although he may face prosecution there. Nevertheless the applicant has suggested that in the particular circumstances of this case the deportation would be contrary to Article 3 as being an arbitrary, unjustified or disproportionate punishment. However, deportation of an alien on grounds of state security cannot, in normal circumstances at least, be looked on as a penalty, and it has not been shown in the present case that the authorities' intention was to punish the applicant, as he has suggested, rather than to protect national security. Such deportation cannot be considered as contrary to Article 3 in itself. There is therefore no indication of a violation of Article 3.

22. *48 Kalderas Gipsies v. Federal Republic of Germany and Netherlands*

Appl. no. 7823-4/77, DR 11 p. 221 (231).

Admissibility Decision

6 July 1977

Extract: 56 In this application the applicants complain that they are being subjected to degrading treatment because the authorities of the Federal Republic have failed to issue them with aliens' passports or other documents of identity. Having regard to the fact that the Romanovs have left the territory of the Federal Republic this complaint must be regarded as being made by the remaining applicants of the Denisov and Nicolic families.
57. The Commission's case law establishes that there is no right as such in the Convention to obtain identity papers, but the Commission accepts, in the special circumstances of this case and considering that the applicants are nomads and have other ethnical peculiarities, that questions might arise under Articles 3 and 14 of the Convention concerning the respect for their human dignity and concerning their treatment.
53. However, the Commission is not required to decide whether or not the application discloses any appearance of a violation of these provisions as, under Article 26 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

23. *X and Y v. Switzerland*

Appl. no. 7289/75, DR 9 p. 57 (74); YB 20 p. 372 (408).

Admissibility Decision

14 July 1977

Extract: The Commission has then considered both applicants' main complaint that the prohibition of entry interfered with their private and family life in Liechtenstein.
Insofar as the applicants consider this to be an inhuman treatment within the meaning of Article 3 of the Convention the Commission finds that there is no room for the application of Article 3 in the present case, given the existence of special provisions concerning private and family life which are contained in Article 8 of the Convention.
As to the first applicants complaint that the prohibition of entry to Switzerland interfered with the free choice of his medical assistance, since he needed treatment for his Parkinsons Disease by a specialist in Zurich, the Commission observes that the right to the free choice of medical assistance is not as such included among the rights and freedoms guaranteed by the convention...
The Commission does not consider that there can be a issue of inhuman treatment by withholding access to a particular medical expert if there is a possibility of obtaining medical treatment elsewhere.

24. *X v. United Kingdom*

Appl. no. 7706/76, np, DS 1 p. 164.

Admissibility Decision

5 October 1977

Extract: The applicant also submits that his treatment whilst his case was being decided, and in particular his detention in prison (which he alleges to have been unnecessary or at any rate unnecessarily prolonged) and the conditions in which he was detained, involved a violation of his rights under Article 3 of the Convention, which prohibits inhuman or degrading treatment or punishment.
The respondent Government have submitted that in so far as the applicant complains of the fact of his detention, his complaint is incompatible with the provisions of the Convention since it was authorised under Article 5 (1) (f). However the fact that the detention of an individual is itself permitted under Article 5 does not, in the Commission's opinion, rule out the possibility that it may, in conjunction with the other circumstances of a case, give rise to an issue under Article 3 of the Convention. The Commission has therefore examined the applicant's complaints as.to his treatment as a whole to see whether they disclose any appearance of a violation of Article 3.
The Commission considers that there was some objective justification for holding the applicant whilst the deportation recommendation was considered. There is no evidence that he had previously made any serious attempt to evade the immigration authorities, but he had twice been convicted of staying in the country beyond the permitted time and the fact that his deportation was a real possibility would have given him a motive for attempting to evade the authorities on this occasion. The length of detention was longer than is desirable in such cases although, even if the applicant's version of the facts is accepted, it is clear that consideration of the matter was delayed by his initial failure to give full details of the grounds he had for fearing for his safety. The evidence produced does not show that the detailed grounds ultimately given (in June according to the applicant and October according to the Government) were supported by any of the representations made on behalf of the applicant before October, or by the letters from Ghana which he handed to the authorities. The Commission accepts that in these circumstances enquiries were necessary and that these may have taken some time .It is clear that the applicant was in a condition of anxiety in prison. However the prison authorities were aware of this and took steps to alleviate it. Some degree of anxiety was probably inevitable in the circumstances, whether the applicant was in prison or not. Further, even accepting that the applicant's description of his physical symptoms and his attempts to see specialists is correct, the Commission is not satisfied that he suffered any serious condition in prison which remained untreated for an excessive length of time.

At least during the great majority of his detention the applicant was not held in solitary confinement. The physical conditions in the prison and opportunities for work and recreation may not have been ideal but the Commission does not consider that they have been shown to have been so seriously inadequate that any question under Article 3 could arise in this respect.
In conclusion the Commission considers that, whilst the applicant may have had some cause for complaint as to the manner in which his case was handled, in particular as to the length of time taken to reach a decision and the fact that he was not apparently informed of what was going on, the facts before it do not disclose that he suffered anything amounting to inhuman or degrading treatment or punishment within the meaning of Article 3.

25. *X v. United Kingdom*

Appl. no. 8081/77, np, DS 1 p. 148.

Admissibility Decision

12 December 1977

Extract: In the Commission's view the circumstances that the applicant allegedly was tortured in connection with his arrest in July 1975 deserve particular attention. The Commission observes that at the time the applicant was under acute suspicion of having set off a bomb at a railway station and he alleges that he was assaulted for the purpose of making a confession to that charge.
However, the applicant does not put forward any element leading the Commission to believe that he is under such kind of suspicion at the present time.
Further, on 8 December 1977 *Le Monde* reported (at p. 3) that MX, leader of the NAP and the Pathan community, has been released on bail on 6 December 1977 together with some 15 supporters.
The Commission cannot, therefore find that there are any serious grounds to believe that the applicant would be tortured or otherwise subjected to treatment of a kind which is contrary to Article 3 of the Convention.
The applicant's fears are that those, including himself, adhering to the Pakhtoonistan autonomy standpoint continue to be repressed. In this respect the Commission must observe that the deportation of a person to a country where his civil and political rights are not fully respected is not equivalent to a breach of Article 3 of the Convention.

26. *Giama v. Belgium*

Appl. no. 7612/76, np, DS supplement to vol 1 (3..0.3.4) p. 3.

Admissibility Decision - (Admissible - Friendly settlement)

15 December 1977

Extract: The Commission by no means overlooks the endeavours made by the Belgian authorities to try to establish the applicant's identity and nationality and secure him an identity document and a ticket. Nonetheless, since these efforts have so far proved unsuccessful, the applicant has been deprived of his liberty, at least since the beginning of 1976, for long periods, on the ground that the expulsion order against him was unenforceable in practice. As the applicant is apparently unable to secure the necessary documents himself, he cannot obey the deportation order against him and is consequently in an impasse. In the Commission's view, this situation, which has been going on for quite a long time and which, as far as can be seen today, seems unlikely to change, calls for consideration from the point of view of Article 3 of the Convention, which prohibits *inter alia* inhuman or degrading treatment.

The complexity of the circumstances to be considered makes it impossible to hold today that this aspect of the application is manifestly ill-founded, and accordingly the merits of the case should be examined.

27. *X v. Netherlands*

Appl. no. 8088/77, np, DS 1 p. 150.

Admissibility Decision

15 December 1977

Extract: The Commission first notes that whatever the applicant's state of health might have been shortly before and at the moment of his extradition, it had been brought about by the applicant himself by his own hunger and thirst strike. Of course it should be understood that, even in these circumstances, every act by the Dutch authorities which would have had a direct beating upon the applicant's physical condition and present a threat to his life could be contrary to the Convention, in particular to Articles 2 and 3 thereof...
In the Commission's opinion it is clear from the medical reports submitted by both parties that the applicant's transport itself to Ireland did not constitute a direct danger to his state of health. The supposition that the fact of his extradition would break the applicant's spirit entirely and could lead to a deterioration of his state of health has not at all been substantiated and seems to be contradicted by the information received subsequently that he has ended his hunger and thirst strike in Ireland and has again started to eat.
The Commission is, therefore, satisfied that the handling of the applicant's case by the Dutch authorities cannot be considered as treatment contrary to the provisions of the Convention and in particular Article 3.

28. *3 East African Asians (British protected persons) v. United Kingdom*

Appl. nos. 4715/70, 4783/71 and 4827/71, DR 13 p. 17 (19-20).

Admissibility Decision

6 March 1978

Extract: 1. The applicants complain that the British authorities, acting under the Commonwealth Immigrants Act 1968, refused to admit them to the United Kingdom, or to allow them to remain there permanently, even though they were British protected persons, and holders of United Kingdom passports, and at a time when they had no other country to go to. They invoke Articles 3, 5 and 14 of the Convention
2. The Commission, noting that the present applicants' complaints are analogous to those made by applicants In Groups I and II, recalls:
-that, In its decisions on the admissibility of the 31 applications in Groups I and II (Collection of Decision 36, pp 92, 127 - Yearbook 13, pp. 928, 1014), it admitted six applications by British protected persons from East Africa who complained that, under the Commonwealth Immigrants Act 1968, they had been refused admission to the United Kingdom The Commission then considered that such refusal raised issues under Articles 3, 5 and 14 of the Convention In this connection it referred, as regards Article 3, to the applicants' complaint that, by the said refusal of admission, they had been treated as "second-class citizens" and been subjected to racial discrimination, and it observed that "quite apart from any consideration of Article 14, discrimination based on race could, in certain circumstances, of itself amount to 'degrading treatment' within the meaning of Article 3" (loc, cit pp 116, 117 and 992, 994 respectively)...

- that, following its examination of the merits of the applications in Groups I and II, the Commission concluded in its Report under Article 31 of the Convention of 14 December 1973 that Article 3 had not been violated nor Articles 5 and 14 taken together...
As to the present applicants' complaints under Articles 3 and 14 of the Convention
4. The Commission observes that:
- according to English law, British protected persons — i.e. persons born in or otherwise connected with (former) British protectorates — although not aliens, are not British subjects;
-like the majority of the Commonwealth citizens, they were already subject to immigration control under the Commonwealth Immigrants Act 1962;
they remained subject to such control even after the East African States had become independent;
- their position as regards entry to the United Kingdom was not changed by the Commonwealth Immigrants Act 1968;
- the immigration legislation concerned did not distinguish between different groups of British protected persons on any ground of race or colour.
4. The Commission considers that, in view of these circumstances, the legislation complained of cannot in the present cases of British protected persons be regarded as discriminatory and even less as constituting degrading treatment in the sense of Article 3 of the Convention. It concludes that the applicants' complaints under Articles 3 and 14 are manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

29. *X v. United Kingdom*

Appl. no. 8155/78, np, DS 1 p. 169.

Admissibility Decision

9 October 1980

Extract: The applicant has alleged a violation of Article 3 of the Convention, which prohibits degrading treatment, in so far as the entry clearance and appeal procedures have branded him and his purported family as liars, have kept the purported family apart and have been allegedly discriminatory.
The Commission finds that, even though the entry clearance procedure may have caused frustration to the applicant and his purported family, nevertheless, no evidence has been submitted to the Commission that the applicant or his purported family have been subjected to any ill-treatment.

30. *X v. United Kingdom*

Appl. no. 8008/77, np, DS 1 p. 154.

Admissibility Decision

17 March 1981

Extract: The Commission has also examined the applicant's complaint that the alleged discrimination constitutes, in the particular circumstances of her case, degrading treatment in the sense of Article 3 of the Convention...
In this connection the Commission has obtained the parties' written observations on the question whether the refusal of an entry certificate, on the ground that the applicant - being a married woman - is not a head of family, constitutes such treatment...Article 3 states that no one shall be subjected to "torture or to inhuman or degrading treatment or punishment". The term "degrading treatment" in this context indicates that the general purpose of the provision is to prevent interference of a particularly serious nature with the dignity of man. It

follows that an action, which lowers a person in rank, position, reputation or character, can only be regarded as "degrading treatment" in the sense of Article 3, where it reaches a certain level of severity (cf. para. 189, 3rd sub-para., of the Commission's Report in the East African Asians Case).
The Commission further recalls its statement in the First Greek Case (Vol. II, Part. 1, p. 1 of the Report) that treatment of an individual may be said to be "degrading" in the sense of Article 3 "if it grossly humiliates him before others". This definition is similar to the interpretation reached in para. 19 above, the word "grossly" indicating that Article 3 is only concerned with "degrading treatment" which reaches a certain level of severity.
The Commission does not find that application of the head of household rule in the circumstances of the applicant's case, even if held to be discrimination on the ground of sex and status, reaches such a level of severity that it constitutes "degrading treatment" in the sense of Article 3.

Extract: The Commission has next examined the applicant's complaint that she is being subjected to discrimination, amounting to degrading treatment, on account of her Asian origin.
The Commission's finding of "degrading treatment" in the East African Asians Case was, however, not only based on the discriminatory character of the legislation concerned but on the combined effect of a number of elements, including the fact that those applicants' "continued residence in Africa became illegal" and that, "being refused entry by the only State of which they were citizens - the United Kingdom - they had nowhere else to go" (para. 196 of the Report).
The applicant has failed to show that she or her husband are in a comparable situation, Her husband is a citizen of Kenya and she does not allege that she or he have been ordered to leave that State. The applicant speaks of "open hostility and discrimination against the Asian community" in Kenya and points out that her husband, because of Kenya's Africanisation policy since 1968, left his job and became a self-employed television and radio repairman. But it is not alleged that he is prevented from exercising his present profession, and the applicant states that her husband owns a share of the property in which the family lives.
The situation of the applicant and her husband seems thus comparable to that of the couple in Application No. 5302/71. Those applicants, citizens of the United Kingdom and Colonies, residing in India, also complained, under Article 3 of the Convention, that they were refused entry to the United Kingdom. The Commission, in its decision declaring that application inadmissible, observed *inter alia* that they had "work and a place to live" (Collection 44 p. 29 (44)).
The Commission consequently does not find that the racial discrimination complained of in the present case amounts to degrading treatment in the sense of Article 3.

31. *X v. Federal Republic of Germany*

Appl. no. 9478/81, DR 27 p. 243 (244-246).

Admissibility Decision

8 December 1981

Extract: In the present case the applicant is already responsible for the care of her children and has been fulfilling this obligation single handedly since her divorce. However it appears from the documents which have been submitted on her behalf that her parents still live in Indonesia and that she and her children have been in regular contact with them to the extent that her children have spent periods of months staying with them.
Accordingly the Commission is of the opinion that it would not be wholly unreasonable to expect the applicant to take her children with her to Indonesia. notwithstanding her contention that their educational and other prospects are worse there than in the Federal Republic and concludes that there is no appearance of an interference by the respondent Government with the applicant's right to respect for her family life within the meaning of Article 8.

Extract: As far as the applicant's private life is concerned. it is true that she has been in the Federal Republic of Germany continuously for over eleven years, during which time she and her children have established the network of friends and acquaintances which would be expected after a prolonged period spent in one area. The question before the Commission is therefore whether the relationships established by an individual's social intercourse over a given period constitute 'private life' within the meaning of Article 8 (1) of the Convention.
The Commission has already examined the scope of the meaning of
private life" under the Convention, notably in Application No. 6825/74, DR. 5 p. 86) where it concluded that the term extended, beyond the right to live, as far as one wishes, protected from publicity, to include to a certain extent:
"the right to establish and to develop relationships with other human beings, especially in the emotional field, for the development and fulfilment of one's own personality".
The Commission has held however that the claim to respect for private life is automatically reduced 'to the extent that the individual himself brings his private life into contact with public life or into close connection with other protected interests" (Application No. 6959/75, D.R 10. p. 100-115).
In the present case the applicant's presence in the Federal Republic of Germany was always subject to restrictions. which were personal to her and were in fact relaxed in her favour by way of an exception. However at no time was there any suggestion that her permission to remain in the Federal Republic was anything but conditional and temporary.
Even assuming therefore that her circle of acquaintances established during her stay in Germany do constitute relationships recognised as private life within the meaning of Article 8 (1) of the Convention, the Commission concludes that the order for her deportation cannot be regarded as an interference with her right to respect for such relationships, since the applicant knew and acknowledged at all material times that her presence, and hence her basic ability to establish and develop such relationships. was temporary and subject to revocation.

32. *X v. United Kingdom*

Appl. no. 9088/80, DR 28 p. 160 (162-163).

Admissibility Decision

6 March 1982

Extract: In the present case the Commission notes, however, that the applicant was deported for having defied immigration controls and that his marriage was contracted at a time when the applicant was aware that he was at risk with his irregular immigration status. There do not appear to be any insurmountable obstacles to the applicant's wife and child following him to Pakistan. The applicant's wife is not a United Kingdom citizen, but was brought up in Pakistan, only acquiring a right of abode in the United Kingdom in 1975. The applicant's child, although having United Kingdom citizenship by birth in the United Kingdom, is of an adaptable age.
In the circumstances of the present case, even though the applicant's deportation constitutes an interference with his right to respect for family life under Article 8, the Commission must attach significant weight to the reasons for the applicant's deportation. It finds with regard to the second Paragraph of Article 8 that there are no elements concerning respect for family life which might outweigh valid considerations relating to the proper enforcement of immigration controls. In this respect the Commission would emphasise the close connection between the policy of immigration control and considerations pertaining to public order. The Commission is of the opinion therefore that the interference with the applicant's right to respect for family life was in accordance with the law (the Immigration Act 1971) and justified as being necessary in a democratic society for the "prevention of disorder" under the second paragraph of Article 8 as a legitimate measure of immigration control.

33. *Mmes X, Cabales and Balkandali v. United Kingdom*

Appl. nos. 9214/80, 9473/81 and 9474/81, DR 29 p. 176 (182-183).

Admissibility Decision - (Admissible - to Court)

11 May 1982

Extract: The applicants have complained that the March 1980 Rules, as applied to them, constitute sex and race discrimination regarding their family lives, in breach of Articles 3, 8, 13 and 14 of the Convention...

The Government contend that the applicants' claims fall entirely outside the scope of the Convention, as it does not guarantee any right of entry. Rights of entry and residence are governed exclusively, according to the Government, by the Fourth Protocol which the United Kingdom has not ratified.

The applicants accept that such rights are not guaranteed by the Convention, but submit that the question is not one of entry rights, but of the manner in which respect for family life is protected in the United Kingdom. The case is not about immigration controls, but about discrimination in the securement of Convention rights, even if such rights may overlap with those protected by the Fourth Protocol.

The Commission recalls its constant jurisprudence that there is no right of an alien to enter, reside or remain in a particular country guaranteed, as such, by the Convention (c.f. Application Nos. 8041/77, Decisions and Reports 12, p. 197; 4403/70 and others, Collection 36, p. 92 and 5269/71, Collection 39, p. 104). However the Commission has also held consistently that the exclusion of a person from a country where close members of his family are living may raise an issue under Article 8 of the Convention (c.f. Application Nos. 8041/77, Decisions and Reports 12, p. 197; 6357/73, Decisions and Reports 1, p. 77 and 5269/71, Collection 39, p. 104). Discrimination in the protection of that right may also raise an issue under Article 8 in conjunction with Article 14 (c.f. Marckx Judgment European Court HR, 13 June 1979). The Commission also refers to its Report in the East African Asians Case where, apart from considerations under Article 14 of the Convention, the Commission considered that race discrimination could in certain circumstances amount to degrading treatment within the meaning of Article 3 of the Convention (31 applications, Nos. 4403/70 and others, lodged by East African Asians against the United Kingdom, Report of the Commission, December 1973). The applicants' claims under these Articles may also give rise to an issue under Article 13 in view of the applicants' further complaint that there is no effective domestic remedy for the alleged violations .

In the light of these considerations, the Commission finds that the applicants' claims concerning sex and race discrimination in respect of their family lives fall within the scope of the Convention and that their complaints cannot be dismissed as being incompatible *ratione materiae* with the provisions of the Convention...

The Government submit that the applicants' complaints are manifestly ill-founded, there being no discrimination on the grounds of sex, race, national origin or nationality, within the meaning of Article 14 of the Convention. and no evidence of a failure to respect family life, or degrading treatment or of an absence of effective domestic remedies.

The Commission considers that the present applications raise complex issues of law and fact in respect of Articles 3, 8 alone, 8 in conjunction with 14 and 13 of the Convention, the determination of which issues should depend on an examination of the merits of the applications.

The Commission concludes that the applications cannot be regarded as manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention and no other ground for declaring them inadmissible has been established.

34. *X v. Federal Republic of Germany*

Appl. no. 9680/82, np, DS supplement to vol. 1 (3.0.3.6) p. 8.

Admissibility Decision

13 May 1982

Extract: 1. The applicant complains of his imminent deportation to Nigeria, which he maintains will entail the risk of persecution if it is affected, and also that his present conditions of detention in the Federal Republic of Germany pending deportation are "horrible".
The Commission has considered these complaints in the context of Article 3 of the Convention,...
The Commission has previously considered cases in which conditions of detention or the threat of deportation to a country in which an applicant faced the serious risk of grave maltreatment as raising issues under this provision. In the present case however the applicant has failed to substantiate his submissions either as to the reasons for or nature of any persecution he may expect if deported to Nigeria, or to specify his complaints in relation to the conditions of his detention pending deportation.

35. *X v. Belgium*

Appl. no. 9144/80, np, DS supplement to vol. 1 (3.0.3.4) p. 7.

Admissibility Decision

14 July 1982

Extract: In his original application the applicant complained that if the Belgian authorities maintained their extradition request to the Netherland's authorities he would be submitted to inhuman treatment within the meaning of Article 3 of the Convention or even an infringement of his right to life protected by Article 2. In this connection, his counsel has submitted various medical opinions stating that there is a very considerable risk that the applicant would commit suicide if the extradition were to be carried out...
The Commission notes that on . . January 1982 the applicant was granted a conditional release on condition of co-operating with the "Nederlands Sociaal Begeleidingsorganisatie" and, in the case of his return to Belgium, to do the same with the officers of the prison welfare service.
It is true that the applicant's counsel has pointed out that, although it was very unlikely that the Belgian Government would call for the extradition to be implemented, it was legally entitled to do so until 1990.
However, the Commission must have regard to the letter of . . September 1981 by which the Belgian Government Agent stated that "if a conditional release were granted to the applicant the extradition request would become pointless". Having noted that the applicant was granted his conditional release by the order of . . January 1982 the Commission considers that the present application has become purposeless.
Admittedly, the psychiatrist treating the applicant stressed that the uncertainty attaching to the conditional release had a paralysing effect on the possibility of an improvement in the applicant's state and that a pardon would be the only way of putting an end to this uncertainty.
However, the Commission points out that, although the risk of the applicant's committing suicide cannot be excluded, this question lies outside the purview of the application since there is no longer any question of his extradition. The Belgian authorities have removed the obstacles which might raise problems with regard to Articles 2 and 3 of the Convention and it cannot be held against them that the applicant, on account of his mental state, does not entirely appreciate the scope of the measures taken in his favour. It is rather the duty of his counsel and his psychiatrist to help him to understand them.
In view of the solution reached, the Commission considers that the applicant can no longer claim to be a victim of a violation of the Convention within the meaning of Article 25. The application must therefore, bc dismissed as manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

36. *X v. United Kingdom*

Appl. no. 9505/81, np, DS supplement to vol. 1 (3.0.3.4) p. 9.

Admissibility Decision

16 December 1982

Extract: The Commission notes that the applicant apparently had no entitlement to enter India when required to leave Kenya. On the other hand, although the Indian authorities subsequently indicated that they were not willing that he should be deported to India, the applicant has never suggested that he could not have returned there if he had attempted to do so on being required to leave Kenya. The Indian authorities appear merely to have been unwilling to accept him if he was being deported there against his will.
The applicant had lived in India for the majority of his life, namely from 1964 when he was about six years old, until 1978 when he returned to Kenya, at the age of about twenty. Furthermore it is not in dispute that some members of his family still live there, namely two uncles. He thus had the possibility, when his continued residence in Kenya became impossible and he was refused admission to the United Kingdom, of going to another country with which he already had substantial ties.The Commission also notes that when the applicant did arrive in the United Kingdom without permission to enter he was allowed to enter on a temporary basis whilst his case was considered. He was neither detained nor removed from the United Kingdom, although either of these steps could have been taken under the law.
In all the circumstances the Commission finds that the circumstances of the case were not such as to bring the applicant's treatment within the scope of Article 3 of the Convention.

37. *X v. Federal Republic of Germany*

Appl. no. 9706/82, np, DS supplement to vol. 1 (3.0.3.4) p. 10.

Admissibility Decision

3 March 1983

Extract: The applicant has first complained of his imminent extradition to Turkey where allegedly he would risk political persecution, torture and even the execution of capital punishment. He has invoked the right to protection against inhuman and degrading treatment and torture as guaranteed by Article 3 of the Convention.
However, the applicant was, according to the statements of his counsel, released in the middle of 1982 and the Federal Government do not intend to extradite him before the Turkish Government agrees to give assurances in accordance with Article 11 of the European Convention on Extradition of 1957. In these circumstances the applicant can no longer be regarded to be a victim of the alleged imminent violation of his rights under Article 3 and the application has, in this respect,.to be rejected as being manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

38. *X v. Spain*

Appl. no. 9822/82, np, DS supplement to vol. 1 (3.0.3.4) p. 10.

Admissibility Decision

3 May 1983

Extract: The Commission first points out that the case concerns extradition to one of the States Parties to the European Convention on Human Rights that recognises the right of individual petition...
The Commission further observes that the national court authorised extradition on the grounds that the offences with which the applicant had been charged in Portugal had no political connotations and that his fear of reprisals and political persecution in that country were unfounded. Moreover, the applicant did not provide any evidence that might cast doubt on the court's judgment.
In the circumstances, the Commission considers that there is no evidence of violation of the rights and freedoms safeguarded by the Convention, in particular Article 3 thereof

39. *Altun v. Federal Republic of Germany*

Appl. no. 10308/83, DR 36 p. 209 (231-234).

Admissibility Decision - (Admissible - struck off list - suicide of applicant)

3 May 1983

Extract: 4. The applicant alleges *inter alia* that his extradition to Turkey would not be accompanied by proper guarantees to ensure that the speciality rule would be complied with by that State. This complaint falls outside the Commission's competence. However, according to established case-law, extradition may under certain exceptional circumstances constitute a treatment prohibited by Article 3 of the Convention. This is the case for example where the person concerned is in danger of being subject in the State to which he is to be extradited, to torture or any treatment contrary to Article 3 (c.f. e.g. Application No. 1802/63, Yearbook VI, p. 462 and No. 7317/75, Decisions and Reports 6, p. 141).
5. In this respect the Commission emphasises that only the existence of an objective danger to the person to be extradited may be considered. The finding that such a danger exists does not necessarily involve the liability of the Government of the State requesting extradition. The Commission moreover has taken account, in cases of expulsion, of a danger not arising out of the authorities of the State receiving the person concerned (c.f. Application No. 7216/75, Decisions and Reports 5, p. 137; No. 8581/79, X v. United Kingdom, unpublished Decision of 6 March 1980).
In this context the Commission has firstly examined the applicant's allegation that he runs the risk of the death penalty in the country to which he is to be extradited. The respondent Government stated that this danger did not exist, in view of the relatively minor importance of the offences for which extradition is requested, i.e. harbouring criminals and suppression of evidence, for which the Turkish Criminal Code (Article 296) lays down a maximum sentence of five years. It also noted a memorandum from the Turkish Government dated . . December 1981 giving a formal assurance that the death penalty is impossible in a case where extradition has been requested for an offence not carrying the death penalty.
In the light of this information, the Commission concedes that the applicant was in no danger, in the event of his extradition, of being sentenced to death.

Extract: 6. The applicant also suggested that in the event of extradition he might be tried under a procedure that did not comply with the guarantees laid down in Article 6 of the Convention. He alleged in particular that the military tribunal that would be required to try him is not an independent and impartial tribunal.
The Commission does not consider it has to verify the merits of this allegation. Indeed even supposing that it were not entirely unfounded, it would not in itself make extradition appear as an inhuman treatment.
7. The same does not necessarily apply to the applicant's allegations concerning the political nature of the criminal proceedings instituted against him in Turkey. Admittedly - and the Commission stresses this -, the rule laid down for example in Article 3 of the European Convention on Extradition, whereby extradition may be refused for a political offence, is not

included in the Convention whose compliance the Commission must ensure the fact of granting extradition for a political offence may not be regarded in itself and in the absence of special circumstances as inhuman treatment within the meaning of Article 3 of the Convention. Moreover, the applicant's extradition is not requested for an offence defined as political.

8. However, if there are reasons to fear that extradition, although requested exclusively for offences under ordinary law, may be used to prosecute the person concerned in breach of the speciality rule for political offences or even simply because of his political opinions, the Commission cannot rule out immediately the possibility of a violation of Article 3 of the Convention. It is consequently required to determine whether in this case, there is a certain risk of prosecution for political reasons which could lead to an unjustified or disproportionate sentence being passed on the applicant and as a result inhuman treatment.

9. In this respect, the Commission finds that the applicant claims to have been involved in a series of political activities in Turkey based on an ideology not shared by the Government at present in power. Furthermore, the Commission notes that the applicant is being prosecuted for an offence that has a political background, a finding that must be distinguished from the question whether it is a "political offence" or an offence that can be assimilated to a political offence ("connected offence") within the meaning of extradition law. In a first arrest warrant dated . . May 1982, the applicant was charged with being the instigator of the murder of the former Minister of Customs, Mr. Gün Sazak, and in a subsequent arrest warrant dated . . July 1982, on the basis of which extradition was granted, mention was made only of the offences of harbouring criminals and suppressing evidence.

10. The Commission refers here to a judgment dated . . February 1983 of the German Constitutional Court (1 BvR 990/82), in which that court refers to indications suggesting that the Turkish authorities tried to ensure the return of political opponents by extradition proceedings based on "falsely inspired" charges (*"[dass] es in der Vergangenheit anscheinend vorgekommen ist, dass turkische Behorden mit manipulierten strafrechtlichen Vorwurfen versucht haben, im Wege des Ausslieferungsverfahrens politischer Gegner habhaft zu werden"*). The Constitutional Court held that in cases relating to political controversy the competent authorities must depart from the general rule of extradition law whereby the requested State does not examine the question whether there are circumstances amounting to plausible reasons for suspecting the person in question. However in this case, it is not clear from the file that the authorities of the respondent Party have really examined this question in detail.

The Commission concludes at this stage of the proceedings that it is not possible to rule out with sufficient certainty the danger that the criminal proceedings instituted against the applicant have been falsely inspired.

Extract: 11. Finally, the applicant alleges that his extradition might expose him to torture, which he claims is systematically practised in Turkey with the Government's approval. The respondent Government rejects this allegation as being completely ill-founded. Without denying the fact that high-ranking Turkish authorities have admitted to certain cases of torture, it noted in particular that this State was in a difficult situation and had commenced an anti-torture campaign which had resulted *inter alia* in a series of convictions of police officers .

12. The Commission repeats that this case does not concern the question whether the Turkish Government is responsible for the undisputed fact that over the last few years there have been cases of torture in that country. The only question which the Commission is required to answer is whether a risk that the applicant may be subjected to torture or other inhuman or degrading treatment or punishment may reasonably be discarded at this stage of the proceedings.

13. The Commission notes firstly that it is not disputed - and the Turkish Government itself has not denied - that cases of torture have occurred in this country. These facts have been partly confirmed by various organisations. Admittedly the Turkish Government stated that it was determined to fight resolutely against torture and the Commission has no reason to doubt the seriousness of this undertaking, which has resulted for example in a number of police officers being convicted for ill-treatment of prisoners. However, it has not been established that these efforts have been completely successful so that all risks in this area may now be ruled out.

14. The Commission considers furthermore that the applicant himself may not be described as someone protected from all dangers. In view of his past record as a political activist and the allegation that he interfered with criminal proceedings against the murderers of a political figure, it cannot be absolutely ruled out that he may be regarded as someone able to provide information of such importance that there would be a temptation to use methods of pressure incompatible with Article 3 of the Convention in order to exact such information from him.
15. On the other hand, the respondent Government has not satisfactorily answered the question as to what protective measures it would or intended to take in this regard. Finally, although this case concerns extradition to a High Contracting Party to the European Convention on Human Rights, the Commission attaches a certain importance to the fact that the applicant does not have, in respect of Turkey, the right of individual petition set forth as an optional clause to Article 25 of the Convention.
16. For these reasons and in view of the present state of the file, the Commission considers that it is not able to declare this part of the application manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

40. *Mmes X, Cabales and Balkandali v. United Kingdom*

Appl. nos. 9214/80, 9473/81 and 9474/81.

Commission Report

12 May 1983

Extract: 121. The applicants have submitted that the refusal to allow their husbands to reside with them in the United Kingdom constitutes an interference with Article 8 in itself, as regards their right to respect for family life. Furthermore they have claimed that they have been subjected to racial and sexual discrimination of such a degree as to constitute degrading treatment contrary to Article 3 of the Convention.
122. However, in its examination above of the applicants' allegations under Article 14 in conjunction with Article 8, the Commission has also dealt with elements of family life and the extent of discrimination suffered. As regards this latter element, the Commission would emphasise that Article 14, by its very nature, inherently incorporates a condemnation of the degrading aspects of sexual and other forms of discrimination. The Commission considers that no other separate issues arise under Articles 3 and 8 in the present applications and, therefore, it is not necessary to pursue a further examination of the matter in the light of these provisions.

41. *X v. Federal Republic of Germany*

Appl. no. 10040/82, np, DS supplement to vol. 1 (3.0.3.4) p. 14.

Admissibility Decision

14 July 1983

Extract: The applicant was wanted in Turkey on the suspicion of having committed a common law crime which is punishable with imprisonment of not less than one year but not with the death penalty. He did not allege that he was wanted for any political reasons and risked persecution and ill-treatment on such grounds. He only stated there was a danger that the organisation "Grey Wolf" or his brother in law would try to kill him. The Commission has held that it is not necessary for the application of Article 3 that the danger emanates from the Government of the State which requires extradition (c.f. Application No. 10308/83). In the present case the applicant has however not substantiated his allegations showing that

an objective danger to his life existed and that the Turkish authorities would not be able or willing to protect him against threats from private individuals or organisations.

42. *X v. Norway*

Appl. no. 9955/82, np, DS supplement to vol. 1 (3.0.3.4) p. 15.

Admissibility Decision

15 July 1983

Extract: The Commission observes that the applicant is no longer in Norway, but is staying in Switzerland. He is thus outside Norwegian jurisdiction. It is true that it is doubtful whether Switzerland will permit him to stay in Switzerland.
However, it is clear that in the circumstances presently prevailing the applicant does not face any immediate risk of being deported to Poland by Norway. Consequently he cannot claim to be a victim of violation of Article 3 of the Convention by that State.

43. *X v. Netherlands*

Appl. no. 10549/83, np, DS supplement to vol. 1 (3.0.3.4) p. 17-18.

Admissibility Decision

16 December 1983

Extract: 1. The applicant alleges that if he is expelled to Morocco, he will be in danger of being treated by the Moroccan authorities in a manner contrary to the requirements of Article 3 of the Convention. He bases his fears, in particular, on his involvement with the Polisario Front, his failure to report for military service and his participation in the Casablanca riots in 1981...
3. The Commission first observes that even if the facts invoked by the applicant should be accurate, it does not necessarily follow that the applicant is in danger of being subjected to a treatment contrary to Article 3 of the Convention. It is, for instance, not clear to what extent the Moroccan authorities are aware of the applicant's past activities to which he now refers. It should also be observed that some of these activities were carried out as long ago as in 1975 and 1976, when the applicant was only 15 or 16 years old. As regards the events in C in 1981, it is not clear whether the applicant played such a part in the riot as would entail any serious consequences for him.
4. The Commission further notes that there are some elements which may cast doubt on the veracity of the facts alleged by the applicant. The Commission refers, in particular, to the fact that the applicant was back in Morocco in 1981 and in December 1982 and that he was then not arrested by the Moroccan police or exposed to any severe treatment. Another element of importance is the fact that the applicant did not immediately ask for political asylum in the Netherlands, but that he only made such a request at a later stage, and only after his request for permission to stay in the country as a stateless person had been rejected. The Netherlands Government has also pointed out that in his first request for a residence permit the applicant had given information about his life in the years 1974-1976 which was inconsistent with his subsequent assertions about his participation in Polisario activities at that time. The Commission is aware, however, that these elements are in no way conclusive and that there may be other reasons for the applicant's failure to ask for political asylum or for the contradictory information he has given. As regards his short involuntary return to Morocco in December 1982, it also seems that he was not properly identified by the authorities who believed that he was a Palestinian and expelled him to Switzerland after a short period of time.
5. The Commission notes, however, that the applicant has not submitted any evidence in support of his affirmations. Moreover, his application for asylum has been examined in the

Netherlands in a procedure which has given the applicant the opportunity of presenting his arguments fully and of having these arguments thoroughly examined by the competent administrative and judicial authorities.
6. Under these circumstances, the Commission arrives at the conclusion that it has not been shown that there exists a substantial risk that the applicant, if returned to Morocco, would be subjected to a treatment contrary to Article 3 of the Convention.

44. *Bulus v. Sweden*

Appl. no. 9330/81, DR 35 p. 57 (62-64).

Admissibility Decision (Admissible - Friendly settlement)

19 January 1984

Extract: The Commission recalls that Abdulmassih arrived in Sweden on 4 October 1979 together with his mother, two brothers and one sister. Their application for residence permits in Sweden was rejected finally by the Government on 10 July 1980, and an order of expulsion was issued against them. Following this decision, the family took refuge in a monastery to avoid the enforcement of the expulsion. It appears that during the time at the monastery the mother abandoned her children.
It was not until 24 February 1981 that Abdulmassih was located and apprehended at the monastery, and brought to the police authorities in Södenälje, which was the authority responsible for the enforcement of the expulsion order. Abdulmassih was released the following day with an obligation to report to the police authorities each week-day.
During the time up to 6 April 1981 Abdulmassih was cared for by relatives in Södenälje On that day he was taken into custody at the Lake Villa, allegedly a prison, together with his two brothers. He stayed there until 10 April, when he was released with an obligation to report to the police authorities daily.
The authorities' intention was to expel Abdulmassih. together with his two brothers on 15 April, but Abdulmassih did not appear on that day, and therefore only his brothers could be expelled.
Almost one and a half years later, on 27 September 1982 Abdulmassih's mother was, by a decision of the Immigration Authority, granted a residence permit in Sweden for one year. By virtue of that decision Abdulmassih was also permitted to stay in Sweden. This permit has subsequently been prolonged.
Abdulmassih alleges a violation of Article 3 of the Convention, mainly based on the treatment of him by the Swedish authorities, seen as a whole. He points in particular to the fact that he was held in a prison from 6 to 10 April 1981, and that the authorities did not change their plans to expel him, in spite of all the medical reports which had been submitted. The Commission has carried out a preliminary examination of the merits of the complaint under Article 3 in the light of the parties observations. It considers that the complaint raises several issues of facts and law, which are of such an important and complex nature that their determination should depend upon a further examination of the merits.
Consequently. this aspect of the application cannot be declared inadmissible.

45 *Kirkwood v. United Kingdom*

Appl. no. 10479/83, DR 37 p.158; YB 27 p. 170 (181).

Admissibility Decision

12 March 1984

Extract: 1. The applicant complains that his extradition to California would amount to inhuman and degrading treatment contrary to Article 3 of the Convention since, if extradited, he would be tried for two counts of murder and one of attempt, and would very probably be convicted and sentenced to death. The applicant does not contend that the death penalty as such would constitute inhuman and degrading treatment contrary to Article 3; he argues however that the circumstances surrounding the implementation of such a death penalty, and in particular the "death row" phenomenon, of excessive delay during a prolonged appeal procedure lasting several years, during which he would be gripped with uncertainty as to the outcome of his appeal and therefore his fate, would constitute inhuman and degrading treatment...

The respondent Government point out that the second sentence of Article 2 (1) of the Convention expressly provides for the imposition of the death sentence by a court, following conviction for a crime for which that penalty is provided by law...

As both the Court and the Commission have recognised, Article 3 is not subject to any qualification. Its terms are bald and absolute. This fundamental aspect of Article 3 reflects its key position in the structure of the rights of the Convention, and is further illustrated by the terms of Article 15 (2), which permit no derogation from it even in time of war or other public emergency threatening the life of the nation.

In these circumstances the Commission considers that notwithstanding the terms of Article 2 (1), it cannot be excluded that the circumstances surrounding the protection of one of the other rights contained in the Convention might give rise to an issue under Article 3...

The Commission must therefore consider the nature of the treatment which the applicant complains he would be subjected to in the event of his extradition, and the severity of the risk thereby arising, in order to assess whether or not it attains a sufficient degree of seriousness to raise an issue under Article 3 of the Convention.

The Commission must consider first the degree of risk which the applicant runs of being convicted of the offences with which he is charged, and of being sentenced to the death penalty...

the Commission finds that the risk is sufficiently real and immediate to justify its examination of other aspects of the seriousness of the treatment to which the applicant contends that he will be subjected...

The Commission notes first that the appeal procedure from a sentence of death in California is automatic...

The applicant has further submitted that the absence of qualified counsel who are prepared to undertake the defence of capital offenders in relation to these proceedings causes further delays over and above those which are inherent in the automatic appeal system...

The overall delays are severe ... According to the applicant's submissions the average amount of time between the entry of a death judgment and its reversal, vacation or affirmation by the Supreme Court of California has up to now been two years, although several cases required four years for their resolution. However in the applicant's contention this period is lengthening, because there is a growing backlog of accumulated cases awaiting judgment from the Supreme Court of California.

The respondent Government contend that, notwithstanding the length of time which appeals may take to be determined at the "automatic" stage of appeals, before the Supreme Court of California, in the applicant's case he will not be exposed to the psychological anguish of the death row phenomenon, owing to the form of assurance which the United Kingdom Government has obtained from the competent authorities in the United States...

The Commission cannot find that the assurances obtained have removed the risk of the applicant being exposed to the death row phenomenon. The assurances do not amount to a legal guarantee that the applicant, if sentenced to death, will have the death sentenced commuted. However, in the light of the provisions of Article 2 (1) of the Convention, which expressly recognises the ending of life through the death penalty following appropriate criminal conviction, such an assurance cannot be expressly or implicitly required by the terms of Article 3. Just as the terms of Article 2 (1) of the Convention do not per se exclude the possibility that the death row phenomenon may constitute inhuman and degrading treatment, they have the further effect that the failure to seek a legally binding assurance that a death sentence, if imposed, will definitely be commuted, would not itself constitute treatment contrary to Article 3.

It therefore remains for the Commission to assess the effect of the anxiety to which the applicant will remain subject during his appeal proceedings, and the risk of his conviction,

and thus whether the "death row phenomenon" does, on the facts of the present case, attain a degree of seriousness such as to involve treatment contrary to Article 3 of the Convention.
For the following reasons the Commission considers that, grave though the risk and the treatment which the applicant is likely to endure are, they do not attain the degree of seriousness envisaged by Article 3 of the Convention.
First the Commission notes the existence of complex and detailed measures to accelerate the appeal system in capital cases in California. ..
the Commission is conscious of the rapid developments in case law which are possible in a common law system. It notes that it is established that the death row phenomenon is now an arguable basis for alleging cruel or unusual punishment in the United States, and it cannot ignore the similarity between this concept and that of inhuman and degrading treatment under Article 3 of the Convention.
Furthermore it is significant that the applicant contends that the death row phenomenon is becoming worse, owing to the backlog of cases currently faced by the California Supreme Court ... this very submission suggests that, if these circumstances arise in a particular case, that appellant will have better grounds than hitherto for arguing before the Californian courts that the death row phenomenon constitutes cruel or unusual punishment...
It is not the Commission's task in the present case to assess as a mathematical probability the likelihood of the applicant being exposed to the treatment about which he complains, but to examine the machinery of justice to which he will be subjected and to establish whether there are any aggravating factors which might indicate arbitrariness or unreasonableness in its operation. The Commission finds however from the material which has been submitted by the applicant, that capital cases are dealt with with particular vigilance to ensure their compliance with the standards of protection afforded by the Californian and United States Constitutions, in order to prevent arbitrariness...
The essential purpose of the California appeal system is to ensure protection for the right to life and to prevent arbitrariness. Although the system is subject to severe delays, these delays themselves are subject to the controlling jurisdiction of the courts. In the present case the applicant has not been tried or convicted and his risk of exposure to death row is uncertain.
In the light of these reasons which have been developed above, the Commission finds that it has not been established that the treatment to which the applicant will be exposed, and the risk of his exposure to it, is so serious as to constitute inhuman or degrading treatment or punishment contrary to Article 3 of the Convention. It follows that this aspect of the application is manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

46. *Z v. Netherlands*

Appl. no. 10400/83, DR 38 p. 145 (150) .

Admissibility Decision

14 May 1984

Extract: However it has considered in the past that the repeated expulsion of an individual whose identity it was impossible to establish to a country where his admission is not guaranteed, may raise an issue under Art. 3 of the Convention, which forbids inhuman or degrading treatment (cf. Application No. 7612/76, Giama v Belgium, D.R. 21, p. 73).
The circumstances of the present application are to some extent analogous to the facts at the basis of the above cited decision. They differ, however, on one essential point. The efforts undertaken by the Netherlands' authorities to establish his identity and to obtain for him identity papers have failed due to the un-cooperative attitude of the applicant who has presented himself under seven different identities and nationalities in the Netherlands. The applicant has further failed to show that he undertook any serious efforts to be confronted with those authorities who could have been in a position to establish his identity.
Furthermore, the applicant having repeatedly stated that he had French nationality, a deportation to France as intended by the Netherlands Government did not seem unreasonable.

In these circumstances, the Commission considers that it is in the applicant's own hands to put an end to the situation he complains of and that it cannot be ascribed to the Netherlands' authorities.
It follows that the application in this respect must be rejected as being manifestly ill-founded within the meaning of Art. 27 para. 2 of the Convention.

47. *M v. France*

Appl. no. 10078/82, DR 41 p. 103 (121).

Admissibility Decision

13 December 1984

Extract: The applicant likewise complains that the compulsory residence order against him itself constitutes treatment contrary to Article 3 of the Convention.Here the Commission notes that the applicant is able to move around the Department to which the order confines him. He is able to carry on his professional activities normally, except that he cannot go abroad on study visits, and to have a normal social and family life. Certainly the restrictions on his freedom of movement his continuing uncertainty about his future are a trial but not a trial so severe as to amount to inhuman and degrading treatment.

48. *Berrehab and Koster v. Netherlands*

Appl. no. 10730/84, DR 41 p. 196 (209); YB 28 p. 118.

Admissibility Decision (Admissible - to Court)

8 March 1985

Extract: The applicants also complain that the practically complete interruption of the applicant's links with his daughter aged four at the time, resulting from his expulsion, amounts to inhuman treatment within the meaning of Article 3 of the Convention .
The Government argue that the applicants have not exhausted the domestic remedies and, apart from the question of exhaustion, there is no reason to confer independent significance on Article 3 of the Convention, seeing that family life is protected by Article 8...
The Commission also notes that the applicants rely on Article 3 with regard to the same facts as the Commission has just examined [and found admissible] with respect to the right of the first and third applicants to respect for their family life. It is therefore not appropriate at this stage to declare the applicant's allegations relating to Article 3 inadmissible.

C1. *Abdulaziz, Cabales and Balkandali Case*

15/1983/71/107-109 Series A , no. 94, §§ 90-91.

Court Judgment

28 May 1985

(See Article 3 Court Cases)

49. *C v. Federal Republic of Germany*

Appl. no. 11017/84, DR 46 p. 176 (181).

Admissibility Decision

13 March 1986

Extract: According to its case-law, only in exceptional circumstances could the length of a sentence be relevant under Article 3 of the Convention (cf. No. 7057/75. Dec. 13.5.76, D.R. 6 p. 127).
The Commission holds that the possibility of the applicant's facing a ten-year prison sentence for refusal to perform military service does not in itself warrant the conclusion that if the applicant were sent back to Yugoslavia he would be subjected to inhuman or degrading punishment within the meaning of Article 3 of the Convention (see, for example. No. 10564/83, Dec. 10.12.84, D.R. 40 p. 262).
The mere fact that an offence is punished more severely in one country than in another does not suffice to establish that the punishment is inhuman or degrading (cf. No. 11615/85, Dec. 10.10.85. unpublished)
In these circumstances, the Commission holds that the applicant has not adequately shown that the sentence which might be imposed upon him would be of sufficient severity to fall within the ambit of Article 3 of the Convention

50. *N.K. v. United Kingdom*

Appl. no. 9856/82, np.

Admissibility Decision

14 May 1987

Extract: In the present case the applicant was served, on 27 April 1982, with a notice by the Secretary of State of the latter's decision to deport him to Sri Lanka. The applicant contends that this decision, coupled with the uncertainty which ensued in the subsequent period, during which the applicant was pursuing domestic remedies to challenge that decision, constituted .a violation of Article 3 (Art. 3) of the. Convention...
The Commission notes in this context that the new policy of not returning Tamils who express the fear of returning to Sri Lanka, notwithstanding whether an application for asylum has been made or indeed rejected, was announce.Such persons were granted six months exceptional leave to remain in the United Kingdom and the applicant was expressly granted such leave with effect from 10 February 1986. That period of leave has since been extended or a further period of 12 months, and the respondent Government have expressly informed the Commission, in the context of these proceedings, that the period of exceptional leave which the applicant currently enjoys will expire no earlier than 10 August 1987. At the same time the respondent Government point out that it remains open to the applicant to make a further application for asylum if e so wishes...
Subsequently, the applicant has been granted exceptional leave to remain in the United Kingdom for a total period which has been exceeded five years since the Secretary of State's original decision for his removal. I these circumstances the Commission finds that the applicant is not currently able to contend that he is at risk of treatment contrary o Article 3(art.3) of the Convention by virtue of his imminent removal from the United Kingdom. In this respect the Commission recalls that the applicant's contention that he should be granted asylum is not one which falls within the Commission's competence, and that this issue is a matter in respect of which it is open to the applicant to make a further application to the competent authorities in the United Kingdom if he so wishes...
In these circumstances the Commission concludes that the applicant's complaint under Article 3 (Art. 3) of the Convention is resolved in such a way that, in the particular circumstances of the present application, he is no longer able to claim to be a victim within the terms of Article 25 para. 1 (Art. 25-1) of the Convention. It follows that this aspect of the

applicant's application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

51. *G.M. v. Federal Republic of Germany*

Appl. no. 12437/86, np.

Admissibility Decision

14 May 1987

Extract: Even .assuming that in the present case .an alleged danger arising from autonomous groups may be taken into .account, the Commission observes that in view of the situation in the Lebanon the West Berlin authorities have decided, for .an indefinite period of time, not to deport Palestinians to the Lebanon, and the applicant's stay in West Berlin is currently being tolerated.
This information has been confirmed by the applicant. However the applicant has called in question the Government's further submissions .according to which, should she be requested to leave the country in the indeterminate future, she may .again .avail herself of the norm.al domestic remedies. The applicant contends in particular that the original deportation warning may at any time be executed.
The Commission observes, on the one hand, that the .applicant has not substantiated her allegation that the original deportation order may at any time again be executed. She has in particular not shown that, should her toleration (Duldung) be repealed, she would be unable to avail herself of the normal remedies under German law.
On the other hand, the Commission is satisfied that the assurances of the respondent Government provide sufficient guarantee that the applicant, whose stay in the Federal Republic of Germany is currently being tolerated, can again avail herself of remedies under German law, should her toleration be repealed.
As .a result, there is at present no serious reason to believe that the applicant will be subjected to treatment prohibited in Article 3 (Art. 3) of the Convention. In these circumstances, and in particular in view of the Government's assurances, the Commission considers that the applicant can no longer claim to be a victim of the alleged violation within the meaning of Article 25 (Art. 25) of the Convention. It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

52. *S.D. v. Netherlands*

Appl. no. 10447/83, np.

Admissibility Decision

14 July 1987

Extract: The applicant has complained of the decision of the Dutch Government to extradite him to Belgium. He considers that the Dutch authorities, in granting the request for extradition, act in breach of Article 3 (Art. 3) of the Convention on the ground that they engender a breach by Belgium of that provision of the Convention, in view of the alleged inhuman character of the detention which is likely to continue, or, alternatively, that they are jointly, with Belgium, responsible for this alleged breach...
the Commission has recognised in its previous case-law that a person's extradition may, exceptionally, give rise to issues under Article 3 (Art. 3) of the Convention where extradition is contemplated to a country in which "due to the very nature of the regime of that country or to a particular situation in that country, basic human rights, such as are guaranteed by the Convention, might be either grossly violated or entirely suppressed" (No. 1802/82, Dec.

26.3.1963, Yearbook 6 p. 462 at p. 480). The Commission is of the opinion that these exceptional circumstances do not arise in the present case.
In this respect, the Commission attaches importance to the fact that the case concerns extradition to a High Contracting Party to the European Convention on Human Rights, which has recognised the right of individual petition as set forth in Article 25 (Art. 25) of the Convention. The Commission further notes that the applicant has effectively availed himself of this right, by introducing an application against Belgium.
Under these circumstances, the Commission finds that Article (Art, 3) of the Convention does not prevent the Netherlands from extraditing the applicant to Belgium.

53. *S.N. v. Netherlands*

Appl. no. 13292/87, np.

Admissibility Decision

13 November 1987

Extract: The applicant further submits that, due to his virulent illness, deportation itself would be tantamount to a violation of Article 3 (Art. 3) of the Convention,
The Commission notes that the illness and its alleged seriousness are maintained in a statement of the applicant's private physician and has been submitted to the Commission only on 9 November 1987, where it was received the following day, as a reply to the information given by the government. The Commission notes that the applicant is unwilling to have himself examined by the Netherlands authorities for fear of deportation.
The applicant now bases his application on a completely different reason which he has not yet submitted as an argument in the domestic proceedings. The commission considers that this new allegation should be examined in a separate manner.
The commission notes that, if the allegation is true, the applicant could invoke Article 25 (Art.25) of the Aliens Act (vreemdelingenwet) before the domestic authorities, according to which deportation of an alien from the Netherlands should not take place if his state of health does not permit such deportation. The Commission therefore concludes that the applicant has not exhausted the domestic remedies available to him in the Netherlands.
Having rejected the first section of this application as being manifestly ill-founded, the Commission finds there are no special circumstances which could absolve the applicant from presenting himself to the authorities for a medical examination and from taking proper proceedings in the Netherlands on the basis of the results of such an examination.
It follows that the application must, in this respect, be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

54. *B v. Federal Republic of Germany*

Appl. no. 13047/87, DR 55 p. 271 (281-282).

Admissibility Decision

10 March 1988

Extract: 3. The Commission has next examined the applicant's other complaint that on account of the suffering endured during his detention in concentration camps he was generally unfit for detention today. In this context the applicant has alleged that his detention from 1940 to 1945 has permanently damaged his health. Thus, he is now no longer able to endure any deprivation of liberty as it forces him to relive in his mind the terrible years of his incarceration in a Nazi concentration camp.
The Commission has carefully assessed the evidence which the applicant has adduced in support of his claims. It has had regard in particular to the psychiatric opinions prepared by

Professor W.M. and by Dr. A.B. The latter is a specialist in the field of psychiatry concerned with persons who were interned in Nazi concentration camps. The Commission finds that in principle the detention today of a person who, like the applicant, has spent five years of his life as a boy in such camps, might well raise serious issues under Article 3 of the Convention. if, as a direct consequence of his detention, he is allegedly forced to relive and suffer again the terrible experiences of the years 1940 to 1945.
However, the Commission finds that even the medical opinions submitted by the applicant's own doctors do not sufficiently substantiate his allegations in this respect. Professor W.M. stated on 25 June 1987 that the applicant was not unfit for detention. Dr. A.B. stated that the applicant was now unfit for detention and he described the applicant as a borderline case, but he did not allege that there was an acute danger to his health.
In this situation, the Commission, whilst appreciating the special hardship that the detention on remand from 8 September 1986 until 9 December 1987 must have caused the applicant, cannot find that it attained such a level of severity as is required to constitute a violation of Article 3 of the Convention.

C2. *Berrehab Case*

3/1987/126/177 Series A , no. 138, §§ 30-31.

Court Judgment

21 June 1988

(See Article 3 Court Cases)

55. *Soering v. United Kingdom*

Appl. no. 14038/88

Admissibility Decision - (Admissible - to Court)

10 November 1988

Extract: The applicant first submits that there is serious reason to believe that he would, if extradited to Virginia, be subjected to inhuman and degrading treatment and punishment in contravention of Article 3 of the Convention. He considers that there is a serious likelihood that he will be convicted and sentenced to death and subjected to the "death row phenomenon" while awaiting the outcome of various State and Federal appeals against the death penalty. He points out that in Virginia the average period spent on death row awaiting the outcome of collateral State and Federal appeals is between six and eight years.
The applicant states that this likelihood exists notwithstanding the assurance that has been given to the respondent Government by the Attorney of Bedford County, Virginia, that should the applicant be convicted of the offence of capital murder as charged, a representation would be made in the name of the United Kingdom to the judge at the time of sentencing that it was the wish of the United Kingdom that the death penalty should not be imposed or carried out. In the applicant's submission, if a jury returns a death sentence verdict, the judge must impose a death sentence and is under no obligation under Virginian law to take such an assurance into account. Moreover, it is contended that the respondent Government could have secured a better assurance, namely that the Attorney of Bedford County agree to reduce the charge to first degree murder, or that the Governor of Virginia agree to commute a death sentence to life imprisonment.
The applicant also claims that he suffered from a mental abnormality at the time of the commission of the alleged offence such as to substantially impair his responsibility for his acts and that this circumstance is neither a defence to a charge of murder under Virginian law nor a ground on which the court is precluded from imposing the death sentence.

The applicant submits that, in such circumstances, the respondent Government should give priority to a later request for the applicant's extradition in respect of the same offences to the Federal Republic of Germany, of which he is a national...
The respondent Government observe that it cannot be assumed that the applicant will actually be sentenced to death, having regard to important mitigating facts such as his age, mental condition and absence of criminal record. They point out that the automatic appeal to the Supreme Court of Virginia is normally completed within a six month period and that the length of time spent on death row in Virginia is determined by the exercise by prisoners of collateral rights of appeal to both State and Federal courts following the review by the Supreme Court. The Government submit that no issue under Article 3 of the Convention can arise for delays that are derived substantially from the voluntary exercise of such appeal rights.
The Government accept that the assurance they have received does not amount to a legal guarantee that the applicant, if sentenced to death, will have the death sentence commuted. They are nevertheless satisfied that the assurance given is the best that can constitutionally be offered under the law of Virginia. Moreover, it is not open to the Federal authorities to compel a State to give a stronger assurance. They point out that, within the diplomatic context of an extradition treaty, both the respondent Government and the United States are aware that an ineffective assurance could have very serious consequences for the extradition arrangements between the two countries. It is therefore likely that the assurance will hake the desired effect.
Reference is also made to the existence of important safeguards against the arbitrary imposition of the death penalty in Virginia, namely, that the penalty may only be imposed if one of the statutory aggravating circumstances is proved to exist beyond reasonable doubt at a separate sentencing hearing. Moreover, a post-sentence investigative report concerning the accused's background is reviewed by the trial judge and an automatic review of the trial and sentencing proceedings is carried out by the Supreme Court of Virginia. In addition, an accused's mental condition can be taken into consideration at the separate sentencing procedure...
The Commission considers, in the light of the parties' submissions, that the application as a whole raises complex issues of law and fact under the Convention, the determination of which depends on an examination of the merits of the application.
It concludes, therefore, that the application cannot be regarded as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention and no other ground for declaring it inadmissible has been established.

56. *Soering v. United Kingdom*

Appl. no. 14038/88

Commission Report

19 January 1989

Extract: 91. The applicant complains under Article 3 of the Convention that if he is extradited to the United States of America he runs the risk of being sentenced to death and spending a protracted period in prison awaiting execution pending the exhaustion of collateral State and Federal appeals. He does not complain that the death penalty itself constitutes a breach of this provision but limits his complaint to the risk of exposure to the "death row phenomenon". He submits that the exceptional delay in carrying out the death penalty in Virginia constitutes inhuman and degrading treatment and punishment contrary to this provision...
101. The Commission notes that the 6th Protocol to the Convention which came into force on 1 March 1985 provides for the abolition of the death penalty. However, this Protocol has neither been signed nor ratified by the United Kingdom and thus has no relevance in the present case as far as the obligations of the respondent Government are concerned.
102. It follows that extradition of a person to a country where he risks the death penalty cannot, in itself, raise an issue either under Article 2 or Article 3 of the Convention. However,

the above provision does not exclude the possibility of an issue arising under Article 3 of the Convention in respect of the manner and circumstances in which the death penalty is implemented. For example it cannot be excluded that protracted delay in carrying out the death penalty (the "death row phenomenon") could raise an issue under this provision (see Kirkwood v. United Kingdom, loc. cit., passim).

110. The Commission must first examine whether there is a serious risk of the applicant being sentenced to death and thus exposed to "death row". It must assess whether the risk that the applicant will be sentenced to death is a real one before examining the severity of the treatment to which he could be exposed (see Kirkwood v. United Kingdom, loc. cit., p. 185)...

113. The Commission considers that it cannot be excluded that the death penalty will be imposed, notwithstanding the applicant's claimed mental condition at the moment of the crime and the possibility of a persuasive plea in mitigation. It notes that the applicant does not contest that he actually committed the offences and has made admission statements to this effect (see para. 28 above). Moreover, the murders were committed in a manner which does not exclude that the aggravating circumstance of "vileness" could be established by the prosecution. Finally the Commission observes that the medical evidence adduced by the applicant in the course of the extradition proceedings does not appear to provide the basis for the defence of insanity under Virginia law, tending only to substantiate his claim of diminished responsibility which may only be taken into account as a mitigating facto in the discretion of the judge and jury when passing sentence (see paras. 64-66 above)...

118. The Commission cannot prejudge the impact and status of the assurance under Virginia law. In particular it is not incumbent on the Commission to express an opinion on difficult questions of Virginia law which are disputed by the parties, such as whether the sentencing judge may lawfully have regard to the representations made to him before he passes sentence, or whether it is open to the Attorney for Bedford County to have provided, as in the Haake case, a more effective assurance. The Commission must nevertheless be satisfied that the assurance given is likely to remove the risk that the death penalty will be imposed.

119. The Commission observes that, irrespective of whether the sentencing judge can have regard to the representation made to him on behalf of the respondent Government, he is not obliged under Virginia law to accept it. Moreover, as an independent judge, under a legal duty to consider "any and all" relevant facts in order to assure that the penalty is "appropriate and just", it cannot be assumed that he will have regard to the diplomatic considerations relating to the continuing effectiveness of the extradition relationship between the two countries which have been alluded to by the Government. Further it has not been shown that such a representation to the judge could have an impact on the carrying out of the penalty if imposed.

120. Against the above background the Commission finds that, notwithstanding the assurance and the existence of mitigating factors, the risk that the applicant will be sentenced to death is a serious one...

122. It remains for the Commission to examine whether the "death row phenomenon" to which the applicant could be subjected attains a degree of seriousness contrary to Article 3 of the Convention. The Commission's task in evaluating this question is not "to assess as a mathematical probability the likelihood of the applicant being exposed to the treatment about which he complains, but to examine the machinery of justice to which he will be subjected and to establish whether there are any aggravating factors which might indicate arbitrariness or unreasonableness in its operation" (loc. cit., p. 189)...

A. Length of detention on "death row" as a result of the appeal system...

126. The Commission considers it to be established, on the evidence available to it, that the average time spent on death row in Virginia is between six and eight years, although it notes that the statistics are based only on the seven executions which have taken place since the death penalty was re-introduced in Virginia in 1977. The Commission cannot lose sight of the reality that death row inmates contribute significantly to the "death row phenomenon" through the exercise of their State and Federal rights of appeal. It is significant, in this regard, that the direct automatic appeal to the Supreme Court of Virginia takes six to eight months and that the remaining delays are brought about by the exercise of these rights of appeal.

127. The Commission has previously recognised the essential dilemma of the "death row phenomenon" in the Kirkwood case. A prolonged appeal system generates acute anxiety

over long periods during to the uncertain, but possibly favourable, outcome of successive appeals. On the other hand, an acceleration of the system would result in earlier executions in cases where appeals were unsuccessful (loc. cit., p. 190).

128. As in the Kirkwood case, the Commission must take into account in assessing the seriousness of the delays the momentous significance of these appeals for the inmate whose life depends upon the outcome.

The inmate on "death row" is not the victim of an unjust system which permits those who have been sentenced to death to languish in prison until the State decides to implement the sentence. On the contrary, a significant part of the delay which forms the basis of the present complaint derives from a complex of procedures which are designed to protect human life and to protect against the arbitrary imposition of the death penalty. As the Commission remarked in the Kirkwood case:

"In these circumstances the tradition of the rule of law which underlies the principles of the Convention requires painstaking thoroughness in the examination of any case the effects of which will be so irremediably decisive for the appellant in question" (loc. cit., p. 188).

129. Finally, as in the Kirkwood case, the Commission attaches great importance to the fact that it would be open to the applicant to raise before United States and Virginia courts the complaint that the "death row phenomenon" constitutes cruel and unusual punishment contrary to the Eighth Amendment of the United States Constitution (loc. cit., p. 189).

130. Against the above background, the Commission does not consider that the length of time spent on death row due to the appeal system attains the degree of severity envisaged by Article 3 of the Convention.

B. Age and Mental condition of the applicant

131. The applicant states that at the moment of the commission of the offence he was only 18 years of age and suffering from a mental disability, less than insanity, which ought to be taken into account in fixing sentence. He submits that his mental condition does not afford him any defence to the charges of capital murder and that there is no rule of law which precludes the judge or jury from imposing the death penalty in such a case...

133. The Commission recalls the opinion of the psychiatrists in the United Kingdom who examined the applicant and who were both of the opinion that, at the time of the offence, the applicant was suffering from an abnormality of mind as to substantially impair his mental responsibility for his acts. While it is true that the defence of diminished responsibility does not exist under the law of Virginia the mental condition of the accused is a factor which must be taken into account, first by the jury and subsequently by the judge, in passing sentence. In this regard the Commission notes that defendants are entitled under Virginia law to the appointment of a mental health expert to assist in an assessment of their mental condition at the moment of the crime. Further, the jury is obliged to take into account inter alia both the defendant's age and the influence of extreme mental or emotional disturbance and any impairment to his ability to conform to the requirements of the law. These factors must also be taken into account by the judge. Moreover, upon presentation of the defendant's mental state, the sentencer may elect to impose life imprisonment rather than the death penalty (see paras. 64-66 above).

134. The Commission finds that both the age and mental condition of the applicant are matters which would be taken into account under Virginia law by judge and jury at the separate sentencing proceedings and therefore no question of inhuman treatment can arise in this respect...

C. Conditions of detention in Mecklenburg Correctional Center and execution procedures...

138. The Commission has had regard to the Institutional Operating Procedures which govern every aspect of the prison regime in "death row". The Commission has also examined the consent decree made by the United States District Court in Richmond, in the case of Alan Brown et al v. Allyn R. Sielaff et al, which sets out detailed conditions of detention on "death row" to be observed by the prison authorities (see para. 77 above)...

141. The Commission has no doubt that day-to-day conditions on "death row" must be tense and stressful. However, this flows from the very nature of a detention centre which houses prisoners who have been sentenced to death and who, consequently, require a higher level of security than other prisoners.

142. As regards execution by electrocution, the Commission notes that the Virginia Supreme Court has rejected the submission that electrocution would cause "the needless imposition of pain before death and emotional suffering while awaiting execution of sentence" and would therefore constitute cruel or unusual punishment contrary to the Eighth Amendment

of the United States Constitution (Stamper v. Commonwealth, see para. 62 above). In the light of the similarity between Article 3 of the Convention and the Eighth Amendment, the Commission must attach substantial weight to the above finding of the Virginia Supreme Court.

143. In the circumstances of the present case, the Commission does not consider that the conditions of detention on "death row" or the execution procedures attain a level of severity contrary to Article 3 of the Convention.

D. Possibility of extradition to the Federal Republic of Germany...

149. The Commission recalls that its task under Article 3 is to assess the existence of an objective danger that the person extradited would be subjected to treatment contrary to this provision. Moreover, it recalls that the State's obligation under Article 1 of the Convention is to secure the rights and freedoms defined in Section 1 to every person within its jurisdiction, regardless of his or her nationality or status. It follows, from both provisions read together, that the assessment of the risk that a person might be subject to inhuman treatment contrary to Article 3 depends on an objective assessment of conditions in the country concerned and is independent of the nationality of the applicant or the possibility of extraditing him to his own country.

150. The Commission therefore does not consider that the possibility of extradition to the Federal Republic of Germany, even if it could take place, is a relevant consideration in assessing the risk of treatment contrary to Article 3 of the Convention.

Final assessment

151. The Commission recalls its finding in the Kirkwood case that the treatment the applicant was likely to endure in the circumstances of the case did not attain the degree of seriousness envisaged by Article 3 of the Convention. In reaching this decision the Commission attached significance to the fact that there existed complex and detailed measures to accelerate the appeal system in capital cases in California and that such cases were treated with particular vigilance to ensure their compliance with the Californian and United States Constitutions; that the automatic appeals procedure was of momentous significance for the appellant whose life depended on it and that its essential purpose was to ensure protection of the right to life and to prevent arbitrariness and, further, that it could be argued in United States and Californian courts that the "death row phenomenon" was cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

152. The Commission considers that the present case cannot, in reality, be distinguished from the Kirkwood case. In the first place the Commission observes that although the delays in the appeal system appear to be longer in the present case, they are, in the main, attributable to the inmates' voluntary action in pursuing State and Federal appeals. It is significant that the automatic appeal procedure to the Virginia Supreme Court only lasts six to eight months. Further, there is no indication that the machinery of justice to which the applicant would be subjected is an arbitrary or unreasonable one. On the contrary the Commission observes that the death penalty scheme in Virginia contains numerous safeguards against arbitrariness and that the appeal system has, as its fundamental purpose, the avoidance of the arbitrary imposition of the death penalty and protection of the prisoner's right to life.

153. Finally, the Commission notes that the important mitigating factors in the present case, namely, the age and mental condition of the applicant, are matters which can be fully taken into consideration by both the judge and jury at the sentencing phase and in any subsequent State and Federal appeals.

The Commission concludes, by six votes to five, that the extradition of the applicant to the United States of America in the circumstances of the present case would not constitute treatment contrary to Article 3 of the Convention.

57 *L.E. v. Federal Republic of Germany*

Appl. no. 14312/88.

Admissibility Decision - (Admissible - Friendly settlement)

8 March 1989

Extract: The applicant complains that her envisaged deportation to Lebanon would amount to inhuman treatment and violates her right to respect for her family life with her husband and three children. She invokes Articles 3 and 8 (Art. 3, 8) of the Convention...
As to the well-foundedness of the application, the respondent Government have submitted that the applicant failed to substantiate that she would risk treatment contrary to Article 3 (Art. 3) of the Convention upon her return to Lebanon. As regards Article 8 (Art. 8) of the Convention, the Government maintain that she had not shown that her family could not follow her to Lebanon. In any event, having regard to the applicant's conviction for property offences, the interference with her right to respect for her family life would be necessary in a democratic society for the prevention of disorder and crime.
The Commission, however, considers that the applicant's complaints under Articles 3 and 8 para. 1 (Art. 3, 8-1) of the Convention raise complex issues of fact and law which can only be resolved by an examination of the merits. The application cannot, therefore, be declared manifestly ill-founded. No other grounds for inadmissibility have been established.

58 *Osman v. United Kingdom*

Appl. no. 14037/88.

Admissibility Decision

13 March 1989

Extract: l. The applicant complains that, if he is returned to Hong Kong to stand trial and convicted, he may on the resumption of Chinese sovereignty in 1997 face violations of his rights under Article 3 (Art. 3) of the Convention...
The Commission notes however that in the present case the applicant's fears of treatment contrary to Article 3 (Art. 3) depend on a number of hypothetical factors, namely, that the applicant is convicted, that he is sentenced to more than eight years imprisonment, that his detention falls under the control of the Chinese authorities and that the proceedings against him are re-opened. The Commission also recalls that the Sino-British Joint Declaration provides for the same laws and policies to be carried over for 50 years and that a Sino-British liaison committee is to be set up to make provision for transitional problems.
The Commission finds in these circumstances that the applicant has failed to establish that he is faced with an imminent act of the respondent Government which might expose him to any real risk of treatment contrary to Article 3 (Art. 3) of the Convention.
It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

59. *Moustaquim v. Belgium*

Appl. no. 12313/86, np.

Admissibility Decision - (Admissible - to Court)

10 April 1989

Extract: The Applicant complains first of all of a violation of Articles 3 and 8 of the Convention on the grounds that the decision to deport him caused a sudden breakdown of his family and social life and constituted inhuman and degrading treatment. He explains that his Moroccan nationality is a pure formality. In support of this assertion, he submits that his real mother tongue is French and that he speaks only a few words of Arabic, that all his close relatives (his father, his mother and seven other children, three of whom have already acquired

Belgian nationality) are resident in Belgium and that he has no other close relations in Morocco who could take him in...
The applicant further alleges that the royal deportation order, in its treatment of a criminal who is also an alien, entails discrimination based exclusively on the subject's nationality irrespective of any general, objective criteria...
The Government on the other hand consider that the deportation order against the Applicant who, in their opinion, cannot be considered as a "theoretical" alien, is justified under paragraph 2 of Article 8 of the Convention. The reasons in the royal deportation order include the number and seriousness of the applicant's offences, his conduct and the fact that in this case, the protection of public order ought to prevail over the social and family considerations set out by the Aliens Advisory Committee...
The Commission has carried out an initial examination of the facts and of the submissions of the parties. It considers that the problems raised by this case are sufficiently complex to require an examination of the merits.
This part of the application cannot therefore be rejected as being manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention.

60 *Djeroud v. France*

Appl. no. 13446/87.

Admissibility Decision - (Admissible - Friendly settlement)

10 May 1989

Extract: The applicant also complains that, if he were again deported to Algeria, he would risk being subjected to treatment prohibited by Article 3 of the Convention, as has already occurred in 1987 when he was previously deported. The Government, for their part, maintain that such a risk has not been adequately established and that the French authorities cannot be held responsible for what might happen to the applicant in Algeria.
The Commission considers that the complaint concerning the alleged violation of Article 3 concerns the consequences of a further enforcement of the deportation order. It is based on the same facts as the complaint concerning the violation of Article 8 and cannot therefore be rejected at this stage.
The Commission considers that the application as a whole raises serious issues of fact and of law which cannot be resolved without an examination of the merits. Consequently, the application cannot be declared manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

61 *Vilvarajah and others v. United Kingdom*

Appl. nos. 13163-5/87 and 13447-8/87.

Admissibility Decision - (Admissible - to Court)

7 July 1989

Extract: The applicants have complained that their removal to Sri Lanka in February 1988 by the United Kingdom Government was in violation of Article 3 of the Convention... They submitted, inter alia, that the removal exposed them to a serious risk of persecution and the kind of ill-treatment proscribed by Article 3 of the Convention. They commented that the risk materialised on their return (cf. adjudicator's determination of 13 March 1989, pp. 18-19, of THE FACTS above).
The Government contended that the applications were manifestly ill-founded on the grounds, inter alia, that the applicants had not substantiated their claim of a strong and substantial fear of ill-treatment contrary to Article 3 of the Convention at the material time

in 1987. The Secretary of State, whilst acknowledging the civil disorder in Sri Lanka, did not consider that the applicants personally faced persecution. The incidents related by the applicants were deemed to be random and part of the Sri Lankan army's general activities to deal with Tamil extremists. The ill-treatment which had allegedly been suffered on return to Sri Lanka cannot be verified by the Government and was irrelevant to consideration of the Convention issues. Insofar as the United Kingdom's responsibility under the Convention could be incurred at all, it was in respect of the removal decisions only, based on an assessment of the general situation in Sri Lanka and the applicants' personal circumstances in 1987. This assessment had not revealed any real risk of persecution in the Government's view...
The Commission considers, in the light of the parties' submissions, that the five cases raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the applications as a whole. The Commission concludes, therefore, that the applications are not manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention. No other grounds for declaring them inadmissible have been established.

C3. *Soering Case*

1/1989/161/217 Series A , no. 161, §§ 80-111.

Court Judgment

7 July 1989

(See Article 3 Court Cases)

62 *Beldjoudi and Teychenev. United Kingdom*

Appl. no. 12083/86.

Admissibility Decision - (Admissible - to Court)

11 July 1989

Extract: The applicants complain that enforcement of the deportation order issued in respect of the first applicant in 1979 would interfere with their right to respect for their private and family life as guaranteed by Article 8 of the Convention...
As for the merits of the complaints raised by the applicants under Articles 3, 8, 9, 12 and 14 of the Convention, the Commission has carried out an initial examination of the facts an of the submissions of the parties. It considers that the issues raised in the present case are sufficiently complex to require an examination of the merits.

63. *P, R.H. and L.L. v. Austria*

Appl. no. 15576/89

Admissibility Decision

5 December 1989

Extract: The first applicant argues that Article 3 (Art. 3) would be violated by his extradition because he would in all likelihood get a life sentence which under the law of the United States could not be suspended. However, it is not established that the first applicant, if extradited, would

actually risk imprisonment for life without any hope of release. Even if convicted, he might get a lesser sentence, and, even if he should receive a life sentence, he might be released before having completed his sentence. The possibility under the law of the United States, referred to by the applicant, of release of persons found to be physically or mentally unable to serve a penalty shows concern to prevent treatment incompatible with Article 3 (Art. 3) of the Convention. The Commission further observes that release before the completion of the sentence by way of an act of grace is not excluded in the present case...
The Commission considers that Article 3 (Art. 3) cannot be interpreted in the sense that it would require a procedure for the reconsideration of a life sentence with a view to its remission or termination in any country to which extradition from a Convention State is envisaged.
The Commission concludes that the first applicant's complaint under Article 3 (Art. 3) is manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

64. *Cruz Varas and his family v. Sweden*

Appl. no. 15576/89

Admissibility Decision - (Admissible - to Court)

7 December 1989

Extract: The Commission considers that the main issue is whether the first applicant's expulsion to Chile violated Article 3 of the Convention on the ground that, at the time of the expulsion, there existed substantial grounds for believing that he faced a real risk of being treated contrary to Article 3 in Chile. The Commission has carried out a preliminary examination of this issue in the light of the parties' submissions. It considers that the issue raises questions of fact and law which are of such a complex nature that their determination should depend on an examination of the merits.

65. *Fadele Family v. United Kingdom*

Appl. no. 13078/87, np.

Admissibility Decision - (Admissible - Friendly settlement)

12 February 1990

Extract: The applicants have complained of the refusal of British immigration authorities to allow the first applicant (a Nigerian) to join the other three applicants, his children (British), in the United Kingdom after the death of the wife/mother...
the Commission concludes that it is unable to deal with the applicants' complaint under Article 13 (Art. 13) of the Convention as they have failed to respect the six months' rule laid down in Article 26 (Art. 26) of the Convention. This part of the application must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.
As regards the remainder of the application, the Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under Articles 3 and 8 (Art. 3, 8) (private and family life and home) of the Convention and Article 2 of Protocol No. 1 (P1-2), the determination of which should depend on an examination of the merits. The Commission concludes, therefore, that the remainder of the application is not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and that no other grounds for declaring this part of the case inadmissible have been established.

66. *R.M. v. Sweden*

Appl. no. 15795/89, np.

Admissibility Decision

16 March 1990

Extract: In the Soering case, the European Court of Human Rights stated as follows (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, para. 91):
"In sum, the decision by a Contracting State to extradite a fugitive 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, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 (Art. 3) of the Convention."
In the Commission's view, this test also applies to cases of expulsion. Consequently, it must be examined whether there are substantial grounds to believe that the applicant faces a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention, if deported to Syria.
The Commission considers that the general situation in Syria is not such that any expulsion to Syria would be a violation of Article 3 (Art. 3) of the Convention. In order to raise an issue under Article 3 (Art. 3) there must be some substantiation that there exist a specific risk of treatment contrary to Article 3 (Art. 3) for the applicant in the particular case. In the present case, the applicant alleges that he was tortured in Syria in 1977 and has deserted from the Syrian army as a result of which he is liable to a long-term imprisonment and is at a real risk of torture if he is returned to Syria.
The Commission has examined the applicant's submissions and the documents in support of his application. It notes that a considerable time has elapsed since the alleged torture in 1977. It finds that the information available to it is not sufficient to conclude that there exists a substantial risk that the applicant will be subjected to treatment contrary to Article 3 (Art. 3) of the Convention if he were returned to Syria.

67. *Vilvarajah and others v. United Kingdom*

Appl. nos. 13163-5/87 and 13447-8/87

Commission Report

8 May 1990

Extract: 135. The applicants complained that their removal to Sri Lanka in February 1988 by the United Kingdom was in violation of Article 3 of the Convention. They submitted, inter alia, that the removal exposed them to a serious risk of persecution and the kind of ill-treatment proscribed by Article 3 of the Convention. They commented that the risk materialised on their return (cf. adjudicator's determination of 13 March 1989, paras. 101-102 above)...
138. The Soering case concerned extradition, but these general considerations are of equal relevance to any forced removal of a person to a country where he would face such a real risk. In the Soering case the situation was that a likely course of events would result in exposure to treatment proscribed by Article 3 as regards the "death row phenomenon". The present cases are different. The risks that the applicants ran of such treatment followed from the general situation and were risks shared by all non-combatants resulting from security operations in the north and east of Sri Lanka and there and elsewhere the risk shared by all of being subjected to security checks and interrogation.
139. In the examination of the nature and extent of the risk involved, and of the Contracting State's responsibility in exposing a person to this kind of risk, the Convention organs must primarily analyse the information which was available at the time of the removal or

proposed removal, for it is at this stage that the liability of the Contracting State is incurred. As indicated in the Soering case, the Contracting State is not directly responsible under the Convention for the acts of the receiving State. However, what happens to the asylum seeker on return cannot be wholly ignored as it may cast light on whether the risk has been rightly or wrongly assessed by the Contracting State...

141. The Commission observes that there is no serious dispute as to the facts of the present cases. What is contested is the interpretation to be given to those facts. The applicants contended that as young male Tamils who had already been caught up in the ethnic conflict in Sri Lanka and exposed to real danger between 1984 and 1987, they faced a real risk of severe ill-treatment on return in February 1988 because the situation had not fundamentally changed, even if the excesses of the Sri Lankan army had been to a large extent replaced by the excesses of the IPKF. The Government contended that the original incidents related by the applicants were examples of the general random activities of the security forces in dealing with terrorist extremists and did not indicate that the applicants had been personally singled out for persecution. The same would apply on their return because the whole of the civilian population in Sri Lanka, in the Government's view, ran a risk of being caught up in the fighting.

142. In view of these conflicting elements, the Commission considers that the present cases turn on the questions whether the United Kingdom Government exposed the applicants to a real personal risk of treatment proscribed by Article 3 of the Convention in removing them to Sri Lanka in February 1988, or whether the situation in that country was then such that it was reasonable in the circumstances for the United Kingdom Government to conclude that on return young male Tamils like the applicants would not necessarily be subjected to such a risk.

143. The Commission notes that in February 1988 there was the appearance of an improvement in the situation in the north and east of Sri Lanka. There the Sinhala dominated security forces were no longer in charge, the IPKF having taken over from them. Though there was still occasional fighting between units of the IPKF and groups of Tamil militants who rejected the Accord, the major fighting at Jaffna had ended. The voluntary repatriation of Tamil refugees under a UNHCR programme, constituted on the basis of a memorandum of understanding with the Government of Sri Lanka signed on 31 August 1987, began at the end of December 1987. Between April and August 1988 over 5,000 Tamils had returned under the UNHCR arrangements to the Jaffna district. Others had returned independently ... The general situation in Sri Lanka was however at that time such that the decision of the United Kingdom to send the applicants back to Sri Lanka cannot be said to have been unreasonable or arbitrary. Undoubtedly the applicants, like all other Tamils in Sri Lanka, were exposed to the possibility of ill-treatment by the IPKF or the Sri Lankan police. Nevertheless, it cannot be said that the risk to each member of the Tamil community, or indeed to each young male member, was such as to constitute in the removal of the applicants to Sri Lanka a violation of Article 3 of the Convention. The general instability in Sri Lanka created risks for all non-combatants in certain areas and the Commission does not find that the applicants can be said to have faced greater personal risks on their return in February 1988.

144. The Commission concludes, by a vote of seven to seven (1), with a casting vote by the President, that there has been no violation of Article 3 of the Convention in respect of the applicants' removal to Sri Lanka, given the information available at the relevant date.

Vilvarajah and others v. United Kingdom

Appl. nos. 13163-5/87 and 13447-8/87.

Dissenting Opinion - HH. Trechsel, Ermacora, Gozubuyuk, Campinos, Mrs. Thune, Hr. Rozakis and Mrs. Liddy.

8 May 1990

Extract: We are not persuaded that the voluntary repatriation programme organised by the UNHCR was a clear indication of an appeasement in the general situation in Sri Lanka,

given the fact that this programme was not initiated by the UNHCR, but was its response to the request of the Sri Lankan and Indian Governments and was limited to the voluntary repatriation of Tamils who were mostly in India. It did not include the involuntary repatriation of Tamils from Western Europe. Indeed the UNHCR had continuously urged that these people, including the present applicants, should not be forced to return, a plea supported by Amnesty International and other humanitarian organisations.
In our view, the cases of the fourth and fifth applicants were particularly aggravated by sending them back to Sri Lanka without their identity cards, thus making any travelling even more hazardous because of the numerous security check points on the roads. We also find the circumstances of the return of the fourth applicant further aggravated by his young age (he was born in 1970).
Our opinion is further confirmed by the decision of the independent adjudicator on 13 March 1989 in these cases. He had an opportunity to hear the parties on the substantive issues of fact (except for the third applicant's allegations, para. 70 above, which were made afterwards) and largely believed the applicants' allegations concerning events both before and after their return to Sri Lanka~ He concluded that the applicants had had a well-founded fear of persecution and that they should have been entitled to political asylum at the material time as conditions, in his view, had not materially changed in Sri Lanka by February 1988.

68. *Cruz Varas, Lazo and Cruz v. Sweden*

Appl. no. 15576/89, np.

Commission Report

7 June 1990

Extract: 80. In the Soering case, the Court stated as follows (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, pp. 35-36, para. 91):
"In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the of Article 3 of the Convention."
81. In the Commission's view, this test also applies to cases of expulsion. Consequently, it must be examined whether, at the time of the expulsion, there were substantial grounds for believing that Mr. Cruz Varas faced a real risk of being subjected to treatment contrary to Article 3 of the Convention, if deported to Chile.
82. This examination involves, on the one hand, an establishment of the facts as regards Mr. Cruz Varas' personal background and,, on the other hand, an assessment of the general situation in Chile. The Commission considers that the general situation in Chile at the relevant time was not such that an expulsion to Chile would generally be a violation of Article 3 of the Convention. In order to raise an issue under Article 3 there must be some substantiation that there existed a specific risk of treatment contrary to Article 3 for the first applicant in the particular circumstances of the case.
83. The Commission considers that the evidence submitted by the applicants suggests that Mr. Cruz Varas has in the past been subjected in Chile to treatment contrary to Article 3 of the Convention...
84. In order to assess the risk that Mr. Cruz Varas would again be subjected to such treatment upon his return to Chile, regard must be had to Mr. Cruz Varas' political activities in the past and in Sweden as well as to the general situation in Chile.
85. With regard to Mr. Cruz Varas' political activities, the Commission recalls that the applicant has submitted certain evidence in support of his affirmation that he has been involved in political activities in Chile (cf. paras. 31 and 32), and in Sweden (para. 59). However, even if it is accepted that Mr. Cruz Varas has been engaged in these political

activities, the material available to the Commission does not show that his political activities in Chile prior to coming to Sweden were so important or of such a nature as to make him am particular subject of possible persecution by the Chilean authorities if he returned to Chile. This latter consideration must be weighed against the political situation in Chile at the time of the expulsion. In this respect, the Commission observes that the political situation, including the human rights situation, had changed considerably between the time when Mr. Cruz Varas left Chile in January 1987 and the time of the expulsion, i.e. October 1989. In October 1989, important steps had in fact been taken to restore democracy and respect for human rights. The Commission notes that the political changes in Chile, which had taken place up to October 1989, have been confirmed thereafter.
86. As the Commission has accepted, on the basis of the material before it, that Mr. Cruz Varas was ill-treated during a period ending in January 1987 (para. 83 above) and as the political situation in Chile had substantially improved between that time and the time of his expulsion in October 1989, it cannot be said that at the time of the expulsion there existed a real risk that Mr. Cruz Varas would again be exposed to treatment contrary to Article 3 of the Convention in Chile.

Extract: the Commission has also examined Mr. Cruz Varas' contention that the expulsion involved such a trauma for him that in itself it constituted a breach of Article 3...
89. The Commission finds it established that at the time of his expulsion Mr. Cruz Varas was in a bad state of health (para. 37) and that his health appears to have deteriorated thereafter (paras. 63-64).
90. The Commission considers that, although the expulsion of Mr. Cruz Varas must have involved serious hardship for him, it nevertheless did not reach the level of severity necessary for Article 3 to be applicable...
The Commission concludes, by 8 votes to 5, that there has been no violation of Article 3 of the Convention.

69. *S.G. v. Switzerland*

Appl. no. 12847/87, np.

Admissibility Decision

13 July 1990

Extract: The applicant complains of his expulsion to Sri Lanka where he will be allegedly subjected to inhuman treatment contrary to Article 3 (Art. 3) of the Convention. The applicant notes that the Swiss authorities currently do not enforce the expulsion order but claims that his residence in Switzerland must be regulated.
The Government submit that as a result of the visit of Swiss officials to Sri Lanka, the applicant's expulsion is no longer imminent. Any definite decision will be taken on the basis of up-to-date information obtained on the spot with regard to the applicant's particular situation. They state that any decision to expel the applicant will be brought to his attention in such a manner that he is in a position duly to react.
In the present case the applicant submits that upon his expulsion to Sri Lanka he will be subjected to such treatment. However, the Commission notes that the Swiss authorities have not enforced the expulsion order since 1987.
The Commission is moreover satisfied that the assurances of the respondent Government provide sufficient guarantee that, if the applicant's expulsion order were to be enforced, he would be granted sufficient opportunity to challenge the execution.

70. *Z.Y. v. Federal Republic of Germany*

Appl. no. 16846/90, np.

Admissibility Decision

13 July 1990

Extract: The applicant complains of his imminent expulsion to Turkey, where allegedly he risks being sentenced to death and executed and/or tortured...
The Commission is not called upon to examine whether the applicant's submissions concerning the danger of a death sentence might raise an issue under Article 3 (Art. 3) as according to the findings of the German courts, uncontested by the applicant, no death penalty has been pronounced in Turkey in cases concerning drug trafficking and no death penalties have been executed since 1984 and in legal writing in Turkey the opinion prevails that the death penalty should be abolished. There is nothing to show that these findings are arbitrary and not corroborated by reliable evidence. The German courts refer to an article written by a member of the University of Istanbul and to reports of the Foreign Office of the Federal Republic of Germany.
The letter and report of Amnesty International, referred to by the applicant, do not constitute any prima facie evidence to the contrary. While Amnesty International is of the opinion that the death penalty may still be imposed by Turkish courts in drug trafficking matters, as it has not yet been abolished, it admits that since 1984 no executions have occurred and therefore concludes that no prediction can be made as to whether or not a possible death penalty would in fact be executed.
Insofar as it is reported by Amnesty International that torture still occurs, the Commission further notes that these reports are related to prosecution for political offences.
In these circumstances the Commission cannot find that the applicant's expulsion would be contrary to Article 3 (Art. 3) of the Convention on account of a risk of a death sentence or ill-treatment in Turkey.
In any event the Commission notes that after his return to Turkey the applicant can bring an application before the Commission under Article 25 (Art. 25) of the Convention in respect of any violation of his Convention rights by the Turkish authorities.
It follows that the application must to this extent be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

71 *Beldjoudi and Teychene v. France*

Appl. no. 12083/86.

Commission Report

6 September 1990

Extract: 71. The applicants complain of a violation of Article 3 of the Convention on the ground that if the first applicant were deported to Algeria the Algerian authorities would probably refuse to issue him with an passport enabling him to leave the country, even in the event that the deportation order were revoked...
73. The Commission recalls that the decision to expel a person to a foreign country may, if enforced, engage the responsibility of a Contracting State under the Convention where there are serious and proven grounds for believing that the person concerned may be subjected in the country of destination to treatment in violation of Article 3 of the Convention (Eur. Court H.R., Soering judgment of 7 July 1989, to be published in Series A no. 161, para. 91).
74. Nevertheless, the Commission does not find in the arguments put forward by the first applicant, according to which he would probably be refused a passport in Algeria, any serious grounds for believing that, in the event of his deportation to Algeria, he would face a real risk of being subjected to such treatment.
75. The Commission concludes unanimously that the deportation of the first applicant would not constitute a violation of Article 3 of the Convention.

72. *Gezici v. Switzerland*

Appl. no. 17518/90, np.

Admissibility Decision

7 March 1991

Extract: In the present case the Commission notes that the applicant has been extradited to Greece. However, he does not contend that in Greece he would risk treatment contrary to Article 3 (Art. 3) of the Convention.
Rather, his complaint is that he should not have been extradited to Greece as the Greek authorities will further extradite him to Turkey, where he risks treatment contrary to Article 3 (Art. 3) of the Convention.
The Commission notes in the first place the decision of the Federal Court of a May 1990 according to which the applicant may not be further extradited to Turkey with regard to offences committed before his extradition to Greece, without the agreement of the Swiss authorities in accordance with Article 15 (Art. 15) of the European Convention on Extradition to which both Greece and Switzerland are parties. There is therefore no immediate risk of the applicant being surrendered to a third country. The applicant furthermore does not claim that the Swiss authorities have given such consent.
Moreover, if Greece were to extradite the applicant to a third country, as a party to the European Convention on Human Rights Greece would have to examine whether the treatment awaiting the applicant in the third country could give rise to an issue under the Convention. The applicant would then be free to bring an application before the Commission under Article 25 (Art. 25) of the Convention in respect of any violation of his Convention rights by the Greek authorities.
Finally, if the applicant were extradited to Turkey, he could file an application under Article 25 (Art. 25) of the Convention in respect of any violation of his Convention rights by the Turkish authorities.
This part of the application must therefore be rejected as being manifestly ill-founded within the meaning of Article 27, para. 2 (Art. 27-2) of the Convention.

C4. *Cruz Varas and others Case*

46/1990/237/307 Series A , no. 201, §§ 69-84.

Court Judgment

20 March 1991

(See Article 3 Court Cases)

73. *V and P v. France*

Appl. nos. 17550/90 and 17825/91, np.

Admissibility Decision - (Admissible - to Court)

4 June 1991

Extract: The applicants' complaint is that they are obliged to leave France to go to their country of origin, where they would be in danger of being arrested and tortured...

The Commission points out that in this case the applicants have not been served with deportation orders. Consequently, as regards Article 26 of the Convention, they cannot be reproached with failing to avail themselves of a remedy against such an order.
Nevertheless, the fact that no deportation order has been issued and the existence of a remedy whereby such an order can be contested may have a bearing on the status of "victim", within the meaning of Article 25 para. 1 of the Convention, which applicants must have in order to be able to introduce an individual petition before the Commission...
The Commission points out that in interpreting the Convention "regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms. Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective" (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 34, para. 87). This consideration is equally valid in respect of the provision contained in Article 25 para. 1 of the Convention concerning the system of individual petitions (cf. Soering v. UK, Comm. Report 19.1.89, para. 109, Eur. Court H.R., loc. cit., p. 58). In particular, the conditions of this provision are satisfied not only when an applicant claims that he has suffered a violation but also when he claims that he will suffer an irreversible violation. In the context of a measure which might expose a person to treatment contrary to Article 3, the applicant must prove, to establish his status as "victim" within the meaning of Article 25 para. 1 of the Convention, that he is exposed, through a measure which might be taken imminently by the authorities of the state complained of, to the serious danger of such treatment (cf. No. 10479/83, Dec. 12.3.84, D.R. 37 p. 158).
In this case the Commission notes that the applicants are unlawfully resident in France and that they maintain they may be arrested at any moment with a view to their repatriation to Sri Lanka. The question whether this is a real risk or whether, on the contrary, such a risk can arise only after dismissal of the appeal provided for in Article 22 bis of the Order of 2 November 1945 raises complex questions of fact and of law which the Commission considers to be closely bound up with the merits of the applications.
Consequently, the Commission takes the view that at this stage in the examination of the applications it cannot find that the applicants do not have the status of "victim".
4. With regard to the risk of treatment contrary to Article 3 of the Convention if the applicants are sent back to Sri Lanka...
The Commission has made a preliminary examination of the applications. It notes that they raise complex questions of fact and of law which necessitate an examination of the merits and can thus not be regarded as manifestly ill-founded. They must therefore be declared admissible, no other ground of inadmissibility having been noted.

74. *Hopic and Hopic-Destanova v. Switzerland*

Appl. no. 13158/87, np.

Admissibility Decision

4 July 1991

Extract: The applicants consider that the impossibility for them to live together during the time that their request for a residence permit was pending constitutes inhuman treatment within the meaning of Article 3 (Art 3) of the Convention...
The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art 3) (No 10142/82, Dec 8 7 85, D R 42 p 86 and Eur. Court H R , Ireland v United Kingdom judgment of 18 January 1978, Series A no 25, p 65, para 162)The Commission considers that the situation of which the applicants complain is not such as to raise an issue under Article 3 (Art 3) of the Convention.

75. *V and P v. France*

Appl. nos. 17550/90 and 17825/91, np.

Commission Report

5 September 1991

Extract: 86. The Commission has declared admissible the applicants' complaint that, because of the rejection of their requests for asylum and the fact that they are unlawfully resident in France, they will be sent back to Sri Lanka, where they run the risk of being arrested and tortured, or even killed, by Sri Lankan forces or paramilitary groups.

87. Consequently, the point at issue in this case is whether there has been a violation of Article 3 of the Convention inasmuch as the applicants allegedly face the prospect of an imminent decision by the French authorities to repatriate them to Sri Lanka and thus expose them to a real risk of torture or inhuman or degrading treatment...

90. In the light of the above case-law the Commission must first of all consider whether in this case the applicants can be regarded as facing the prospect of an imminent decision by the French authorities to send them back to Sri Lanka. If so, and in order to decide whether the state criticised is responsible under Article 3 of the Convention, it must assess the seriousness of the risk of treatment contrary to that provision which the applicants would run if they were returned to their country of origin.

91. The Commission points out first of all that no deportation order has been issued against the applicants. The applicants consider that this circumstance is not relevant, since such an order could be issued at any moment, given that they remain unlawfully present in French territory. On the other hand, the Government consider that the nonexistence of such an order shows that the applicants are not under threat of repatriation to Sri Lanka.

92. The Commission will examine these arguments in detail. It notes, however, that there is already no dispute between the parties that, if the applicants are deported from French territory, they will be sent to their country of origin, namely Sri Lanka. Not having noted in the facts of the case any particular circumstance tending to suggest that this would not be the case for either of the applicants, the Commission considers this fact to be established...

111. The Commission points out that in interpreting the Convention "regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms. Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective" (Eur. Court H.R., above-mentioned Soering judgment of 7 July 1989, Series A no. 161, p. 34, para. 87). It is in the light of this principle that the Commission must consider whether in the absence of a deportation order and a final decision as to its legality, given by the administrative courts, the applicants are faced with the imminent prospect of a decision to repatriate them to Sri Lanka.

112. The Commission observes that the applicants have been unlawfully resident in France since expiry of the time limit within which they were asked to leave French territory. However, they are not being actively sought out and no deportation order has been issued against them. The practice followed by the authorities in this connection might in fact suggest that their presence in French territory is for the time being tolerated. Nevertheless, if they were stopped in the street for a simple identity check, they could be arrested and the expulsion procedure could begin.

113. The Commission observes in fact that the authorities - whether the prefect or the central administration - are empowered to apply Article 22 of the Order of 2 November 1945 and order the applicants' deportation at any moment, provided that the limit within which they have been required to leave French territory has expired, a condition that has already been fulfilled in this case. The fact that the authorities have such discretionary powers, which may be exercised at any time, makes the presence of the applicants in France precarious, though tolerated, and places them in a vulnerable situation.

114. Nevertheless, it should be pointed out that under domestic law the applicants have a remedy with suspensive effect provided for in Article 22 bis of the Order of 2 November 1945 whereby they can contest the validity of a deportation order against them before a supervising authority, and, in particular, before a court.

115. The Commission is well aware that the twenty-four hour time limit for lodging such appeals is extremely short (cf. No. 17262/90, Dec. 27.2.91), bearing in mind in particular the fact that the person concerned is obliged to submit a written application. Nevertheless, he has the right to request the assistance of an interpreter "as soon as the appeal has been lodged" and can ask for the appointment of official legal counsel.
116. In addition, the Commission observes that the judge dealing with the appeal has powers to supervise the legality of the authorities' decision from the material standpoint, and can annul it if there has been a manifest error of assessment on the part of the authorities.
117. The Commission notes, however, that the supervisory powers of the judge dealing with the appeal may be limited by the very scope of the impugned decision, i.e. the deportation order. Such a decision makes no mention of the country to which the person concerned is to be deported, so that scrutiny of its legality is limited to the question whether the expulsion of the person concerned from French territory will have serious personal consequences. On this point, it is admittedly relevant to raise arguments relating to any ties the applicant may have in France, whereas this is not the case for arguments relating to the situation in which the foreigner would find himself once he had been sent back to his country of origin.
Such complaints, relying inter alia on Article 3 of the Convention, may be raised, according to the case-law of the Conseil d'Etat, against the authorities' separate decision with regard to the country of destination. The respondent Government maintain in their observations of 12 July 1991 that the appeal provided for in Article 22 bis of the Order of 2 November 1945 would enable the applicants to contest the decision as to the country of destination "which would be notified to them at the same time as service of any deportation order". However, the Commission observes that there is no precise instruction, in either the legislation or the ministerial circulars governing this question, as to the timing of the notification of this decision to the person concerned. Such notification may not take place at the same time as service of the deportation order, particularly when the deportation order is served by post.
118. The Commission does not underestimate the possible consequences of these defects in the system. In the first place, the twenty-four hour limit in which the appeal in question must be lodged is so short that a foreigner subject to a deportation order might find it very difficult to avail himself of that remedy; secondly, where the person concerned learns of the decision as to the country of destination only after expiry of the above limit, it would seem that he is deprived of an effective remedy relying on the risks he would face in that country.
119. However, the Commission considers that this danger remains hypothetical in the applicants' particular case. No deportation order has been issued against them and there is no reason to suppose that such an order will be issued in the near future. Moreover, even if a deportation order were to be issued against them there is no reason to believe that they would not be able to argue successfully before the administrative court the risks of ill-treatment in Sri Lanka.
120. The Commission points out that the responsibility of a Contracting State under the Convention in the area of extradition or expulsion measures is engaged as soon as the decision in question is taken (cf. Eur. Court H.R., above-mentioned Soering judgment, p. 35, para. 91; above-mentioned Cruz Varas judgment, para. 70). In this case there has been no such decision and the risk that it might be taken and enforced with irreversible consequences is considerably reduced by the possibility of contesting it by means of the appeal with suspensive effect provided for in Article 22 bis of the Order of 2 November 1945.
121. That being the case, the Commission considers that the applicants cannot validly maintain that they face the prospect of an imminent decision by the French authorities to repatriate them to Sri Lanka.
122. The Commission concludes by 9 votes to 6 that there has been no violation of Article 3 of the Convention in this case.

V and P v. France

Appl. nos. 17550/90 and 17825/91, np.

Dissenting Opinion of Mr. H.G. Schermers

5 September 1991

Extract: I have been unable to agree with the opinion of the majority of the Commission that there has been no violation of Article 3 of the Convention in this case for the following two reasons.
1. Admittedly, in theory, no violation of Article 3 is committed until the time of the expulsion itself. It is also true that the applicants will be able to appeal against the authorities' separate decision as to the country of destination. Nevertheless, the possibility of making effective use of such an appeal seems limited. In the first place, the time limit is extremely short, particularly in view of the fact that the persons concerned are foreigners who know neither the language of the country nor the procedures to follow. Secondly, "the scope of judicial review in French law on decisions ordering the deportation of an alien is a rather restricted one. The source of such a case-law lies in judicial selfrestraint: administrative courts have been rather reluctant to review fully such decisions relating to aliens, in view of the general wording of the statutes and the amount of discretion it allowed, or thought so, the administration". Consequently, once the repatriation decision has been taken it will be very difficult to obtain its annulment.
I find it difficult to accept that the Convention permits the authorities of Contracting States to decide to send someone back to a country where he will be killed or tortured merely on the ground that the decision is not absolutely final.
2. Believing, as I do, that the Commission must proceed cautiously in expulsion cases, I might have been able to agree with the no-violation line in spite of the objections I have explained above. I did not do so because the Court has blazed a new trail for us in its Soering judgment of 7 July 1989 (Series A no. 161). In that judgment the Court held that "in the event of the Secretary of State's decision to extradite the applicant to the United States of America being implemented, there would be a violation of Article 3". Article 31 of the Convention does not impose on the Commission a formal obligation to limit its scrutiny to acts which have already taken place. In my opinion the Commission could and should have concluded in its report, in accordance with the line followed in the Soering judgment, that, in the event of the decision to repatriate the applicants being implemented, the latter being sent back to Sri Lanka, there would be a violation of Article 3 of the Convention.

V and P v. France

Appl. nos. 17550/90 and 17825/91, np.

Separate Opinion of Mr. C.L. Rozakis

5 September 1991

Extract: A violation of Article 3 is regarded under the Convention system and in the case-law of its institutions as a serious violation of human rights. Application of the provision in question calls for a particularly cautious approach. This is all the more true because the Commission's case-law, recently confirmed by the Court, permits the application of Article 3 in connection with expulsion or extradition to a country in which the person concerned runs the risk of being subjected to treatment prohibited by that article. However, this development of caselaw must not transform the institutions of the Convention into bodies supervising application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, nor substitute Article 3 of the European Convention on Human Rights for that convention.

V and P v. France

Appl. nos. 17550/90 and 17825/91, np.

Separate Opinion of Mr. L. Loucaides

5 September 1991

Extract: It is a general principle of international law that States are not obliged to admit aliens in their territory. The reception of aliens is a matter of discretion and every State is by reason of its territorial supremacy competent to exclude aliens from the whole or a part of its territory.
I do not think that the European Convention was intended in any way to derogate from this principle by imposing on the High Contracting Parties an obligation to admit aliens on their territory or "within their jurisdiction" against their will. For such an obligation deviating from the general principles of international law and amounting to a serious limitation of a State's sovereignty one would have expected to find in the Convention an express and clear provision to that effect. But there is none. On the contrary, the only provision relating to a right of entry of persons in the territory of States Parties to the Convention is expressly limited to the nationals of such States (Article 3 para. 2 of Protocol No. 4 of the Convention).
The case-law of the organs of the Convention also adopts the principle that the Convention does not grant any right to an alien to enter the territory of a State Party to the Convention (N° 7816/77, Dec. 19.5.77, D.R. 9 p. 219).
Considering the above and the wording of the provisions of Article 1 of the Convention I believe that such provisions cannot be interpreted in such way as to consider aliens in situations like those of the present cases as being "within the jurisdiction" of a State as long as they were not actually admitted in the territory over which such State exercises jurisdiction through the prescribed procedures of that State.

V and P v. France

Appl. nos. 17550/90 and 17825/91, np.

**Dissenting Opinion of Mr. J.C. Geus,
joined by MM. F. Ermacora, A.V. d'Almeida Ribeiro, M. Pellonpää and B. Marxer**

5 September 1991

Extract: I am not able to agree with the majority finding that there has been no violation of Article 3 in this case. My opinion is based on the following argument.
It cannot be disputed that the applicants are in a situation of illegality. The fact that no deportation order has been issued against them in no way diminishes the precariousness of their situation.
Although the practice followed by the administrative authorities might suggest that, in many cases, this situation of illegality might be tolerated, there is no reason to believe that this will be the case for the applicants nor any way of knowing how long toleration of their presence in French territory might continue. Although they are not being actively sought, if they were stopped in the street for a simple identity check, they could be arrested and the expulsion procedure could begin.
While the authorities are not obliged in every case to issue deportation orders against foreigners unlawfully present in French territory, it is a more important consideration that those authorities whether the prefect or the central administration - are empowered to apply Article 22 of the Order of 2 November 1945 and order the applicants' deportation at any moment, provided that the limit within which they have been required to leave French territory has expired, a condition that has already been fulfilled in this case. The fact that the authorities have such discretionary powers, which may be exercised at any time, makes the presence of the applicants in France particularly precarious, though tolerated. Consequently, the applicants can validly claim, for the purposes of Article 3 of the Convention, read in the light of the Soering judgment, that their repatriation to Sri Lanka would be imminent.
That would not be the case if under domestic law the applicants had a remedy whereby they could effectively contest the validity of a deportation order against them before a supervising authority, and, in particular, before a court, relying on Article 3 of the Convention. The majority of the Commission took the view that the appeal provided for in Article 22 bis of the Order of 2 November 1945 was an adequate remedy in that respect.

However, it should be pointed out in the first place that the 24 hour limit within which a foreigner must lodge an appeal is extremely short, particularly in view of the fact that the person concerned is obliged to submit a written application (cf. No. 17262/90, Dec. 27.2.91). Although he has the right to request the assistance of an interpreter "as soon as the appeal has been lodged" (see Article 241-11 of the Code of Administrative Procedure), there is no provision for him to be assisted by an interpreter when preparing his defence. In addition, the person concerned may request the appointment of official counsel, again "as soon as the appeal has been lodged", but his assistance by a lawyer is not compulsory. Moreover, the adversarial aspect of the proceedings is limited, since they take place without submissions from the government commissioner, and they are of a "summary" nature, since the judge hearing the appeal must in principle announce his decision within 48 hours of the lodging of the appeal.

In any case, the judge hearing the appeal has only limited powers to review the authorities' decision, since he may not criticise the contested decision unless there has been a manifest error of assessment on the part of the authorities, while he cannot look into the advisability of their decision.

In addition, the effectiveness of the rights of the defence, and even the possibility of exercising them in the context of such proceedings, have been clearly called into question (E. LASSNER and S. LAUSSINOTTE, La nouvelle procedure de reconduite a la frontiere. Des etrangers au pays des droits de l'homme?, Gazette du Palais, 7-8 December 1990).

Lastly, and above all, it should be noted that the supervisory powers of the judge dealing with the appeal are limited by the very scope of the impugned decision, i.e. the deportation order. Such a decision makes no mention of the country to which the person concerned is to be deported, so that scrutiny of its legality is limited to the question whether the expulsion of the person concerned from French territory will have serious personal consequences. On this point, it is admittedly relevant to raise arguments relating to any ties the foreigner may have in France, whereas arguments relating to the situation in which the foreigner would find himself once he had been sent back to his country of origin, such as the complaints in this case relating to Article 3 of the Convention, may be raised, according to the case-law of the Conseil d'Etat, only against the authorities' separate decision with regard to the country of destination. However, there is no precise instruction, in either the legislation or the ministerial circulars governing this question, as to the timing of the notification of this decision to the person concerned. The case-law of the Conseil d'Etat reveals that the person concerned is informed of the decision as to the country of destination when he is served with the order imposing administrative detention. However, notification may not take place at the same time as service of the deportation order, particularly when the deportation order is served by post.

The Government's statement that the separate decision as to the country of destination could be contested under the same conditions as the deportation order even if the person concerned was not informed of its contents until after service of that order is not confirmed by any judgment of the Conseil d'Etat. On the other hand, the ministerial circular of 25 January 1990 stipulates (paragraph 2.1.1) that "if the alien served with a deportation order does not appeal within 2~ hours from service of the order, the latter must be enforced ... according to the usual procedures". Consequently, where the person concerned has not been informed of the decision as to the country of destination within 24 hours from service of the deportation order, and has thus not been able to contest that decision - the only one against which an argument relating to the risk of treatment contrary to Article 3 of the Convention in the country of destination can be effectively raised - there is absolutely nothing to prevent enforcement of the foreigner's repatriation.

It follows that the applicants, who continue to reside unlawfully in French territory, may be served at any moment with an automatically enforceable deportation order and repatriated to Sri Lanka, while under national legislation and practice they have no effective remedy whereby they can obtain scrutiny of the consequences of such repatriation. They must therefore be regarded as faced with the prospect of an imminent decision by the French authorities to send them back to Sri Lanka.

C5. *Vilvarajah and others Case*

45/1990/236/302-306 Series A , no. 215, §§ 101-116.

Court Judgment

30 October 1991

(See Article 3 Court Cases)

C6. *Beldjoudi Case*

55/1990/246/317 Series A , no. 234-A.

Separate Opinion of Judge De Meyer

26 March 1992

(See Article 3 Court Cases)

C7. *Vijayanathan and Pusparajah Case*

75/1991/327/339-400 Series A , no. 241-B, §§ 43-47.

Court Judgment

27 August 1992

(See Article 3 Court Cases)

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

1. *Sanchez-Reisse Case*

4/1985/90/137 Series A , no. 107, §§ 43-60.

Court Judgment

21 October 1986

Extract: A. The procedure followed

43. Mr. Sanchez-Reisse alleged that the Swiss system for appealing against detention with a view to extradition did not, at the time, afford adequate safeguards when measured against Article 5 § 4.

44. In the first place, he complained of the fact that he had not been able to apply directly to a court. Being obliged, like anyone who was detained with a view to extradition, to turn first of all to an administrative body, he did not have, so he maintained, direct access to the judicial authority competent to hear a request by him for provisional release...

45. ...The Court considers that the intervention of the Office did not impede the applicant's access to the Federal Court or limit the latter's power of review. Moreover, it may meet a legitimate concern: as extradition, by its very nature, involves a State's international relations, it is understandable that the executive should have an opportunity to express its views on a measure likely to have an influence in such a sensitive area.

46. The applicant made a second complaint, concerning the impossibility of conducting one's own defence, due to the fact that the exclusively written nature of the procedure necessitated the assistance of a lawyer. He alleged that a detainee needed to be able to check the action taken by the lawyer, in particularly attending the oral proceedings, especially as the latter might have been appointed by the Office...

47. In the Court's view, the allegation of the applicant - who in fact chose his lawyer himself - does not stand up to examination. It has no basis in the actual text of Article 5 § 4. What is more, it loses sight of the fact that Swiss law, by requiring the assistance of a lawyer, affords an important guarantee to the person concerned by an extradition procedure. The detainee is, by definition, a foreigner in the country in question and therefore often unfamiliar with its

legal system. Furthermore, Mr. Sanchez-Reisse furnished no evidence that his legal knowledge was sufficient to enable him to present his requests effectively in writing.
48. Mr. Sanchez-Reisse also alleged that he should have had an opportunity of replying to the office's opinion, which was ex hypothesi negative since its very existence presupposed a refusal on the part of the administrative authority to grant release.
At the same time he complained of the fact that he had not been able to appear - either as of right or on his application - before a court in order to argue the case for his release...
51. In the Court's opinion , Article 5 § 4 required in the present case that Mr. Sanchez-Reisse be provided, in some way or another, with the benefit of an adversarial procedure.
Giving him the possibility of submitting written comments on the Office's opinion would have constituted an appropriate means, but there is nothing to show that he was offered such a possibility. Admittedly, he had already indicated in his request the circumstances which, in his view, justified his release, but this of itself did not provide the "equality of arms" that is indispensable: the opinion could subsequently have referred to new points of fact or of law giving rise, on the detainee's part, to reactions or criticisms or even to questions of which the Federal Court should have been able to take notice before rendering its decision.
The applicant's reply did not, however, necessarily have to be in writing: the result required by Article 5 § 4 could also have been attained if he had appeared in person before the Federal Court...
In the present case, the Federal Court was led to take into consideration the applicant's worsening state of health, a factor which might have militated in favour of his appearing in person, but it had at its disposal the medical certificates appended to the third request for provisional release from custody (see paragraph 28 above). There is no reason to believe that the applicant's presence could have convinced the Federal Court that he had to be released.
Nevertheless, it remains the case that Mr. Sanchez-Reisse did not receive the benefit of a procedure that was really adversarial.
52. To sum up, the procedure followed in the two cases in dispute did not, viewed as a whole, fully comply with the guarantees afforded by Article 5 § 4.
B. Length of the proceedings
53. Before compliance with the requirement that decisions be taken "speedily" is considered, the duration of the proceedings in question needs to be established...
54. ...Like the Commission, the Court notes that submission of the request to the Office opens the administrative stage of the proceedings and is the prerequisite for the Federal Court's exercise of "judicial supervision of the lawfulness of the measure" (see the above-mentioned De Wilde, Ooms and Versyp judgment, Series A no. 12, p. 40, para. 76). The relevant dates in this case are therefore 25 January and 21 May 1982.
The periods in question ended on 25 February and 6 July 1982 respectively, on which dates the requests were rejected (see paragraphs 26 and 31 above).
The total duration of the periods to be considered is thus thirty-one days in the first instance and forty-six days in the second.
55. It remains to be established whether these periods comply with the requirement of Article 5 § 4 that decisions be taken "speedily". In the Court's view, this concept cannot be defined in the abstract; the matter must - as with the "reasonable time" stipulation in Article 5 § 3 and Article 6 § 1 (see the established case-law) - be determined in the light of the circumstances of each case.
56. In this connection, the Government relied on various factors which, taken together, they regarded as satisfactorily explaining and excusing the length of time taken in the two instances: the nature of detention with a view to extradition, which can hardly be dissociated from the extradition procedure; the mixed nature - administrative and then judicial - of the relevant procedure and the fact that the decision on the merits, i.e. on the guilt or innocence of the person concerned, will in principle be made by a foreign court; in this case, in addition, the lateness of the requests for release; the reasons justifying continued detention, such as the gravity of the offences of which the applicant was accused and the risk of his absconding; the complexity of the question of extradition; the advanced state of the extradition procedure; the links between the applicant's case and those of his accomplices; the difference in what was at stake, for Mr. Sanchez-Reisse, between the outcome of his objection to extradition and that of his requests for provisional release.
51. ...The fact nevertheless remains that the applicant was entitled to a speedy decision - whether affirmative or negative - on the lawfulness of his custody. The decisions of 25

February and 6 July 1982 clearly show, moreover, that the Federal Court confined its examination to the requests in question: after succinctly stating the facts, it weighed the risks of maintaining Mr. Sanchez-Reisse's detention and those of provisionally releasing him. There is no reason to believe that the problem was a complex one, necessitating detailed investigation and warranting lengthy consideration. More particularly, whilst the applicant's state of health was undoubtedly inseparable from other considerations, the latter were readily apparent in a case-file that had been under examination for approximately a year.

58. To these comments, which are valid for both sets of proceedings, must be added others specific to each.

59. With regard to the second request - the first, which the applicant withdrew (see paragraph 22 above), is not relevant -, the Commission noted and the Government did not contest this - that the only new element was Mr. Sanchez-Reisse's state of health (see paragraph 23 above). This point had given rise to a brief investigation during which the Office had contacted the medical service of Champ-Dollon prison, with the result that the competent authority was in a position to take a prompt decision. The Office nevertheless needed twenty-one days and the Federal Court a further ten, making thirty-one in all. The Court considers such a delay unwarranted.

60. As to the third request, the Office forwarded it to the Federal Court without expressing an opinion. Although in possession of the full case-file, the Court, in accordance with its practice, therefore deferred its decision until such time as it had received the opinion, and this entailed a few days' delay (see paragraphs 29 and 31 above).

In explanation of the duration of the proceedings, which was half as long again as on the first occasion, the Government made a number of points: the Federal Court was going through a very busy period; it was on the point of giving its decision as to extradition itself, which meant that the case no longer had priority; it could not do otherwise than reject the request because it was based on grounds identical to those of the previous one.

The Court does not see why these factors should have deprived Mr. Sanchez-Reisse of the guarantee of rapidity prescribed in Article 5 § 4. After all, the matter was particularly straightforward because the applicant had raised it in similar terms in an earlier request. Here too, therefore, the period in question - twenty days at the Office and a further twenty-six days at the Federal Court was excessive...

For these reasons, the Court

1. holds by five votes to two that there has been a violation of Article 5 § 4 of the Convention on account of the non-compliance with procedural guarantees;

2. holds by six votes to one that there has been a violation of Article 5 § 4 on account of the failure to take decisions "speedily".

Sanchez-Reisse Case

4/1985/90/137 Series A , no. 107.

Concurring Opinion of Judges Ganshof, Van der Meersch and Walsh

21 October 1986

Extract: While concurring in the result, we regret that we are unable to agree with the reasoning in the judgment in respect of one matter.

In our view, a procedure exclusively in writing is not sufficient to satisfy the requirements of Article 5 § 4 of the Convention, even if the person concerned is assisted by a lawyer and has the right to challenge the lawfulness of his detention in the appropriate courts.

Although Article 5 § 4 is silent on the point, it seems to us that this provision is fully satisfied only if the detainee has an opportunity to be heard in person. The Article in question is based on the institution of habeas corpus, which is based on the principle that the person concerned appears in flesh and blood before the court.

Such a view is moreover consistent with previous decisions of the Court, which has hitherto tended - as the judgment points out - to recognise the need for a court hearing. Admittedly, the case-law so far concerns only the eventualities contemplated in sub--paragraphs (c) and

(e) in fine of paragraph 1, but we see no reason why it should not also apply to a person "against whom action is being taken with a view to ... extradition" (sub-paragraph (f)).
In short, the applicant's appearance in person before the Federal Court was necessary in the instant case.

2. *Bozano Case*

5/1985/91/138 Series A , no. 111, §§ 54-60.

Court Judgment

18 December 1986

Extract: 54. The main issue to be determined is whether the disputed detention was "lawful", including whether it was in accordance with "a procedure prescribed by law". The Convention here refers essentially to national law and establishes the need to apply its rules, but it also requires that any measure depriving the individual of his liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see, as the most recent authority, the Ashingdane judgment of 28 May 1985, Series A no. 93, p. 21, § 44). What is at stake here is not only the "right to liberty" but also the "right to security of person".
55. The applicant contended that the police action of 26 to 27 October 1979 was automatically deprived of any legal basis when the deportation order was retroactively quashed by the Limoges Administrative Court.
The Commission's Delegate disagreed with this contention. The Government argued that it was inconsistent with the Commission's case-law (report of 17 July 1980 on application no. 6871/75, Caprino v. United Kingdom, p. 23, § 65), but they did not state this as their firm opinion; in their view it was a complex point and one which the applicant had not given the French courts an opportunity to consider.
The argument adduced on Mr. Bozano's behalf does not entirely convince the Court either, despite its undeniable logic. It may happen that a Contracting State's agents conduct themselves unlawfully in good faith. In such cases, a subsequent finding by the courts that there has been a failure to comply with domestic law may not necessarily retrospectively affect the validity, under domestic law, of any implementing measures taken in the meantime.
On the other hand, it is conceivable that matters would be different if the authorities at the outset knowingly contravened the legislation in force and, in particular, if their original decision was an abuse powers. The Court notes that the Limoges Administrative Court, in its judgment of 22 December 1981 (final ground), found that there had indeed been an abuse of powers. The Limoges court based its finding on circumstances obtaining after the disputed deportation order had been made but which appeared to it to reveal the ministerial authority's real motives at the time; the Minister of the Interior and for Decentralisation, who had stated in written pleadings of 8 December 1981 that he desired to leave the matter to the discretion of the court, did not appeal (see paragraphs 34 and 35 in fine above).
56. The applicant complained of a second failure to comply with French law. He claimed that the executive was not empowered to implement its own decisions by force except where a statute expressly gave it such a power or made no provision for a criminal sanction or else in cases of urgency. None of these three exceptions to the general rule applied in this instance, he argued...
58. Where the Convention refers directly back to domestic law, as in Article 5, compliance with such a law is an integral part of Contracting State's "engagements" and the Court is accordingly competent to satisfy itself of such compliance where relevant (Article 19); the scope of its task in this connection, however, is subject to limits inherent in the logic of the European system of protection, since it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, inter alia and mutatis mutandis, the Winterwerp judgment of 24 October 1979, Series A no. 33, p. 20, § 46).

Several points of French law have been disputed in the instant case. Even if the arguments of those appearing before the Court and the other information in the file are not absolutely conclusive in the Court's view, they provide sufficient material for the Court to have the gravest doubts whether the contested deprivation of liberty satisfied the legal requirements in the respondent State. 59. "Lawfulness", in any event, also implies absence of any arbitrariness (see paragraph 54 above). In this respect, the Court attaches great weight to the circumstances in which the applicant was forcibly conveyed to the Swiss border.

Firstly, the relevant authorities waited for more than a month before serving the deportation order of 17 September 1979 on Mr. Bozano, although there was no difficulty about finding him in Limoges, where he was in pre-trial detention until 19 September and subsequently under judicial supervision (see paragraphs 19 and 23-24 above). The authorities thus prevented him from making any effective use of the remedies theoretically available to him. What is more serious is that the authorities gave every appearance of having wanted to ensure that Mr. Bozano did not find out about the action they were preparing to take against him, so that they could the more effectively face him with a fait accompli thereafter. As early as 14 September, and again on 24 October, Switzerland had been informed by telexes from Interpol in Rome that Mr. Bozano was about be deported from France (see paragraph 26 in fine above). Moreover, Mr. Bozano stated that on 20 September he had applied for a residence permit at Haute Vienne Préfecture, which had refused to issue him an acknowledgement of receipt of his application (see paragraph 20 above). That such an application was indeed made seems to be confirmed by the letter Mr. Yves Henry, the applicant's lawyer, sent to the Prefect on 27 September (ibid.). The Government did not dispute that the application was made, but stated that there was no trace of it in the official archives and that in any case the deportation order of 17 September was a bar to issuing the permit sought. They did not, however, explain why nothing was said about the Minister of the Interior's decision.

To this must be added the suddenness with which the applicant was apprehended by the police on the evening of 26 October and, more striking still, the way in which the Minister of the Interior's decision was carried out. From what their own Agent himself indicated, the Government had contacted only Switzerland, a State which had an extradition treaty with Italy and where since April 1976 there had been a warrant out for the applicant's arrest with a view to extradition, as was recorded in the Swiss Police Gazette (Moniteur Suisse de police) (see paragraph 27 above). Mr. Bozano was not even able to speak to his wife or his lawyer and at no time was any offer made to him that he should be expelled - if necessary under supervision - across the frontier of his choice or even across the nearest frontier, the Spanish border. On the contrary, he was forced to travel from Limoges to the customs post at Moillesulaz - some twelve hours and several hundred kilometres away -, handcuffed and flanked by policemen who in due course handed him over to Swiss colleagues (see paragraphs 25-26 above). Mr. Bozano's precise, detailed description of the events strongly suggests that this is what happened. His account seems plausible in the absence of any evidence or explanation to the contrary (see paragraph 22 above).

60. Viewing the circumstances of the case as a whole and having regard to the volume of material pointing in the same direction, the Court consequently concludes that the applicant's deprivation of liberty on the night of 26 to 27 October 1975 was neither "lawful", within the meaning of Article 5 § 1 (f), nor compatible with the "right to security of person". Depriving Mr. Bozano of his liberty in this way amounted in fact to a disguised form of extradition designed to circumvent the negative ruling of 15 May 1979 by the Indictment Division of the Limoges Court of Appeal, and not to "detention" necessary in the ordinary course of "action ... taken with a view to deportation". The findings of the presiding judge of the Paris tribunal de grande instance - even if obiter - and of the Limoges Administrative Court, even if that court had only to determine the lawfulness of the order of 17 September 1979, are of the utmost importance in the Court's view; they illustrate the vigilance displayed by the French courts...

For these reasons, the Court unanimously holds that there has been a breach of Article 5 § 1 of the Convention.

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

1. *X v. Federal Republic of Germany*

Appl. no. 1802/63, CD 10 p. 26 (37); YB 6 p. 462 (480).

Admissibility Decision

26 March 1963

Extract: Whereas. in respect of the applicant's complaint that he is detained in prison although entitled to benefit of political asylum, it is to be observed that the Convention, under Article 5 (1) (f), provides that "no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law...the lawful arrest or detention...of a person against whom action is being taken with a view to deportation or extradition"; whereas it is clear that the applicant was, and is today, detained in those circumstances; whereas, consequently, an examination of the case, as it has been submitted, does not disclose any violation of Article 5 (1);

2. *X v. Netherlands*

Appl. no. 1983/63, CD 18 p. 19 (39); YB 8 p. 228 (264).

Admissibility Decision (partial decision)

13 December 1965

Extract: Whereas the applicant complains that he was detained in the aircraft taking him to the USA and that this constituted during the flight an interference with his private life (see above, "Submissions of the Parties" II/BI...(a)...); whereas the Commission has stated above that the right not to be extradited or deported is not as such included among the rights and freedoms guaranteed by the Convention; whereas a measure of extradition or deportation

generally implies that the liberty of the person to be extradited or deported is restricted during the execution of that measure; and whereas it is also clear that a certain interference with a person's private life may be a consequence of such restriction of liberty; whereas the Commission is satisfied that the restriction of the applicant's liberty during the flight was a lawful detention within the meaning of Article 5, (1) (f) of the Convention and that, in so far as there was any interference with the applicant's right to respect for his private life as a result of that flight, such interference was covered by Article 8 (2), of the Convention;

3. *X v. Netherlands*

Appl. no. 1983/63, YB 9 p. 228 (302-304).

Admissibility Decision (final decision)

13 July 1966

Extract: *Whereas* the Applicant also alleges a violation of Article 5, paragraph (4), of the Convention on the ground that, in respect of his detention, he did not have at his disposal the possibility of taking proceedings by which the lawfulness of his detention would be decided by a court and his release ordered if the detention was not lawful; whereas, in particular, he has submitted that proceedings under Article I40I of the Civil Code did not satisfy these requirements; whereas the Government has contradicted this view;
Whereas there is a question whether the procedure available under Article I40I satisfied the requirements of Article 5, paragraph (4), by expressly empowering and directing the courts to order the release of a person found to be unlawfully detained;
Whereas, however, even if such proceedings were not effective for this purpose, the Applicant could not be regarded as a victim of a violation of the Convention for the two following reasons; whereas, first, given the necessity for deportation, the continuance of the detention from November I962 to May I963 was in large part to meet his own desire to avoid, if possible, deportation to the USA; whereas, secondly, the further continuance of his detention from May to September I963, enabled him to challenge in the courts the legality of the order for deportation...;
whereas it follows that this part of the Application is incompatible with the provisions of the Convention, in particular with Article 25, which governs the conditions under which the Commission may receive an application from an individual.

4. *X v. Belgium*

Appl. no. 2392/65, (np), DS 1 p. 434.

Admissibility Decision

7 October 1966

Extract: Whereas in regard to the applicant's complaints that the period of his detention in Italy in respect of proceedings for his extradition to the Federal Republic of Germany was not deducted from the sentence which he was required to serve following his conviction by the Regional Court of E on . . October, 1962, it is to be observed that the Convention under Article 5 (1) and (1) (f) provides that "no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ... the lawful arrest or detention ... of a person against whom action is being taken with a view to deportation or extradition"; whereas it is clear that the applicant was detained in Italy in those circumstances; whereas, consequently, his complaint that the Regional Court of E failed to take into consideration the period of his detention in Italy does not disclose any violation of Article 5, or of any other article of the Convention;

5. *X v. Belgium*

Appl. no. 3522/68, np, DS 1 p. 440.

Admissibility Decision

14 December 1968

Extract: Whereas the applicant also complains that he was wrongfully detained from . . March 1968, the date of his acquittal by the Court at L, until . . April, 1968, the date of his deportation; whereas, in this respect, the Commission had regard to Article 5 (1) (f), of the Convention which permits the "lawful . . . detention of a person . . . against whom action is being taken with a view to deportation...
Whereas it is clear that during the period concerned the applicant was detained under the deportation order which was made against him in accordance with the appropriate Belgian law; whereas the Commission is not competent to examine the question whether during those proceedings the domestic law was correctly interpreted and applied but is only concerned to satisfy itself that the applicant's detention was not the consequence of some arbitrary action by the authorities; whereas the applicant has not produced any evidence indicating the existence of such arbitrary action; whereas, therefore, the Commission finds that his detention was "lawful" within the meaning of Article 5 (1) (f), of the Convention;

6. *Brückmann v. Federal Republic of Germany*

Appl. no. 6242/73, CD 46 p. 202 (209); YB 17 p. 458 (474-476)

Admissibility Decision - (Admissible - Friendly settlement)

27 May 1974

Extract: The Commission notes that the judgment of the Federal Constitutional Court is not directly binding on Berlin courts, including the Court of Appeal which, on the applicant's new request, has now to decide if the proceedings under Article 9 of the Mutual Assistance Act should be reopened. It further notes that the Federal Government have at this stage of the proceedings made no comments on the legal situation as it presents itself in the light of the Federal Constitutional Court's recent judgment and the position adopted by the Allied authorities.
In these circumstances, the Commission considers that the question whether the applicant's detention since 21 September 1973 is "lawful" under Article 5 (1) (f) - or, alternatively, under Article 5 (1) (c) - raises complex issues of law and fact which cannot be determined at the stage of admissibility but require an examination of the merits of the complaint.

7. *X v. Austria*

Appl. no. 6701/74, DR 5 p. 69 (77).

Admissibility Decision

8 March 1976

Extract: 1. As regards the applicant's complaints concerning his first period of custody, i.e. from 31 October 1973 to 27 December 1973, it should be noted that during this period he was in detention with a view to deportation.

Detention with a view to deportation is defined in Section 5 of the Aliens' Police Act (Fremdenpolizeigesetz), which was published in the Austrian Official Gazette No. 75 of 1954 and is one of the "laws on administrative procedure"(Verwaltungsverfahrensgesetze) concerning measures for the deprivation of liberty. These laws, promulgated in Official Gazette No. 172 of 1950, are referred to in the Austrian reservation.
In ratifying the Convention, Austria entered a reservation with respect to Article 5 to the effect that "provisions of Article 5 of the Convention shall be so applied that there shall be no interference with the measures for the deprivation of liberty laid down the laws of administrative procedure, BGBI No. 172/1950, and that these will remain subject to review by the Administrative Court or the Constitutional Court as provided for in the Austrian Federal Constitution".
There is therefore no doubt that the detention involved in the present case is of an administrative kind covered by legislation on administrative procedure (cf. mutatis mutandis, the decision on the admissibility of Applications Nos 1047/61, Yearbook 4, 356, and 1452/62, Yearbook 6, page 268).
Consequently, the Austrian Government's reservation concerning Article 5 affects the applicant's case. Accordingly this part of the application is incompatible with the Convention's provisions as applicable in respect of Austria and should be rejected in accordance with Article 27, paragraph 2, of the Convention.

8. *Lynas v. Switzerland*

Appl. no. 7317/75, DR 6 p. 141 (167); YB 20 p. 412 (442)

Admissibility Decision

6 October 1976

Extract: Article 5 (1) (f) clearly permits the Commission to decide on the lawfulness... [of the detention] ... of a person against whom action is being taken with a view to extradition .... The wording of both the French and English texts makes it clear that only the existence of extradition proceedings justifies deprivation of liberty in such a case. It follows that if, for example, the proceedings are not conducted with the requisite diligence or if the detention results from some misuse of authority, it ceases to be justifiable under Article 5 (1) (f). Within these limits the Commission might therefore have cause to consider the length of time spent in detention pending extradition from the point of view of the above-cited provision.

9. *X and Y v. Sweden*

Appl. no. 7376/76, DR 7 p. 123 (124-125).

Admissibility Decision

7 October 1976

Extract: The applicants have [finally] alleged a violation of Art. 5 (4) of the Convention in that the first applicant had no possibility of taking any court proceedings in order to have the lawfulness of his detention on ... September 1975 decided. They have submitted that the detention continued also during the flight from Sweden to Japan as the applicant was accompanied by officers from the Swedish Secret Service Police
The Commission observes that the so-called Terrorist Act did not provide a person deprived of his liberty by virtue of its provisions with any possibility whatsoever to have the lawfulness of his detention reviewed by a court of law. However, the Commission is not called upon to decide in abstracto as to whether this Act, as such, was conform to the requirements of the Convention, but only to examine whether or not its application to the applicant in the

present case was inconsistent with Art. 5 (4) (cf. decision on the admissibility in Application No. 290/57, Yearbook 3, pp. 214, 220).
It then appears, in the first place, that the applicant was detained in Sweden during less than two hours on ... September 1975. It has furthermore been submitted however that he was being detained even in the aircraft which took him to Japan. In this respect the Commission refers to its decision on the admissibility in a similar case according to which the restriction of a person's liberty during his flight from the Netherlands to the United States was a lawful detention within the meaning of Art. 5 (1) (f) of the Convention (cf. Application No. 1983/63, Collection of Decisions 18, p. 19). However, even considering in the present case the time the applicant thus Spent in the aircraft from Sweden to Japan, the Commission nevertheless finds that his deprivation of liberty for which the Swedish authorities were responsible ceased within a period shorter than that which would have been necessary for the application Of the procedure envisaged in Art. 5 (4) of the Convention. Even the most speedy procedure under Art. 5 (4) would take at least some hours. The Commission therefore concludes that, in spite of the absence of any local remedy by which the lawfulness of the applicant's detention could have been determined, he has not suffered any prejudice thereof which would amount to a violation of Art. 5 (4).

10 *Agee v. United Kingdom*

Appl. no. 7729/76, DR 7 p. 164 (173).

Admissibility Decision

17 December 1976

Extract: Where the decision to deport the applicant appeared to meet all the requirements of the pertinent Immigration Act, where the Home Office had given reasons why national security required the applicant's departure, and where there was no evidence that the applicant was prevented from leaving the United Kingdom and travelling to the country of his choice, the Commission found no indication of a violation of Article 5 of the Convention.

11. *X v. United Kingdom*

Appl. no. 7902/77. DR 9 p. 224 (226).

Admissibility Decision

18 March 1977

Extract: The applicant has submitted, In essence, that his position is analogous to that of the applicants in the Ringeisen and König cases, in that the deportation proceedings necessarily determined his civil rights and obligations vis-a-vis his employers
However the Commission considers that an aliens right to enter or remain in a particular country is, in principle, separate from and independent of the private rights and obligations which may accrue to him under a contract of employment in the country concerned. Any decision in the field of immigration, whether it be to refuse entry to an alien, to limit the period for which he may enter the country or to expel him, may have consequences in relation to his rights and obligations under private law contracts which he has entered into. However the applicability of Article 6 to proceedings which, in themselves, are solely concerned with an alien's right to enter or reside in the country, cannot in the Commission's opinion depend on the particular agreements which he may have entered into under private law...
The applicant's private rights and obligations under his contract of employment were not in any sense in themselves the subject of the proceedings...

12. *X v. Belgium*

Appl. no. 7505/76, np, DS 1 p. 445.

Admissibility Decision

11 July 1977

Extract: The Commission considers that the applicant's complaint is in any case without foundation. In fact, as from 6 March 1975, the applicant was, without any doubt, in the position of a person "against whom action is being taken with a view to extradition' ' within the meaning of Article 5 (1) (f). Firstly, the Belgian authorities were lawfully seized of an application for extradition for aggravated theft of 17 February 1975 and secondly, the applicant was detained by virtue of a warrant issued by the investigating judge of the Dijon court and rendered enforceable in Belgium by the court in Namur.
The fact that the applicant may have been in possession of documents enabling him to establish his innocence is irrelevant in this context. In fact, according to the generally recognised principles of law, the authorities of the requested State do not examine the merits of the charge on which the application for extradition is based.
It thus follows from the examination of the file that the applicant was lawfully detained between 6 March 1975 and 4 August 1975 in accordance with Article 5 (1) (f) since extradition proceedings were being taken.

13. *X v. United Kingdom*

Appl. no. 7706/76, (np), DS 1 p. 435-436.

Admissibility Decision

5 October 1977

Extract: The applicant has also submitted that his detention between . . April 1976, the date of his conviction, and his release on . . December 1976 was, in whole or in part, in contravention of his rights under Article 5 of the Convention. In particular he has submitted that he was not detained "With a view to deportation" as authorised by Article 5 (1) (f) but so that his claim for political asylum would be considered and for the administrative convenience of the authorities. He has also referred to the provisions of Article 18 of the Convention in this context ...
The lawfulness in United Kingdom law of the applicant's detention under these provisions has not been disputed. The only question arising is therefore whether the applicant was, throughout the period of his detention, "a person against whom action (was) being taken with a view to deportation" within the meaning of Article 5 (1) (f) of the Convention.
From . . to . . April 1976 the applicant was held pending the outcome of his appeal to the Crown Court against the magistrates' recommendation for deportation. The Commission considers it clear that during this period deportation proceedings against the applicant were in progress and that his detention was authorised under Article 5 (1) (f).
After rejection of the appeal it was, under the relevant legislation, for the Home Secretary to decide whether to make and put into effect a deportation order. In the circumstances of this case that decision involved consideration of the applicant's various objections to deportation, including his alleged grounds for fearing for his safety in Ghana. The applicant's grounds for objecting to deportation (as ultimately put forward by him) were one and the same as the grounds put forward in support of his claim for political asylum. There is no reason to doubt that during this part of the applicant's detention consideration was being given to, and enquiries were being conducted into, both aspects of the applicant's case at the same time. Action was being taken with a view to determining whether he should be deported or allowed to remain in the country. Furthermore, the Commission does not

find that the facts of the case, even as presented by the applicant, give rise to any inference that he was being detained during this period for a purpose other than that authorised by Article 5 (1) (f).

14. *X v. Federal Republic of Germany*

Appl. no. 7352/76, (np)., DS 1 p.436.

Admissibility Decision

12 October 1977

Extract: The Commission then considered the applicant's complaint that the length of the periods spent in detention with a view to his deportation was excessive. In this respect the Commission has first found that until . . January 1976 the applicant had been detained in conformity with Article 5 (1) (f) of the Convention. Article 5 (3) which guarantees *inter alia* that the detention shall not exceed a reasonable period only applies to persons detained in accordance with the provisions of Article 5 (1) (c). It does not concern the detention mentioned in para. 1 (f) of this article and no exceptional circumstances have been disclosed in this case which would require the Commission to consider the length of the applicant's detention with a view to his expulsion under this or any other provision of the Convention.

15. *X v. United Kingdom*

Appl. no. 8081/71, DR 12 p. 206, (208-210).

Admissibility Decision

12 December 1977

It appears. consequently, that the applicant was deprived of his liberty in accordance with the authorisation from the Secretary of State and that this is a procedure prescribed by law. Article 5 (1) does not in addition in its terms provide in this part that the procedure should be judicial as suggested by the applicant.

The authorities justified the applicant's arrest and detention by referring to the risk that he might go into hiding, and in addition by giving consideration to the safety of Mrs. X. The Commission confirms here its view (expressed in Application No. 7917/75, Lynas v. Switzerland, Decisions and Reports 6, p. 141) that only the existence of extradition proceedings, or, as in this application, deportation proceedings, justifies deprivation of liberty under Article 5 (1) (f). This means that a person to be deported can only be detained for the purpose of securing his deportation.

The Commission also confirms that it might have cause to consider whether the detention ceases to be justifiable under Article 5 (1) (f) if the proceedings are not conducted with the requisite diligence. In the present case, it was held that the applicant might also endanger the safety of others. If this reason militates against his release there is all the more reason for a speedy handling of the matter.

The applicant has spent more than ten months in detention waiting for the final decision on his case.

However, the Commission recalls first that it was not until a year after his arrival that he for the first time made a claim for political asylum (in his appeal against the deportation order) and he has stated that his case was not fully presented. It is possible that a significant portion of the investigation would have been avoided, if he had presented a straightforward asylum case from the beginning. Later the situation in Pakistan changed and had to be assessed.

The applicant has especially complained that it took the Home Office some 6 months to render its decision of October 1977. However, the Commission accepts
that it was necessary to carry out enquiries and that these were extensive.
The Commission also observes that the applicant has assumed that the Home Office has checked his story in his home town of Haripur. If this is so, there is certainly a reasonable explanation for a considerable part of the time consumed in the action taken against him.
Then came the interventions by the UNHCR on 28 October 1977, and at a later date, which apparently caused the Home Office to give further consideration to the applicant's case.
Having regard to these circumstances the Commission forms the view that the delays in the applicant's deportation proceedings were partly caused by the applicant's own conduct of the matter and are partly explained by its complicated nature. There is no clear appearance of any lack of diligence on the part of the authorities in handling the applicant's case.

16. *Caprino v. United Kingdom*

Appl. no. 6871/75, YB 21 p. 284 (288-296).

Admissibility Decision - (Admissible - Art. 5 (4) - to Committee of Ministers).

3 March 1978

Extract: 1. The Commission first observes that the facts of the present case are different from those in applications Nos. 7729/76 and 7917/77 (Agee v. the United Kingdom) and 7902/77 (Hosenball v. the United Kingdom) which the Commission declared inadmissible. Unlike the applicants in these cases against whom deportation orders had been made under the same provision of the Immigration Act 1971, the present applicant does not complain of the deportation order as such or of the related procedure, but exclusively of the detention imposed on him in connection with the deportation order, and the alleged lack of effective remedies to challenge that detention...
The Commission observes that a deportation order had been made against the applicant before he was arrested and therefore no doubt action was being taken against him with a view to deportation. The case therefore clearly comes within the broad scope of Article 5 (1) (f) of the Convention and the only question before the Commission is whether all the requirements for a detention under this provision were met in the applicant's case.
a) It does not seem to be disputed between the parties that the procedure followed by the authorities when arresting the applicant was in conformity with United Kingdom law and in particular with the applicable provisions of Schedules 2 and 3 of the Immigration Act 1971 which empower the Secretary of State to order on his own authority without a judicial order the detention of a person against whom a deportation order is in force. The applicant was therefore deprived of his liberty in accordance with a procedure prescribed by law as required by the introductory phrase of Article 5 (1).
b) The applicant has, however, alleged that notwithstanding the lawfulness of the procedure, his detention was not "lawful" within the meaning of Article 5 (1) (f). The applicant submits that the word "lawful" in Article 5 (1) (f) means lawful under international law including the Convention, and in his view the Convention authorises the detention of a proposed deportee only if it is necessary to carry out the deportation order which the applicant alleges was not so in his case. The Government, on the other hand, considers the word "lawful" in Article 5 (1) (f) as a reference to the substantive law of the High Contracting Party concerned, including EEC legislation which is applicable on the domestic level. The Government further contends that the applicant's detention was lawful both under the domestic law and under EEC Council directive No. 64/221, and that the necessity of the detention for carrying out the deportation order is not a requirement under Article 5 (1) (f).
The Commission recalls its earlier case-law in which it consistently understood the word "lawful" in sub-para. (f) and the other sub-paragraphs of Article 5 (1) to mean "lawful under the applicable domestic law". It considers that there is no reason to depart from this jurisprudence. The applicant's suggestion that "lawful" refers back to the Convention law itself would in fact amount to a circular argument leaving the organs applying the Convention with no guidance whatsoever. On the other hand it is arguable that the origin of

the legal provisions determining the lawfulness of a particular measure under the domestic law is irrelevant for an examination under the Convention, and that provisions of international law which have been incorporated into the domestic law must also be taken into account.

The applicant's detention was clearly covered by para. 2 (3) of Schedule 3 of the Immigration Act 1971. The only doubts which could exist are therefore whether it was also covered by EEC directive No. 64/221. This directive does not deal with the detention of a proposed deportee as such, but only with the lawfulness of a deportation order made against an EEC national. Nevertheless, under the principle established by the European Court of Justice in the Royer case, the lawfulness of the detention would be affected if the decision to deport were itself contrary to the EEC treaty.

The directive implementing Article 48 of the EEC treaty contains at least one self-executing provision in Article 3 (1) according to which deportation measures taken on grounds of public policy or public security shall be based exclusively on the personal conduct of the individual concerned. Although the applicant was not informed of what allegations had actually been made against him, there is no indication that the measures taken against him were applied otherwise than on the basis of his personal conduct. In particular there is no indication that the deportation order in question constituted part of a wider scheme of expulsion of aliens for political or any other reasons. The Commission therefore is satisfied that the requirements of Article 3 (1) of the directive were complied with in the applicant's case.

As regards other provisions of the directive, the Commission first observes that it is not firmly established whether they are self-executing and therefore relevant for an examination of the lawfulness of the deportation order under the United Kingdom law. However, even assuming that they were directly binding upon the authorities dealing with the applicant's case, the Commission is unable to discover a breach of any of the articles in question which could possibly have had the consequence of depriving the deportation order made against the applicant of its legal basis. It may be that there were technical breaches of Articles 5 and 7 of the directive, the authority not having decided in time on the applicant's request for a first residence permit under the EEC regulations, and not having informed him of the period allowed for leaving the territory once the deportation order was made. However, the Commission considers that the authorities' failure to comply with these provisions did not invalidate the deportation order thus depriving the applicant's detention of its legal basis. Indeed the applicant's lawyer himself argued that the power to deport was the overriding provision of the EEC directive and could not be affected by non-compliance with certain other provisions of the EEC legislation. This is also true with regard to the procedural provisions in Articles 6, 8 and 9 of the directive which moreover seem to allow the withholding of information (Article 6) and exclusion of an appeal (Article 9/2) in national security cases if the same limitation of remedies exists for nationals in respect of acts of the administration in a comparable situation (Article 8 of the directive). It follows that the validity of the deportation order could not be challenged under the applicable EEC legislation and that consequently the lawfulness of the applicant's detention could not be challenged either on this basis. The applicant's detention must therefore be considered as "lawful" within the meaning of Article 5 (1) (f).

Extract: As regards the applicant's claim that his detention was not necessary to secure the deportation, the Commission considers that this is a question which must be examined separately from the lawfulness of the detention. Article 5 (1) (f) of the Convention does not expressly refer to "necessity," but it is implied in the character of this provision as an exception clause that it must be strictly interpreted and that no other criteria than those mentioned in the exception clause itself may be the basis of any restriction of the right to liberty and security of person (cf. para. 194 of the Commission's Report of 18 May 1977 on Application No. 6538/74, Times Newspapers and others v. United Kingdom). Moreover, Article 18 of the Convention provides that the restrictions permitted under the Convention to the rights and freedoms guaranteed therein shall not be applied for any purpose other than those for which they have been prescribed. It follows that the detention of a proposed deportee can only be justified under Article 5 (1) (f) if it is related to the deportation proceedings and is for no other purpose, e.g. it may not be used as a substitute for detention on remand or for any other form of detention which would have been open to the authorities but which they have chosen not to use. On the other hand the language used in Article 5 (1)

(f) does not make it a condition for the detention of a proposed deportee that a deportation order is actually in force against him. It suffices that "action is being taken [against him] with a view to deportation," or according to the French text, that "une *procédure d'expulsion . . . est en cours.* " This can only mean that the eventual outcome of the deportation proceedings is irrelevant for the justification of the detention provided that a lawful deportation procedure has been instituted and is being seriously pursued. Thus it cannot be decisive in the present case that the deportation order was finally revoked. This is not necessarily an admission by the authority, as the applicant seems to suggest, that there was *ab initio* no legal possibility of deporting him; it might well have been an exercise by the authority of its discretion not to use a power to deport which it actually possessed. It may be that the applicant's detention was not strictly necessary to implement the envisaged deportation if it had eventually taken place, but the Commission finds that in the present case there was nevertheless an adequate relationship between the detention and the deportation proceedings. Despite the discussion at the oral hearing of considerations other than the necessity to secure the deportation which might motivate a decision to detain a proposed deportee, there is no indication that in the applicant's case the decision to detain him was in fact influenced by any considerations extraneous to the deportation proceedings instituted against him.
The Commission therefore concludes that the applicant's detention was covered by Article 5 (1) (f) of the Convention. The applicant's complaint in this respect is manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

Extract: 3. The Commission has next considered the applicant's complaint under Art. 5 (2) of the Convention. The applicant was in fact informed not only of the legal basis of his detention, but also of the essential facts relevant under the existing United Kingdom law for the determination of the lawfulness of his detention. As regards the legal basis of his detention, he was informed that it had been authorised by the Secretary of State under para. 2 (3) of Schedule 3 to the Immigration Act 1971. This provision empowers the Secretary of State to order the detention of a person against whom a deportation order is in force. In the case of such an order there is no further requirement to be fulfilled by the Secretary of State. In particular the law does not provide that the detention must be necessary for the carrying out of the deportation order. The factual information to be given therefore need only relate to the existence of a deportation order, and no additional reasons justifying detention need be given. The applicant was in fact informed that a deportation order had been made against him under section 3 (5) b of the Immigration Act 1971 for reasons of national security, and that he was therefore required to leave the United Kingdom. The applicant was also informed that he had no statutory appeal but that he could make a non-statutory appeal to a body which would advise the Home Secretary. The applicant therefore knew at the time of his arrest, or shortly afterwards, that a deportation order was in force against him and that it could be revoked only by the Secretary of State himself. These were the essential facts relevant to the lawfulness of his detention of which he had to be informed in accordance with Art. 5 (2) of the Convention.
Finally as regards the information "of any charge against him" the Commission considers that this phrase in Art. 5 (2) refers only to a criminal charge, if any. As there is no question of a criminal charge being brought against the applicant, this part of Art. 5 (2) does not seem to be applicable in the present case.

Extract: 4. The Commission now comes to the applicant's complaint that the scope of the judicial control available in his case did not meet the requirements of Art. 5 (4) of the Convention...
It is true that in application No. 1983/63 against the Netherlands the Commission had before it a similar situation as in the present case, the available remedies being restricted to the determination of particular aspects of the lawfulness of the detention of a proposed deportee. However, in its decision on the admissibility of that application (Yearbook 9, p. 286) the Commission found that the then applicant was only required to exhaust those remedies in, relation to his complaints under Art. 5(1) which came within the area where the courts would in fact have been competent. This was certainly not a finding under Art. 5 (4) of the Convention that the system of limited judicial control then existing in the Netherlands in such cases provided all the necessary guarantees. On the contrary, the Commission expressly reserved its position regarding this question deciding that under the particular

circumstances of that case the applicant's complaints under Art. 5 (4) were inadmissible for other grounds.
In the present case there is an unlimited discretion in the Minister to authorise the detention of a person against whom he has issued a deportation order. The law itself establishes a presumption that the detention shall always be considered as legal custody (para. 18 (4) of Schedule 2 to the Immigration Act). The Courts refrain from controlling the exercise of the Minister's discretion except where it is alleged that he has acted ultra vires or mala fide. They do not control other aspects of the lawfulness of the detention or of the underlying deportation measures. Even within the limited area where the courts assert their competence, the procedural situation tends to favour the defendant authority which cannot be forced to disclose the information on which it based its decisions, thus leaving the plaintiff with the onus of discharging the whole burden of proof in a case of which by its nature he may know very little.
These limitations of the judicial review are very similar to those applied by the courts in relation to detention under the Northern Ireland emergency legislation which was also imposed for considerations of national security. In relation to the latter the Court found in its judgment of 18 January 1378 in the Irish State case that the judicial review was not sufficiently wide in scope and would as such have violated Art. 5 (4) of the Convention if the derogation from the obligations of the Convention had not been justified under Art. 15 of the Convention (paras. 200 and 220 of the judgment). In the present case there is no derogation under Art. 15, and the Commission considers that the detention of any alien in view of his deportation for reasons of national security can in a certain way be compared to the internment of nationals effected for the same reasons, both measures aiming at removing the person concerned from society mainly because he is considered to constitute a risk to the preservation of peace and maintenance of order in the country.
In the light of the above considerations the Commission finds that the limitation of judicial review in the applicant's case raises important and complex issues concerning the interpretation of Art. 5 (4) of the Convention in relation to the detention of persons against whom action is being taken with a view to deportation. It follows that the applicant's complaint in this respect cannot be considered as manifestly ill-founded, and that it must therefore be reserved for a consideration on its merits.

17. *Caprino v. United Kingdom*

Appl. no. 6871/75, DR 22 p. 5 (12).

Commission Report

17 July 1980

Extract: The applicant seems to suggest that the control of the lawfulness of his detention to which he was entitled under Article 5 (4) should also include the lawfulness of the deportation order as such. However, detention is justified under Article 5 (1) (f) as soon as "action is being taken with a view to deportation". This indicates that the lawfulness of the deportation order is not a prerequisite for the detention to be in conformity with Article 5 (1) (f).
It is therefore irrelevant that in the present case the judicial review of the deportation order provided by certiorari proceedings would have been limited to an examination whether the Secretary of State had acted ultra vires or mala fide. The Convention does not require any judicial review of deportation proceedings (cf. the Commission's decision on the admissibility of application No. 7729/76, Agee v. UK, DR7, p. 164) and the legal position under the Convention cannot be judged otherwise even if a deportation order serves as the basis for detention.
It is therefore only the legality of the must detention itself which must be judicially controlled under Art. 5 (4)...
67. In the present case there is no dispute as to the availability of habeas corpus. The applicant argues that by this procedure only the formal legality of the detention order could have been established. Neither the reasons for deportation nor those for ordering the detention would have been looked into by the court in habeas corpus proceedings,

according to his allegations. The Commission notes that according to the practice in the United Kingdom, courts in habeas corpus procedure will set aside a decision when it has been taken ultra vires or mala fide. It is open to dispute whether that will always be sufficient for the control required by Art. 5 (4) of the Convention. The Commission has held that a detention under Art. 5 (1) (f) must be seen as subject to principles such as necessity or proportionality (cf. the Commission's decision on the admissibility of application No. 7317/75, Lynas v. Switzerland, DR 6, pp. 141, 153). It is not clear whether under a habeas corpus procedure the courts would go into these matters.

68. However, in the present case the Commission is not required to decide this question. The applicant has not applied for habeas corpus. Nor has he furnished any indications why in his case the detention could be held to be "unlawful" for any reason which the courts would not have investigated. Where a remedy is available which in principle may fulfil the requirements of Art. 5 (4) of the Convention, the Commission cannot find a violation of this provision merely on the basis of a hypothetical judgment. This is all the more so where the applicant has chosen to avail himself of the existing informal appeal procedures against the deportation order and has thereby achieved what he wished to obtain.

69. The Commission is well aware of the formal nature of the guarantee included in Art. 5 (4). Where no remedy exists at all, this provision will be violated even though there may be no indications that the detention is unlawful (cf. the above cited Report of the Commission in the Winterwerp case and the Judgment of the Court in that case, §§33 et seq.). This is, however, different where a remedy exists and the dispute is as to its scope. Here the applicant would either have had to use this remedy or to indicate to the Commission why in his particular case he had no chance to rely on any grounds for the "unlawfulness" of the detention because of the restricted scope of review.

70. For these reasons, the Commission finds by eight votes against one, with one abstention, that there has been no breach of Art. 5 (4) of the Convention in the present case.

Caprino v. United Kingdom

Appl. no. 6871/75, DR 22 p. 5 (12).

Dissenting Opinion to Commission Report-- Mr. M. Melchior.

17 July 1980

Extract: 1. The opinion expressed by the majority of the Commission could, in a tendentious way perhaps, be summarised as follows: There is no violation Article 5 (4) of the Convention because the applicant has not exhausted the domestic remedies. or because he has failed to show in which way these remedies are ineffective in his case. This opinion seems to be in contradiction: to the Commission's decision of 3 March 1978 declaring admissible the application No. 6971/75.

2. I cannot share the opinion expressed in paragraph 65 of the Report that, since a detention is Justified under Article 5 (l) (f) of the Convention as soon as "action is being taken with a view to deportation", it follows a *fortiori* that the lawfulness of the deportation order is not a prerequisite for the detention to be in conformity with Article 5 (1) (f). It appears to me that a different argument must he used according to whether a) a deportation proceeding is still pending, or b) a deportation order has already been adopted. In the second case the lawfulness of this order is a condition for the lawfulness ("regularité') of the detention under Article 5 (1) (f), and its control must accordingly be ensured in conformity with Article 5 (4).

3. It is evident that only the legality of the detention itself must be judicial controlled under Article 5 (4). but it is also evident that this control is not to be seen as a mere formality because its purpose is to prevent arbitrary measures of detention. I agree that this provision does not imply unlimited power of review for the competent court.

4. Nevertheless, I am of the opinion that since Mr Caprino's detention was based on the existence of a deportation order against him, and since this detention could not be lawful if the deportation order itself was unlawful, the judicial control under Article 5 (4) could and even should have extended to the lawfulness of the deportation order as such or as basis of the applicant's detention.

18. *X v. Switzerland*

Appl. no. 9012/80, DR 24 p. 205 (219-220).

Admissibility Decision

9 December 1980

Extract: Admittedly, in the instant case the extradition request was not made until 3 October 1978. However, the documents in the case-file show that the police of the Emirate of Dubai and the Swiss police had been in contact on the question of the applicant's extradition since 30 September 1978. From that date onwards he was detained by a decision of the Federal Police Department acting under the authority of the Federal Council. It follows that the applicant's period of detention complied with the Convention, and in particular with Article 5 (1) (f).
The second period beginning on 8 January 1980 also complied with that provision of the Convention as extradition proceedings against the applicant had been commenced.

19 *X v. United Kingdom*

Appl. no. 8971/80, np, DS 1 p. 438.

Admissibility Decision

5 May 1981

Extract: On 8 November 1979 the applicant was arrested pursuant to a certificate sent to the Metropolitan Police by the Indian High Commission in London to the effect that the applicant was a deserter from the Indian Air Force since on or about 8 March 1978 (s. 14 (b) Visiting Forces Act 1952). Details of the applicant and his address were also provided. The applicant was bailed the following day and on 30 November 1979 attended the magistrates' court before which he admitted being a deserter. The court was satisfied that the requirements of SS. 13 and 14 of the Visiting Forces Act 1952 and SS. 186 -188 and 190 of the Army Act 1955 had been complied with, i.e. that the applicant had acknowledged being a deserter and that the Secretary of the Defence Council had certified that a general request for the surrender of deserters from the Indian Forces had been received from the Government of India. The court, having no discretion under the law to take the applicant be handed over to on Indian Air Force Escort.
The Commission considers that such detention was "in accordance with a procedure prescribed by law", "with a view to deportation or extradition" as envisaged by Article 5 (1) of the Convention.

20. *X v. United Kingdom*

Appl. no. 9088/80, np, DR 28 p. 160 (165).

Admissibility Decision

6 March 1982

Extract: Whether the lapse of time was excessive so as to vitiate the justification for detention is a matter which falls within the scope of Article 5, paragraph 1.f (cf. Lynas v. Switzerland, Application No. 7317/75, Decision and Reports 6, pp. 141-169, at p. 167). The question arises,

however, whether the applicant could have pursued Habeas Corpus proceedings for a second time in view of the delay involved.
The Government have referred to the Habeas Corpus proceedings in 1975 of Sital Singh who was to be deported as an illegal entrant, and enclosed a copy of the judgment of the Divisional Court, in which Milmo J. said:
"The application having been made, it is now said that the detention of this man by reason of the fact that it has gone on since 17 March is excessive and accordingly illegal. It may be that a case will arise when the detention awaiting deportation is excessive, and when that case does arise it will be considered. But in the judgment of this Court the present case falls far short of that mark."
The Judge's obiter remark concerning other possible cases of excessively long detention suggests that the Courts would look at allegations such as those made by the applicant. The fact that the British Courts may not consider complaints under the Convention as such, does not alter the fact that the substance of the applicant's claim could possibly have been dealt with later during his detention in 1981.
In these circumstances, the Commission concludes that the applicant has not exhausted domestic remedies within the meaning of Article 26 of the Convention and that, therefore, the complaint concerning Article 5, paragraph I must be rejected in accordance with Article 27, paragraph 3.
In respect of the applicant's claim under Article 5, paragraph 4 that he had no judicial remedy by which the lawfulness of his detention pending deportation could have been determined, it follows from the above conclusion that the applicant had an adequate remedy through further Habeas Corpus proceedings (cf. Caprino case, Application No. 6871/75, Report of the Commission). Consequently the applicant has not shown that he would not have been entitled to test the lawfulness of his detention and this aspect of the complaint is manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention.

21. *X v. United Kingdom*

Appl. no. 9403/81, DR 28 p. 235 (238).

Admissibility Decision

5 May 1982

Extract: 11. It is clear from the above that the requirements of accessibility and foreseeability are also applicable to the expression "lawful" in Article 5 of the Convention. In the present case the applicant has been found by the Court of Appeal to have obtained indefinite leave to remain in the United Kingdom by deception (i.e. by assuming the identity of another person). The Commission finds that in such circumstances there can be no doubt that the applicant must have been able to foresee that, if discovered, he would be liable to detention with a view to deportation.
12. The Commission therefore finds that the applicant's detention was justified under Article 5 (1) (f) as being the lawful arrest and detention of a person against whom action was being taken with a view to deportation.

Extract: 16. The Commission is of the opinion that the purpose of Article 5(4) is to provide a safeguard against arbitrary detention by enabling a person to challenge the legality of his detention. It follows from this that once a detainee has been released from detention Article 5(4) ceases to be applicable in this way. Accordingly, apart from questions concerning the "speed" of the proceedings which are not at issue in the present case, this provision can no longer be invoked by a person who is not actually in detention.

22. *Zamir v. United Kingdom*

Appl. no. 9174/80, DR 29 p. 153 (163).

Admissibility Decision - (Admissible - to Committee of Ministers)

13 July 1982

Extract: The applicant complains that there has been a breach of his right to "security of person" or in the alternative that his arrest and detention were not "in accordance with a procedure prescribed by law" or ' lawful" under Article 5(1) (f). He submits in this respect, relying on the decision of the European Court of Human Rights in the Sunday Times Case Judgment of 26 April 1979, paras. 48-50) that the legal rules governing his arrest and detention were not reasonably foreseeable or formulated with sufficient precision. He invokes in particular the uncertainty in the law relating to the definition of an illegal entrant and the scope of the duty of disclosure. The respondent Government contend that the relevant legal rules were sufficiently foreseeable and that the applicant's arrest and detention was justified under Article 5 (1) (f), as being the "lawful arrest or detention of a person ... against whom action is being taken with a view to deportation".
The applicant further alleges that he was not able to challenge the "lawfulness" of his detention as required by Article 5 (4) since the courts did not examine the question of whether he was an illegal entrant. He further complains that the national proceedings were not in conformity with the requirement in this provision that they take place "speedily".
The Government contend that to satisfy the requirements of Article 5 (4), it is not necessary that the court should be able to review the underlying justification for the decision to deport but only that it determine the justification for the administrative decision to remove from the country. Furthermore they submit that in the circumstances of the case, having regard in particular to the possibility of applying at an earlier time for release on bail, the proceedings complied with the requirement of "speed" in Article 5 (4).
The Commission considers that the present application raises complex issues of law and fact in respect of Article 5 (1) and (4), the determination of which should depend on an examination of the merits of the application. It therefore concludes that the applicant's complaints under these provisions are admissible.

23. *X v. Federal Republic of Germany*

Appl. no. 9706/82, np, DS supplement to vol. 1 (5.1.8.1) p. 2.

Admissibility Decision

3 March 1983

Extract: In the present case the applicant's detention was ordered on .. September 1980 and lasted until the middle of 1982, i.e. about 22 months. This is a considerable period. It has, however to be noted, that the K Court of Appeal examined in regular and short intervals whether or not the applicant's detention pending extradition had to continue, and in particular that the applicant was not immediately extradited because the Federal Government negotiated with the Turkish Government to obtain assurances in accordance with Article 11 of the European Convention on Extradition of 1957. These negotiations, and the delay caused by them, were therefore in the applicant's own interest and it cannot be held against the German authorities that they undertook to obtain guarantees from the Turkish Government that a death penalty would not be imposed on the applicant or executed against him. There is nothing to show that any delays of the extradition proceedings were caused by the German authorities which released the applicant after having taken the decision that, for the time being, he would not be extradited because the necessary assurances from the Turkish Government had eventually been refused.

24. *Zamir v. United Kingdom*

Appl. no. 9174/80, DR 40 p. 42 (55-60).

Commission Report

11 October 1983

Extract: 87. The use of the words "person against whom action is being taken with a view to deportation" in Article 5 para. 1 (f) indicates that the Commission should examine whether the person is detained in accordance with national law with the intention of being deported (1). However a legal situation may occur, where, as in the present case, national law makes the lawfulness of detention dependent on the lawfulness of the deportation. While Article 5 para. 1 (e) requires that the substantive conditions justifying detention are met (2), Article 5 para. 1 (f) does not require the Commission to provide its own interpretation on questions of national law concerning the legality of the detention or deportation. The scope of the Commission's review is limited to examining whether there is a legal basis for the detention and whether the decision of the courts on the question of lawfulness could be described as arbitrary in light of the facts of the case.

88. In the present case the Divisional Court, the Court of Appeal and the House of Lords considered that the applicant was lawfully detained under the 1971 Act in that the Secretary of State had reasonable grounds for considering him to be an illegal entrant. Moreover it is clear from the decision of the House of Lords that even if the Court was to have applied a stricter standard of review and judge the matter for itself, it would have found that the applicant was in fact guilty of deception (see para. 52).

89. In the Commission's opinion. there is no indication that the findings by the courts that the applicant was lawfully detained were in any respect arbitrary.

90. The applicant has also submitted that his detention was not lawful because the legal rules relating to the concept of "illegal entrant" were not sufficiently precise or foreseeable. The European Court of Human Rights in the Sunday Times Case interpreted the expression "prescribed by law" in the second paragraph of Article 10 in the following way.

"In the Court's opinion, the following are two of the requirements that flow from the expression "prescribed by law". Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able—if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable. it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which to a greater or lesser extent, are vague and whose interpretation and application are questions of practice". (Judgment of 26 April 1979, Series A, Vol. 30, para. 49, p. 31).

91. The Commission considers that the same principles apply to the expression "lawful" where it occurs in Article 5. As the Court has recognised in the above quotation, while the law must be certain there must also be room for the gradual development of the law by the courts in the light of changing conditions. While particular decisions of the courts may be seen as unexpected within the legal community, it does not follow that the legal rule in question was not sufficiently certain in the manner described above by the Court. The Commission's approach must be to examine whether the margin of uncertainty that surrounds legal rules in this field of law, exceeds acceptable boundaries. (See also, X Ltd. and Y v. United Kingdom, Application No. 8710/79, Decisions and Reports 28 p. 77).

92. The applicant has submitted that even with legal advice he could not have foreseen that fraud would vitiate his leave to enter and that he would be liable to detention and removal as an illegal entrant. He points out that this doctrine was first developed in the case of Hussain (*op. cit.*, para. 48) which was decided after he had entered the United Kingdom and that prior to this decision the concept of illegal entrant was thought to extend only to those persons entering the country clandestinely. An adviser could only have foreseen, it is

submitted, that he would be liable to prosecution under Section 26 (1) (c) of the 1971 Act. Nor could he have foreseen that he was subject to a duty of candour on all material facts and that marriage would be regarded as material in this respect. Finally he submits that he could not have foreseen that the date of eligibility for entry would be the date of entry as opposed to the date on which he applied for an entry certificate.

93. The Commission does not consider that these rules were so uncertain that the applicant could not have foreseen, with appropriate legal advice, the consequences of remaining silent concerning his marriage. The notes on the application form that had been completed on behalf of the applicant when he originally applied for an entry certificate would have put the applicant or his adviser on notice that a change of circumstances, if discovered by an immigration officer might result in his being refused entry. In addition it must have been clear to the applicant or his adviser from these notes that the applicant's eligibility to enter the United Kingdom would be assessed at the date of entry. The Commission further considers that an immigrant who has been given leave to enter "to join his father" as was stated on his visa must be taken to be aware of the materiality of marriage to his immigration status. This is particularly so in the present case where the applicant married less than one month prior to his arrival in the United Kingdom and therefore must have, at some stage, considered whether this affected his right of entry.

94. Finally the Commission does not consider that the development in the law which occurred in the Hussain case concerning the impact of fraud on leave to enter, was so unusual or out of step with legal principle that it fails to satisfy the test of legal certainty. It does not find it necessary to take into account the subsequent decision of the House of Lords in Khera & Khawaja v . the Secretary of State for the Home Department (see paras. 55-58), although it notes that the House of Lords in this decision reaffirmed the principle that fraud would vitiate leave to enter. The Commission recognises that the principle may have been regarded as novel to many practitioners in the field of immigration law but it does not consider that such a development in the law could be described as in breach of the principle of reasonable foreseeability as developed above...

95. The Commission concludes that the applicant was lawfully detained under Article 5 (1) (f) as a person against whom action was taken with a view to deportation and that therefore, by eleven votes with one abstention, there has been no breach of Article 5 (1).

Extract: 98. The applicant submits that since he could only be detained if he was an illegal entrant judicial review of the lawfulness of his detention under this provision requires the courts to examine whether he was in fact guilty of deception and thus an illegal entrant The lesser standard of review actually carried out by the court namely whether the Secretary of State had reasonable grounds for considering that the applicant was an illegal entrant, was insufficient. It was further argued that in proceedings concerning the lawfulness of detention Article 5 para. 4 required the burden of proof of legality to be on the detainor i.e. the Secretary of State...

100. The Commission recalls its view that detention is justified under Article 5 para. I (f) where a person is detained in accordance with national law with the intention of deporting him. Accordingly Article 5 para. 4 is satisfied if the courts are empowered to examine the lawfulness under domestic law of the applicant's detention and whether he is being detained with a view to deportation or removal. It is not a requirement of this provision, as indicated by the court that judicial control of detention under Article 5 para. I (f) extend to a complete review on all questions of fact of the exercise of the power to detain.

101. In the instant case, the courts, when considering the lawfulness of the applicant's detention in *habeas corpus* proceedings, examined the statutory basis for the applicant's detention and whether there were reasonable grounds for the Secretary of State to consider that the applicant was an illegal entrant. The Commission finds that this standard of judicial review is wide enough to encompass the conditions in Article 5 para. I (f) justifying detention.

102. As regards the burden of proof. the Commission considers that the state. as the detaining authority, should be required to prove that the individual is lawfully detained. If it were otherwise. there can be no doubt that the protection afforded to detained persons by the requirement of judicial control of the legality of the detention would be substantially weakened.

103. The Commission notes that in *habeas corpus* proceedings once the detainee has shown *a prima facie* case the burden of justifying the legality of the detention shifts to the

executive. Although the decisions of the courts did not, in the present case, deal explicitly with the question of the burden of proof, the Commission is satisfied that once the applicant showed that he had been granted leave to enter, the burden of proof rested on the Secretary of State to show that he had reasonable grounds for believing that the applicant was guilty of deception and thus an illegal entrant liable to detention. Accordingly the Commission is satisfied that no issue arises under Article 5 para. 4 in this respect.
104. The Commission finds that the applicant was able to challenge the lawfulness of his detention before a court as required by Article 5 para. 4.

Extract: 105. The applicant complains that the proceedings for *habeas corpus* did not comply with the 'speed' requirement in this provision...
106. The right of speedy judicial control of the lawfulness of detention contained in Article 5 para. 4 constitutes an important safeguard against arbitrary and unlawful deprivation of liberty. In a case where detention ends within a short time after arrest, the right in Article 5 para. 4 becomes devoid of purpose since the detained person has been speedily released (see No. 9403/81, Dec. 5.5.82, D.R. 28 p. 235). However Article 5 para. 4 clearly applies to detained persons such as the applicant who have been in detention for a lengthy period and subsequently released pending the outcome of proceedings concerning the lawfulness of detention.
107. In assessing the question of speed the Commission has stated that it "cannot be defined in the abstract but must be assessed in the light of the circumstances of the particular case" (see Christinet v. Switzerland. Commission Report 1.3.79, D.R. 17 p. 35 at p. 57).
108. The Commission would add that it must take account of the general conduct of the proceedings and the extent to which delays can be attributed to the behaviour of the applicant or his legal representatives. In principle, however, since the liberty of the individual is at stake, the State must organise its procedures in such a way that the proceedings can be conducted with the minimum of delay...
111. It appears from the facts that the long delay is attributable in the main to the difficulties incurred by the applicant's legal representatives in securing legal aid to enable them to continue their representation of the applicant...
113. In proceedings concerning the liberty of the individual Article 5 para. 4 clearly requires that decisions concerning legal aid be taken speedily where such a decision is a prerequisite for the initiation of or the continued conduct of the proceedings. In the opinion of the Commission. it would have been unreasonable to expect the applicant to present his own case in the light of the complexity of the procedures involved and his limited command of English...
116. In the present case the Commission notes that the applicant applied for *habeas corpus* on 24 October 1978 and that his application was rejected by the Divisional Court on 14 March 1979. The Commission is of the opinion. having regard to the length of these proceedings, that the requirement of speed in this provision was not complied with.

25. *Sanchez-Reisse v. Switzerland*

Appl. no. 9862/82, DR 34 p. 191 (205-207).

Admissibility Decision - (Admissible - to Court)

18 November 1983

Extract: The applicant alleges that Article 5. paragraph 4 guarantees him the right to appear in person before the court responsible for taking a decision on the lawfulness of his detention. If the proceedings are carried out entirely in writing he claims that they become more complex and onerous with the result that it is difficult to respect the guarantees provided for in Article 5, paragraph 4
The respondent Government, for its part, asserts that the fact that the proceedings are entirely in writing is not in itself contrary to the provisions of Article 5, paragraph 4, and that in the present case all the guarantees provided therein were respected in the proceedings in question.

The Commission considers that the question whether the procedure followed in this case meets the requirements of Article 5, paragraph 4 of the Convention raises complex issues which cannot be resolved at this stage of the proceedings and which require an examination on the merits.

B. With regard to the question whether the lawfulness of the applicant's detention pending extradition was decided "speedily" within the meaning of Article 5, paragraph 4 of the Convention.

a. With regard to the request submitted on 25 January 1982

The Commission ... observes that the examination of this request ... took 46 days, which is longer that the examination of the previous request.

In the circumstances of the case, and taking into account the observations of the parties in this connection. the Commission considers that the applicant's complaint concerning these two requests for release cannot be considered as manifestly ill-founded. It requires a thorough examination on the merits.

26. *Bozano v. France*

Appl. no. 9990/82, DR 39 p. 119 (144); YB 27 p. 118.

Admissibility Decision - (Admissible - to Court)

15 May 1984

Extract: The applicant claims that the compensation referred to in Article 5 para. 5 would in his case consist primarily in regaining the freedom he was deprived of following unlawful deportation. He further maintains that, contrary to what the French Government have alleged, he would not be able to obtain financial compensation for the damage suffered.

The Commission considers that the right to compensation referred to in Article 5 para. 5 may be of broader scope than mere financial compensation. It cannot, however, refer to a right to secure termination of deprivation of liberty, since that right is secured in Article 5 para. 4 of the Convention.

This complaint must accordingly be considered in relation to financial compensation.

27. *K v. Belgium*

Appl. no. 10819/84, DR 38 p. 230 (231).

Admissibility Decision

5 July 1984

Extract: The Commission has previously held that Art. 5 (2) does not require that a complete description of all the charges should be given to the accused al the moment of the arrest (cf. Application No. 4220/69, X. v. United Kingdom, Yearbook 14, p. 250, 278).

The above reasoning applies *mutatis mutandis* to the arrest of persons with a view to their extradition, the meaning Art. 5 (2) being that a person should know why he is arrested by the police. While it is true that insufficiency of information of the charges held against an arrested person may be relevant for the right to a fair trial under Art. 6 of the Convention for persons arrested in accordance with Art. 5 (I) (c), the same does not apply to the arrest with a view to extradition as these proceedings are not concerned with the determination of a criminal charge.

It appears from the warrant of arrest of 11 October 1983 that the applicant was suspected of fraud, and that his arrest was being ordered for the purposes of extradition to the United States.

The Commission finds that the above elements constituted sufficient information concerning the reasons for his arrest and the charge held against him for the purposes of Art. 5 (2). It follows that this complaint is also manifestly ill-founded within the meaning of Art. 27 (2) of the Convention.

28. *Bozano v. France*

Appl. no. 9990/82, np.

Commission Report

7 December 1984

Extract: 69. The Commission points out at the outset that the applicant can still claim to be a victim of a breach of the Convention by reason of his arrest even if an administrative court finally found that the deportation procedure was unlawful, since, when quashing the deportation order, that court made no express reference either to the deprivation of liberty as such or to the compatibility of the deprivation of liberty with the Convention (c.f. European Court HR, Eckle Judgment of 15 July 1982, Series A, Vol. 51, paragraphs 66 and 69). The enforcement of the deportation order had extremely serious consequences for the applicant, who since his arrest has been in custody and subject to the jurisdiction of a country other than France.
70. It is not disputed that by reason of the enforcement of the deportation order, the applicant was deprived of his liberty within the meaning of Article 5 (1) of the Convention. The applicant was apprehended by the police, taken to the Swiss border and handed over to the Swiss authorities eleven hours after his arrest, at the end of what was indisputably a period of enforced detention.

Extract: 73. Although the Commission is not under a duty to determine whether or not the deprivation of liberty contravened national law - it is for national authorities, notably the courts, to interpret and apply domestic law - it can and must take account of any national decisions on the ordering of disputed measures from which it might possibly be inferred that there had been unlawful deprivation of liberty.
74. The Limoges Administrative Court quashed the deportation order made against the applicant after the Indictment Division of the Limoges Court of Appeal had vetoed extradition on 15 May 1975. The order was quashed on two grounds.
The administrative court held, firstly, that by making the disputed order, the Minister of the Interior had committed a manifest error of judgment, for, on the one hand, the offences of which the applicant was accused in France could not be considered as constituting a threat to public order and, on the other hand, "the only factor to which regard was had in respect of the plaintiff's behaviour in Italy was a criminal conviction and sentence by the Genoa Assize Court of Appeal" (translation) and that "in the absence of any truly adversarial proceedings, the serious offences of which Mr. Bozano was accused, and which he has always denied, could not be regarded as being adequately proved" (translation).
It went on to hold that the disputed decision was a misuse of powers. In this context it had the following to say: "Whereas, secondly, it appears from the file and is in any case not disputed - that after the deportation order was served on him on 26 October 1979, Mr. Bozano, on the orders of the Minister of the Interior was immediately taken to the Swiss border, where he was held in custody and then handed over to the Italian authorities, who had lodged an extradition request with the Swiss authorities; an extradition request made to the French Government, however, had been vetoed by the Indictment Division of the Limoges Court of Appeal on the ground that the rights of the defence in the case had not been sufficiently secured by the Italian proceedings;
Whereas the haste with which the impugned decision was enforced, when the applicant had not even indicated his refusal to comply, and the choice of the Swiss border which was imposed on the applicant clearly show the real reason behind the decision: in reality the executive sought, not to expel the applicant from French territory, but to hand him over to the Italian authorities via the Swiss authorities, with whom Italy had an extradition agreement; the executive accordingly sought to circumvent the competent judicial

authority's veto, which was binding on the French Government; it follows from this that the impugned decision was a misuse of powers (. . .)" (translation).
75. The Commission considers that it follows from these findings that the applicant was deprived of his liberty unlawfully.
76. This conclusion is confirmed by the interim order made on 14 January 19S0 by the President of the Paris Tribunal de Grande Instance, who, while holding that he had no jurisdiction to rule on the enforcement of the deportation order nonetheless took the view that: "the various events between Bozano's being stopped by the French police and his being handed over to the Swiss police disclose manifest and very serious irregularities both from the point of view. of French public policy and with regard to the rules resulting from application of Article 48 of the Treaty of Rome; it is surprising to note, moreover, that the Swiss border was chosen as the place of expulsion although the Spanish border is nearer Limoges; and, lastly, it is noteworthy that the judiciary has not had an opportunity to determine whether or not there were any irregularities in the deportation order against him, since as soon as the order was served on him, Bozano was handed over to the Swiss police despite his protests; and the executive thus itself implemented its own decision" (translation).
77. From these decisions it follows also that the deprivation of liberty was unlawful from the point of view of Article 5 (1) (f).
78. The Commission also points out that the Limoges Administrative Court considered that there had been "a misuse of powers". By Article 18 of the Convention, no permitted restriction on a secured right - such as the right to liberty - shall be applied for any purpose other than that for which it has been prescribed. The question thus arises whether the unlawfulness of the enforcement of the deportation order affects the applicant's detention in respect of Article 18 of the Convention as well.
79. The Commission considers that it is not required to express a general view on the question whether and under what circumstances what are sometimes known as "disguised extraditions" by means of deportations might raise problems with regard to the Convention.
80. The Commission further notes that it has already had occasion to consider these problems, particularly as regards the obligations that arise for States to which persons against whom such expulsion measures have been taken are sent (c.f. the Decisions as to Admissibility of Application Nos. 8916/80, Decisions and Reports 21 p. 250 and 10689/83, Decisions and Reports 37, p. 225).
81. It points out, however, that the Limoges Administrative Court found that the enforcement of the deportation order- and hence the applicant's detention - was unlawful also on the ground that the executive, by proceeding in this way, had sought to circumvent the competent judicial authority's veto on extraditing the applicant, which was binding on the French Government.
82. The Commission consequently considers that since detention with a view to extradition was no longer possible in French law, the applicant's detention had a purpose different from detention with a view to deportation, as provided for in Article 5 (1) (f).
83, By 11 votes to 2, the Commission expresses the opinion that there was in this case a breach of Article 5(1) of the Convention in that the applicant's arrest and detention with a view to his deportation were not lawful within the meaning of sub-paragraph (f) of this provision.

29. *Bozano v. Switzerland*

Appl. no. 9009/80, DR 39 p. 71 (73-74).

Admissibility Decision - (Admissible - Struck off - following Sanchez-Reisse Court judgment)

13 December 1984

Extract: The applicant complains that the Federal Act of 22 January 1892 on extradition to foreign States does not provide for any review of the lawfulness of detention pending extradition proceedings, at any rate where the case is not submitted to the Federal Court (Section 25 of the Act). He also considers that even where a case is in fact submitted to the Federal Court,

the Court's jurisdiction should not be an exclusive one given that its procedure—which is entirely written—deprives appellants of any opportunity to attend a hearing and put their case orally. Lastly, he argues that the lawfulness of his detention was not reviewed by a court "speedily".
The application raises two separate issues: the problem of the procedural safeguards required under Article 5 para. 4 for reviewing the lawfulness of detention pending extradition proceedings and the problem of the length of the procedure for considering the applicant's application for release.
The Commission considers that these are complex issues which cannot be resolved at this stage of the proceedings and require an examination of the merits In this connection it refers to its decision of 18.11.83 in Application No. 9862/82 (Sanchez-Reisse v/Switzerland) .

30. *Sanchez-Reisse v. Switzerland*

Appl. no. 9862/82

Commission Report

13 December 1984

Extract: 83. The points at issue in the present case are as follows:
Did the verification of the lawfulness of the applicant's detention, as carried out by the competent authorities in response to his requests for release submitted on 25 January and 21 May 1982, meet the requirements of Article 5(4) of the Convention.
A. with regard to the procedure applied?
B. with regard to the length of time taken to reach a decision?...
89. When dealing with questions relating to deprivation of liberty, the European Court of Human Rights has stated that, while the judicial proceedings referred to in Article 5(4) need not always be attended by the same guarantees as those required under Article 6(1) for civil or criminal litigation, it is nonetheless "essential that the person concerned should have access to a court and the opportunity to be heard either in person, or, where necessary, through some form of representation, failing which he will not have been afforded the fundamental guarantees of procedure applied in matters of deprivation of liberty" (Eur. Court H.R., Winterwerp case, 24.10.79, paragraph 60 referring to cf Eur. Court H.R., "Vagrancy" cases already cited, paragraph 76,).
90. The Commission has had occasion to state that an arrested person should be able to put forward arguments against his continued detention in custody (cf Application No. 8098/77, 13.12.787 D.R. 16, pp. 111, 119). However, it has emphasised that this result could be obtained even if the proceedings were entirely in writing, provided the applicant was represented by a lawyer and accordingly had the option of contesting the lawfulness of his detention before a court with jurisdiction to hear his case (Application No, 8485/79, 17.3.81, D.R. 22, pp. 131, 139).
In the present case, the Commission cannot preclude a priori the possibility that proceedings conducted entirely in writing might meet the requirements of Article 5(4) of the Convention.
91. In addition, the applicant has complained in substance to the Commission that the procedure for verifying the lawfulness of detention pending extradition, as laid down in Switzerland, does not at any time provide for the interested party to have direct access to the judicial authority called upon to decide whether his detention is lawful. This direct access is, however, claimed to be an essential characteristic of the guarantees required by Article 5(4).
92. The Commission notes that, when the Federal Police Office decides to reject a request for provisional release, it cannot confine itself to forwarding the request together with the principal elements of the case-file, but must draw up an aide-mémoire for submission to the Federal Court.
The Federal Court, for its part, only reaches a decision once it has received the aide-mémoire from the Federal Police Office. The Commission notes that, according to the Government, only the proceedings before the Federal Court should be taken into account for the purposes of applying Article 5(4), The Government accordingly maintains that a person detained pending extradition cannot refer his case directly to the Federal Court.

93. The whole of the procedure is quite clearly different from that envisaged under Article 5(4): even though it may be submitted direct to the Federal Court, the request for provisional release must be examined in the first place by the Federal Police Office. That body, as the respondent Government has observed, is an administrative authority with its own powers of discretion. The Federal Police Office takes up a position without the applicant necessarily being informed of the reasons underlying it, although he is able to obtain a copy of the aide-mémoire drawn up by the Federal Police Office. It should also be noted that the Federal Court does not hear the applicant.
94. A procedure of this kind can doubtless be explained by the fact that it is closely linked to the extradition procedure which, as the Government has emphasised, constitutes the "back cloth" to the case. However, the procedure for verifying the lawfulness of detention pending extradition does have a specific objective, which justifies its being examined and judged on its own merits. This is particularly apparent when, as in the present case, the claim that detention is unlawful relies upon reasons relating to the applicant's health.
95 In the light of these various observations, the Commission considers that the proceedings did not satisfy the requirements of Article 5(4) of the Convention.

Extract: B. Whether the lawfulness of the applicant's detention pending extradition was decided speedily" within the meaning of Article 5(4) of the Convention.
a. The request submitted on 25 January 1982.
101 It remains to be seen whether the time taken in the present case to examine the applicant's request, that is at least 32 days, may be held to meet the requirement of "speed" within the meaning of the above-mentioned provision of the Convention. The Commission has not fixed any absolute, abstract limits to the concept of a "speedy" decision, Indeed, this cannot be defined in the abstract, but must be assessed in the light of the circumstances of the case - the nature of the detention being a paramount factor - in accordance with the criteria established in the case-law of the Commission and of the European Court of Human Rights...
104. The Commission notes that most of the circumstances invoked by the Government to illustrate the complexity of the case relate solely to the examination of the actual request for extradition. The Commission does not underestimate the importance of this aspect in determining the advisability of releasing the applicant, particularly in view of the risk that he might abscond. However, in its opinion these are circumstances which could already have been evaluated by the authorities. In this particular case, the new element introduced by the applicant's request for release related to health considerations, and it is apparent from the file that the matter was capable of being decided after a brief investigation during which the Federal Police Office directly contacted the medical service at the prison where the applicant was detained.
105. In conclusion, the Commission considers that, given the circumstances of the case, the applicant's request for release was not dealt with speedily.
b. The request submitted on 21 May 1982...
109. In the first place, the Federal Police Office transmitted the applicant's request directly to the Swiss Federal Court without formulating any preliminary opinion, as the investigative phase of the request for extradition was concluded and the Swiss Federal Court, since the complete case-file was in its possession, should have been able to reach a direct decision on the question as a whole.
110. This was not the position of the Swiss Federal Court, which referred the request back to the Federal Police Office for a preliminary opinion. This indicates that the intervention of the Federal Police Office plays an integral part in the proceedings and, as such, should be taken into account when evaluating the length of the review procedure provided for in Article 5(4) of the Convention.
It is also apparent from the foregoing that, because the Federal Police Office omitted to submit a preliminary opinion, the consideration of the request was postponed for a few days. The Commission finally notes that the Federal Court took a great deal longer to reach a decision than in the case of the previous request,
111. The Government has explained that this delay was due to the fact that the Federal Court was going through what is traditionally a very busy period just before the court recess, and that the applicant's request no longer had priority status as the Federal Court was on the point of reaching a decision on the extradition request itself. Moreover, the applicant's

request for release was based on the same grounds as the preceding one and so was bound to be rejected.
112. The Commission considers that these factors are not such as to justify, from the standpoint of the Convention, procedural delays which arose in the case. They do not affect the ratio legis of the above-mentioned provision of the Convention, which is that everyone who is deprived of his liberty shall be entitled to ensure, by recourse to speedy proceedings, that his deprivation of liberty is not arbitrary, particularly as in the present case such a decision did not imply a complex examination as the question had already been raised in the same terms in a previous request submitted by the same applicant.
It must accordingly be concluded that these proceedings also failed to meet the requirement of a speedy decision under Article 5(4).

31. *C v. Federal Republic of Germany*

Appl. no. 10893/84, DR 45 p. 198 (202-203).

Admissibility Decision

2 December 1985

Extract: The applicant alleges in substance that the procedure applied was improper because he had been brought to the German territory by a "disguised extradition" As there was no extraditable offence under the Belgian-German extradition treaty he had instead been deported from Belgium to the Federal Republic at the instigation of the German authorities...
The Commission is of the opinion that there existed no rule of international law preventing the German authorities from seeking the applicant's extradition from Belgium despite the fact that the offences for which he had been convicted were not extraditable under the German-Belgian extradition treaty.
In principle, the question whether or not the offences in question were extraditable or whether they were political offences justifying a refusal of extradition was a matter to be judged by the Belgian authorities on the basis of the applicable Belgian law. The applicant could not have raised these questions *vis-a-vis* the German authorities even if an extradition procedure had in fact taken place (cf. No. 8299/78, Dec. 10.10.80. D.R. 22 pp. 51, 70).
As there was no right for the applicant not to be extradited there could be no question in this case of an inadmissible extradition being circumvented by an expulsion procedure. In this respect the case can be clearly distinguished from Application No. 9990/82 v. France, where the courts had already established the inadmissibility of extradition and the authorities nevertheless proceeded to the expulsion of the applicant to a third country obliged under a treaty to extradite him to his home country. As the Commission found. this way of proceeding might raise an issue under Article 5 para. I (f) read in conjunction with Article 18 of the Convention as to the lawfulness of the detention in the expelling state (Dec. 15.5.84, D.R. 39 p. 119)...
Similarly in the present case, the lawfulness of the applicant's detention in the Federal Republic of Germany could not be affected even if his previous detention and expulsion by Belgium might have been unlawful. There is nothing in the Convention to prevent a State from expelling a person to his home country even if criminal proceedings are pending against him in that country or if he has already been convicted in that country. Nor does the Convention prevent cooperation between the States concerned in matters of expulsion, provided that this does not interfere with any specific rights recognised in the Convention.

C1. *Sanchez-Reisse Case*

4/1985/90/137 Series A , no. 107, §§ 43-60.

Court Judgment

21 October 1986

(See Article 5 Court Cases)

C2. *Bozano Case*

5/1985/91/138 Series A , no. 111, §§ 54-60.

Court Judgment

18 December 1986

(See Article 5 Court Cases)

32. *Kolompar v. Belgium*

Appl. no. 11613/85.

Admissibility Decision - (Admissible - Court hearing: 23 March 1992 - judgment not yet delivered)

16 May 1990

Extract: As far as the merits of the complaint are concerned, the Government maintain that the suspension of the extradition proceedings by no means prevented the applicant's detention from remaining based on current extradition proceedings, within the meaning of Article 5 para. 1 (f) of the Convention. They point out that the suspension of extradition proceedings to enable an alien to be tried for offences committed in Belgium by no means amounts to an abuse of official authority, the existence of a prosecution in Belgium constituting a lawful obstacle to his extradition in the case in point. Furthermore, the proceedings instituted by the applicant before the Antwerp investigating authorities and subsequently before the Court of Cassation were conducted with particular diligence. As to the urgent application proceedings, they recall that they are civil proceedings pursued solely on the initiative of the parties. In this respect they observe that the applicant did not attempt to obtain a speedy decision, but on the contrary delayed these proceedings by long periods of inactivity, doubtless attributable to the fact that, at that time, his main aim was to avoid extradition to Italy.

For his part, the applicant recalls that, during part of the period for which he was deprived of his liberty pending extradition, namely from 11 April 1984 to 25 May 1985, extradition was stayed pending the outcome of the proceedings under way in Belgium. This showed that the extradition proceedings had not been conducted with due speed, to the extent that the deprivation of liberty had ceased to be justified. In this respect he relies on the Commission's decision in the case of Lynas v. Switzerland (No. 7317/75, Lynas v. Switzerland, Dec. 6.10.76, D.R. 6 pp. 141 and 167).

Having carried out an examination of the parties' arguments on this issue, and having regard in particular to its decision in the above-mentioned Lynas case, the Commission considers that the issues of fact and law which arise in the area of Article 5 para. 1 (f) of the Convention have proved to be sufficiently complex to necessitate an examination of the merits. It follows that this complaint cannot be declared manifestly ill-founded and must be declared admissible, no ground for inadmissibility having been established.

2. The applicant also complains of the refusal of the Belgian courts to rule on the lawfulness of his detention pending extradition. In respect of this complaint, he relies on Article 5 para. 4 of the Convention...

After carrying out a preliminary examination of the parties' arguments on this point, and having regard in particular to the judgments delivered by the European Court in the De Wilde, Ooms and Versyp case (Eur. Court H.R., De Wilde, Ooms and Versyp judgment of

18 November 1970, Series A no. 12) and the afore-mentioned Van Droogenbroeck case, as well as its own case-law (No. 9107/80, Dec. 6.7.83, D.R. 33 pp. 78 and 79), the Commission considers that the complaint raises sufficiently complex questions in respect of the interpretation and application, in the present case, of Article 5 para. 4 of the Convention to require an examination of the merits. It follows that this complaint cannot be considered to be manifestly ill-founded, and that it must be declared admissible, no other ground for inadmissibility having been established.

33. *Kolompar v. Belgium*

Appl. no. 11613/85.

Commission Report

28 February 1991

Extract: 58. The Commission is required to give its opinion on the following questions:
- Whether the deprivation of the applicant's liberty was justified throughout in the light of Article 5 para. 1 of the Convention.
- Whether the applicant, under Belgian law, had a remedy available, within the meaning of Article 5 para. 4, enabling him to obtain a speedy review of the lawfulness of his detention with a view to extradition...

62. The Commission recalls that, under Article 5 para. 1 (f), the organs of the Convention examine the lawfulness of the detention of a person against whom action is being taken with a view to extradition. However, the review carried out by the Court and the Commission is limited to examining whether there is a legal basis for the detention and whether the decision to place a person in detention may or may not be described as arbitrary in the light of the facts of the case (Zamir v. United Kingdom, Comm. Report 11.10.83, D.R. 40 pp. 42, 55). The wording of both the French and the English texts makes it clear that only the existence of extradition proceedings justifies deprivation of liberty in such a case. It follows that, if the proceedings are not conducted by the authorities with the requisite diligence, the detention ceases to be justified under Article 5 para. 1 (f). Within these limits, the Commission might therefore have cause to consider the length of time spent in detention pending extradition in the light of the above-mentioned provision (No. 7317/75, Dec. 6.10.76, Lynas v. Switzerland, D.R. 6 pp. 155-167). Thus the authorities of a State may not make use of the cases of deprivation of liberty for which Article 5 para. 1 of the Convention makes provision as a means of disguising detention on remand or any other kind of detention of which, for one reason or another, they were unable or unwilling to make use (cf. Eur. Court H.R., Bozano judgment of 18 December 1986, Series A no. 111, pp. 25-27, paras. 59 and 60; No. 6871/75, Dec. 3.3.78, I Yearbook 21, pp. 294 ff.). This requirement, the purpose of which is to prevent restrictions on the right to freedom from being diverted from their objective and from their natural purposes, has to be viewed in conjunction with the text of Article 18 of the Convention, according to which the restrictions permitted under the Convention to the rights and freedoms guaranteed by it may not be applied for any purpose other than those for which they have been prescribed...

65. The Commission therefore has to examine whether, during this period of detention pending extradition, the Belgian authorities showed the requisite diligence in the conduct of the extradition proceedings to justify this uninterrupted detention in the light of Article 5 para. 1 (f) (cf. No. 10400/88, Dec. 14.5.84, D.R. 38 pp. 145, 151). In this context, the Commission first notes that, following the letter from the Minister for Justice dated 4 June 1985 informing him that extradition was scheduled for 25 June 1985, the applicant on 17 June 1985 applied to the "chambre du conseil" at Antwerp court of first instance, alleging primarily that his extradition to Italy would be unlawful. At the applicant's request, the Minister for Justice decided to stay execution of the extradition pending the outcome of this application. In an order of 21 June 1985 the application was declared inadmissible, and this was confirmed on 5 July 1985 by the Indictments Chamber of Antwerp Court of Appeal. The applicant's appeal to the Court of Cassation was rejected in a judgment of 8 October 1985. The Commission first considers that the Belgian authorities cannot be reproached for

staying extradition pending the outcome of these proceedings. It is in fact difficult to see how the applicant could usefully have employed the said remedies if extradition had been carried out. The Commission also considers that the Belgian authorities showed the requisite diligence in the conduct of these proceedings, which were carried out without delay. In fact the Commission notes that the "chambre du conseil" gave a decision within four days, the Indictments Chamber within a fortnight and the Court of Cassation within three months of commencement of the proceedings. These periods cannot be regarded as unreasonable, particularly in the light of the role which each of these courts was required to play.

66. As far as the urgent application subsequently made to the President of Brussels court of first instance is concerned, the Commission notes that this was submitted on 17 September 1985, and that the applicant obtained a stay of execution from the Government pending the outcome of these proceedings. The decision was given on 21 March 1986, following submission of pleadings by the Belgian Government on 24 December 1985 and by the applicant at the hearing of 19 March 1986. The applicant appealed against this decision on 12 June 1986, after receiving notice of it from the Belgian Government. On 19 June 1986 he applied for the case to be reinstated on the list. With the exception of the submission of pleadings by the Belgian Government on 19 November 1986, no further progress was made in the proceedings: no act or measure was taken prior to the applicant's extradition on 25 September 1987. Nevertheless the applicant remained in detention pending extradition throughout this period.

67. The Commission notes that the time which thus elapsed during the proceedings before the court of first instance and the Court of Appeal seems largely attributable to the applicant. As far as the appeal proceedings are concerned, this inactivity doubtless stemmed from the attitude of the applicant's Belgian counsel, who suspended his work pending receipt of a retainer which the applicant claimed to be unable to pay. The Commission, however, notes that in this context the applicant seems not to have availed himself of the opportunity to obtain legal aid for the purposes of these proceedings.

68. However, the Commission considers that there is also, in the present case, a problem of State inactivity. The Commission recalls that Article 5 para. 1 of the Convention states that there is a "right to liberty", and that the exceptions to this right, listed in sub-paragraphs (a) to (f) of this provision, have to be narrowly interpreted (cf. Eur. Court H.R., Winterwerp judgment of 24 October 1979, Series A no. 33, p. 16, para. 37; Eur. Court H.R., Guzzardi judgment of 6 November 1980, Series A no. 39, p. 36, para. 98). The Commission takes the view that the State from which extradition is requested must ensure that there is a fair balance between deprivation of liberty and the purpose of that measure. Being responsible for the detention of the individual whose extradition has been requested, this State must take particular care to ensure that the prolongation of the extradition procedure does not culminate in a lack of proportionality between the restriction imposed on the right to individual liberty protected by Article 5 and its international obligations in respect of extradition. The Commission therefore considers that, even assuming total inactivity by the applicant in the said proceedings, it was the Government's duty to take particular care to limit the applicant's detention pending extradition. Having regard to the stay of extradition and the continuing detention of the applicant, the Belgian State could not simply adopt a passive attitude, but had a duty to take positive steps to expedite the proceedings commenced by the applicant, and thus to limit his detention. However, the Belgian State did not react to the applicant's alleged inactivity and did not take any steps with a view to speeding up these proceedings and limiting the applicant's detention. Consequently, the appeal proceedings were still pending and had made no progress at all when, on 13 September 1987, the applicant stated that he no longer objected to his extradition. In the circumstances of the case, compliance with the Convention required it to take positive steps. The Commission therefore considers that the extradition proceedings were not conducted with the requisite diligence, and that the detention was not, throughout the period, justified in the light of Article 5 para. 1 (f) of the Convention, particularly following the applicant's appeal of 12 June 1986 against the decision of 21 March 1986.

69. The Commission concludes, by 8 votes to 3, that there has been a violation of Article 5 para. 1 of the Convention.

Extract: As to compliance with Article 5 para. 4 of the Convention...

73. The first remedy mentioned by the Government is the appeal to the Administrative Division of the Conseil d'Etat for annulment of an act. The Commission recalls that it has already considered the time-limit imposed by Belgian legislation for the examination of appeals by the Conseil d'Etat to "go beyond the limits inherent in the concept of a speedy decision contained in para. 4 of Article 5" (De Wilde, Ooms and Versyp v. Belgium, Comm. Report 19.7.69, para. 179, Eur. Court H.R., Series B no. 10, p. 95; Van Droogenbroeck v. Belgium, Comm. Report 9.7.80, para. 71, Eur. Court H.R., Series B no. 44, p. 28). The Commission further notes that in the present case, the applicant was no longer, following the expiry of the time-limit for an appeal against the decision of the Minister for Justice of 2 May 1984 authorising his extradition to Italy, able to make use of this appeal for annulment of an act in order to complain of the prolongation of his detention with a view to extradition, which nevertheless was extended to 25 September 1987, in the absence of a further decision by the Minister on the question of his detention. The Commission therefore believes that the appeal to the Conseil d'Etat did not, in the present case, satisfy the requirements of Article 5 para. 4 of the Convention.

74. The second remedy mentioned by the Government is the urgent application procedure. The Commission first recalls that, in its judgment of 24 June 1982 (Eur. Court H.R., Van Droogenbroeck judgment of 24 June 1982, Series A no. 50, pp. 29-31, para. 54), the Court made the following statement:

"... since the decision by the juge des référés can contain only a 'provisional' ruling, it is given without prejudice to the merits of the case (...) and therefore does not have the authority of res judicata. Furthermore, the state of the case-law is not yet such as to establish with adequate clarity whether the review undertaken by the juge des référés meets, from the point of view of its scope, the requirements of Article 5 para. 4 regarding a decision on 'lawfulness'. It is thus necessary to know which court is empowered to dispose finally of the matter 'on the merits'."

The Commission observes that the question of the powers of the judge dealing with urgent applications has further evolved, particularly following the judgments of the Court of Cassation of 21 October 1982 and 21 March 1985. Nevertheless, the Commission notes that, in the present case, the examination of the case by the judge dealing with urgent applications did not fulfil the requirement of a speedy decision laid down in Article 5 para. 4 of the Convention. Indeed it took more than six months for the judge to give a decision on the application submitted on 17 September 1985, while at the appeal stage the application had still not been examined at the time of the extradition, i.e. more than 15 months after notice of appeal had been filed. Although certain delays in these proceedings may seem to be attributable to the applicant, the Commission notes that the time taken to file the Government's submissions in these proceedings exceeded three months at first instance and five months in respect of the appeal. These lengths of time do not enable the courts dealing with the application to make a ruling 'speedily', within the meaning of Article 5 para. 4 of the Convention (cf. Eur. Court H.R., Koendjbiharie judgment of 25 October 1990, para. 29, to be published in Series A no. 185-B). The Commission further notes that, in his decision of 21 March 1986, the President of the court of first instance, dealing with the urgent application, rejected the applicant's application on the grounds that his detention had been lawfully and legitimately ordered within the context of extradition proceedings conducted in accordance with the law and with the Belgian-Italian extradition treaty. Thus the President seems to have been satisfied with a review of the lawfulness "ab initio" of the detention, and not to have considered whether the grounds initially justifying the detention were still pertinent more than two years after the applicant had been placed in detention with a view to extradition. Having regard to these circumstances, the Commission takes the view that the appeal under the urgent application procedure did not, in the present case, satisfy the requirements of Article 5 para. 4 of the Convention.

75. The Government have lastly asserted that the applicant did not properly appeal to the Court of Cassation against the judgment of the Indictments Chamber of Antwerp Court of Appeal, with the result that the Court of Cassation was unable to make a ruling on the power of the investigating authorities to order the release of a person placed at the disposal of the Government with a view to extradition, when that extradition is based on Section 3 (1) of the Act of 15 March 1874. They explain that the Court of Cassation could have decided, on the basis of Article 5 para. 4 of the Convention, that the investigating authorities had the power to take a decision on this issue, particularly as it had delivered its last judgment on this issue

on 24 May 1943, i.e. before the Convention came into force. The Government point out in this respect that, on the basis of Article 5 para. 4 of the Convention, the Court of Cassation has, in a judgment of 18 December 1985, recognised the power of a court martial to take a decision on the lawfulness of the continued detention of a military detainee, in spite of the absence in domestic law of any authorisation for such jurisdiction. Supposing, as the Government assert, that the Court of Cassation did not take a decision on this issue in its judgment of 8 October 1985, the Commission recalls that a remedy has to exist with a sufficient degree of certainty, without which it lacks the accessibility and effectiveness required by Article 5 para. 4 of the Convention (Eur. Court H.R., De Wilde, Ooms and Versyp judgment, loc. cit., p. 34, para. 62; Eur. Court H.R., Van Droogenbroeck judgment, loc. cit., pp 29-31, para. 54). The Commission takes the view that this condition was not fulfilled at the time of the acts complained of, particularly having regard to the doctrine of the judgment of the Court of Cassation dated 24 May 1943, which still was (and is) the established precedent on this issue. The mere possibility of a departure from the existing precedent is not sufficient for the alleged remedy to be considered to exist with a sufficient degree of certainty.

76. The Commission concludes, by 10 votes to 1, that there has been a violation of Article 5 para. 4 of the Convention.

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

   a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

   b. to have adequate time and facilities for the preparation of his defence;

   c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

   d. to examine or have examined witnesses against him and to ~obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

1. *Soering Case*

   1/1989/161/217 Series A , no. 161, §§ 112-113.

   Court Judgment

   7 July 1989

   Extract: 112. The applicant submitted that, because of the absence of legal aid in Virginia to fund collateral challenges before the Federal courts (see paragraph 57 above), on his return to the United States he would not be able to secure his legal representation as required by Article 6 § 3 (c)...
   113. ...The Court does not exclude that an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country. However, the facts of the present case do not disclose such a risk.
   Accordingly, no issue arises under Article 6 § 3 (c) in this respect. [unanimous]

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d. to examine or have examined witnesses against him and to ~obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

1. *X v. Austria*

Appl. no. 1918/63, CD 12 p. 115 (119-120); YB 6 p. 484 (492).

Admissibility Decision

18 December 1963

Extract: Whereas in regard to the alleged violations of Article 6 (2) and (3) it is to be observed that these two paragraphs guarantee certain procedural rights to "everyone charged with a criminal offence"; whereas the applicant, during the proceedings before the Regional Court of B and the Court of Appeal of B concerning his extradition, had already been convicted of the crimes which he committed on Austrian territory and had already served the sentence imposed upon him in respect of these crimes; whereas, in accordance with Article 59 of the Code of Criminal Procedure, the courts were called upon to decide only the question whether or not the applicant should be extradited to one or more foreign countries and, if so, to which of the countries which had requested his extradition; whereas, accordingly, during the proceedings before the Austrian courts, the applicant was not "charged with a criminal offence" within the meaning of the above two paragraphs;

2 *X v. Netherlands*

Appl. no. 1983/63, CD 18 p. 19 (38-39); YB 8 p. 228 (264).

Admissibility Decision

13 December 1965

Extract: Whereas the applicant also alleges that the Netherlands Government has held him guilty of illegal entry into The Netherlands, although he had not been convicted of such offence (see above: "Submissions of the Parties" II/A/5); whereas Article 6 (2) of the Convention provides that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law"; whereas the applicant was not charged, at the time concerned, with the offence of illegal entry or any other equivalent offence but was detained pending his deportation from The Netherlands; whereas, consequently, Article 6 (2) was not applicable in the circumstances of his case;

3. *Khan/Singh v. United Kingdom*

Appl. nos. 2991/66. 2992/66, CD 24 p. 116 (130).; YB 10 p. 478 (500).

Admissibility Decision - (Admissible - Friendly settlement)

15 July 1967

Extract: Whereas the Applicants have also submitted, as did the applicant Harbhajan Singh, that the right to the unimpeded entry of Mohamed Khan into the United Kingdom to join his father was a "civil right" within the meaning of Article 6, paragraph (I) of the Convention; whereas they further submit that the United Kingdom Government, in failing to provide an independent and impartial tribunal and a fair and public hearing by such tribunal for the determination of the said civil right, violated Article 6, paragraph (I) of the Convention.
Whereas the determination of the question whether the applicants had in this respect any civil right under Article 6, paragraph (I), depends substantially on the determination of the question whether or not the refusal of the immigration authorities to allow the minor child Mohamed Khan to enter the United Kingdom to take up residence with his father Mohamed Alam was an unjustified interference with the family life of the Applicants within the meaning of Article 8; whereas the determination of a right to respect for family life under Article 8 may well be considered as the determination of a civil right within the meaning of Article 6; whereas the Commission has just held that this complaint of the Applicants under Article 8 cannot be declared manifestly ill-founded; whereas accordingly their submission that a civil right existed under Article 6, paragraph (I) cannot also be declared manifestly ill-founded.

4. *X, Y, Z, V, W v. United Kingdom*

Appl. no. 3325/67, CD 25 p. 117 (122-123); YB 10 p. 528 (538).

Admissibility Decision

15 December 1967

Extract: Whereas the right to enter and reside in a country is determined by public law, through acts of public administration, from which it follows that the term "civil rights," in Article 6 (1), does not include any such right and that therefore neither the decision to grant or refuse entry, nor the proceedings through which that decision is reached, are governed by the provisions of Article 6 (1);
Whereas, in so far as the rights of the applicants to live together as a family may be among the "civil rights" covered by Article 6 (1), the Commission has found that the initial refusal of entry to, or continued residence in, the United Kingdom of the first applicant did not, in all the circumstances of the case, constitute a separation of the family or an interference with

those rights, by the acts of the authorities; whereas consequently the decision of refusal did not purport to be, and was not, a determination of any "civil rights" within the meaning of Article 6 (1) (cf. Decision as to the admissibility of Application No. 2992/66, *loc. cit.*, p. 131);

5 *X v. United Kingdom*

Appl. no. 4247/69, CD 36 p. 73 (75).

Admissibility Decision

14 December 1970

Extract: According to the constant jurisprudence of the Commission, Article 6 (2) and (3) provide procedural guarantees to "everyone charged with a criminal offence" but this does not apply to an extradition procedure in which the national courts must decide only on the question whether an individual should or should not be extradited to another State.

6. *X v. Federal Republic of Germany*

Appl. no. 6501/74, DR 1 p. 80 (80).

Admissibility Decision

19 December 1974

Extract: The applicant (further) complains that he was deported to Turkey on ... May 1973 before his sentence had become final. In this respect, he alleges a violation of Article 6 (3) b).
Article 6 (3) b) assures to everyone charged with a criminal offence the right to have adequate time and facilities for the preparation of his defence.
According to the Commission's jurisprudence, in order to determine the question whether the right to have adequate time and facilities for the preparation of the defence has been respected, account must be taken of the general situation of the defence, in particular whether such defence is carried out by the accused himself or through a lawyer (see application No. 2370/64, X. v. Austria, Collection of Decisions 22, p. 96).
It is true that the applicant was expelled on ... May 1973 by decision of the Public Order Office in Stuttgart, while his further appeal (Revision) against the decision of the Regional Court was pending before the Court of Appeal in Stuttgart. However, the applicant was represented by the same lawyer (Dr P.) in the course of all criminal proceedings. In this context, it is also to be observed that the further appeal (Revision) concerned only the length of the sentence imposed and that the conviction had already become final. Consequently, the Commission finds that the applicant's deportation does not disclose any appearance of a violation of the rights of the defence as set out in Article 6 (3) b).

7 *Agee v. United Kingdom*

Appl. no. 7729/76, DR 7 p. 164 (175-176)

Admissibility Decision

17 December 1976

Extract: 27. The Commission has next considered the applicant's complaint that he has been denied a fair hearing in respect of the decision to deport him. The applicant has submitted that the decision in essence involved the determination of criminal charge since the allegations

made against him "provide the basis for criminal charges" under the Official Secrets Act or otherwise. The Commission has also considered *ex officio* whether the decision involved a determination of his civil rights or obligations.
28. However, the Commission observes that the right of an alien to reside in a particular country is a matter governed by public law. It considers that where the public authorities of a State decide to deport an alien on grounds of security, this constitutes an act of state falling within the public sphere and that it does not constitute a determination of his civil rights or obligations within the meaning of Art. 6. Accordingly even though the decision to deport the applicant may have consequences in relation to his civil rights, in particular his reputation, the State is not required in such cases to grant a hearing conforming to the requirements of Art. 6 (1).
29. The question remains, however, whether in the present case the decision involved the determination of a criminal charge against the applicant. Whilst no specific allegations of criminal conduct have been made against him, it is implied at least that the Home Secretary's decision is based on information that he has been guilty of criminal conduct. However this does not, in the Commission's opinion, bring the decision within the penal sphere, since deportation constitutes a procedure completely separate from criminal prosecution or conviction. It cannot, as the Commission has already observed, normally be looked on as a penalty.
30. The Commission therefore considers the applicant's complaints that he has been denied a fair hearing in respect of the deportation decision, contrary to Art. 6, to be incompatible with the Convention *ratione materiae* on the ground that the decision to deport him did not involve the determination of his civil rights or obligations or of any criminal charge against him.

8. *X v. United Kingdom*

Appl. no. 7751/76, np, DS 2 p.68.

Admissibility Decision

18 May 1977

Extract: In the present case the decision complained of was concerned solely with the question whether the applicant should be allowed to remain in the United Kingdom beyond the length of stay originally permitted. Any consequences which the decision might have in relation to the applicant's civil rights and obligations, in particular in so far as it may prevent him carrying on business in the United Kingdom would be purely indirect or incidental. The decision cannot therefore be said to have involved a "determination" of his civil rights or obligations within the meaning of Article 6 (1).

9. *X v. United Kingdom*

Appl. no. 7902/77, DR 9 p.224(225-226).

Admissibility Decision

18 May 1977

Extract: The applicant has submitted, in essence, that his position is analogous to that of the applicants in the Ringeisen and König Cases, in that the deportation proceedings necessarily determined his civil rights and obligations *vis-a-vis* his employers.
However the Commission considers that an alien's right to enter or remain in a particular country is, in principle, separate from and independent of the private rights and obligations which may accrue to him under a contract of employment in the country concerned. Any decision in the field of immigration, whether it be to refuse entry to an alien, to limit the

period for which he may enter the country or to expel him, may have consequences in relation to his rights and obligations under private law contracts which he has entered into. However the applicability of Article 6 to proceedings which, in themselves, are solely concerned with an alien's right to enter or reside in the country, cannot in the Commission's opinion depend on the particular agreements which he may have entered into under private law.
In the present case the only question which fell to be decided in the deportation proceedings was whether the applicant should be allowed to remain in the United Kingdom or whether he should be deported. The determination of that question did not, as the Commission has already observed, constitute in itself a determination of the applicant's civil rights or obligations. The applicant's private rights and obligations under his contract of employment were not in any sense in themselves the subject of the proceedings. Furthermore, as it has indicated above; the Commission considers that they were completely separate from and independent of the matter which did form the subject of the proceedings, namely the applicant's right to remain in the United Kingdom.

10. *X v. United Kingdom*

Appl. no. 7706/76, np, DS 2 pp. 69-70.

Admissibility Decision

5 October 1977

Extract: The applicant submits that the right to political asylum is a "civil right" within the meaning of this provision and that, even if it is not, the right to *non-refoulement* to a country in which persecution may take place is such a right. He submits that Article 6 (1) was therefore applicable to the determination of his claim to political asylum and in any event to his claim that he should not be deported to Ghana on the ground that he feared persecution there.
The Commission first recalls that it has consistently held that the term "civil rights and obligations" relates to an autonomous concept which must be interpreted independently of the domestic law of the High Contracting Party concerned (see e.g. Application No. 1931/63, X v. Austria, Yearbook VII, p. 212; Collection 15, p. 8; 7014/75, X v. Federal Republic of Germany, Decisions and Reports 5, p. 134). It also recalls that the European Court of Human Rights has held that Article 6 (1) "covers all proceedings the result of which is decisive for private rights and obligations", (European Court of Human Rights, Ringeisen Case, Judgment of 16 July 1971, Series A, Vol. 13, para. 94).
Having considered the matter in the light of the above-mentioned jurisprudence the Commission has come to the conclusion that rights to political asylum, refugee status or *non-refoulement* even if guaranteed to an individual under domestic or international law, cannot be classified as civil rights" within the meaning of Article 6 (1)...
In its opinion rights of asylum, refugee status and *non-refoulement* are in principle similar in character to rights such as those of entry and residence in that, where guaranteed, they consist of rights of the individual *vis-a-vis* the State falling within the domain of public law, rather than "private rights"...
This part of the application is therefore incompatible with the provisions of the Convention *ratione materiae* and must be considered inadmissible under Article 27 (2) thereof.

11. *X v. United Kingdom*

Appl. no. 8259/78, np, DS 2 p. 71.

Admissibility Decision

12 July 1978

Extract: The applicants further complained that in the proceedings before the Council of State no reasonable and impartial examination,of the personal situation of each member of the group has taken place...
The Commission, however, observes that in the present case the proceedings before the Council of State in question concerned the applicants' appeal of the respective decisions of the Minister of Justice to refuse them a residence permit in The Netherlands. These proceedings are, in the Commission's opinion, not to be considered as proceedings by which the applicants' civil rights and obligations were determined.
It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27 (2).

12. *Harbhajan Singh Uppal et al v. United Kingdom*

Appl. no. 8244/78, DR 17 p. 149 (157).

Admissibility Decision

2 May 1979

Extract: The Commission has considered in the context of previous cases brought before it, the question of the applicability of Article 6.1 of the Convention t deportation matters The Commission has held in these cases that a decision as to whether an alien should be allowed to stay in a country is a discretionary act by a public authority. Consequently, the decision to expel the applicant parents in the present case were of an administrative order and they were made in the exercise of the discretionary powers of the immigration authorities. They did not therefore involve as such the determination of civil rights within the meaning of Article 6.1. of the Convention and, even assuming that the respective rights of grandparents parents and children to maintain a life in common is a civil right within the meaning of that provision the decision of the United Kingdom immigration authorities to expel the applicant parents does not determine such a right.
It follows that Article 6 1 of the Convention is not applicable in the present case.

13 *X v. Sweden*

Appl. no. 8681/79, np, DS 2 p. 72.

Admissibility Decision

16 October 1980

Extract: The question remains, however, whether the extradition proceedings could involve the determination of a criminal charge against the applicant. The Commission notes in this respect, that according to the request for extradition, the applicant had already been convicted various times and the relevant judgments were final. The Italian authorities now want the applicant extradited in order that he serve his sentences. This means of course that when the Swedish Government decides whether or not to extradite the applicant, its decision will be taken on information concerning his criminal conduct. However, this does not, in the Commission's view, bring such a decision within the penal sphere, since extradition constitutes a procedure completely separate from criminal prosecution or conviction (cf. Application No. 7729/76, Agee v. United Kingdom, Decisions and Reports 7, p. 164).
The Commission therefore concludes that the applicant's complaint that the protracted extradition proceedings violate Article 6 (1) is incompatible with the Convention *ratione materiae* in that such proceedings do not involve the determination either of his civil rights or obligations or of any criminal charge against him.

14 *X v. Federal Republic of Germany*

Appl. no. 8080/77, np, DS 2 p. 73.

Admissibility Decision

17 March 1981

Extract: However, the Commission has already held in a previous case, concerning the claim of a citizen of the United Kingdom and Colonies to enter, and reside in, the United Kingdom, that "the right to enter and reside in a country is determined by public law, through acts of public administration, from which it follows that the term 'civil rights' in Article 6 (1) does not include any such right and that therefore neither the decision to grant or refuse entry, nor the proceedings through which that decision is reached, are governed by the provisions of Article 6 (1)" (Application No. 3325/67, Collection 2S, p. 117 (122)). The Commission has confirmed this interpretation of Article 6 (1)

15 *X v. United Kingdom*

Appl. no. 8971/80, np, DS 2 p. 73-4.

Admissibility Decision

5 May 1981

Extract: The applicant also claimed that the proceedings against him under the Visiting Forces Act 1952 also denied his right under Article 6 (1) to a fair and public hearing in the determination of his civil rights and obligations.
The Commission refers to its decision as to admissibility in the case of the Singh/Uppal family against the United Kingdom, Application No. 8244/78, which concerned the deportations from the United Kingdom of a couple whose parents and children were entitled to reside there...
The Commission is of the opinion that similar considerations apply to proceedings by which an alien deserter is obliged to return to the country of his military service. It finds that the court decisions of which the applicant complains did not determine his civil rights or obligations within the meaning of Article 6 (1) and that, therefore, no issue arises under this provision of the Convention.

16 *X, Y and Z v. United Kingdom*

Appl. no. 9285/82, DR 29 p. 205 (211).

Admissibility Decision

6 July 1982

Extract: 4. The second applicant has complained that the deportation measures against her husband constituted a denial of her right to a fair hearing in the determination of civil rights and obligations ensured by Article 6, paragraph 1, of the Convention. She claims to be affected by these proceedings, because if she follows her husband and stays away from the United Kingdom, she will lose her right of abode after two years...
As regards the circumstances of the present case, the Commission notes, In addition to the fact that the conferment of settled status upon the second applicant, a Pakistan citizen, was within the discretion of the immigration authorities, that she is not being compelled to follow

her husband. Furthermore, if she does follow him, she may return to the United Kingdom at regular intervals, thereby avoiding the loss of her present right of abode.
The Commission concludes that the decision of the United Kingdom immigration authorities to deport the first applicant did not determine the civil rights and obligations of the second applicant. It follows that Article 6, paragraph 1, is not applicable in the present case and that the complaint of the second applicant of having been denied a fair hearing is manifestly ill-founded within the meaning of Article 27, paragraph 2, of the Convention.

17. *Zamir v. United Kingdom*

Appl. no. 9174/80, DR 29 p. 153 (163-164).

Admissibility Decision

13 July 1982

Extract: Finally, the applicant complains that he was effectively charged with a criminal offence since the finding that he was an illegal entrant is tantamount to an allegation of criminal conduct covered by Section 24. paragraph I (a) of the 1971 Act. He also alleges a breach of Article 6, paragraph 2, since the burden of proof on him to prove the lawfulness of of his presence in the United Kingdom and in addition a breach of Article 6, paragraph 3 (d) since he was unable to cross-examine witnesses against him.
The Commission notes that the applicant was removed from the United Kingdom as an illegal entrant on the basis that he had gained entry into the country by deception. He was not formally charged with any offence under SS. 24-27 of the 1971 Act. In these circumstances the Commission is of the opinion that the administrative process leading to his removal does not involve the determination of a criminal charge. Nor can his removal be regarded as a disguised criminal penalty. It follows therefore that article 6 is not applicable in the present case.

18 *H v. Spain*

Appl. no. 8971/80, np, Supplement to DS 2 (6.1.1.3.2.3.) p. 4.

Admissibility Decision

15 December 1983

Extract: The principal question which the Commission is called upon to decide is whether the guarantee of a fair hearing under Article 6 (1) of the Convention is applicable to extradition proceedings, i.e., whether such proceedings can be deemed to be a determination of a criminal charge.
In the Commission's view the word "determination involves the full process of the examination of an individual's guilt or innocence of an offence, and not the mere process of determining whether a person can be extradited to another country. The Commission notes that in the present case the Audiencia Nacional specifically stated that it could not examine the question of the applicant's guilt in respect of the charges against him in the United States, but only whether the formal extradition requirements had been fulfilled.
The Commission finds, therefore, that the extradition proceedings in question did not involve the determination of a criminal charge against the applicant within the meaning of Article 6 (1) of the Convention and that the applicant's complaint is accordingly incompatible *ratione materiae* with its provisions, within the meaning of Article 27 (2) of the Convention.

19 *Kirkwood v. United Kingdom*

Appl. no. 10479/83, DR 37 p.158; YB 27 p. 170.

Admissibility Decision

12 March 1984

Extract: The Commission recalls its decision on the admissibility of application No. 10227/82, H against Spain (1), where it considered whether extradition proceedings involved the "determination" of a criminal charge. It recognised that the word "determination" involve the full process of the examination of an individual's guild or innocence of an offence. Since the proceedings in Spain did not involve an examination of the question of the applicant's guilt, but merely whether formal extradition requirements had been fulfilled, that application was declared inadmissible.
The present case also concerns extradition, but the Commission notes that the tasks of the Magistrates' Court included the assessment of whether or not there was, on the basis of the evidence, the outline of a case to answer against the applicant. This necessarily involved a certain, limited, examination of the issues which would be decisive in the applicant's ultimate trial. Nevertheless, the Commission concludes that these proceedings did not in themselves form part of the determination of the applicant's guilt or innocence, which will be the subject of separate proceedings in the United States which may be expected to conform to standards of fairness equivalent to the requirements of Article 6, including the presumption of innocence, notwithstanding the committal proceedings. In these circumstances the Commission concludes that the committal proceedings did not form part of or constitute the determination of a criminal charge within the meaning of Article 6 of the Convention. This aspect of the applicant's complaint is accordingly incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 (2) of the Convention.

20 *X v. Austria*

Appl. no. 10266/83, DR 39 p. 219.

Admissibility Decision

9 July 1984

Extract: 5. The applicants finally claim that there has been a violation of Article 6 (1) of the Convention because the decision concerning the residence prohibition against their husband and father was decisive for their civil rights, but was not taken by an independent and impartial tribunal as required by this provision. However, the Commission observes that the decision in question did not involve any direct determination of the applicants' civil rights, both as regards their family relationship in civil law, and as regards the first applicant's employment contract. At best it could be said that the decision in question might have had certain remote consequences for the exercise of these civil rights. This is not enough to bring the decision within the scope of Article 6 (1) of the Convention, and this part of the application is thus incompatible, *ratione materiae,* with the provisions of the Convention.

21. *K and F v. Netherlands*

Appl. no. 12543/86, DR 51 p. 272 (277).

Admissibility Decision

2 December 1986

Extract: 2. The applicants have also complained that they will not have a fair trial upon extradition to the United Kingdom and they have invoked Article 6 para. I of the Convention in this respect...
However, the Commission finds that, as far as Article 6 of the Convention is concerned, the United Kingdom Government are exclusively responsible under the Convention for the applicants' trial in the United Kingdom and that the extradition can in no way engage the responsibility of the Netherlands Government under Article 6 of the Convention.
The Commission leaves it open whether in exceptional circumstances the extradition of a person for the purpose of prosecution before a court lacking even the most fundamental legal guarantees could raise a problem under Article 3 of the Convention, since no such issue could arise in the present case.
It follows that this part of the application is incompatible with the Convention *ratione personae* within the meaning of Article 27 para. 2 of the Convention.

22. *P v. United Kingdom*

Appl. no. 13162/87, DR 54 p. 211 (211-212).

Admissibility Decision

9 November 1987

Extract: The applicant has [also] complained of an absence of a fair hearing by an independent and impartial tribunal, in accordance with Article 6 para. I of the Convention, as regards his request for political asylum. He suggests that the political asylum procedures in the United Kingdom give rise to a determination of a civil right within the meaning of this provision.
However, the Commission has constantly held that the procedures followed by public authorities to determine whether an alien should be allowed to stay in a country or should be expelled are of a discretionary, administrative nature, and do not involve the determination of civil rights within the meaning of Article 6 para. I of the Convention (cf. e.g. No. 7729/76, Dec. 17.12.86, D.R. 7 p. 164 and No. 8118/77, Dec. 19.3.81, D.R. 25 p. 105). The Commission finds that political asylum applications fall within this category of procedures which do not determine civil rights within the meaning of Article 6 para. I of the Convention. Accordingly the Commission must reject this aspect of the application as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 27 para. 2.

23. *Soering v. United Kingdom*

Appl. no. 14038/88

Admissibility Decision - (Admissible - to Court)

10 November 1988

Extract: The applicant complains under Article 3 of the Convention of his imminent extradition to the Commonwealth of Virginia in the United States of America on a charge of capital murder. He also complains under Articles 6 para. 3(c) and 13 of the Convention...
The applicant complains ... that although under Virginia law the accused may be granted legal aid for the purpose of his automatic appeal to the Supreme Court of Virginia, there are eight other voluntary appeal procedures for which legal aid is not available. The applicant has serious reason to believe that he will be unable to fund the voluntary appeals which he may require in order to avoid the imposition of the death penalty, and submits that the

denial of legal aid in such circumstances constitutes a breach of Article 6 para. 3 (c) of the Convention...
The Government contest the applicant's assertion that legal aid is not available under Virginian law for the purposes of voluntary appeals in cases of capital murder...
The Commission considers, in the light of the parties' submissions, that the application as a whole raises complex issues of law and fact under the Convention, the determination of which depends on an examination of the merits of the application.
It concludes, therefore, that the application cannot be regarded as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention and no other ground for declaring it inadmissible has been established.

24. *Soering v. United Kingdom*

Appl. no. 14038/88

Commission Report

19 January 1989

Extract: 155. The applicant complains of the absence of legal aid under Virginia law to fund the collateral State and Federal appeals following the automatic appeal to the Supreme Court of Virginia. He invokes Article 6 para. 3 (c) of the Convention...
156. The Commission recalls that it can only examine complaints directed against one of the States Parties to the Convention. In this respect the Commission points out that the respondent Government could not be held directly responsible under the Convention for the absence of legal aid under Virginia law - a matter entirely within the responsibility of the United States of America. Nor could the proposed extradition of the applicant give rise to the responsibility of the respondent Government under Article 6 para. 3 (c) of the Convention.
157. The Commission concludes, by a unanimous vote, that the extradition of the applicant would not constitute a breach of Article 6 para. 3 (c) of the Convention due to the absence of legal aid in the State of Virginia to pursue various State and Federal appeals.

C1. *Soering Case*

1/1989/161/217 Series A , no. 161, §§ 112-113.

Court Judgment

7 July 1989

(See Article 6 Court Cases)

25. *Osman v. United Kingdom*

Appl. no. 15933/89, np.

Admissibility Decision

14 January 1991

Extract: The applicant also complained that if he is returned to Hong Kong he will receive an unfair trial, particularly in respect of possible untested evidence which he alleges would be used against him contrary to Article 6 para.3 (d) (Art. 6-3-d) of the Convention.

The Commission notes that in principle the United Kingdom Government would not incur any liability under the Convention for the acts of the Hong Kong Government. As the European Court of Human Rights held in its Soering judgment, Article 1 Art. 1) of the Convention cannot be read as justifying a general principle to the effect that a Contracting State may not surrender an individual unless satisfied that the conditions awaiting him in the country of destination are in full .accord with each of the safeguards of the Convention. However, exceptionally, if a Contracting State decided to extradite a fugitive to "a country where substantial grounds have been shown for believing that the individual faces a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention, that decision itself may raise an issue under Article 3 (Art. 3). The Court also left open the possibility that, exceptionally, .an issue might arise under Article 6 (Art. 6) of the Convention "by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country" (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, paras. 81-91 and paras. 112-113).
In the present case, even assuming that the responsibility of the United Kingdom could be incurred in respect of the .applicant's claim under Article 6 (Art. 6), the Commission finds that the facts of the application do not disclose a risk that the applicant will suffer a flagrant denial of a fair trial in Hong Kong. Accordingly, this aspect of the case must .also be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

26. *Koslov v. Finland*

Appl. no. 16832/90, np.

Admissibility Decision

28 May 1991

Extract: The applicant alleges that his extradition would expose him to a serious risk of not having his case tried by a tribunal in conformity with the conditions set out in Article 6 para. 1 (Art. 6-l) of the Convention. After the trial had taken place, he alleged that the requirements of fairness and the rights of the defence had been disregarded in various respects...
The Commission recalls that in the Soering case the Court did not exclude that an issue might exceptionally arise under Article 6 (Art. 6) by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country (above-mentioned Soering judgment, p. 45, para. 113).
In the present case the Commission finds that the information available to it as to the situation prevailing in 1990 in regard to the system of criminal justice with which the applicant would be confronted upon his extradition is not sufficient to conclude that the applicant's case is of that exceptional character.
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.

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

1. *X v. Netherlands,*

Appl. no. 7512/76, DR 6, p. 84 (185-186).

Admissibility Decision

6 July 1976

Extract: The applicant wrongly invokes Article 7 of the Convention in relation to his extradition, This provision embodies the principle of the legality of crimes and punishments and provides in particular that "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed".
In relation to extradition properly so called, the Commission is not required to examine its legality according to the law of the Netherlands or the European Convention on extradition. In fact, although it is implicitly accepted by the Convention and in particular by Article 5, paragraph 1 (f) (cf. decision of application No. 5078/71 v/Italy and Fed. Rep. of Germany, Rec. 46, p. 35), extradition does not itself fall within the scope of the Convention (Decision in application No. 1405/62, v/Fed. Rep. of Germany- unpublished). The concept of "guilty" in Article 7, although autonomous, cannot cover the decision on extradition which may lead to a conviction. It follows that the application is in this regard incompatible with the provisions of the Convention within the meaning of Article 27, paragraph 2, of the Convention.
Assuming that when the applicant had been in fact found guilty for having brought narcotics into Sweden in 1968-1969 it would have been on the basis of specific provisions introduced into the Swedish penal code by a law of 14 December 1962 and in force for several years before the commission of the offence.
It follows that the application, in so far as it can be considered as directed against the Swedish authorities is manifestly ill-founded within the meaning of Article 27, paragraph 2, of the Convention.

2 *Osman v. United Kingdom*

Appl. no. 14037/88.

Admissibility Decision

13 March 1989

Extract: 2. The applicant also complains that on return to Hong Kong he may, on resumption of Chinese sovereignty, face violations of his rights under Article 7 para. 1 (Art. 7-1) of the Convention...
The Commission may however only examine complaints directed against one of the States Parties to the Convention. The respondent Government could not in this case be held directly responsible under the Convention for the retrospective imposition of criminal liability or retrospective increase in penalties allegedly provided for under Chinese law. The

Commission also finds that the proposed extradition of the applicant to Hong Kong could not give rise to the responsibility of the respondent Government under Article 7 (Art. 7) of the Convention.
It follows that this complaint is incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. *Moustaquim v. Belgium*

Appl. no. 12313/86.

Commission Report

12 October 1989

Extract: 74. The applicant also complains of a violation of Article 7 of the Convention on the grounds that he was to some extent punished for offences not all of which, at the time when they were committed, that is before he had reached the age of criminal responsibility, were offences under national law and for which only protective measures were provided...
75. This provision, however, which essentially outlaws the retrospective application of the criminal law, is not applicable in this case (see No. 8988, Dec. 10.3.81, D.R. 24 p. 198). As the Council of State observed in its judgment of 16 October 1985, the deportation order against the applicant does not constitute an additional penalty but a security measure. A measure of this kind taken in pursuance, not of the criminal law but of the law on aliens, is not in itself penal in character.
76. The Commission concludes unanimously that there has been no violation of Article 7 of the Convention in this case.

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

1. *X v. Netherlands,*

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Admissibility Decision

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In relation to extradition properly so called, the Commission is not required to examine its legality according to the law of the Netherlands or the European Convention on extradition.
In fact, although it is implicitly accepted by the Convention and in particular by Article 5, paragraph 1 (f) (cf. decision of application No. 5078/71 v/Italy and Fed. Rep. of Germany, Rec. 46, p. 35), extradition does not itself fall within the scope of the Convention (Decision in application No. 1405/62, v/Fed. Rep. of Germany- unpublished). The concept of "guilty" in Article 7, although autonomous, cannot cover the decision on extradition which may lead to a conviction. It follows that the application is in this regard incompatible with the provisions of the Convention within the meaning of Article 27, paragraph 2, of the Convention.
Assuming that when the applicant had been in fact found guilty for having brought narcotics into Sweden in 1968-1969 it would have been on the basis of specific provisions introduced into the Swedish penal code by a law of 14 December 1962 and in force for several years before the commission of the offence.
It follows that the application, in so far as it can be considered as directed against the Swedish authorities is manifestly ill-founded within the meaning of Article 27, paragraph 2, of the Convention.

2 *Osman v. United Kingdom*

Appl. no. 14037/88.

Admissibility Decision

13 March 1989

Extract: 2. The applicant also complains that on return to Hong Kong he may, on resumption of Chinese sovereignty, face violations of his rights under Article 7 para. 1 (Art. 7-1) of the Convention...
The Commission may however only examine complaints directed against one of the States Parties to the Convention. The respondent Government could not in this case be held directly responsible under the Convention for the retrospective imposition of criminal liability or retrospective increase in penalties allegedly provided for under Chinese law. The

Commission also finds that the proposed extradition of the applicant to Hong Kong could not give rise to the responsibility of the respondent Government under Article 7 (Art. 7) of the Convention.
It follows that this complaint is incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. *Moustaquim v. Belgium*

Appl. no. 12313/86.

Commission Report

12 October 1989

Extract: 74. The applicant also complains of a violation of Article 7 of the Convention on the grounds that he was to some extent punished for offences not all of which, at the time when they were committed, that is before he had reached the age of criminal responsibility, were offences under national law and for which only protective measures were provided...
75. This provision, however, which essentially outlaws the retrospective application of the criminal law, is not applicable in this case (see No. 8988, Dec. 10.3.81, D.R. 24 p. 198). As the Council of State observed in its judgment of 16 October 1985, the deportation order against the applicant does not constitute an additional penalty but a security measure. A measure of this kind taken in pursuance, not of the criminal law but of the law on aliens, is not in itself penal in character.
76. The Commission concludes unanimously that there has been no violation of Article 7 of the Convention in this case.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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.

Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

1. *Abdulaziz, Cabales and Balkandali Case*

15/1983/71/107-109 Series A , no. 94, §§ 60-69.

Court Judgment

28 May 1985

Extract: 60. ...The applicants are not the husbands but the wives, and they are complaining not of being refused leave to enter or remain in the United Kingdom but, as persons lawfully settled in that country, of being deprived (Mrs. Cabales), or threatened with deprivation (Mrs. Abdulaziz and Mrs. Balkandali), of the society of their spouses there.
Above all, the Court recalls that the Convention and its Protocols must be read as a whole; consequently a matter dealt with mainly by one of their provisions may also, in some of its aspects, be subject to other provisions thereof (see the "Belgian Linguistic" judgment of 23 July 1968, Series A no. 6, p. 33, para. 7). Thus, although some aspects of the right to enter a country are governed by Protocol No. 4 as regards States bound by that instrument, it is not to be excluded that measures taken in the field of immigration may affect the right to respect for family life under Article 8. The Court accordingly agrees on this point with the Commission...
62. The Court recalls that, by guaranteeing the right to respect for family life, Article 8 "presupposes the existence of a family" (see the Marckx judgment of 13 June 1979, Series A no. 31, p. 14, para. 31). However, this does not mean that all intended family life falls entirely outside its ambit. Whatever else the word "family" may mean, it must at any rate include the relationship that arises from a lawful and genuine marriage, such as that contracted by Mr. and Mrs. Abdulaziz and Mr. and Mrs. Balkandali, even if a family life of the kind referred to by the Government has not yet been fully established. Those marriages must be considered sufficient to attract such respect as may be due under Article 8.
Furthermore, the expression "family life", in the case of a married couple, normally comprises cohabitation. The latter proposition is reinforced by the existence of Article 12, for it is scarcely conceivable that the right to found a family should not encompass the right to live together. The Court further notes that Mr. and Mrs. Abdulaziz had not only contracted marriage but had also cohabited for a certain period before Mr. Abdulaziz was refused leave to remain in the United Kingdom (see paragraphs 40-41 above). Mr. and Mrs. Balkandali had also cohabited and had a son, although they were not married until after Mr. Balkandali's leave to remain as a student had expired and an extension been refused; their cohabitation was continuing when his application for leave to remain as a husband was rejected (see paragraphs 51-52 above)...

The Court does not consider that it has to resolve the difference of opinion that has arisen concerning the effect of Philippine law. Mr. and Mrs. Cabales had gone through a ceremony of marriage (see paragraph 45 above) and the evidence before the Court confirms that they believed themselves to be married and that they genuinely wished to cohabit and lead a normal family life. And indeed they subsequently did so. In the circumstances, the committed relationship thus established was sufficient to attract the application of Article 8...

The Court recalls that, although the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective "respect" for family life (see the above-mentioned Marckx judgment, Series A no. 31, p. 15, para. 31). However, especially as far as those positive obligations are concerned, the notion of "respect" is not clear-cut: having regard to the diversity of the practices followed and the situations obtaining in the Contracting States, the notion's requirements will vary considerably from case to case. Accordingly, this is an area in which the Contracting Parties enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals...

68. The Court observes that the present proceedings do not relate to immigrants who already had a family which they left behind in another country until they had achieved settled status in the United Kingdom. It was only after becoming settled in the United Kingdom, as single persons, that the applicants contracted marriage (see paragraphs 39-40, 44-45 and 50-52 above). The duty imposed by Article 8 cannot be considered as extending to a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country.

In the present case, the applicants have not shown that there were obstacles to establishing family life in their own or their husbands' home countries or that there were special reasons why that could not be expected of them.

In addition, at the time of their marriage

(i) Mrs. Abdulaziz knew that her husband had been admitted to the United Kingdom for a limited period as a visitor only and that it would be necessary for him to make an application to remain permanently, and she could have known, in the light of draft provisions already published (see paragraph 20 above), that this would probably be refused;

(ii) Mrs. Balkandali must have been aware that her husband's leave to remain temporarily as a student had already expired, that his residence in the United Kingdom was therefore unlawful and that under the 1980 Rules, which were then in force, his acceptance for settlement could not be expected. In the case of Mrs. Cabales, who had never cohabited with Mr. Cabales in the United Kingdom, she should have known that he would require leave to enter and that under the rules then in force this would be refused. 69. There was accordingly no "lack of respect" for family life and, hence, no breach of Article 8 taken alone.[unanimous]

2. *Berrehab Case*

3/1987/126/177 Series A , no. 138, §§ 19-29.

Court Judgment

21 June 1988

Extract: 19. In the applicants' submission, the refusal to grant a new residence permit after the divorce and the resulting expulsion order infringed Article 8 of the Convention...

21. The Court likewise does not see cohabitation as a sine qua non of family life between parents and minor children. It has held that the relationship created between the spouses by a lawful and genuine marriage such as that contracted by Mr. and Mrs. Berrehab - has to be regarded as "family life" (see the Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, p. 32, § 62). It follows from the concept of family on which Article 8 is based that a child born of such a union is ipso jure part of that relationship; hence, from the

moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to "family life", even if the parents are not then living together.
Subsequent events, of course, may break that tie, but this was not so in the instant case. Certainly Mr. Berrehab and Mrs. Koster, who had divorced, were no longer living together at the time of Rebecca's birth and did not resume cohabitation afterwards. That does not alter the fact that, until his expulsion from the Netherlands, Mr. Berrehab saw his daughter four times a week for several hours at a time; the frequency and regularity of his meetings with her (see paragraph 9 in fine above) prove that he valued them very greatly. It cannot therefore be maintained that the ties of "family life" between them had been broken...
22. ...The Government replied that nothing prevented Mr. Berrehab from exercising his right of access by travelling from Morocco to the Netherlands on a temporary visa.
23. Like the Commission, the Court recognises that this possibility was a somewhat theoretical one in the circumstances of the case; moreover, Mr. Berrehab was given such a visa only after an initial refusal (see paragraph 12 above). The two disputed measures thus in practice prevented the applicants from maintaining regular contacts with each other, although such contacts were essential as the child was very young. The measures accordingly amounted to interferences with the exercise of a right secured in paragraph 1 of Article 8 and fall to be considered under paragraph 2...
The Commission noted that the disputed decisions were consistent with Dutch immigration-control policy and could therefore be regarded as having been taken for legitimate purposes such as the prevention of disorder and the protection of the rights and freedoms of others.
26. The Court has reached the same conclusion. It points out, however, that the legitimate aim pursued was the preservation of the country's economic well-being within the meaning of paragraph 2 of Article 8 rather than the prevention of disorder: the Government were in fact concerned, because of the population density, to regulate the labour market.
27. The applicants claimed that the impugned measures could not be considered "necessary in a democratic society".
28. In determining whether an interference was "necessary in a democratic society", the Court makes allowance for the margin of appreciation that is left to the Contracting States (see in particular the W v. the United Kingdom judgment of 8 July 1987, Series A no. 121-A, p. 27, § 60 (b) and (d), and the Olsson judgment of 24 March 1988, Series A no. 130, pp. 31-32, § 67).
In this connection, it accepts that the Convention does not in principle prohibit the Contracting States from regulating the entry and length of stay of aliens. According to the Court's established case-law (see, inter alia, the judgments previously cited), however, "necessity" implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued.
29. ...As to the aim pursued, it must be emphasised that the instant case did not concern an alien seeking admission to the Netherlands for the first time but a person who had already lawfully lived there for several years, who had a home and a job there, and against whom the Government did not claim to have any complaint. Furthermore, Mr. Berrehab already had real family ties there - he had married a Dutch woman, and a child had been born of the marriage.
As to the extent of the interference, it is to be noted that there had been very close ties between Mr. Berrehab and his daughter for several years (see paragraphs 9 and 21 above) and that the refusal of an independent residence permit and the ensuing expulsion threatened to break those ties. That effect of the interferences in issue was the more serious as Rebecca needed to remain in contact with her father, seeing especially that she was very young.
Having regard to these particular circumstances, the Court . considers that a proper balance was not achieved between the interests - involved and that there was therefore a disproportion between the means employed and the legitimate aim pursued. That being so, the Court cannot consider the disputed measures as being necessary in a democratic society. It thus concludes that there was a violation of Article 8. [by six votes to one]

3. *Moustaquim Case*

31/1989/191/291 Series A , no. 193, §§ 33-47.

Court Judgment

18 February 1991

Extract: 33. In their memorial the Government submitted that the application had become devoid of purpose in that the deportation order of 28 February 1984 had been suspended for a trial period of two years by a royal order of 14 December 1989 and the applicant was thus authorised to reside in Belgium.
Since the order of 28 February 1984 only suspended the deportation order and did not make reparation for its consequences, which Mr Moustaquim suffered for more than five years, the Court considers that the case has not become devoid of purpose (see, mutatis mutandis, the Eckle judgment of 15 July 1982, Series A no. 51, pp. 30-31, § 66).
34. Mr Moustaquim submitted that his deportation by the Belgian authorities interfered with his family and private life. He relied on Article 8 of the Convention...
36. Mr Moustaquim lived in Belgium, where his parents and his seven brothers and sisters also resided. He had never broken off relations with them. The measure complained of resulted in his being separated from them for more than five years, although he tried to remain in touch by correspondence. There was accordingly interference by a public authority with the right to respect for family life guaranteed in paragraph 1 of Article 8.
37. It must accordingly be determined whether the deportation in question satisfied the conditions in paragraph 2, that is to say was "in accordance with the law", in the interests of one or more of the legitimate aims listed, and "necessary in a democratic society" for achieving them.
38. Like the Government and the Commission, the Court notes that the royal deportation order of 28 February 1984 was based on sections 20 and 21 of the Act of 15 December 1980 on the entry, residence, settlement and expulsion of aliens (see paragraph 28 above). The applicant did not dispute that, and the Belgian Conseil d'Etat moreover held in its judgment of 16 October 1985 that the deportation was lawful (see paragraph 20 above).
39. In Mr Moustaquim's submission, the interference in question did not pursue any of the legitimate aims set out in Article 8 § 2, in particular "the prevention of crime" and, more broadly, of "disorder". He claimed that it was in reality a sanction for old offences.
40. Both the Government and the Commission considered, on the contrary, that it did pursue an aim fully compatible with the Convention: the prevention of disorder. The Court, like the Belgian Conseil d'.Etat (see paragraph 20 above), reaches the same conclusion.
41. Mr Moustaquim claimed that his deportation could not be regarded as "necessary in a democratic society"...
44. Mr Moustaquim's alleged offences in Belgium have a number of special features. They all go back to when the applicant was an adolescent (see paragraphs 10-15 above). Furthermore, proceedings were brought in the criminal courts in respect of only 26 of them, which were spread over a fairly short period - about eleven months -, and on appeal the Liege Court of Appeal acquitted Mr Moustaquim on 4 charges and convicted him on the other 22. The latest offence of which he was convicted dated from 21 December 1980. There was thus a relatively long interval between then and the deportation order of 28 February 1984. During that period the applicant was in detention for some sixteen months but at liberty for nearly twenty-three months.
45. Moreover, at the time the deportation order was made, all the applicant's close relatives - his parents and his brothers and sisters had been living in Liege for a long while; one of the older children had acquired Belgian nationality and the three youngest had been born in Belgium.
Mr Moustaquim himself was less than two years old when he arrived in Belgium. From that time on he had lived there for about twenty years with his family or not far away from them. He had returned to Morocco only twice, for holidays. He had received all his schooling in French.
His family life was thus seriously disrupted by the measure taken against him, which the Advisory Board on Aliens had judged to be "inappropriate".

46. Having regard to these various circumstances, it appears that, as far as respect for the applicant's family life is concerned, a proper balance was not achieved between the interests involved, and that the means employed was therefore disproportionate to the legitimate aim pursued. Accordingly, there was a violation of Article 8. [by seven votes to two]
This conclusion makes it unnecessary for the Court to consider whether the deportation was also a breach of the applicant's right to respect for his private life.

4. *Cruz Varas and others Case*

46/1990/237/307 Series A , no. 201, §§ 87-89.

Court Judgment

20 March 1991

Extract: 87. All three applicants alleged that the expulsion of the first applicant led to a separation of the family and amounted to a violation of their right to respect for family life contrary to Article 8...
88. As noted by both the Government and the Commission, the expulsion of all three applicants was ordered by the Swedish Government but the second and third applicants went into hiding and have so remained in order to evade enforcement of the order (see paragraph 33 above). Moreover, the evidence adduced does not show that there were obstacles to establishing family life in their home country (see, mutatis mutandis, the Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, p. 34, § 68). The Court refers in this respect to its finding concerning the applicants' complaints under Article 3 (see paragraph 86 above). In these circumstances responsibility for the resulting separation of the family cannot be imputed to Sweden.
89. Accordingly there has been no "lack of respect" for the applicants' family life in breach of Article 8. [unanimous]

5. *Beldjoudi Case*

55/1990/246/317 Series A , no. 234-A, §§ 65-79.

Court Judgment

26 March 1992

Extract: 65. The applicants claimed that the decision to deport Mr Beldjoudi interfered with their private and family life. They relied on Article 8 of the Convention...
67. The Court merely notes, in agreement with the Commission, that enforcement of the deportation order would constitute an interference by a public authority with the exercise of the applicants right to respect for their family life, as guaranteed by paragraph 1 of Article 8.
68. It must therefore be determined whether the expulsion in issue would comply with the conditions of paragraph 2, that is to say, whether it would be "in accordance with the law", directed towards one or more of the legitimate aims listed, and necessary for the realisation of those aims in a democratic society".
69. The Court, in agreement with those appearing before it, takes note that the ministerial order of 2 November 1979 was based on section 23 of the Order of 2 November 1945 relating to the conditions of entry and residence of aliens in France (see paragraph 43 above). It was also found to be lawful by the Conseil d'Etat in its judgment of 18 January 1991 (see paragraph 28 above).
70. The Government and the Commission considered that the interference in issue was directed at aims which were entirely in accordance with the Convention, the "prevention of disorder" and the "prevention of crime". The applicants did not dispute this.
The Court reaches the same conclusion.

71. The applicants argued that the deportation of Mr Beldjoudi could not be regarded as "necessary in a democratic society"...
74. The Court acknowledges that it is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry, residence and expulsion of aliens (see the Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment of 28 May 1985, Series A no. 94, p. 34, § 67, the Berrehab v. the Netherlands judgment of 21 June 1988, Series A no. 138, pp. 15-16, §§ 28-29, and the Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, p. 19, § 43).
However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be necessary in a democratic society, that is to say, justified by a pressing social need and in particular, proportionate to the legitimate aim pursued.
75. In the present case, as was rightly emphasised by the Government, Mr Beldjoudi's criminal record appears much worse than that of Mr Moustaquim (see the above-mentioned judgment, Series A no. 133, p. 19, § 44). It should therefore be examined whether the other circumstances of the case, relating to both applicants or to one of them only, are enough to compensate for this important fact.
76. The applicants lodged a single application and raised the same complaints. Having regard to their age and the fact that they have no children, the interference in question primarily affects their family life as spouses, as the Government rightly pointed out.
They were married in France over twenty years ago and have always had their matrimonial home there. The periods when Mr Beldjoudi was in prison undoubtedly prevented them from living together for a considerable time, but did not terminate their family life, which remained under the protection of Article 8.
77. Mr Beldjoudi, the person immediately affected by the deportation, was born in France of parents who were then French. he had French nationality until 1 January 1963. He was deemed to have lost it on that date, as his parents had not made a declaration of recognition before 27 March 1967 (see paragraph 9 above). It should not be forgotten, however, that he was a minor at the time and unable to make a declaration personally. Moreover, as early as 1970, a year after his first conviction but over nine years before the adoption of the deportation order, he manifested the wish to recover French nationality; after being registered at his request in 1971, he was declared by the French military authorities to be fit for national service (see paragraphs 31 and 33 above).
Furthermore, Mr Beldjoudi married a Frenchwoman. His close relatives all kept French nationality until 1 January 1963, and have resided in France for several decades.
Finally, he has spent his whole life - over forty years - in France, was educated in French and appears not to know Arabic. He does not seem to have any links with Algeria apart from that of nationality.
78. Mrs Beldjoudi for her part was born in France of French parents, has always lived there and has French nationality. Were she to follow her husband after his deportation, she would have to settle abroad, presumably in Algeria, a State whose language she probably does not know. To be uprooted like this could cause her great difficulty in adapting, and there might be real practical or even legal obstacles, as was indeed acknowledged by the Government Commissioner before the Conseil d'Etat (see paragraph 27 above). The interference in question might therefore imperil the unity or even the very existence of the marriage.
79. Having regard to these various circumstances, it appears, from the point of view of respect for the applicants' family life, that the decision to deport Mr Beldjoudi, if put into effect, would not be proportionate to the legitimate aim pursued and would therefore violate Article 8.
80. Having reached this conclusion, the Court need not examine whether the deportation would also infringe the applicants' right to respect for their private life. [by seven votes to two]

Beldjoudi Case

55/1990/246/317 Series A , no. 234-A.

Dissenting Opinion of Judge Pettiti

26 March 1992

Extract: Unlike the majority, I have not voted in favour of a violation of Article 8.
To be sure, the effect of the judgment is confined to the particular case and to the special circumstances: Mr Beldjoudi has spent 41 years of his life to date in France and has been married to a Frenchwoman for 22 years. But it seems to me that neither the reasoning on the principle nor the grounds given for the decision are consistent with a precise construction and evaluation of Article 8 of the European Convention, with reference to the deportation of aliens who have committed crimes...
The Convention of Human Rights cannot ignore the aspect of the rights of others and their necessary protection. It would no doubt have been preferable if the French Government, bearing in mind the new provisions (closer to Article 8 of the Convention) of the Law of October 1981 (sections 23 and 25) and the law of 2 August 1989, had waived deportations in this particular case, in view of the position of the French spouse. If the European Court intended to move towards the review of deportations in similar cases for all Member states, it would have to examine matters from the point of view either of Article 6, if that article has been violated with reference to the domestic proceedings seen in the light of the European Convention on Human Rights, or of Article 3 (inhuman and degrading treatment). The concept of a balance of interests in the event of the possible but not certain use of Article 8 would require a strict application of proportionality, which in my opinion is lacking in the reasoning of the Beldjoudi judgment.The State's right to deport aliens who commit crimes is to a certain extent for the general interest the counterpart of the welcome given to persons enjoying the right of asylum and migrants, which is a key element of international solidarity and the protection of human rights.

Beldjoudi Case

55/1990/246/317 Series A , no. 234-A.

Concurring Opinion of Judge Martens

26 March 1992

Extract: 1. I agree with the findings of the Court but, as far as Mr Beldjoudi is concerned, I would have preferred its decision to have been based on (a) a less casuistic reasoning and (b) interference with the right to respect for private life.
2. Paragraph 1 of Article 3 of Protocol No. 4 to the Convention forbids the expulsion of nationals. In a Europe where a second generation of immigrants is already raising children (and where violent xenophobia is increasing to an alarming extent it is high time to ask ourselves whether this ban should not apply equally to aliens who were born and bred in a member State or who have otherwise, by virtue of long residence, become fully integrated there (and, conversely, become completely segregated from their country of origin).
In my opinion, mere nationality does not constitute an objective and reasonable justification for the existence of a difference as regards the admissibility of expelling someone from what, in both cases, may be called his "own country". I therefore have no hesitation in answering the above question in the affirmative. I believe that an increasing number of member States of the Council of Europe accept the principle that such "integrated aliens" should be no more liable to expulsion than nationals, an exception being justified, if at all, only in very exceptional circumstances. My own country is one of those States and since 1981 - with the exception of the period 1986-1989 - so is France.
I would have preferred the Court's decision in the present case to have been based on the aforesaid principle, coupled with a finding that there were no very exceptional circumstances justifying a departure therefrom. A judgment along those lines would have achieved what the Moustaquim and the present judgment have failed to do, namely introduce a measure of legal certainty; this seems highly desirable, especially in this field.

3. The latter consideration also militated, as Mr Schermers rightly pointed out , in favour of basing the Court's decision - if possible - on interference with the right to respect for private life, since, whilst not all "integrated aliens" threatened with expulsion are married, they all have a private life.
In my opinion, it is possible to do so. Expulsion severs irrevocably all social ties between the deportee and the community he is living in and I think that the totality of those ties may be said to be part of the concept of private life, within the meaning of Article 8...
To sum up: I think that expulsion, especially (as in the present case) to a country where living conditions are markedly different from those in the expelling country and where the deportee, as a stranger to the land, its culture and its inhabitants, runs the risk of having to live in almost total social isolation, constitutes interference with his right to respect for his private life.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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.

Article 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

1. *X v. Belgium*

Appl. no. 312/57, YB 2 p. 352 (353).

Admissibility Decision

9 January 1959

Extract: In his application the applicant does not attack the sentence passed on him in 1947, but claims that his expulsion was arbitrary. He argues that his wife and son, who possess Belgian nationality, are obliged to live apart from him and that this situation is "inconsistent with human rights". He argues, moreover, that his wife cannot join him in Italy, being employed at X where she earns what she needs to support her son and her disabled and dependent mother, whereas he himself cannot support his family in Italy. He consequently asks for recognition of his right to live in Belgium with his wife and son.
The present application chiefly raises the question of whether the lawfulness of an expulsion order served on an alien by a Party to the Convention can be contested before the Commission in cases where such expulsion affects enjoyment of the right to respect for private and family life, guaranteed by Article 8 (1) of the European Convention on Human Rights..

2. *X v. Sweden*

Appl. no. 434/58, YB 2 p. 354 (372-374).

Admissibility Decision

30 June 1959

Extract: whereas the question that is raised in the present case is whether by the exercise of its right under general international law to refuse an entry permit to the applicant, the Swedish Government has deprived him of rights which are guaranteed to him in Section I of the Convention, namely his right to the fair hearing of his petition for a right of access to his son (Article 6) and his right to respect for his private and family life (Article 8);
Whereas, having regard to the several considerations of fact and of law set out above, the Commission is of the opinion that the possibility that the facts of the present case may

involve a violation of one or other of the rights and freedoms guaranteed in the Convention cannot be excluded *in limine* upon a preliminary examination of the case;

3. *X v. Denmark*

Appl. no. 1855/63, YB 8 p. 200 (202-204).

Admissibility Decision

24 April 1965

Extract: whereas the applicant has submitted that by denying him a residence permit in Denmark, the Danish authorities have infringed this Article of the Convention...whereas it is true that in certain circumstances refusals to give persons access to, or allow them to take up residence in, a particular country, might result in the separation of such persons from the close members of their family which could raise serious problems under Article 8 of the Convention;
Whereas in the present case, the Commission has considered that the applicant has lived for more than 20 years in Germany, that he is now forty-one years of age, that he has the possibility of making regular visits of a reasonable length to Denmark for the purpose of visiting his parents and his relatives and that the closest members of his family, namely his parents, possess German nationality; whereas, in these circumstances, the Commission finds that he has failed to establish that his "private and family" life within the meaning of Article 8 has been infringed by the refusal on the part of the Danish Government to grant him a residence permit;

4. *X v. Federal Republic of Germany*

Appl. no. 2535/65, CD 17 p. 23 (30).

Admissibility Decision

16 July 1965

Extract: With specific reference to the right to respect for family life, guaranteed by Article 8 of the Convention, it must be emphasised that the applicant was free, in the event of her husband's being expelled from the territory of the Federal Republic, to follow him if she so wished, and that this right was not therefore violated in the present instance. The Commission, while referring to its earlier rulings on the expulsion of aliens married to citizens of a country from which they have been expelled on the strength of criminal convictions in that country, (cf. for example the Commission's Decisions as to the Admissibility of Application Nos. 312/57, Yearbook II, pp. 352 *et seq;* 381/58, unpublished and 1380/62 unpublished) points out furthermore that, in the present case. the applicant had married Mr. Y after the serving of the expulsion order and should thus have taken account of this risk. The application must thus be rejected under Article 27 (2) of the Convention as being manifestly ill-founded.

5. *Khan/Singh v. United Kingdom*

Appl. nos. 2991/66. 2992/66, CD 24 p. 116 (130); YB 10 p. 478 (500).

Admissibility Decision - (Admissible - Friendly settlement)

15 July 1967

Extract: Whereas the applicant Harbhajan Singh complains that the refusal by the immigration officer to allow the applicant's widowed father to enter the United Kingdom constitutes a violation of the applicant's right to family life as is guaranteed under Article 8 of the Convention; whereas in the circumstances of the case, and in particular, in view of the fact that the applicant is himself an adult and of the long period during which the applicant and his father had been living apart, it cannot be said that the applicant has shown that such a link existed with his father as can be considered to establish family life within the meaning of Article 8;

Extract: Whereas, similarly, the applicants Mohamed Alam and Mohamed Khan complain that the refusal by the immigration officer to allow Mohamed Khan to enter the United Kingdom to join his father constituted a violation of the applicant's right to respect for family life as is guaranteed under Article 8 of the Convention; whereas the Commission has carried out a preliminary examination of the information and arguments submitted by the parties in regard to this complaint; whereas the Commission finds that this complaint raises issues of law and fact whose determination should depend upon an examination of the merits of the case;

6. *X, Y, Z, V, W v. United Kingdom*

Appl. no. 3325/67, CD. 25 p. 117 (121-122); YB 10 p. 528 (536).

Admissibility Decision

15 December 1967

Extract: whereas it is true that the exclusion of a person from a country where close members of his family are living, can amount to an infringement of this right; whereas, in this respect, the Commission refers to its Decision of 15 July 1967, as to the Admissibility of Application Nos. 2991/66 (Alam and Khan v. United Kingdom) and 2992/66 (Singh v. United Kingdom) Collection 24, p. 116. concerning two similar cases; whereas in that decision the Commission observed that the refusal by the immigration authorities to allow an immigrant to enter the United Kingdom in order to join a close member of his family, raises issues of law and fact whose determination should depend upon an examination of the merits of the case and whereas the Commission consequently declared that application to be admissible;
Whereas, however, in the present case the Commission has had regard to the particular circumstances which lead to a different conclusion; whereas, indeed, it is to be observed that the refusal by the authorities of entry or continued residence of the husband did not prevent the wife and children from joining him abroad, no reason appearing, given the short period of their residence in the United Kingdom, why they could not do so; and whereas the refusal, therefore, would not have constituted a separation of the family by the authorities, if the wife and children were entitled to, and chose, to remain in the United Kingdom;

7. *X and Y v. United Kingdom*

Appl. no. 5269/71, CD 39 p. 104 (107-108); YB 15 p. 564 (572-574).

Admissibility Decision

8 February 1972

Extract: In the present case the first applicant, a Cypriot citizen then twenty-two years old, entered the United Kingdom in October 1968 as a student and married the second applicant, a

United Kingdom citizen of Cypriot origin, in April 1970. Having become a part-time student only, he was refused permission by the Home Secretary to stay in the United Kingdom indefinitely and was asked to leave the country in January 1971. His appeal against this decision ultimately failed and he was again requested to leave the United Kingdom in August 1971.
Although the Commission has noted in the present case the applicant's submissions that for a number of personal reasons, the wife may be reluctant to follow her husband, it is satisfied that there are no legal obstacles for the applicants effectively to establish their family life in Cyprus if the first applicant were to return to that country. A refusal by her to do this because she chooses to stay in the United Kingdom (as she is entitled to do) does not, in the circumstances of the case, mean that there has been thereby an interference by the United Kingdom authorities with the applicant's family life within the meaning of Article 8 (1) of the Convention. The Commission refers in this respect to the Decision as to the Admissibility of Application No. 3325/67, Yearbook X, p. 528 (536).

Extract: The Commission finds that the same ground of inadmissibility applies to the application in so far as the applicants allege a violation of their right under Article 12 of the Convention to marry and to found a family. It is sufficient to note that there has been no interference with the applicants' right to marry as they are already married and living together, nor has their right to found a family been infringed. Moreover, the reasons for the Commission's above finding that it would not be an interference by the United Kingdom authorities with the applicants' family life under Article 8 if the husband were required to leave the United Kingdom but the wife chose to remain there, apply equally to the applicants' complaint when examined under Article 12 of the Convention.

8. *X v. United Kingdom*

Appl. no. 5301/71, CD 43 p. 82 (84).

Admissibility Decision

3 October 1972

Extract: The Commission would not suggest that, where a couple is refused residence in a country of which one of them is a national, there is no violation of Article 8 simply because they can find some legal residence elsewhere. If the only legal residence which they can find is in a country unconnected with either of them, the exclusion from residence in the "home" country of one of them might constitute a violation of Article 8. But in the present case the applicant and his wife appear to be able to reside legally in India and India is the applicant's country of origin. Furthermore, the applicant and his wife were married in Kenya at a time when they were fully aware that the applicant might not be allowed to enter the United Kingdom.
The Commission has thus considered the present application under both Articles 8 and 12 of the Convention. It can find no ground on which to distinguish it from Application No. 5269/71 and notes also that there is not even any suggestion in the present case (as there was in Application 5269/71) that the applicant's wife has other family ties in Britain.

9. *X and Y v. United Kingdom*

Appl. no. 5302/71, CD 44 p. 29 (47).

Admissibility Decision

11 October 1973

Extract: The applicants' further complaint under Article 8 of the Convention concerns not themselves but their children. They wish to obtain United Kingdom citizenship for their children so as to end the *de jure* split in the unity of the family...
Under the independence provisions ...all persons born in Kenya, with one Kenya-born parent, acquired Kenya citizenship. It was thus that the X children became Kenya citizens...
The applicants have claimed that the above provisions caused a split in the *de jure* unity of their family. Nevertheless, in the Commission's view the *de jure* unity of the family is, of itself, irrelevant to a consideration of the issue under Article 8. The Article concerns not *de jure* but *de facto* family life and the applicants have made no claim that they have been separated from their children nor does it appear in anyway probable that they will be separated from them within the foreseeable future.

10. *Amekrane v. United Kingdom*

Appl. no. 5961/72, CD 44 p. 101 (112-114); YB 16 p. 356 (384-388).

Admissibility Decision - (Admissible - Friendly settlement)

11 October 1973

Extract: The Government's arguments about the complaint based on Article 8 of the Convention (cf. para. 20 above) are beside the point. If the Government is suggesting that Mrs. Amekrane herself brought about the separation of the family by leaving Morocco on 17 August 1972, this shows a misunderstanding of the recognised rules of causation.
It was, on the contrary, the extradition of Mohamed Amekrane which destroyed the unity of the family. If the Government had made it possible for him to go to a country other than Morocco the family would have been able to reunite. It is superfluous to show how the violation of Article 8 affects the material situation of the surviving members of the family, the education and instruction of the two children, Mrs. Amekrane's means, etc...
After a preliminary examination of the facts and arguments advanced by the parties, the Commission is of the opinion that the application raises, both in relation to the provisions relied on by the applicants, namely Articles 3, 5 (4) and 8, and in relation to Article 5 (1), (2) and (3) of the Convention, problems of such complexity as to justify an examination of the merits. It follows that the application as a whole cannot be held to be manifestly ill-founded within the meaning of Article 27 (2) of the Convention and must be declared admissible.

11. *X v. Federal Republic of Germany*

Appl. no. 6357/73, DR 1 p. 77 (77-78).

Admissibility Decision

8 October 1974

Extract: The present applicant has lived in the Federal Republic of Germany for the last 10 years; he is married to a German wife (since 1967) and has two children. It may be possible for his wife and children to follow him to Syria, but in the circumstances they may have a valid reason for not doing so. The applicant's extradition to Syria could thus lead to a lasting separation from his wife and children. Such a substantial interference with the applicant's family life, who does not seem to have committed any serious criminal offence in the Federal Republic of Germany, may not be justified, under para. 2 of Article 8, on the ground of public safety or the prevention of crime.

12. *X v. Federal Republic of Germany*

Appl. no. 7175/75, DR 6 p. 138 (139-140).

Admissibility Decision

12 July 1976

Extract: In the present case, the applicant complains that the decisions of the German authorities not to grant him a residence permit violates his "right to marry" as is contained in Article 12 of the Convention.
Thus the question arises whether the refusal of the German authorities has denied to the applicant one of the rights guaranteed by Section I of the Convention, particularly his right to marry (Article 12).
However, the applicant has not brought any evidence capable of showing that as a result of having to leave German territory his right to marry has been restricted. As the Berlin Administrative Court rightly emphasised, the applicant would at least have to provide precise information about his fiancee in order to prove that his "right to marry" was in some way affected by the refusal of the administrative authority.
On the one hand he has not shown the credibility of his engagement, and on the other he has not established that his expulsion would prevent him from marrying and leading his married life with the person he wants to marry outside the Federal Republic of Germany.
Therefore the Commission considers that the examination of this complaint does not disclose any appearance of a violation of the rights and freedoms guaranteed by the Convention and in particular in the above provision.

13. *X v. United Kingdom*

Appl. no. 7455/76, np, DS 3 p. 136-7.

Admissibility Decision

13 December 1976

Extract: In the present case the Commission observes that the applicant has been convicted of lying to customs officers in connection with a case of illegal importation of drugs. At the time of the applicant's arrest, a refusal of leave to enter was issued to her under the Immigration Act. It is clear that the immigration authorities were concerned, when deciding the question of leave to enter, with the necessity of preventing disorder or crime in the United Kingdom.
It further appears that the applicant had several times applied for leave to visit Mr. C in prison. Although a first application lodged shortly after her release in April 1974 was apparently rejected, all further applications for leave to enter were granted. The applicant was thus admitted to the United Kingdom in February, May, August and November, 1975 and March and May, 1976 for periods of a few days for the purpose of visiting Mr. C.
In this connection the Commission notes that under the Prison Rules convicted prisoners may receive only one visit every 8 weeks, although in practice usually one every 4 weeks. The applicant has however, not shown that she was not allowed to visit Mr. C even at shorter intervals than now seems to be the case (approximately once every 3 months).
The Commission therefore concludes that, even assuming that any family life within the meaning of Article 8 existed in the present case, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 (2) of the Convention.

14. *X v. Denmark*

Appl. no. 7647/76, np, DS 3 p. 137.

Admissibility Decision

28 February 1977

Extract: As to the present case it appears that the applicant's wife has possibilities to follow her husband in order to establish their family life in another country. The Commission notes that she has even expressly made known her intention to do so. Moreover, the applicant has not been obliged to go to Algeria but was in fact expelled to Switzerland on 11 January 1977. As he seems to have possibilities of settling down in a country other than Algeria, where it would be easier, for cultural and other reasons, for his Danish wife to live, the Commission concludes that in the present case the expulsion of the applicant did not cause excessive strain on the spouses' marriage.

15. *X v. United Kingdom*

Appl. no. 7048/75, DR 9 p. 42 (43-44).

Admissibility Decision

9 March 1977

Extract: The Commission considers that, even if it is accepted that entry procedures may raise an issue under Article 8 (1), the period required by the United Kingdom authorities for granting an entry clearance to the applicant's wife cannot in the circumstances of this case be regarded as so unreasonably long that it constitutes a violation of the applicant's right, under this provision, to respect for his family life.
The Commission observes in this connection that the applicant's wife, when applying for an entry clearance on . . August 1974, was offered a priority interview for February 1975, i.e. about 6 months later, on condition that she be accompanied by her husband. The applicant's wife was, however, unable to accept this priority date because her husband had to return to the United Kingdom before February 1975. The Commission does not consider that the United Kingdom can be held responsible under the Convention for the further delay resulting from these circumstances. It also finds that, in view of the number of persons seeking entry from Pakistan at the material time, and the difficulties of verifying their status, as described by the respondent Government, the period of 6 months initially envisaged for granting an entry clearance to the applicant's wife cannot be regarded as unreasonably long.
It follows that the present application must be regarded as manifestly ill-founded even if considered on the basis of the above wider interpretation of Article 8 of the Convention.

16. *X and Y v. Federal Republic of Germany*

Appl. no. 7816/77, DR 9 p. 219 (221).

Admissibility Decision

19 May 1977

Extract: The obligation to leave the Federal Republic of Germany was imposed on the applicant X. in accordance with section 10 (2) No. 2 of the Aliens Act (Ausländergesetz) which provides that an alien may be expelled, if he has been convicted of a criminal offence. It was further intended as a measure for the prevention of crime and for the protection of health. The Commission observes in this respect that the applicant had been found guilty of dealing in heroin and living off the proceeds. It is to be observed that this drug constitutes a grave danger to its users.

Having thus assessed the grounds on which the German authorities based their decision and having taken account of its consequences for the applicant's family life, the Commission concludes that this measure constitutes an interference which is justified under Article 8, paragraph 2 of the Convention.

17. *X and Y v. Switzerland*

Appl. nos. 7289/75 and 7349/76, YB 20 p. 372 (408-410).

Admissibility Decision

14 July 1977

Extract: ...the Commission observes that it should distinguish between the relationship of the first applicant to the second applicant, and that [of the applicant] to his illegitimate children. In the Commission's opinion the relationship between a father and his illegitimate children is always included in the concept of family life within the meaning of Article 8 of the Convention while this is not necessarily the case with extra-marital relationships even if they have led to the birth of children. The Commission does not deny that extramarital relationships may constitute "family life" within the meaning of the above provision. In the present case however there is no common household of the applicants and they do not permanently live together, the first applicant being married and normally staying with his family in Munich. The Commission therefore considers that the relationship between the first and second applicants only amounts to "private life" within the meaning of Article 8 of the Convention.

This is of special importance when judging whether in the present case there has been an interference with a right guaranteed in Article 8. In this respect the Commission recalls its earlier case-law according to which the Convention does not as such guarantee an alien's right to be admitted to or to reside in a particular country. A measure of prohibition of entry can therefore only be considered as interfering with a person's private or family life where the private and family life of that person is firmly established in the territory concerned.

It is true that in the present case the situation of the second applicant was a special one in that she could not reasonably be expected to give up her livelihood in order to follow the first applicant in view of the latter's family situation, and having regard to the special kind of work in which she was engaged, namely the administration of companies which necessitated the maintenance of her residence in Liechtenstein. However, the Commission notes that the private relationship between the applicants, and their family life with the children, consisted of rather loose ties being by that very nature reduced to occasional visits of the first applicant in Liechtenstein. Having regard to this special character of the applicants' private and family life, having further regard to the possibility for the applicants and their children to meet at a reasonable distance from the second applicant's residence in either Austria or the Federal Republic of Germany, and having finally regard to the suspensions from prohibition of entry which the first applicant was on numerous occasions (nine times in 2 years) granted for the very purpose of visiting his children, the Commission considers that there has been no interference with the applicants' private and family life within the meaning of Article 8 of the Convention.

18 *X v. United Kingdom*

Appl. no. 7765/77, np, DS 3 p. 144.

Admissibility Decision

10 October 1977

Extract: The applicant has first complained that the decision of the Home Secretary in August 1976 refusing her leave to remain in the United Kingdom with her purported husband constituted a violation of her right to respect for her private and family life as guaranteed by Article 8 (1). Although she has subsequently been granted permission to remain for a limited time, it appears that she considers herself entitled to unconditional leave to remain and considers that the failure of the authorities to grant her such leave involves a violation of her rights under Article 8.

However even if the original decision taken in August 1976 could have given rise to any interference with the applicant's rights under Article 8 (1), it was in effect revoked without the applicant having to leave the country and has not resulted in any separation of the applicant from her husband. The mere fact that a time-limit has been placed on the applicant's leave to remain in the United Kingdom does not in itself constitute an interference with her right to respect for her private or family life in the Commission's opinion, particularly having regard to the reasons which existed for doubting whether she was in fact married to Mr. A and the fact that it is open to her to apply for an extension of the time-limit.

There is accordingly no indication that the action of the United Kingdom authorities has resulted in any interference with the applicant's rights under Article 8 (1) of the Convention and this part of the application is accordingly manifestly ill-founded within the meaning of Article 27 (2).

19. *X and Y v. United Kingdom*

Appl. no. 7229/75, DR 12 p. 32 (33-34).

Admissibility Decision

15 December 1977

Extract: The applicants, whilst conceding that no "effective family life" has been established as [existing] between them, submit that this is the result of the respondent Government's refusal to allow the entry of the second applicant. They suggest that the position of an adoptee such as the second applicant is analogous to that of a new-born child, and that the establishment of an "effective family life" would necessarily take time, but has been prevented by the Government. They submit that there is therefore a violation of Article 8 notwithstanding the absence of an "effective family life".

The Commission is unable to accept these submissions. Article 8, as the (above-mentioned) cases indicate, guarantees a right to respect for existing "family life" (see also: Application No. 5416/72, X v. Austria, Collection 46, p. 88). It does not oblige a State to grant a foreign citizen entry to its territory for the purpose of establishing a new family relationship there.

The Commission has examined whether any relationship amounting to family life" existed between the present applicants. In 1972, at the age of fourteen, the second applicant was adopted under Indian law by his uncle, the first applicant. This adoption is neither recognised nor eligible for recognition in English law. The first applicant has apparently since made financial contributions towards the upkeep of the second applicant. However, throughout his life, both before and after the adoption, he has lived with his natural parents in India. It appears that they have been and are fully capable of supporting him. In these circumstances the applicants have not, in the Commission's opinion, established a relationship between them which amounted at any material time to "family life" within the meaning of Article 8, notwithstanding their blood relationship and any legal relationship created under Indian law by the adoption. The Commission does not consider that the second applicant's relationship with the first applicant is at all comparable to that of a new-born child with its parents, where "family life" might be held to exist from the moment of birth.

It follows that the refusal to allow the second applicant to enter the United Kingdom did not infringe the right of either applicant to respect for his family life as guaranteed by that Article. Furthermore the Commission finds no indication that this refusal involved any interference with the home or private life of either applicant.

20. *X v. Federal Republic of Germany*

Appl. no. 8041/77, DR 12 p. 197 (199).

Admissibility Decision

15 December 1977

Extract: In the present case the applicant's wife is of German nationality and she would apparently not be allowed to enter the United States because of the seriousness of the crimes committed by her. In the applicant's submission his marriage would therefore be destroyed if he were to be expelled to the United States.
The Commission accepts that a deportation would constitute an interference with the applicant's family life.
The Commission recalls, however, that under Article 8 (2), there may be an interference by a public authority with the exercise of this right, if such interference is in accordance with the law and is necessary in a democratic society for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.
The obligation to leave the Federal Republic of Germany was imposed on the applicant in accordance with Article 10, paras. 1 (2), (4), (6) and (9) of the Aliens Act. These provisions stipulate respectively that an alien may be expelled if he has been convicted of a criminal offence, violated the tax and residence regulations and if he endangers the public health and morals. The expulsion was also considered essential as the applicant not only used heroin himself but also wanted to trade with it for gain, and necessary for reasons of a general prevention of crime as it should deter other foreigners from committing drug offences. It was noted that heroin is one of the most dangerous drugs. The prevention of the misuse of drugs, and thereby the maintenance of public security, order and health was therefore of a pressing concern for the Federal Republic of Germany.
The Commission notes that the couple has no children and that the German authorities warned the applicant in advance that his marriage would not give him the right to stay in Germany. The. Commission therefore finds that, in view of the specific circumstances of this case, the acts taken by the German authorities were justified under Article 8 (2) of the Convention.

21. *Harbhajan Singh Uppal et al v. United Kingdom*

Appl. no. 8244/78, DR 17 p. 149 (155-156).

Admissibility Decision - (Admissible - Friendly settlement)

2 May 1979

Extract: The Commission notes that allegations of an unjustified interference with their right to respect for family life, contrary to Article 8 of the Convention, have been made by three generations of the Singh/Uppal family; the grandparents, the parents and the children. This implies that family life has been invoked on three family levels involving three family relationships.
As regards the **children** it is not in dispute between the parties that, having been born in the United Kingdom, they have a right under United Kingdom law to remain as citizens of that country. If their parents were to be deported this would clearly.result in a separation of the family unless the children were to accompany them.
As regards **the parents** it is clear that, being aliens, they have no right as such under United Kingdom law or under the Convention to remain in the United Kingdom. However, deporting them would result in a separation from their parents, and also their children if it were decided that they should stay behind. The Commission has held in certain exceptional

cases that such exclusion of a close family member may raise an issue under Article 8 of the Convention. All the applicants submit that their situation is different from that considered by the Commission in earlier cases because they are a large and close family unit, including three adult married sisters, whose family life centres in the United Kingdom and has for many years been already well established there.

The same argument is made by the **grandparents** who, like the children, have a right of abode in the United Kingdom and are exempt from deportation. The grandparents also allege in this context that they are partly dependent financially on their son and wholly dependent on him in all other ways. In their case the further question arises to what extent they would be responsible under the law of the United Kingdom for the well-being of the children if the children were to remain in the United Kingdom following the deportation of their parents.

The Commission also observes from the parties' submissions that the applicant parents would not be deported if Mr. Uppal had illegally entered the territory of the United Kingdom in 1968 as, in that case, he would fall under the amnesties for illegal immigrants announced in Parliament on 11 April 1974 and 29 November 1977. Mrs. Uppal would also therefore under the relevant legislation be allowed to remain in the United Kingdom with her husband. To that extent it is alleged that, in the enjoyment of their right to respect for family life, these applicants, who on the face of it entered legally and overstayed, have been treated differently from those immigrants who have entered the United Kingdom illegally and that this difference in treatment is without justification.

The Commission notes, on the other hand, that the applicant parents have been resident in the United Kingdom in clear violation of the immigration laws for many years, which has been possible by reason of the fact that the competent authorities have a liberal policy of not obliging aliens to register with them and of not closely surveying them.

The Commission considers that the issues arising the present case under Article 8 of the Convention and under Article 14 read in conjunction with Article 8 in relation to all applicants are so complex in regard to the facts and the law that their determination should depend on an examination of the merits of the case. In particular, this part of the application cannot be regarded as manifestly ill-founded within the meaning of Article 27 (2) of the Convention, and no other ground for declaring it inadmissible has been established.

22. *X v. United Kingdom*

Appl. no. 8157/78, np, DS 3 p. 147-148.

Admissibility Decision

5 December 1979

Extract: The Commission notes that the applicants are all adults with their own families established in the United Kingdom for several years. Moreover their parents and brothers in India are not dependent on them, despite a certain financial subsidy which the applicants send. The Commission finds that the applicants have not shown in the circumstances that there existed a sufficiently close link between them and their relatives which could be deemed to have established the family life which is protected by Article 8. It concludes therefore that the immigration authorities' refusal to facilitate the relatives' visit to the United Kingdom does not constitute an interference with the applicants' right to respect for family life.

23 *X and Y v. United Kingdom*

Appl. no. 8897/80, np, DS 3 p. 149-150.

Admissibility Decision

12 March 1980

Extract: The Commission considers that in the present case the extradition of the applicants and the resultant separation from their families would constitute an interference with their family lives within the meaning of Article 8. However, in assessing the extent of the interference, account must be taken of the fact that extradition cannot be regarded as a form of banishment and that both applicants would be entitled to re-enter the United Kingdom whatever the outcome of their trials in the United States. In this respect the Commission notes that Section 3 (2) of the Extradition Act, 1870 specifically provides that no extradition will be effected unless the foreign State undertakes to allow the accused to return to the United Kingdom after he has been dealt with for the extradition crime.
As the Commission has stated [elsewhere in this Decision], the Convention specifically envisages the possibility of extradition between States. Since extradition arrangements constitute a form of assistance between States in the suppression of crime, the extradition of a person would normally be justified as a measure which is necessary for the prevention of crime in the broadest sense within the meaning of the second paragraph. Moreover, since the effectiveness of extradition agreements between States depends on the reciprocal performance of their obligations under such agreements, extradition in a particular case can also be seen as a measure taken for the prevention of crime within each State.
Accordingly, the Commission finds that the extradition of the applicants in the present case is necessary in a democratic society for the prevention of crime within the meaning of para. 2 of Article 8.

24. *Kamal v. United Kingdom*

Appl. no. 8378/78. DR 20 p. 168 (171-173).

Admissibility Decision

14 May 1980

Extract: The Commission notes that it is not disputed that the applicant, as a person settled in the United Kingdom, has the right under United Kingdom law to have his wife and children, under 18 Years of age, join him in the United Kingdom. Thus, in principle, the applicant's right to respect for family life is not in question.
What is in dispute in the present case is the evidence required to show that the woman and child in Pakistan are the applicant's wife and youngest son as claimed...
In the Commission's opinion it is clear that the applicant's complaint falls for consideration under Article 8 of the Convention. It is equally clear however that a High Contracting Party, having accepted the principle of family reunification, is entitled under Article 8 of the Convention to establish a domestic verification procedure for the family claims of prospective or settled immigrants.
The Commission's task is limited to that of a subsidiary organ of control Where, as in the present case, there is a complaint that the verification authorities were mistaken in their conclusions, it is not its role to take the place of the competent national authorities, but rather to review whether, in the exercise of their functions, those authorities acted outside what might reasonably be expected of them under Article 8 of the Convention in ensuring the right to respect for family life
As regards the facts of the present case it is noteworthy that the applicant was able to submit documentary evidence of his family ties and that the Adjudicator, who heard the applicant, found in his favour. However the Entry Clearance Officer also heard the evidence of the purported wife and child and, despite the documentary evidence, was not satisfied of the claimed relationships. Moreover the Immigration Appeal Tribunal in view of various discrepancies and despite the further submissions of the applicant's representative felt unable to uphold the Adjudicator's appreciation of the facts.
In these circumstances the Commission is satisfied that before all three instances the applicant was given a fair opportunity to present his case. Given the difficulties of conducting such immigration inquiries, the Commission finds that it has not been shown

that the immigration authorities have acted perversely, arbitrarily or otherwise, in denial of the applicant's right to respect for family life.
An examination by the Commission of this complaint, as it has been submitted, does not therefore disclose any appearance of a violation of the right to respect for family life ensured by Article 8 of the Convention.

25. *X v. United Kingdom*

Appl. no. 8986/80, np, DS 3 p. 150.

Admissibility Decision

18 July 1980

Extract: In such cases the Commission first examines whether such a link existed between the applicant and his relatives as can be considered to establish family life within the meaning of Article 8. The Commission notes that in the present case the applicant, who is thirty-seven years of age, is basing his claim on his relationship with his two adult sisters and their families, with whom it has not been shown that there is any dependent relationship or that he even lives with either of them. In the circumstances, therefore, the Commission considers that the applicant has not shown that there exists a sufficiently close link between himself and his sisters' families which could be deemed to have established the family life which is protected by Article 8.
As regards the applicant's claims in respect of his home and his friends, the Commission finds that the applicant has not shown that there would be any serious obstacles to re-establishing friendships and a home in India, obstacles which might outweigh the Government's legitimate concern to enforce its immigration policy.
The Commission concludes that the threatened deportation of the applicant does not constitute an interference with his right to respect for his private and family life and his home.

26. *X v. United Kingdom*

Appl. no. 8971/80, np, DS 3 p. 152.

Admissibility Decision

5 May 1981

Extract: In this present case the Commission considers that the handing over of the applicant to the Indian Air Force, thereby effecting his involuntary return to India, and the consequential separation of the applicant from his wife and child, did constitute an interference with his right to respect for family life ensured by Article 8 (1) of the Convention.
The Commission notes, however, that Article 5 (1) (f) of the Convention specifically envisages the possibility of extradition and other such expulsion agreements between States. The applicant was not being deported as an illegal immigrant, but was in effect extradited under a special procedure in compliance with a request for his surrender under the Visiting Forces Act (1952). It considers that such arrangements for the return of deserters from the armed forces constitute a normal form of assistance between States in the maintenance and regulation of their military and penal codes and could be said, in principle, to be "necessary in a democratic society... for the prevention of... crime", within the meaning of Article 8 (2).
Taking into account the fact that the applicant enlisted in the Indian Air Force of his own free will at the age of eighteen and a half, the Commission finds that the interference with the applicant's right to respect for family life by his return to India was justified for the prevention of crime within the meaning of Article 8 (2).

27. *X v. United Kingdom*

Appl. no. 8245/78. DR 24 p. 98 (80).

Admissibility Decision

6 May 1981

Extract: 4. In the present case the Commission notes that the applicant was deported on the grounds that she overstayed the three-month period for which she was originally admitted to the United Kingdom. Moreover. it appears that the applicant's three children acquired. by virtue of their birth in the United Kingdom the status of "patrial" and thus a right of abode in the United Kingdom. It is clear that although the applicant's three children could not be deported in their own right they accompanied the applicant to India after her deportation because of their young age. The Commission further notes that !he applicant's husband and the childrens' father had previously been deported to India several months prior to their deportation and that the applicant did not have other relations residing in the United Kingdom. Moreover, given the tender age of the children, it does not appear that there were any serious obstacles preventing the entire family from returning to India and rejoining the applicants husband.

5. In such circumstances. even assuming that the applicant's deportation constitutes an interference with the right to respect for family life under Article 8, the Commission must attach significant weight to the fact that the applicant was deported for overstaying. It finds with regard to the second paragraph of Article 8 that there are no elements concerning respect for family life which might outweigh valid considerations relating to the proper enforcement of immigration controls. In this respect the Commission would emphasise the close connection between the policy of immigration control and considerations pertaining to public order. The Commission is of the opinion therefore that in the circumstances of the present case, the possible interference with their right to respect for family life in accordance with the law (the Immigration Act 1971) and would be justified as being necessary in a democratic society for the "prevention of disorder" under the second paragraph of Article 8 as a legitimate measure of immigration control.

28. *X and Y v. United Kingdom*

Appl. no. 9326/81, np, DS 3 p. 152.

Admissibility Decision

6 May 1981

Extract: The Commission notes that in the present case, the applicants, by virtue of their birth in the United Kingdom, acquired British nationality and the right of abode in the United Kingdom. However, even assuming that thereby the prospective deportation of the parents may constitute an interference with the family's rights under Article 8, the Commission also notes that there do not appear to be serious obstacles preventing the whole family returning to Cyprus. The Commission finds in the present case that there are no elements concerning respect for family life which might outweigh valid considerations relating to the proper enforcement of immigration controls. The Commission therefore concludes that there is no evidence that, in the circumstances of the present case, the potential interference with the applicants' right to respect for family life is not justified for one or more of the reasons set out in the second paragraph of Article 8, such as "the prevention of disorder".

29. *X v. Federal Republic of Germany*

Appl. no. 9478/81, DR 27 p. 243. (244-6)

Admissibility Decision

8 December 1981

Extract: In deciding whether an interference has arisen in such cases the Commission has considered the practicality and reasonableness of the close members of family concerned accompanying or following the applicant (e.g. Application No. 5269/71...). A further factor to be considered is the links which the deportee and the other members of the family have with the destination country and in particular whether there are further members of family or relatives there.
In the present case the applicant is already responsible for the care of her children and has been fulfilling this obligation single-handedly since her divorce. However, it appears from the documents which have been submitted on her behalf that her parents still live in Indonesia and that she and her children have been in regular contact with them, to the extent that her children have spent periods of months [at a time] staying with them.
Accordingly the Commission is of the opinion that it would not be wholly unreasonable to expect the applicant to take her children with her to Indonesia, notwithstanding her contention that their educational and other prospects are worse there than in the Federal Republic and concludes that there is no appearance of an interference by the respondent Government with the applicant's right to respect for her family life within the meaning of Article 8.

Extract: As far as the applicant's private life is concerned. it is true that she has been in the Federal Republic of Germany continuously for over eleven years, during which time she and her children have established the network of friends and acquaintances which would be expected after a prolonged period spent in one area. The question before the Commission is therefore whether the relationships established by an individual's social intercourse over a given period constitute 'private life' within the meaning of Article 8 (1) of the Convention...
The Commission has held however that the claim to respect for private life is automatically reduced 'to the extent that the individual himself brings his private life into contact with public life or into close connection with other protected interests" (Application No. 6959/75, D.R 10. p. 100-115).
In the present case the applicant's presence in the Federal Republic of Germany was always subject to restrictions. which were personal to her and were in fact relaxed in her favour by way of an exception. However at no time was there any suggestion that her permission to remain in the Federal Republic was anything but conditional and temporary.
Even assuming therefore that her circle of acquaintances established during her stay in Germany do constitute relationships recognised as private life within the meaning of Article 8 (1) of the Convention, the Commission concludes that the order for her deportation cannot be regarded as an interference with her right to respect for such relationships, since the applicant knew and acknowledged at all material times that her presence, and hence her basic ability to establish and develop such relationships. was temporary and subject to revocation.

30. *Mmes X, Cabales and Balkandali v. United Kingdom*

Appl. nos. 9214/80, 9473/81 and 9474/81, DR 29 p. 176 (182-183).

Admissibility Decision - (Admissible - to Court)

11 May 1982

Extract: The applicants have complained that the March 1980 Rules, as applied to them, constitute sex and race discrimination regarding their family lives, in breach of Articles 3, 8, 13 and 14 of the Convention...
The Government submit that the applicants' complaints are manifestly ill-founded, there being no discrimination on the grounds of sex, race, national origin or nationality, within the meaning of Article 14 of the Convention. and no evidence of a failure to respect family life, or degrading treatment or of an absence of effective domestic remedies.
The Commission considers that the present applications raise complex issues of law and fact in respect of Articles 3, 8 alone, 8 in conjunction with 14 and 13 of the Convention, the determination of which issues should depend on an examination of the merits of the applications.
The Commission concludes that the applications cannot be regarded as manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention and no other ground for declaring them inadmissible has been established.

31 *Family X v. United Kingdom*

Appl. no. 9492/81, DR 30 p. 232 (234-235).

Admissibility Decision

14 July 1982

Extract: Finally the applicants have submitted that, whatever the situation of the rest of the family, it is unjustifiable to prevent the eldest son from continuing his studies in the United Kingdom.
The Commission finds, however, that this aspect of the case also does not demonstrate an interference with the applicants' right to respect tor family life ensured by Article 8 of the Convention.

32 *X and Y v. United Kingdom*

Appl. no. 9369/81, DR 32 p. 220 (221-222).

Admissibility Decision

3 May 1983

Extract: Despite the modern evolution of attitudes towards homosexuality. the Commission finds that the applicants' relationship does not fall within the scope of the right to respect tor family life ensured by Article 8.
On the other hand. as the Commission and Court has recognised in the case of Dudgeon (Eur. Court H.R. judgment of 22 October 1981), certain restraints on homosexual relationships could create an interference with an individual's right to respect for his private life ensured by Article 8. The Commission finds that the applicants' relationship is a matter of their private life and the question arises whether the deportation order of 13 October 1982, requiring the first applicant to leave the United Kingdom, constituted an interference with the applicants' right under Article 8.
The Commission considers that it is helpful to draw a parallel with its jurisprudence in other immigration cases. in which the Commission has frequently held that there is no right to enter or remain in a particular country, guaranteed as such by the Convention. Where, however, a close member of a family is excluded from the country where his family resides, an issue may arise under Article 8. The Commission's approach in such cases is first to examine the facts of each case in order to find the extent of the claimed family links and also the ties with the country concerned. since the right to respect for family life does not necessarily include the right to choose the geographical location of that family life (cf. Commission's Decisions on Admissibility in Applications Nos. 7289/75 and 7349/75, D.R. 9.

p. 57; 8041/77, D.R. 12, p. 197; 8244/78 Uppal et al. against the United Kingdom, D.R. 17, p. 145).
The same factual approach can be adopted with regard to the applicant's right to respect for their private life. The Commission notes that the British immigration authorities have given careful consideration to the applicants claims, including that concerning the difficulties they might face in living together in the first applicant's country of origin. The Commission also notes, however, that the applicants are professionally mobile: the first applicant did not hesitate in joining the second applicant in the United Kingdom although he had employment in his native country. The second applicant has travelled and worked in other parts of the world. The Commission finds that it has not been shown that the applicants could not live together elsewhere than the United Kingdom, or that their link with the United Kingdom is an essential element of the relationship.
The Commission concludes, therefore, that the refusal to allow the first applicant to remain in the United Kingdom did not constitute an interference with the applicants' right to respect for private life ensured by Article 8 of the Convention.

33. *Mmes X, Cabales and Balkandali v. United Kingdom*

Appl. nos. 9214/80, 9473/81 and 9474/81.

Commission Report

12 May 1983

Extract: 121. The applicants have submitted that the refusal to allow their husbands to reside with them in the United Kingdom constitutes all interference with Art 8 in itself, as regards their right to respect for family life. Furthermore they have claimed that they have been subjected to racial and sexual discrimination of such a degree as to constitute degrading treatment contrary to Art 3 of the Convention.
122. However, in its examination above of the applicants' allegations under Art 14 in conjunction with Art 8, the Commission has also dealt with elements of family life and the extent of discrimination suffered. As regards this latter element, the Commission would emphasise that Art 14, by its very nature, inherently incorporates a condemnation of the degrading aspects of sexual and other forms of discrimination. The Commission considers that no other separate issues arise under Arts 3 and 8 in the present applications and, therefore, it is not necessary to pursue a further examination of the matter in the light of these provisions.

34. *Bulus v. Sweden*

Appl. no. 9330/81, DR 35 p. 57 (64-65).

Admissibility Decision - (Admissible - Friendly settlement)

19 January 1984

Extract: The Commission recalls that the separation of the members of the Bulus-Chamoun family, which has taken place, is, to a certain extent, due to measures taken by the members of the family themselves. However, the Swedish authorities have taken measures which have clearly affected Abdulmassih's rights under Article 8, *inter alia,* the decision to expel Abdulmassih together with his two brothers, while the mother and his sister were to be left in Sweden, and the subsequent decision to expel only the two brothers.
After having made a preliminary examination of the merits of this complaint, the Commission considers that this complaint also raises several issues of such an important and complex nature that their determination should depend upon a further examination of the merits. Accordingly, this aspect of the application cannot be declared inadmissible.

35. *S and S v. United Kingdom*

Appl. no. 10375/83, DR 40 p. 196 (198).

Admissibility Decision

10 December 1984

Extract: The applicants complained of the refusal by the British Immigration authorities to allow the first applicant to enter and remain in the United Kingdom...
Generally, the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33 year old son in the present case, would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal, emotional ties.

36. *Berrehab and Koster v. Netherlands*

Appl. no. 10730/84, DR 41 p. 196 (207-209); YB 28 p. 118.

Admissibility Decision (Admissible - to Court)

8 March 1985

Extract: The applicants complain that the expulsion of the first applicant amounts to an unjustified interference with the right to respect for the family life of the first and third applicants. In particular, they allege that the expulsion results in the breaking of the bonds uniting the first applicant and the child. They rely on Article 8 of the Convention...
The Commission considers that cohabitation is not an essential factor for the existence of family life between parents and their children under age.
In the instant case the Commission notes that in spite of the fact that the applicants did not live together, regular contacts were established between the first applicant and the child. In accordance with the above-mentioned arrangement, the applicant saw his child four times a week at least for the two years preceding his expulsion. The Commission further notes that in spite of the expulsion of the first applicant, contact was maintained between the applicants. Moreover, under an order of the Amsterdam court, the applicant is obliged to contribute to the maintenance and education of the child.
In view of these factors, the Commission regards the bonds which were established and developed between the first applicant and his child, the third applicant, as amounting to family life and his expulsion, by rendering the continuance of regular contacts impossible, as amounting to an interference in the exercise of the right to respect for their family life. In view of this conclusion, the Commission does not consider it necessary to decide the question whether there was also an interference with the right to respect for the private life of the first and third applicants.
The Commission must next consider whether the interference in the exercise of the right to family life of which the applicants complain could be justified under Article 8 para. 2 of the Convention...
The Commission notes that the Netherlands authorities, being of the opinion that Article 8 did not apply in the case, did not take into consideration the relations existing between the child and the first applicant when they decided to expel the latter.
The Commission has made a preliminary examination of the facts and the arguments of the parties. It considers that the problems raised in the case, in particular the question to what extent the Netherlands authorities should take into account the interests of the child, are sufficiently complex for their solution to depend on an examination of the merits.

C1. *Abdulaziz, Cabales and Balkandali Case*

15/1983/71/107-109 Series A , no. 94, §§ 60-69.

Court Judgment

28 May 1985

(See Article 8 Court Cases)

37. *Family K and W v. Netherlands*

Appl. no. 11278/84, DR 43 p. 216 (219-220).

Admissibility Decision

1 July 1985

Extract: In the present case, the first applicant is of Dutch nationality. It is further alleged that it cannot be expected of her and her children to follow the second applicant to Hong Kong. The Commission accepts that in the present case, there is an interference with the applicants' rights to family life.
The Commission recalls, however ,that under Article 8 para. 2, there may be an interference by a public authority with the exercise of this right, if such interference is in accordance with the law and is necessary in a democratic society for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.
The second applicant was declared as an undesired alien, in accordance with section 21 of the Aliens Act, in order to protect public order by preventing the applicant from returning to the Netherlands after his expulsion. The Commission observes that the applicant has been found guilty of dealing in heroin, a crime which is internationally regarded as a very serious threat to public order and health.
Having assessed the grounds on which the Netherlands authorities based their decision and having considered the consequences for the applicants' family life, the Commission concludes that the measure constitutes an interference which is justified under Article 8 para. 2 of the Convention.

38. *Chandra v. United Kingdom*

Appl. no. 10427/83, DR 47 p. 85 (94).

Admissibility Decision

12 May 1986

Extract: Such a surrender to the Indian military authorities must necessarily imply a disruption of private life but this inevitable consequence of any extradition, which is recognised under the terms of Article 5 para. I (f) of the Convention, cannot in principle be regarded as an interference with the right to respect for private life protected by Article 8 of the Convention. The applicant has not submitted any evidence which would suggest that this principle should be departed from in the present case. The Commission therefore finds that there has been no interference with the applicant's right to respect for his private life.

39. *Berrehab v. Netherlands*

Appl. no. 10730/84,

Commission Report

7 October 1986

Extract: 67. The applicants claim that the decision to expel the first applicant constituted a breach of their right to respect for family life under Article 8 of the Convention...

71. The commission recalls that in order to ascertain whether in a specific case it is dealing with family life it does not only consider whether a relationship exists but also whether there is in fact a link which can be considered to establish family life within the meaning of Article 8 of the Convention (application no. 3110/67, decision of 19 July 1968, Yearbook, vol. 11, p. 494 and applications nos. 2991/66 and 2992/66, decision of 15 July 1967, Yearbook, vol. 10, p. 478). Moreover, the Commission has held that family life between parent and child does not cease after the divorce of a married couple (application no. 7770/77, decision of 2 May 1978, Decisions and Reports no. 14, pp. 175-178) and that in principle a parent always has a right of access to his child under Article 8 § I of the Convention (application no.7911/77, decision of 12 December 1979, Decisions and Reports no. 12, pp. 192-195). Therefore, living together is not an indispensable element for the existence of family life between parents and their minor children.

72. Moreover, the Commission finds that there are no indications in the present case that the first applicant had entered into a marriage of convenience but notes that although the first and second applicant did not actually live together regular and intensive contacts between them did indeed exist. In this respect, it is also noted that on 26 November 1979 the first applicant was appointed as the child's co-guardian by the Regional Court of Amsterdam, and that this court ordered him on 5 February 1980 to contribute towards the cost of the upbringing of the child on a monthly basis.

73. Under these circumstances the Commission finds that the link which existed between the first and second applicant must be considered as family life within the meaning of Article 8 § 1 of the Convention...

75. The Commission ... finds that the first applicant's expulsion made continued contacts between him and his child virtually impossible and particularly in view of the child's very young age, therefore constituted an interference with the applicants' rights to respect for family life.

76. The question which remains to be answered is whether this interference was justified under the second paragraph of Article 8 of the Convention...

78. The Commission notes that the decision not to renew the first applicant's residence permit was based on section 12 (d) of the Aliens Act, and as such must be regarded as having been taken in accordance with the law.

79. Furthermore, the decision was taken in conformity with Netherlands immigration policy, which is aimed at regulating the entry of aliens into the country. In this respect, the Commission recalls the close connection between the policy of immigration control and considerations pertaining to public order. The Commission has also had regard to the need to protect the labour market and the general position of immigrants in a country. The decision can thus be considered as having been taken in the pursuit of legitimate aims, such as the prevention of disorder and the protection of the rights and freedoms of others.

80. The question which remains to be examined is whether the decision was "necessary in a democratic society" in pursuit of the above aim...

82. When, as in the present case, the right at issue is the family life of a parent and a child. particular regard must be had to the interests of the latter. In this respect, the Commission recalls that it is an important function of the law in a democratic society to provide safeguards in order to protect children, particularly those who are vulnerable because of their low age, as much as possible from harm and mental suffering resulting, for instance, from a divorce of their parents (cf. Hendriks v . the Netherlands, Commission s report of 8 March 1982, § 120, Decisions and Reports no. 29, p. 5).

83. The Commission considers that the decision of the Council of State of 9 May 1983, in which the lawfulness of the decision not to renew the applicant's residence permit was examined, must be considered as the final decision by which the proportionality of the interference with the applicants' right to respect for family life was assessed by the national authorities. In addition, the Commission has had regard to the reasons given by the Government for the first applicant's expulsion.
84. The Commission notes that the Council of State did not consider Article 8 of the Convention to be applicable. Moreover, it does not appear from the decision that the Council had regard to the particular interests of the child. It merely noted that the impugned decision did not have to put an end to the relations between the first applicant and his daughter, since the former could arrange with his ex-wife to continue the contact, but there is no indication that the Council of State had considered possible hardships for the family in maintaining such contact, such as the distance that would have to be travelled or the financial situation of the first applicant
85 Neither the decisions of the Council of State, nor the reasons given by the Government for the first applicant's expulsion have demonstrated that sufficient account was taken of the child's interest when assessing the proportionality of the interference with the applicants' rights Moreover, the Commission notes that the first applicant was employed at the time of his expulsion and that it has not been alleged that he had engaged in any criminal behaviour.
86. It is also noted that according to the Government's submissions aliens who have been married for more than three years to a Dutch national, and have lived with their spouse in the Netherlands for at least one year before the dissolution or termination of the marriage become eligible for an "independent" residence permit. Even if these requirements are not met, a person who has close ties with someone in the Netherlands, e g a high degree of emotional or physical dependency, can in exceptional circumstances nevertheless be eligible for an "independent" residence permit.
87 The authorities, however, did not consider that the parent-child relationship between the first and the second applicant could constitute such an exception.
88 Under these circumstances the Commission cannot be satisfied that a fair balance was struck between the interest of the child and her father in continued contact, and the general interest calling for the prevention of disorder Consequently the Commission must conclude that the interference with the applicants' rights under Article 8 § I of the Convention was not proportionate to the legitimate aim pursued and was hence not justified under paragraph 2 of Article 8 of the Convention.
89 The Commission concludes by eleven votes to two that there has been a violation of the applicants' rights under Article 8 of the Convention.

40. *Lukka v. United Kingdom*

Appl. no. 12122/86, DR 50 p. 268 (271-272).

Admissibility Decision

16 October 1986

Extract: The applicant next complains of a violation of his right to respect for family life should he be deported to South Africa. He is married to a British citizen of Indian origin who, given the circumstances in South Africa, could not be expected to follow him to that country...
In the present case, the Commission notes that the applicant is to be deported for having failed to observe immigration controls and that his marriage was contracted at a time when the applicant was aware that he was at risk with his irregular immigration status. Although it may be unreasonable to expect the applicant's wife to follow him to South Africa, given the present circumstances there, the applicant may not necessarily be permanently excluded from the United Kingdom. According to current Immigration Rules the applicant may apply for entry clearance to join his wife, she being a British citizen. This he could do following an application for the revocation of the deportation order. Although, according to paragraph 171 of the Statement of Changes in Immigration Rules HC 169, the Secretary of

State will not normally revoke a deportation order which has been in force for less than three years, he will consider revocation in exceptional circumstances.
In the circumstances of the present case, even though the applicant's present deportation would constitute an interference with his right to respect for family life under Article 8, the Commission must attach significant weight to the reasons for this measure. It finds with regard to the second paragraph of Article 8 that there are insufficient elements concerning respect for family life which could outweigh valid considerations relating to the proper enforcement of immigration controls...
Accordingly. this part of the application must be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 of the Convention.

41. *Y. H. v. Federal Republic of Germany*

Appl. no. 12461/86, DR 20 p. 258 (265).

Admissibility Decision

10 December 1986

Extract: The Commission, assuming that the applicant's expulsion from the Federal Republic of Germany constitutes an interference with her family life, nevertheless has to take account of her repeated convictions for property offences. It therefore finds that the applicant's proposed expulsion is justified under paragraph 2 of Article 8 as a measure taken in accordance with the law and necessary in a democratic society for the prevention of disorder or crime.

42. *O and O.L. v. United Kingdom*

Appl. no. 11970/86, np.

Admissibility Decision

13 July 1987

Extract: In the present case, the Commission first notes that the applicants' British nationality is exclusively based on the fact that they were born in the United Kingdom. However, this fact alone cannot confer rights of abode in that country upon the parents, particularly when, as in the case of the second applicant, the birth occurred whilst the parents had no right to reside in the United Kingdom.
It is a striking feature in the present case that the parents have repeatedly violated British immigration laws by entering the United Kingdom illegally and by staying there without any right of residence.
The Commission notes that the parents have themselves created the present situation by leaving the children behind in the United Kingdom, where the parents had no right to stay but where they apparently found the economic and educational opportunities for their children to be more favourable than in Northern Cyprus. There would have been no obstacle for the parents to take the children with them back to Northern Cyprus, while the children were younger and would more easily have adapted themselves to life there.
Thus, while the Commission considers that the deportation of the applicants' parents constitutes an interference with the applicants' right to respect for their private and family life under Article 8 para. 1 (Art. 8-1) of the Convention, the Commission must, in considering whether that interference was justified under Article 8 para. 2 (Art. 8-2), attach significant weight to the special circumstances indicated above. The Commission emphasises the close connection between the policy of immigration control and considerations pertaining to public order and finds that these considerations should given special weight in a case like the present one, where the applicants' parents have repeatedly taken measures which

breached or circumvented immigration rules, and where they must to a large extent be held to be responsible for their present separation from their children. In such circumstances, the Commission finds it compatible with Article a (Art. 8) to expect the children of unlawful overstayers to follow the parents, even if those children have acquired theoretical rights of abode in the deporting country.
The Commission is therefore of the opinion that the interference with the applicants' right to respect for their private and family life, which was in accordance with British immigration law, was justified as being necessary in a democratic society 'for the prevention of disorder' under Article 8 para. 2 (Art. 8-2).

43. *W.J. and D.P. v. United Kingdom*

Appl. no. 12513/86, np.

Admissibility Decision

13 July 1987

Extract: 1. The applicants complain that the refusal to allow the first applicant to remain in the United Kingdom with his homosexual partner, the second applicant, constitutes an unjustified interference with their private life, contrary to Article 8 (Art. 8) of the Convention, and discrimination, compared with heterosexual couples, contrary to Article 14 (Art. 14) of the Convention...
The Court and the Commission have previously held that homosexual relationships do not fall within the ambit of family life, but rather fall within the notion of private life under Article 8 (Art. 8) of the Convention (cf. Eur. Court H.R. Dudgeon judgment of 22 October 1981, Series A no. 45 para, 41 and No. 9369/81, Dec. 3.5.83, D.R. 32 p. 220). It is clear that a refusal to allow a person to remain in a country where he has been living and working for several years must result in a disruption of his private life. However, this inevitable disruption cannot, in principle, be regarded as an interference with the right to respect for private life, ensured by Article 8 (Art. 8) of the Convention, unless the person concerned can demonstrate that there are exceptional circumstances in his case justifying a departure from that principle (cf. No. 10427/83, Dec. 12.5.86 to be published in D.R...). Accordingly, the Commission finds that the absence in United Kingdom Immigration Rules of settlement rights for non-nationals in respect of their stable, private relationships, other than family relationships, does not, of itself, disclose any appearance of a violation of Article 8 (Art. 8) of the Convention.
As regards the factual circumstances of the present case, the Commission notes that the applicants have had a stable homosexual relationship and have lived together since April 1982. However, the first applicant entered that relationship in the knowledge that his immigration status was unsettled and that he would only have a maximum of two further years' leave to remain in the United Kingdom as a working holiday-maker; Apart from this relationship with the second applicant and his necessarily short-term employment because of his limited immigration status, the first applicant has no other ties with the United Kingdom. The Commission finds no substantiation in this case for the applicants' claim that no individual consideration has been given to their particular circumstances by the Secretary of State in exercise of his overriding discretion pursuant to Section 4 of the Immigration Act 1971. Nor have the applicants provided any substantiation of their claim that it would be impossible to live together in New Zealand or elsewhere At no time have the applicants been prevented from developing their relationship.
In the light of the above considerations, the Commission concludes that the present case does not disclose any exceptional circumstances which might justify a departure from the aforementioned general principle. The Commission concludes, therefore, that the refusal to allow the first applicant to remain in the United Kingdom does not constitute an interference with the applicants' right to respect for private life, ensured by Article 8 (Art. 8) of the Convention. It follows that this aspect of the application is manifestly ill-founded.

44. *NG v. United Kingdom*

Appl. no. 12790/87, np.

Admissibility Decision

13 July 1987

Extract: The applicant has complained of proposals by the Secretary of State in October 1986 to deport him from the United Kingdom, even though this would probably have deprived him of contacts with his children who would remain there...
However, the Commission notes that the Secretary of State has reviewed his earlier decision in the light of the Liverpool County Court's decision of 13 February 1987 to grant the applicant care and custody of his two children. The applicant has thus been granted leave to remain for a reviewable period and, for the time being, his family life is not in jeopardy. The Commission further observes that the original decision to deport the applicant did not have any concrete repercussions on the applicant's family life i.e. it did not in fact result in a separation of the family. In these circumstances, the Commission concludes that the factual basis of the applicant's complaint has been resolved and that he can no longer claim to be a victim of a violation of the Convention, within the meaning of Article 25 (Art. 25).
It follows that the application must be rejected as being manifestly ill-founded, pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

45. *M and O.M. v. Netherlands*

Appl. no. 12139/86, np.

Admissibility Decision

5 October 1987

Extract: In cases where grown-up children wish to take up residence with their parents the Commission examines the Article 8 (Art. 8) issue in the light of the child's age, his or her factual living together with the parents in the past and any financial or other dependency between parents .and child (No. 9492/81, Dec. 14.7. 1982, d.R. 30, p. 232; No. 10557/83, Dec. 5.7.1984, Chandarana v. United Kingdom, not published).
As regards the facts of the present case the Commission notes that the first .applicant is 26 years of age .and, did not live with his father from 1966 until 1980. Furthermore, it , does not appear that there is a financial or other dependency between the applicants, since they have independent incomes and have not lived together since 1985. The fact that the second applicant helps his son occasionally with the latter's coffee shop does not in itself indicate any form of dependency.
Accordingly the Commission concludes that in this case no family life within the meaning of Article 8 (Art. 8) of the Convention exists, .and that therefore the applicants' complaint under this provision is manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

46. *Karlidag v. Austria*

Appl. no. 12771/87, np.

Admissibility Decision

7 October 1987

Extract: The applicant complains that the Austrian.authorities' refusal to revoke a residence prohibition issued .against him interferes with his, right to respect for his family life as guaranteed by Article 8 (Art.8) of the Convention.
The Commission notes that the applicant's family, i.e. his wife and three children who are not yet of age, have been lawfully residing in Austria for more than ten years. Despite the residence prohibition issued against the applicant, it appears that he has been granted.leave to enter Austrian territory for short periods for the purpose of visiting his family. In these circumstances, it can be assumed that the applicant's family life is indeed established in Austria.
The Commission further notes that the specific measure complained of is the refusal to revoke a permanent residence prohibition which was ordered in 1982 . Although the applicant can no longer complain of the original order the Commission considers that he is entitled to complain that the refusal interfered with his rights under Article 8 para. 1 (Art 8-l) of the Convention. A permanent residence prohibition may become disproportionate with the lapse of time and in the present case the applicant invokes .a change of circumstances which, in his view, justified his request for a revocation under Article 8 (Art. 8) of the Convention.
However the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision as, under Article 26 (Art. 2.6) of the Convention. it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

C2. *Berrehab Case*

3/1987/126/177 Series A , no. 138, §§ 19-29.

Court Judgment

21 June 1988

(See Article 8 Court Cases)

47 *L.E. v. Federal Republic of Germany*

Appl. no. 14312/88.

Admissibility Decision - (Admissible - Friendly settlement)

8 March 1989

Extract: The applicant complains that her envisaged deportation to Lebanon would amount to inhuman treatment and violates her right to respect for her family life with her husband and three children. She invokes Articles 3 and 8 (Art. 3, 8) of the Convention...
As to the well-foundedness of the application, the respondent Government have submitted that the applicant failed to substantiate that she would risk treatment contrary to Article 3 (Art. 3) of the Convention upon her return to Lebanon. As regards Article 8 (Art. 8) of the Convention, the Government maintain that she had not shown that her family could not follow her to Lebanon. In any event, having regard to the applicant's conviction for property offences, the interference with her right to respect for her family life would be necessary in a democratic society for the prevention of disorder and crime.
The Commission, however, considers that the applicant's complaints under Articles 3 and 8 para. 1 (Art. 3, 8-1) of the Convention raise complex issues of fact and law which can only be resolved by an examination of the merits. The application cannot, therefore, be declared manifestly ill-founded. No other grounds for inadmissibility have been established.

48. *Moustaquim v. Belgium*

Appl. no. 12313/86, np.

Admissibility Decision - (Admissible - to Court)

10 April 1989

Extract: The Applicant complains first of all of a violation of Articles 3 and 8 of the Convention on the grounds that the decision to deport him caused a sudden breakdown of his family and social life and constituted inhuman and degrading treatment. He explains that his Moroccan nationality is a pure formality. In support of this assertion, he submits that his real mother tongue is French and that he speaks only a few words of Arabic, that all his close relatives (his father, his mother and seven other children, three of whom have already acquired Belgian nationality) are resident in Belgium and that he has no other close relations in Morocco who could take him in...
The applicant further alleges that the royal deportation order, in its treatment of a criminal who is also an alien, entails discrimination based exclusively on the subject's nationality irrespective of any general, objective criteria...
The Government on the other hand consider that the deportation order against the Applicant who, in their opinion, cannot be considered as a "theoretical" alien, is justified under paragraph 2 of Article 8 of the Convention. The reasons in the royal deportation order include the number and seriousness of the applicant's offences, his conduct and the fact that in this case, the protection of public order ought to prevail over the social and family considerations set out by the Aliens Advisory Committee...
The Commission has carried out an initial examination of the facts and of the submissions of the parties. It considers that the problems raised by this case are sufficiently complex to require an examination of the merits.
This part of the application cannot therefore be rejected as being manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention.

49 *Djeroud v. France*

Appl. no. 13446/87.

Admissibility Decision - (Admissible - Friendly settlement)

10 May 1989

Extract: The applicant complains of a violation of Articles 3 and 8 of the Convention. He maintains that, if expelled again, he would face the risk of inhuman treatment contrary to Article 3 of the Convention and that deportation would seriously interfere with the right to respect for private and family life which is secured to him under Article 8 of the Convention...
3. As to the merits, the applicant emphasises the purely formal nature of his Algerian nationality and considers that his deportation cannot be considered as a measure necessary in a democratic society for the prevention of disorder or crime. In particular, he considers that a fair balance has not been struck between the interests at stake and that there is a lack of proportion between the means employed and the aim pursued.
The Government consider on the contrary that the deportation order issued against the applicant who, in its view, cannot be regarded as a "theoretical" alien, is justified under Article 8 para. 2 of the Convention in view of the number and seriousness of the offences committed by the applicant, his behaviour and the fact that, in the present case, the protection of public order must prevail over social or family considerations.
The Commission has carried out an initial examination of the facts and of the submissions of the parties. It considers that the issues raised in the present case are sufficiently complex to require an examination of the merits.

50 *Beldjoudi and Teychene v. France*

Appl. no. 12083/86.

Admissibility Decision - (Admissible - to Court)

11 July 1989

Extract: The applicants complain that enforcement of the deportation order issued in respect of the first applicant in 1979 would interfere with their right to respect for their private and family life as guaranteed by Article 8 of the Convention...
As for the objection of inadmissibility raised by the Government under Article 25 of the Convention, the Commission recalls first of all its case-law according to which the expulsion of a person from a country in which members of his immediate family are living may constitute an interference with the right to respect for private and family life guaranteed by Article 8 of the Convention (cf., inter alia, Application No. 6357/73, Dec. 8.10.74, D.R. 1 p.77.
In this connection it is of little relevance, where Article 25 is concerned, that the first applicant has not yet been effectively deported. It is enough that he is subject to a deportation order issued by the competent authorities of the State of which he complains (cf. mutatis mutandis, Eur. Court HR. Soering judgment of 7 July 1989, Series A no. 165, pp, 25-27, para. 85, 87, 90 and 91). In the present case, the Commission points out that since 1979 the first applicant has been in danger of expulsion at any time through enforcement of the deportation order which has so far not been revoked.
he may therefore, together with his wife, claim to be the victim of an alleged violation of Article 8 of the Convention.
As for the merits of the complaints raised by the applicants under Articles 3, 8, 9, 12 and 14 of the Convention, the Commission has carried out an initial examination of the facts an of the submissions of the parties. It considers that the issues raised in the present case are sufficiently complex to require an examination of the merits.

51. *F v. France*[1]

Appl. no. 13653/88, np.

Admissibility Decision - (Admissible - Friendly Settlement)

11 July 1989

Extract: The Applicant, who was born in France, lost his French nationality without being aware of it because his parents did not sign a declaration recognising his French nationality when they had a possibility to do so by virtue of the law of 20 December 1966 which provided that everyone of Algerian origin who did not reside before 21 March 1966 was deemed to have lost their French nationality on 1 January 1963.
The Applicant complains that his expulsion to Algeria was in violation of his right to respect for his family and private life guaranteed by Article 8 of the Convention. He maintains that, having served the prison sentences to which he had been condemned, he has paid his debt to society and, given his habitual residence in France since his birth, he should not be condemned to an additional penalty such as expulsion to a country where he would be a complete foreigner, despite the fact that he officially possesses that nationality.
The Government, on the other hand, contends that the deportation order is justified, having regard to paragraph 2 of Article 8 of the Convention. It considers, taking account of the

[1]Original French - translation: James Davies.

criminal record of the Applicant, that his presence in the territory constitutes a threat to public order.
The Commission has carried out an initial examination of the facts and of the submissions of the parties. It considers that the problems raised by this case are sufficiently complex to require an examination of the merits.
This part of the application cannot therefore be rejected as being manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention.

52. *C and L.M. v. United Kingdom*

Appl. no. 14753/89, np.

Admissibility Decision

9 October 1989

Extract: the Commission finds that a lesbian partnership involves private life, within the meaning of Article 8 (Art. 8) of the Convention. However, although lawful deportation will have repercussions on such relationships, it cannot, in principle, be regarded as an interference with this Convention provision, given the State's right to impose immigration controls and limits. In the present case, the Commission finds no exceptional circumstances to justify a departure from these considerations. It, therefore, concludes that there has been no interference with the applicants' right to respect for private life ensured by Article 8 (Art. 8) of the Convention and that this aspect of the case is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Extract: Finally the applicants have complained that the proposed deportation violates Article 12 (Art. 12) of the Convention which guarantees to 'men and women of marriageable age ... the right to marry and to found a family, according to the national law governing the exercise of this right'.
The Commission refers to the case-law of the European Court of Human Rights in the Rees case concerning transexuals:
'In the Court's opinion, the right to marry guaranteed by Article 12 (Art. 12) refers to the traditional marriage between persons of opposite biological sex. This appears also from the wording of the Article which makes it clear that Article 12 (Art. 12) is mainly concerned to protect marriage as the basis of the family. Furthermore, Article 12 (Art. 12) lays down that the exercise of this right shall be subject to the national laws of the Contracting States. The limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired. However, the legal impediment in the United Kingdom on the marriage of persons who are not of the opposite biological sex cannot be said to have an effect of this kind. There is accordingly no violation in the instant case of Article 12 (Art. 12) of the Convention.' (Eur. Court H.R., Rees judgment of 17 October 1986, Series A no. 106, p. 19 paras. 49-51)
In the light of this case-law, the Commission considers that the first applicant's relationship with her lesbian cohabitee does not give rise to a right to marry and found a family within the meaning of Article 12 (Art. 12) of the Convention. The Commission concludes, therefore, that this part of the application is incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2).

53. *Moustaquim v. Belgium*

Appl. no. 12313/86.

Commission Report

12 October 1989

Extract: 49. The applicant claims that the deportation order against him infringes Article 8 of the Convention...

51. The Commission will first consider whether between the applicant and his family there existed any real, effective family life...

53. In the circumstances of this case, the fact that the applicant lived for a while outside the family circle, either because he had run away or because he was in custody, did not bring his family relationships to an end. The facts noted in the opinion of the Alien's Advisory Committee of 24 November 1983 and the fact that on 29 April 1984 the applicant's father, as legal representative of his under-age son, himself requested the Council of State to set aside the royal deportation order of 24 February 1984, show on the contrary that family ties did exist. The deportation order prevented family life within the meaning of Article 8 of the Convention from continuing and was therefore tantamount to interference in the applicant's right to respect for his family life.

54. The case-law has consistently held that such interference is in breach of Article 8 unless it is "in accordance with the law",
seeks to achieve one of the legitimate aims mentioned in paragraph 2 and is "necessary in a democratic society" to achieve those aims (Eur. Court H.R., W v. United Kingdom, judgment of 8 July 1987, Series A no. 121, p. 27, para. 60 (a))...

56. ...The Commission agrees with the Government that the deportation order was manifestly aimed at the prevention of disorder. In view of the numerous offences, some of them serious, committed by the applicant, his deportation was justified on the grounds of protection of public order in Belgium. The interference at issue was therefore in pursuit of a legitimate aim in accordance with Article 8 para. 2 of the Convention...

60. Concerning the interpretation of the phrase "necessary in a democratic society" the Commission recalls first of all that in order to judge the "necessity in a democratic society" of a given interference it needs to consider the margin of appreciation allowed to Contracting States (see, in particular, Eur. Court H.R., Olsson judgment, loc. cit., pp. 31-32, para. 67). It is true that the Convention does not in principle prohibit Contracting States from regulating the entry of aliens into their territory and the length of their stay there. However, in order to be "necessary" an interference must be based on a pressing social need and in particular be proportionate to the legitimate aim pursued (Eur. Court H.R., Berrehab judgment, loc. cit., pp. 15-16, para. 28).

61. The Commission, called upon to to state whether this last condition has been complied with, notes that it is not required to judge, as such, Belgium's policy on the deportation of second-generation immigrants. Its role is principally to ascertain whether, in the present case, a fair balance has been reached between the legitimate aim pursued and the seriousness of the infringement of the applicant's right to respect for his family life.

62. As regards the seriousness of the infringement, it must be pointed out first of all that the person in question came to Belgium at an early age, lived there until his deportation at the age of 20 and speaks only a few words of Arabic. Although legally an alien, he has all his family and social ties in Belgium and the nationality which links him to Morocco, though a legal reality, does not reflect his actual position in human terms. As for the possibility referred to by the Government of the applicant's acquiring Belgian nationality, the Commission notes that, as a result of his deportation the applicant found himself unable (as witness his attempts, see paras. 35-36 above) to exercise his right, under Article 13 of the Nationality Code of 28 July 1984, which entered into force on 1 January 1985, to opt for Belgian nationality.

The Commission also notes that, following his deportation, the applicant did not go to Morocco, where he had no close relations to take him in. After being deported from Spain he went to Sweden, where he is in a precarious situation since to date he has not been able to obtain a long term residence permit.

That being the case, the Commission considers that the interference should be scrutinised especially strictly and that the threshold of necessity should be set at a higher level to reflect the seriousness of the interference.

63. In the Commission's opinion a State must take into consideration the consequences which may flow from the deportation of an alien from his place of residence. This is all the more necessary when the person concerned does not speak the language of his country of origin and has no family or other links with that country. An order for his deportation to that country - the only one in which he has the right of permanent abode - places him in such a

difficult position that only in exceptional circumstances can it be justified as proportionate to the aim pursued under Article 8 para. 2. In this case the Commission considers that the offences with which the applicant was charged and on which the deportation order was grounded did not constitute such exceptional circumstances.
It should also be noted that the deportation took place about five years after the date of the offences, the most recent of which were committed in December 1980. These offences were committed during the applicant's adolescence (he was aged 17 at the time). Nor is it apparent from the file that the applicant persisted in a life of crime after his conviction.
64. In view of the circumstances and particularly with regard to the applicant's age at the time of the offences, his links with Belgium and his present precarious situation, the Commission does not believe that a proper balance was struck between the interests of the applicant on the one hand and the general interest of the defence of public order on the other. Consequently, the interference in the exercise of the rights secured to the applicant by Article 8 para. 1 of the Convention was not proportionate to the legitimate aim pursued and thus was not justified under Article 8 para. 2.
65. In view of this finding, the Commission does not consider that it needs to rule on whether there was also interference in the applicant's private life.
66. The Commission concludes, by 10 votes to 3, that there has been a violation of Article 8 of the Convention in this case.

Moustaquim v. Belgium

Appl. no. 12313/86.

Dissenting Opinion - Mr. J.C. Soyer, joined by MM. G. Sperduti and E. Busuttil

12 October 1989

Extract: ...The following simple question arises: if criminal activity of this type cannot be regarded as socially intolerable and as constituting exceptional circumstances justifying interference, what can?
It is clear in view of the actual concrete implications of its opinion for the social order that the Commission - though it denies it (para. 61) - is setting out a normative solution, viz. a rule to the effect that second-generation immigrants must not be deported.
Such a solution seems to me to ignore both the letter and the spirit of the Convention.
The text of the Convention mentions and legitimises the deportation of aliens. There is no provision for second-generation immigrants - as such and as a distinct category - to be exempt from deportation even though they are legally aliens. "Ubi lex non distinguit ...". Where the Convention does not distinguish, is it permitted to draw a distinction?
As for the spirit of the Convention, its preamble refers to the Universal Declaration of Human Rights, Article 29 of which is worded as follows: "Everyone has duties to the community in which alone the free and full development of his personality is possible".
The Commission's opinion seems to me to imply consequences which - whether ill-considered or not considered at all - could be unintentionally harmful to the host community, a community which, on a balanced view, should not be alone in having obligations.

54. *Cruz Varas and his family v. Sweden*

Appl. no. 15576/89

Admissibility Decision - (Admissible - to Court)

7 December 1989

Extract: 2. The applicants also allege that there has been a violation of Article 8 of the Convention on the ground that the applicants have been separated as a result of the expulsion to Chile of the first applicant whereas the other applicants are now hiding in Sweden...
The Government submit that the splitting up of the family was the result of the applicants' own actions for which the Government cannot be held responsible. The authorities' intention was to expel all the applicants at the same time. In any event, the Convention does not protect the right of an alien to enter a certain country and be granted asylum there, nor the right to be united in a State where no one in the family has a permit to remain. The complaint is therefore incompatible ratione materiae or personae with the Convention or manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.
The Commission considers that this complaint is closely related to the first applicant's complaint under Article 3. It also raises questions of fact and law which are of such a complex nature that their determination should depend on an examination of the merits. It cannot therefore be considered manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

55. *Z.B. v. United Kingdom*

Appl. no. 16106/90, np.

Admissibility Decision

10 February 1990

Extract: In the present case, however, the applicant further contends that he will be exposed to prosecution for homosexual activity if he is returned to the northern part of Cyprus. He submits that his removal in such circumstances constitutes an unjustifiable interference with his rights under this provision. He refers in this context to the judgments of the European Court of Human rights in the cases of Dudgeon (judgment of 22 October 1981, Series A no. 45) and Norris (judgment of 26 October 1988, Series A no. 142) where the 'criminalisation of homosexual behaviour was held to constitute a breach of Article 8 (Art. 8) of the Convention. He emphasises that he is thus being returned to a country whose criminal laws in respect of homosexuality are in breach of the Convention.
The Commission, however, in assessing this claim must attach significant weight to the reasons for his deportation, namely, the fact that he stayed for some considerable time in the United Kingdom without leave. Moreover while the evidence indicates that the applicant might at some stage in the future be subject to the risk of prosecution for homosexual acts it does not indicate that the risk is high. Furthermore, the evidence adduced in the course of the proceedings for judicial review does not show that homosexuals in the northern part of Cyprus are persecuted by the authorities.
The Commission considers that even if the applicant's deportation were to constitute an interference with the right to respect for private life against the background of the Dudgeon and Norris judgments such interference was in accordance with the law (the Immigration Act of 1971) and justified as being necessary in a democratic society for the prevention of disorder under the second paragraph of Article 8 (Art. 8) as a legitimate measure of immigration control. The Commission refers in this respect to its case-law which highlights the close connection between the policy of immigration control and considerations pertaining to public order (see No. 9285/81, Dec. 6.7.82, D.R. 29 p. 205). It finds that notwithstanding the possibility that the applicant will be subjected to hostility and social ostracism because of his homosexuality the considerations relating to respect for private life in this case do not outweigh valid considerations relating to the proper enforcement of immigration controls.

56. *Fadele Family v. United Kingdom*

Appl. no. 13078/87, np.

Admissibility Decision - (Admissible - Friendly settlement)

12 February 1990

Extract: The applicants have complained of the refusal of British immigration authorities to allow the first applicant (a Nigerian) to join the other three applicants, his children (British), in the United Kingdom after the death of the wife/mother...
the Commission concludes that it is unable to deal with the applicants' complaint under Article 13 (Art. 13) of the Convention as they have failed to respect the six months' rule laid down in Article 26 (Art. 26) of the Convention. This part of the application must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.
As regards the remainder of the application, the Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under Articles 3 and 8 (Art. 3, 8) (private and family life and home) of the Convention and Article 2 of Protocol No. 1 (P1-2), the determination of which should depend on an examination of the merits. The Commission concludes, therefore, that the remainder of the application is not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and that no other grounds for declaring this part of the case inadmissible have been established.

57 *Djeroud v. France*

Appl. no. 13446/87.

Commission Report

15 March 1990

Extract: 55. The Commission notes in the first place that all the applicant's close relatives have been resident in France for a long time. It considers that the breaks in the applicant's family life, which were not desired by him and were due to his terms of imprisonment in France and in Switzerland and his stays in Algeria, did not put an end to his family relationships. On the contrary, certain circumstances of the case and, in particular, the fact that the applicant was supported by his family in his approaches to both the French authorities and the Commission and the albeit reprehensible fact that he violated the compulsory residence order on several occasions in order to visit his family in Mulhouse, show that genuine family ties did exist. It must be concluded that the enforcement of the deportation order in the applicant's present circumstances is likely to compromise the continuation of his family life within the meaning of Article 8 of the Convention and therefore amounts to an interference with the applicant's right to respect for his family life (Moustaquim v. Belgium, Comm. Report of 12.10.89, para. 52).
56. According to constant case-law an interference with the right to respect for family life entails a violation of Article 8 unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 para. 2 and was "necessary in a democratic society" for the aforesaid aim or aims (see, inter alia, Eur. Court H.R., W. v. the United Kingdom, judgment of 8 July 1987, Series A no. 121, p. 27, para. 60 (a)).
57. The Commission notes that the obligation imposed on the applicant to leave French territory is based on Section 23 of the Order of 2 November 1945 on the conditions for aliens' entry into and residence in France. In the circumstances, any interference on the part of the French authorities in the event of deportation of the applicant is in accordance with the law...
59. The Commission considers that the deportation order was aimed at preventing disorder. Indeed, in view of the applicant's convictions, expulsion was justified on the ground of protecting public order in France. Looked at in the light of Article 8 para. 2 of the Convention, therefore, the interference at issue was in line with the legitimate aim authorised by the Convention...62. With regard to the interpretation of the expression "necessary in a democratic society", the Commission recalls first of all that, in determining whether an interference is "necessary in a democratic society", account has to be taken of

the margin of appreciation left to Contracting States (see, inter alia, Eur. Court H.R., Olsson judgment of 24 March 1988, Series A. No. 130, pp. 31-32, para. 67). It is true that the Convention does not in principle prohibit the Contracting States from regulating the entry and length of stay of aliens. However, the criterion of "necessity" implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued (Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, pp. 15-16, para. 28).

63. In considering whether this latter condition has been met, the Commission notes that it is not required to pass judgment on the policy as such applied by France to the expulsion of second-generation immigrants. Its main role is to ascertain whether, in the present case a fair balance has been struck between the legitimate aim pursued and the seriousness of the interference with the applicant's right to respect for his family life (Moustaquim Report, op. cit. para. 61).

64. With regard to the seriousness of the infringement in the present case, it must be emphasised first and foremost that the applicant arrived in France when he was less than one year old, that he lived there until he was at least 21, that is to say until he left France after a deportation order was issued against him, and that he does not speak Arabic. Although legally an alien, the applicant has his family and social ties in France, and the nationality which links him to Algeria, though a legal reality, does not reflect his actual position in human terms. With regard to the possibility, mentioned by the Government, of acquiring French nationality through naturalisation, it is probable, as the applicant claims, that such naturalisation would have been denied him on the basis of Article 68 of the Nationality Code (see para. 49).

In the circumstances, the Commission considers that the interference with the applicant's family life must be scrutinised with particular care.

65. In the Commission's opinion a State must take into account the consequences which may flow from the deportation of an alien from his place of residence. This is all the more necessary when the person concerned does not speak the language of his country of origin and has no family or other social links with that country. An order for his deportation to that country - the only one in which he has the right of permanent abode - places him in such a difficult position that only in exceptional circumstances could it be justified as proportionate to the aim pursued under Article 8 para. 2 (Moustaquim Report, op. cit., para. 63).

In the present case, the Commission considers that the sentences which were imposed on the applicant and on which the deportation was grounded do not constitute such exceptional circumstances. This is shown by the fact that, following his return to France, the applicant obtained a provisional residence permit on 17 June 1982, which was regularly renewed until 11 February 1985, the date on which he was expelled to Algeria. In this connection, the Commission notes that, after being deported in 1985 and 1987, the applicant came back to France on each occasion and has lived there without interruption since 1987.

66. It is true that in 1982 and 1984, following his return to France, the applicant was sentenced to two one-month terms of imprisonment one for unauthorised assumption of identity, the other for theft and receiving stolen goods. It was these two convictions which partly justified the enforcement of the deportation order dated 11 February 1985. In the Commission's opinion, it cannot reasonably be claimed that these offences made the applicant such a threat to public order that considerations of public order had to be given priority over family considerations. The same is true of the three infringements of the deportation order and the compulsory residence order.

67. In the circumstances of the present case, the Commission does not believe that a fair balance was struck between the interests at stake. Consequently, the interference with the exercise of the rights guaranteed to the applicant by Article 8 para. 1 of the Convention was not proportionate to the legitimate aim pursued and was therefore not justified under Article 8 para. 2 of the Convention.

68. The Commission takes the view that the deportation of a person from one country where he has lived almost all his life to another country with which his sole links are the formal ties of nationality may raise issues not only from the standpoint of respect for his family life but also in connection with respect for his private life. Having found that there has been a violation of Article 8 of the Convention in this case, because of the lack of respect for the applicant's family life, the Commission does not consider it necessary to rule on whether there was also interference with the applicant's private life.

69. The Commission concludes, by thirteen votes to one, that there has been a violation of Article 8 of the Convention in the present case.

58. *B v. United Kingdom*

Appl. no. 14507/89, np.

Admissibility Decision

2 April 1990

Extract: The Commission notes that the applicant originally sought entry to the United Kingdom to visit her sister only. She gave the immigration authorities misleading details about her marital status and access to the children. It also notes that she renounced much of her contact with her children in allowing them to live with their paternal grandparents and apparently agreeing to them going to live in the United Kingdom with their father. As a result she has apparently become estranged from the children. (They are over 10 and 11 years old.) From the point of view of British immigration, the applicant's ex-husband has settled in the United Kingdom with a complete family unit, a wife and three children, including the applicant's two children. The Commission does not consider that Article 8 (Art. 8) of the Convention obliges a Contracting State to allow an ex-wife, who is a non-national never having lawfully resided in that country other than as a temporary visitor, to enter and settle in order to facilitate access to children. The Commission finds no elements in the present case which warrant a departure from this principle. The Commission concludes, therefore, that the United Kingdom Government have not failed to respect the applicant's right to respect for family life. Accordingly this aspect of the case must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

59. *Odedra v. United Kingdom*

Appl. no. 14742/89, np.

Admissibility Decision

4 April 1990

Extract: The applicant complains that the refusal of British immigration authorities to allow her husband to enter the United Kingdom to settle with her constitutes a breach of Article 8 (Art. 8) of the Convention...

The Commission notes that the British immigration authorities had reasonable grounds to consider that the husband had not shown that originally the main purpose of his marriage to the applicant, a British citizen, was not to immigrate to the United Kingdom. The Commission also observes that the applicant's husband apparently has no strong ties with the United Kingdom, not having lived there for a reasonable period of time and not having any relatives there apart from the applicant. Moreover there seem to be no serious obstacles preventing the applicant following her husband to India. In the light of these circumstances, the Commission concludes that there has not been an interference with the applicant's right to respect for family life ensured by Article 8 para. 1 (Art. 8-1) of the Convention and that, accordingly, the case must be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

60. *Cruz Varas, Lazo and Cruz v. Sweden*

Appl. no. 15576/89, np.

Commission Report

7 June 1990

Extract: 99. The Commission is satisfied that Mr. Cruz Varas' expulsion, based on the provisions of the Aliens Act, was lawful and formed part of the enforcement of the policy of immigration control.
100. The Commission also observes that the Swedish authorities planned to expel all the applicants together but that they were prevented from doing so, as the second and third applicants evaded the expulsion by going into hiding. It is also recalled that Mr. Cruz Varas had been taken into custody on 4 October 1989 in order to ensure the enforcement of the expulsion order. The fact that the second and third applicants evaded the expulsion is as such outside the responsibility of the respondent State. The question is whether it was nevertheless acceptable to expel Mr. Cruz Varas alone, thereby splitting up the family.
101. The Commission considers that in general the options open to the authorities would either be to take the whole family into custody in advance to ensure the expulsion or not to enforce the expulsion of Mr. Cruz Varas. None of these options is free from reproaches. If in cases of this kind whole families were taken into custody, this would mean a considerable increase of individuals deprived of their liberty and i notably children. If, on the other hand, one member of the family was not expelled when other members of the family had gone into hiding,this would seriously impede the effectiveness of the immigration control. It should also be recalled that in the present case the Swedish authorities had first planned to enforce the expulsion order on 28 October 1988. However, none of the applicants appeared in time for the departure and the expulsion was therefore cancelled.
102. The Commission is therefore of the opinion that the splitting up of the family, as a result of the family members' failure to comply with lawful orders, does not show lack of respect for the applicants' family life.
103. In view of the above, the Commission finds that, in the
circumstances, the separation of the family was not a violation of Article 8 of the Convention.
104. The Commission concludes, by a unanimous vote, that there has been no violation of Article 8 of the Convention.

61 *Beldjoudi and Teychene v. France*

Appl. no. 12083/86.

Commission Report

6 September 1990

Extract: 53. The applicants contend that the impending expulsion from France of the first applicant contravenes Article 8 of the Convention...
55. The Commission will first consider whether there were real and effective family ties between the first applicant and his family. The first applicant points out that his wife, his parents and his brothers and sisters live in France. The Government observe that it has not been claimed that the second applicant would be prevented from accompanying the first applicant to Algeria or a third country should he be expelled from French territory.
56. The Commission notes that the facts show that the first applicant lived in France with his parents from his birth until October 1969 and, since that date, has lived with the second applicant, whom he married in 1970. Accordingly, it considers that the enforcement of the deportation order in the present circumstances is liable to compromise the continuation of their family life within the meaning of Article 8 of the Convention and therefore amounts to an interference with the right of both applicants to respect for their family life (Moustaquim v. Belgium, Comm. Report 12.10.89, para. 52, Djeroud v. France, Comm. Report 15.3.90, para. 55).
57. According to constant case-law an interference with the right to respect for family life entails a violation of Article 8 of the Convention unless it was "in accordance with the law",

had an aim or aims that is or are legitimate under Article 8 para. 2 and was "necessary in a democratic society" for the aforesaid aim or aims (see, inter alia, Eur. Court H.R., W. v. the United Kingdom, judgment of 8 July 1987, Series A no. 121, p. 27, para. 60 (a)).

58. It is necessary to point out that the deportation order is based on Section 23 of the Order of 2 November 1945 on the conditions for aliens' entry into and residence in France. That being so, any interference on the part of the French authorities in the event of deportation is in accordance with the law.

59. As to the aims pursued by the deportation order, the Commission, like the Government considers that the deportation order was manifestly aimed at the prevention of disorder and crime. In view of the first applicant's convictions prior to 1979, including a case of aggravated theft for which he was sentenced to eight years' imprisonment, the purpose of the expulsion was to safeguard public order in France. Looked at in the light of Article 8 of the Convention, therefore, the interference at issue was in line with the legitimate aims authorised by the Convention...

62. With regard to the interpretation of the expression "necessary in a democratic society", the Commission recalls first of all that in determining whether an interference is "necessary in a democratic society", it is appropriate to be take account of the margin of appreciation left to Contracting States (see inter alia, Eur. Court H.R., Olsson judgment of 24 march 1988, Series A no. 130, pp. 31-32, para. 67). It is true that the Convention does not in principle prohibit the Contracting States from regulating the entry and length of stay of aliens. However the criterion of "necessity" implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued (Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, pp. 15-16, para. 28).

63. In considering whether this latter condition has been met, the Commission notes that it is not required to pass judgment on the policy as such applied by France to the expulsion of second-generation immigrants. Its main role is to ascertain whether, in the present case, a fair balance has been,struck between the legitimate aim pursued and the seriousness of the interference with the applicants' right to respect for their family life (Moustaquim Report, op. cit., para. 61).

64. With regard to the seriousness of the interference in the present case, it must be emphasised that the first applicant was born and has always lived in France. Nor is it disputed that, until 1963, the first applicant possessed French nationality owing to his birth in France to parents who were in Algeria at the time of French sovereignty over that territory. After the independence of Algeria, he lost his French nationality through the application of Section 1 of the Act of 20 December 1966. In accordance with that article, he is regarded as having lost French nationality on 1 January 1963. He has not recovered it because his declaration of reintegration was rejected by decree. However, the fact remains that, although in law he is an alien, the first applicant has all his family and social ties in France and the nationality link, though a legal reality, in no way reflects the real situation in human terms. It must also be pointed out that in 1970 the first applicant married the second applicant, who is of French nationality.

In the circumstances, the Commission considers that the interference with the first applicant's family life must be scrutinised with particular care.

65. In the Commission's opinion, a State must take into account the consequences which may flow from the deportation of an alien from his country of residence. This is all the more necessary when the person concerned does not speak the language of his country of origin and has no family or other social links with that country. In such a situation, an order for deportation to that country is in general a measure of such severity that only in exceptional circumstances could it be justified as being proportionate to the aim pursued under Article 8 para. 2 (Moustaquim Report, op. cit., para. 63 and Djeroud Report, op. cit., para. 65).

66. The Commission recalls first of all that it has on several occasions had to examine cases in which, as in the present case, a married man was forced to leave a State in which he was living with his wife. In those cases the Commission considered that consideration must be given to the possibility of the wife following her husband (Application No. 8041/77, Dec. 15.12.77, D.R. 12 p. 197; Application No. 9478/81, Dec. 8.12.81, D.R. 27 p. 243 and Application No. 11333/85, Dec. 17.5.85, D.R. 43 p. 227). Such a solution might be contemplated even when one or more of the persons concerned are nationals of the country which orders the deportation of a member of their family (see Application No. 11278/84, Dec. 1.7.85, D.R. 43 p. 216). In the present case, however, it is the opinion of the Commission that the first applicant's wife may have good reasons for not following him to Algeria.

67. The Commission attaches particular importance to the fact that the first applicant committed a number of offences when of full age and committed further offences after notification of the deportation order issued against him in 1979. Nevertheless, the offences which gave rise to the deportation order although serious, were not of such a nature that considerations of public order in the application of Article 8 of the Convention, should outweigh family considerations. The same is true of the offences for which the first applicant was convicted after the deportation order. The Commission notes, moreover, that the French authorities have in fact tolerated the continuing presence of the first applicant on French territory for several years. The deportation order has not in fact been enforced and in 1984 the first applicant was offered a temporary residence permit by the Hauts-de-Seine prefecture. On 31 August 1989 the Minister for the Interior, wishing to give the first applicant a last chance, issued a compulsory residence order.
68. It follows that in the present case there are no exceptional circumstances which, in spite of the integration of the first applicant into French society, would be such as to justify his deportation to Algeria. Consequently, his deportation would constitute an interference with the exercise of the rights secured to the applicants by Article 8 para. 1 of the Convention and would not be justified under Article 8 para. 2.
69. The Commission also takes the view that the deportation of a person from the country in which he has lived all his life to another country with which his only links are the formal ties of nationality may raise issues not only from the standpoint of respect for his family life but also in connection with respect for his private life. Having found that there has been a violation of Article 8 of the Convention in this case, through failure to respect the first applicant's family life, the Commission does not consider it necessary to examine whether his right to respect for his private life has also been violated.
70. The Commission concludes, by 12 votes to 5, that the deportation of the first applicant would constitute a violation of the right of both applicants to respect for their family life within the meaning of Article 8 of the Convention.

Extract: 82. Lastly, the applicants complain that the fact that the first applicant was, without his knowledge, retroactively attributed Algerian nationality as a result of Section 1 (2) of the Act of 20 December 1966 constitutes a violation of Articles 9 and 12 of the Convention by the French authorities...
The Commission does not find, in the facts referred to by the applicants, any appearance of a violation of these Articles of the Convention.
84. The Commission concludes unanimously that there has been no violation of Articles 9 and 12 of the Convention.

62 *Yousef v. United Kingdom*

Appl. no. 14830/89, np.

Admissibility Decision - (Admissible - Art. 31 report adopted July 1992 by Commission - not yet public)

8 November 1990

Extract: The applicant claimed, inter alia, that the refusal to allow him to re-enter the United Kingdom severed the bond he had with his first child and constituted an unjustified interference with his right to respect for family life...
The Government submitted, inter alia, that the applicant had not exhausted domestic remedies and that the application was anyway manifestly ill-founded because the applicant had had only limited contact with his first child before actually leaving the United Kingdom and, according to the applicant's ex-wife, he had made no attempt to maintain contact with his son since leaving the United Kingdom, apart from one letter in March 1989. The Government also argued that the applicant could have applied to return to the United Kingdom either as a visitor or as the fiance of the mother of his second child. Thus, either the refusal to allow the applicant to enter the United Kingdom did not constitute an interference with his right to respect for family or, if it did, the interference was justified for the prevention of disorder, within the meaning of Article 8 para. 2 of the Convention, which notion encompasses the effective enforcement of immigration controls.

The Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application as a whole. The Commission concludes, therefore, that the application is not manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention. No other grounds for declaring it inadmissible have been established.

C3. *Moustaquim Case*

31/1989/191/291 Series A , no. 193, §§ 33-47.

Court Judgment

18 February 1991

(See Article 8 Court Cases)

C4. *Cruz Varas and others Case*

46/1990/237/307 Series A , no. 201, §§ 87-89.

Court Judgment

20 March 1991

(See Article 8 Court Cases)

63. *Hopic and Hopic-Destanova v. Switzerland*

Appl. no. 13158/87, np.

Admissibility Decision

4 July 1991

Extract: The applicants consider that the impossibility for them to live together during the time that their request for a residence permit was pending constitutes inhuman treatment within the meaning of Article 3 (Art 3) of the Convention...
The applicants further argue that the refusal to grant the wife a residence permit on the ground that the applicants were not lawfully married at the time amounts to a breach of Article 8 (Art 8). The refusal also constituted a de facto hindrance to the enjoyment of the rights set forth in Article 12 (Art 12)...
The Commission notes that the decision by the Dutch administrative authorities not to grant the wife a residence permit was based on the fact that there was no joint household, the marriage concluded according to Gypsy rites not being legally recognised under Dutch law. The Judicial Division of the Council of State, called upon to decide whether the above decision could be regarded lawful was bound by the facts, which constituted the basis of the challenged decision, and could not take into account factual or legal elements which had occurred subsequent to the challenged decision, such as the marriage concluded on 27 November 1981, and which was regarded valid under Dutch law. Nothing prevented the wife however to present a new request for a residence permit as soon as she got married to Mr. Hopic, who had an unrestricted right of residence and to invoke these changed circumstances in order to be granted a residence permit for the purpose of family reunification. However, she did so only several years later. The Commission therefore

considers that the fact that the applicants were unable to have a family life in the Netherlands between 1982 and 1988 is to be attributed to the wife's tarrying in taking the necessary administrative steps.

64. *G v. Switzerland*[2]

Appl. no. 17124/90, np.

Admissibility Decision - (Admissible - no report yet adopted)

12 July 1991

Extract: The Applicant complains that the measures leading to his deportation from Switzerland constituted an interference in his right to family life contrary to Article 8 of the Convention. The Applicant emphasised his wish to continue to live with his wife and child. A decision to deport him would lead to the destruction of his family and to the final separation from them. The Applicant does not deny that the state has an interest to prevent crime but emphasises that all the infractions for which he has been accused were minor...
So far as the necessity of the measure in a democratic society is concerned, the Government argues that the measure was justified by the fact that the Applicant had committed numerous criminal offences, the constant repetition of which showed that the perpetrator did not respect the established order. Furthermore, the authorities formally warned him of the risk of expulsion from Switzerland in the case of recidivism. Taking these facts into account, and the scope permitted to Contracting states to determine the necessity of a measure limiting the rights guaranteed by Article 8 of the Convention, the Government contends that the measure in question was necessary in democratic society and consequently justified under Article 8 paragraph 2 of the Convention...
The Commission has examined the complaint of the Applicant in light of the submissions of the parties, of its jurisprudence and of the jurisprudence of the European Court of Human Rights (cf. No. 6357/73, 8.10.74, DR 1 p. 77; No. 8041/77, 15.12.77, DR 12 p. 197; No. 11278/84, 1.7.85, DR 43 p. 216; Eur. Court H.R. Berrehab judgement of 21.6.88, series A no. 138; Moustaquim judgment of 18.2.91, series A no. 193). It considers that the Application raises complex questions of fact and of law which necessitate closer examination and this being the case, cannot be considered as manifestly ill-founded.

65. *Abbas v. France*[3]

Appl. no. 15671/89, np.

Admissibility Decision - (Admissible - Friendly Settlement)

6 December 1991

Extract: The Applicant complains that his expulsion from France constitutes an interference with his private and family life which is not justified by paragraph 2 of Article 8. This interference is particularly serious because the Applicant leaves behind his grandmother, already very elderly, who brought him up after his parents abandoned him at the age of three. In addition, the applicant does not speak Arabic and no longer has relations in Algeria who could accommodate him...
Referring to the Commission's analysis in the cases of Djeroud and Moustaquim, the Applicant recalls that he arrived in France at the age of three. Although legally a foreigner,

[2]Original French - translation: James Davies.
[3]Original French - translation: James Davies.

he has all his family and social connections in this country. As far as his connections of nationality are concerned, if they correspond to the legality of the situation, he does not consider that they correspond to the reality...
The Government argues that the particular seriousness of the acts of indecency, corruption of a minor, procuring, acquiring, possessing and using drugs shows that this expulsion constitutes, as understood by the Commission, a necessary measure in a democratic society for the prevention of disorder and crime and for the protection of health. This measure cannot be regarded as disproportionate, having regard to the legitimate aims pursued...
The Commission has carried out an initial examination of the facts and of the submissions of the parties. It considers that the problems raised by this case are sufficiently complex to require an examination of the merits.
This part of the application cannot therefore be rejected as being manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention.

66 *Lamguindaz v. United Kingdom*

Appl. no. 16152/90, np.

Admissibility Decision - (Admissible - Article 31 Report to be presented in October 1992)

17 February 1992

Extract: The applicant complains that the deportation constitutes an interference with his right to respect for his family and private life contrary to Article 8 of the Convention and that it also discloses discrimination on the ground of nationality contrary to Article 14 of the Convention...
The applicant submits that the deportation order is a penalty which is a disproportionately harsh response to his criminal record, in respect of which he points out that his family is entirely based in the United Kingdom where he was brought up and that he had difficulties in understanding and communicating in Arabic. He submits that the measure was not justified by a "pressing social need", and that the penalties of the criminal courts were available in the event of his reoffending.
The Government argue that the deportation did not substantially interfere with the applicant's private or family life, in particular, in view of the applicant's previous lengthy stay in Morocco from 1988 to 1989. They submit that the deportation pursued the legitimate aim of the prevention of crime and was not disproportionate, having regard to the State's margin of appreciation, the applicant being a habitual offender and the offences concerning wounding and drugs being particularly serious.
Having regard to the observations of the parties and to the Court's decision in Moustaquim (Eur. Court H.R., Moustaquim judgment of 18 February 1991, Series A no. 193) the Commission considers that the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The application cannot therefore be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention and no other grounds for declaring the application inadmissible have been established.

C5. *Beldjoudi Case*

55/1990/246/317 Series A , no. 234-A, §§ 65-79.

Court Judgment

26 March 1992

(See Article 8 Court Cases)

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions an receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, televisior cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

1. *Agee v. United Kingdom*

Appl. no. 7729/ 76, DR 7 p. 164 (174-175).

Admissibility Decision

17 December 1976

Extract: However, Article 10 does not in itself grant a right to asylum or a right for an alien to stay in a given country. Deportation on security grounds does not therefore as such constitute an interference with the rights guaranteed under Article 10. It follows that an alien's rights under Article 10 are independent of his right to stay in the country and do not protect this latter right. In the present case the Applicant has not, whilst in the jurisdiction of the United Kingdom, been subjected to any restrictions on his rights to receive and impart information. Nor has it been shown that the deportation decision in reality constituted a penalty imposed

on the Applicant for having exercised his rights under Article 10 of the Convention, rather than the proper exercise on security grounds of the discretionary power of deportation reserved to States.

Extract: However, the Commission does not consider that Article 11 can be interpreted as forbidding a State from deporting an alien on the ground that he has been in contact with foreign intelligence officers even if, under Article 11 he were entitled to have contact with such persons whilst in the jurisdiction of the State concerned. There is no indication that the applicant's freedom to associate with others has been interfered with whilst he has been in the United Kingdom. The Commission therefore considers this complaint also manifestly ill-founded within the meaning of Article 27 (2).

2. *Omkarananda and the Divine Light Zentrum v. Switzerland*

Appl. no. 8118/77, DR 25 p. 105 (118).

Admissibility Decision

19 March 1981

Extract: This provision [Art. 9] does not in itself grant a right for an alien to stay in a given country. Deportation does not therefore as such constitute an interference with the rights guaranteed by Article 9 (see, mutatis mutandis, decisions on Application No. 7729/76, Agee v. United Kingdom, Decisions and Reports 7, pp. 164, 174), unless it can be established that the measure was designed to repress the exercise of such rights and stifle the spreading of the religion or philosophy of the followers.

In the present case, the first applicant has not, whilst in the jurisdiction of Switzerland, been subjected by the authorities to any restriction on his rights to manifest his religion, in particular in teaching and worship. The question has been raised nevertheless whether at the time of the expulsion order complained of whether there were obvious reasons of public order to justify the measure or whether it must be suspected that the main purpose sought was to remove the source of an unwanted faith and to dismantle the group of his followers.

The Commission notes however that the expulsion order issued by the cantonal authorities and later extended by the Federal authorities to cover all the territory of the State was never carried out. If the first applicant is ever expelled it will be in pursuance of the judgement of the Federal Criminal Court sentencing him to fourteen years' imprisonment and fifteen years' expulsion from Swiss territory.

Such decision, based on obvious reasons of public order, constitute an exercise of the discretionary power of deportation reserved for States.

The Commission finds accordingly that there is no indication of any interference with the first applicant's right to freedom of religion as guaranteed by Article 9 (1). For the same reasons, his expulsion, though likely to deeply shake the DLZ, cannot be considered as an interference with the second applicant's right under the same provision. The complaint is therefore manifestly ill-founded within the meaning of Article 27 (2).

The above considerations under Article 9 of the Convention also apply to both applicants' claims under Articles 10 and 11 of the Convention. In the circumstances of the case, the purported expulsion cannot be seen as an interference with their rights to freedom of expression and association.

3 *Beldjoudi and Teychene v. France*

Appl. no. 12083/86.

Admissibility Decision - (Admissible - to Court)

11 July 1989

Extract: The applicants complain that enforcement of the deportation order issued in respect of the first applicant in 1979 would interfere with their right to respect for their private and family life as guaranteed by Article 8 of the Convention...
As for the merits of the complaints raised by the applicants under Articles 3, 8, 9, 12 and 14 of the Convention, the Commission has carried out an initial examination of the facts an of the submissions of the parties. It considers that the issues raised in the present case are sufficiently complex to require an examination of the merits.

4 *Beldjoudi and Teychene v. France*

Appl. no. 12083/86.

Commission Report

6 September 1990

Extract: 82. Lastly, the applicants complain that the fact that the first applicant was, without his knowledge, retroactively attributed Algerian nationality as a result of Section 1 (2) of the Act of 20 December 1966 constitutes a violation of Articles 9 and 12 of the Convention by the French authorities...
The Commission does not find, in the facts referred to by the applicants, any appearance of a violation of these Articles of the Convention.
84. The Commission concludes unanimously that there has been no violation of Articles 9 and 12 of the Convention.

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.

1. *Abdulaziz, Cabales and Balkandali Case*

15/1983/71/107-109 Series A , no. 94, §§ 93.

Court Judgment

28 May 1985

Extract: 93. The Court has found that the discrimination on the ground of sex of which Mrs. Abdulaziz, Mrs. Cabales and Mrs. Balkandali were victims was the result of norms that were in this respect incompatible with the Convention. In this regard, since the United Kingdom has not incorporated the Convention into its domestic law, there could be no "effective remedy" as required by Article 13 (see the Silver and Others judgment of 25 March 1983, Series A no. 61, pp. 42-44, paras. 111-119, and the Campbell and Fell judgment of 28 June 1984, Series A no. 80, p. 52, para. 127). Recourse to the available channels of complaint (the immigration appeals system, representations to the Home Secretary, application for judicial review see paragraphs 19 and 34-37 above) could have been effective only if the complainant alleged that the discrimination resulted from a misapplication of the 1980 Rules. Yet here no such allegation was made nor was it suggested that that discrimination in any other way contravened domestic law.
The Court accordingly concludes that there has been a violation of Article 13. [unanimous]

2. *Soering Case*

1/1989/161/217 Series A , no. 161, §§ 116-124.

Court Judgment

7 July 1989

Extract: 116. Finally, the applicant alleged a breach of Article 13...
119. The Court will commence its examination with judicial review proceedings since they constitute the principal means for challenging a decision to extradite once it has been taken.
Both the applicant and the Commission were of the opinion that the scope of judicial review was too narrow to allow the courts to consider the subject matter of the complaint which the applicant has made in the context of Article 3. The applicant further contended that the courts' lack of jurisdiction to issue interim injunctions against the Crown was an additional reason rendering judicial review an ineffective remedy.
120. Article 13 guarantees the availability of a remedy at national level to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order (see the above-mentioned Boyle and Rice judgment, Series A no. 131, p. 2 § 52). The effect of Article 13 is thus to require the provision of a domestic remedy allowing the competent "national authority" both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see, inter alia, the Silver and Others judgment of 25 March 1983, Series A no. 61, p. 42, § 113 (a)).
121. In judicial review proceedings the court may rule the exercise of executive discretion unlawful on the ground that it is tainted with illegality, irrationality or procedural impropriety (see paragraph 35 above). In an extradition case the test of "irrationality", on the basis of the so-called "Wednesbury principles", would be that no reasonable Secretary of State could have made an order for surrender in the circumstances (ibid.). According to the

United Kingdom Government, a court would have jurisdiction to quash a challenged decision to send a fugitive to a country where it was established that there was a serious risk of inhuman or degrading treatment, on the ground that in all the circumstances of the case the decision was one that no reasonable Secretary of State could take. Although the Convention is not considered to be part of United Kingdom law (ibid.), the Court is satisfied that the English courts can review the "reasonableness" of an extradition decision in the light of the kind of factors relied on by Mr Soering before the Convention institutions in the context of Article 3...

122. ...There was nothing to have stopped Mr Soering bringing an application for judicial review at the appropriate moment and arguing "Wednesbury unreasonableness" on the basis of much the same material that he adduced before the Convention institutions in relation to the death row phenomenon. Such a claim would have been given "the most anxious scrutiny" in view of the fundamental nature of the human right at stake (see paragraph 35 above). The effectiveness of the remedy, for the purposes of Article 13, does not depend on the certainty of a favourable outcome for Mr Soering (see the Swedish Engine Drivers' Union judgment of 6 February 1976, Series A no. 20, p. 18, § 50), and in any event it is not for this Court to speculate as to what would have been the decision of the English courts.

123. The English courts' lack of jurisdiction to grant interim injunctions against the Crown (see paragraph 35 in fine above) does not, in the Court's opinion, detract from the effectiveness of judicial review in the present connection, since there is no suggestion that in practice a fugitive would ever be surrendered before his application to the Divisional Court and any eventual appeal therefrom had been determined.

124. The Court concludes that Mr Soering did have available to him under English law an effective remedy in relation to his complaint under Article 3. This being so, there is no need to inquire into the other two remedies referred to by the United Kingdom Government.

There is accordingly no breach of Article 13. [unanimous]

3. *Vilvarajah and others Case*

45/1990/236/302-306 Series A , no. 215, §§ 117-127.

Court Judgment

30 October 1991

Extract: 117. The applicants further alleged that they had no effective remedy in the United Kingdom in respect of their Article 3 complaint as required by Article 13...

118. In their submission, in judicial review proceedings the courts do not control the merits of the Secretary of State's refusal of asylum but only the manner in which the decision on the merits was taken. In particular, they do not ascertain whether the Secretary of State was correct in his assessment of the risks to which those concerned would be subjected. Moreover, the courts have constantly stated that in reviewing the exercise of discretion in such cases they will not substitute their views on the merits of the case for that of the Secretary of State.

The applicants accepted that judicial review might be an effective remedy where, as in the Soering case (above-mentioned judgment of 7 July 1989, Series A no. 161), the facts were not in dispute between the parties and the issue was whether the decision was such that no reasonable Secretary of State could have made it. However, this was not so in their case where the question of the risks to which they would be exposed if sent back to Sri Lanka was the very substance of the dispute with the Secretary of State...

123. In its Soering judgment of 7 July 1989 (loc. cit., pp. 47-48, §§ 121 and 124) the Court considered judicial review proceedings to be an effective remedy in relation to Mr Soering's complaint. It was satisfied that the English courts could review the "reasonableness" of an extradition decision in the light of the kind of factors relied on by the applicant before the Convention institutions in the context of Article 3...

124. The Court does not consider that there are any material differences between the present case and the Soering case which should lead it to reach a different conclusion in this respect.
125. It is not in dispute that the English courts are able in asylum cases to review the Secretary of State's refusal to grant asylum with reference to the same principles of judicial review as considered in the Soering case and to quash a decision in similar circumstances and that they have done so in decided cases (see paragraphs 89-91 above). Indeed the courts have stressed their special responsibility to subject administrative decisions in this area to the most anxious scrutiny where an applicant's life or liberty may be at risk (see paragraph 91 above). Moreover, the practice is that an asylum seeker will not be removed from the United Kingdom until proceedings are complete once he has obtained leave to apply for judicial review (see paragraph 92 above).
126. While it is true that there are limitations to the powers of the courts in judicial review proceedings (see paragraphs 89-92 above) the Court is of the opinion that these powers, exercisable as they are by the highest tribunals in the land, do provide an effective degree of control over the decisions of the administrative authorities in asylum cases and are sufficient to satisfy the requirements of Article 13.
127. The applicants thus had available to them an effective remedy in relation to their complaint under Article 3. There is accordingly no breach of Article 13. [seven votes to two]

Vilvarajah and others Case

45/1990/236/302-306 Series A , no. 215, §§ 117-127.

Partly Dissenting Opinion of Judge Walsh

30 October 1991

Extract: 1. In my opinion the applicants' claim that there has been a breach of Article 13 of the Convention is well founded. The comparison of the present case with the Soering case is not well founded. In the latter case there was no disputed question of fact whereas in the present case the facts were in dispute. Judicial review does not exist to resolve such disputed issues. The purpose and extent of judicial review in the English courts is exclusively a matter for English law. I believe that the principles governing the exercise of that remedy are clearly set out in the following decisions of the English courts.
The Chief Constable of North Wales Police v. Evans (1982) 1 WLR p. 1155, per Lord Brightman at p. 1173-1174:
"Judicial review is concerned, not with the decision, but with the decision making procedure. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power .... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made."
In the same case the Lord Chancellor, Lord Hailsham, said at p. 1160:
"But it is important to remember in every case that the purpose of the remedies (of judicial review) is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is not part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question."
One of the grounds on which the decision making process may be subject to judicial review is where it exercises a power it has in so unreasonable a manner that the exercise becomes open to review on what in English law are known as the Wednesbury principles and frequently have been referred to with approval in the House of Lords and the Court of Appeal. The case from which they derive their name was Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (1948 1 KB 223, Per Lord Greene M.R. at pp. 230, 233):
"It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could have ever come to it, then the courts can interfere."

In the Council of Civil Service Unions v. Minister for the Civil Service (1984 3 A.E.R. 935) Lord Diplock said of the Wednesbury test:
"It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." (at p. 921).
In short the decision must be one which is indefensible for being in the teeth of plain reason and common sense and is plainly and unambiguously so. In the Wednesbury case it was stated that to prove a case of that kind "would require something overwhelming".
In the present case the claim of the U.K. Government that judicial review "controls" the decision of the immigration authorities must be qualified by the fact that in English law judicial review controls only the procedure and not the merits for the impugned decision.
This case was ultimately decided by the Adjudicator in favour of the applicant by an examination of the merits. Judicial review could not have entered into any examination of the merits for the purposes of deciding on the merits. An examination of the merits could only have been undertaken for the purposes of dealing with any claim that the immigration decision fitted within the criteria of unreasonableness or outrage referred to in the English cases above cited. That "would require something overwhelming" and nobody has claimed that any such overwhelming evidence of unreasonableness or outrageousness exists in the present case.
2. The national authority envisaged by Article 13 of the Convention is one before which an effective remedy can be obtained for a violation of the rights and freedoms set forth in the Convention. Judicial review cannot grant any relief simply on the grounds that the facts of any given case disclose a breach of the Convention. It may well be that in some cases in which there has in fact been such a breach judicial review may be available to set aside the decision impugned on the grounds that a fatal procedural defect in English law has been proved but this latter ground would be the sole ground. In such a case the existence of a breach of the Convention would be simply a coincidence. The English courts will not review a decision by reason only of the fact that the deciding authority failed to consider whether or not there was a breach of the Convention (see the Soering judgment of 7 July 1989, Series A no. 161, § 35). The view of the Court on the effectiveness of judicial review expressed at § 121 of the latter judgment can only be understood in the light of the circumstances of that case because there was no essential question of fact in issue and if there had been judicial review it would not have involved any dispute question of fact or any of the merits of that case. It was theoretically possible, but never put to the test, that the,English courts would, as a matter of English law, regard "the death row phenomenon" as being so barbarous that any Secretary of State permitting such an extradition would have (in the words of Lord Diplock) reached a decision which was "so outrageous in its defiance of ... accepted moral standards" that it would have to be set aside as a matter of law on the grounds that it was one that no reasonable authority could have arrived at it. If such an event had occurred in the English courts that would have been the end of the affair and there would have been no breach of Article 3 and the matter would not have reached the Convention organs. If such an application for judicial review had been unsuccessful the matter would ultimately have been decided by the Court as it did and judicial review would not have been held to satisfy Article 13.
3. It appears to me that a national system which it is claimed provides an effective remedy for a breach of the Convention and which excludes the competence to make a decision on the merits cannot meet the requirements of Article 13.

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.

1. *Harbhajan Singh Uppal et al v. United Kingdom*

Appl. no. 8244/78, DR 17 p. 149 (157).

Admissibility Decision

2 May 1979

Extract: As regards the applicants' complaint under Article 13 of the Convention the Commission finds that the possible appeals to the Adjudicator and Immigration Appeal Tribunal who are empowered under the Immigration Act 1971 to review and reverse the Home Secretary's decision constitute effective remedies should the subject of a deportation order claim that the Home Secretary has failed fully to consider his family situation. The fact that in the present case the appeals made to the Adjudicator and Immigration Appeal Tribunal were unsuccessful cannot amount to a breach of Article 13 of the Convention.

2 *X v. United Kingdom*

Appl. no. 8797/78, np, DS 4 p. 30.

Admissibility Decision

9 October 1980

Extract: However, the Commission finds that the possible appeals to the Adjudicator and Immigration Appeal Tribunal, who are empowered under the Immigration Act, 1971 to review and reverse the Entry Clearance Officer's refusal of entry, constitute effective remedies. The fact that in the present case the final appeal to the Immigration Appeal Tribunal found against the applicant's sons does not amount to a breach of Article 13 of the Convention or invalidate the efficacy of the appeal procedure.

3. *Mmes X, Cabales and Balkandali v. United Kingdom*

Appl. nos. 9214/80, 9473/81 and 9474/81, DR 29 p. 176 (182-183).

Admissibility Decision - (Admissible - to Court)

11 May 1982

Extract: The applicants have complained that the March 1980 Rules, as applied to them, constitute sex and race discrimination regarding their family lives, in breach of Articles 3, 8, 13 and 14 of the Convention...
The Government submit that the applicants' complaints are manifestly ill-founded, there being no discrimination on the grounds of sex, race, national origin or nationality, within the meaning of Article 14 of the Convention. and no evidence of a failure to respect family life, or degrading treatment or of an absence of effective domestic remedies.
The Commission considers that the present applications raise complex issues of law and fact in respect of Articles 3, 8 alone, 8 in conjunction with 14 and 13 of the Convention, the

determination of which issues should depend on an examination of the merits of the applications.
The Commission concludes that the applications cannot be regarded as manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention and no other ground for declaring them inadmissible has been established.

4. *Mmes X, Cabales and Balkandali v. United Kingdom*

Appl. nos. 9214/80, 9473/81 and 9474/81.

Commission Report

12 May 1983

Extract: 123. The applicants' final complaint is that there is no effective remedy available to them before a national authority in respect of their claims under Art 8, 130. The Commission now turns to the examination of the remedies which are in fact available in respect of the applicants' claims and whether these remedies are effective. The Government have cited three - the adjudicators, the Immigration Appeal Tribunals and representations to the Secretary of State.
a) The adjudicators and Immigration Appeal Tribunals
131. Under the Immigration Act 1971 the applicants' husbands had rights of appeal against the Secretary of State's refusal to allow them to remain in (first and third applicants) or enter (second applicant) the United Kingdom. The Commission notes, however, that the appellate authorities are bound to apply the current Statement of Changes in Immigration Rules, HC 394 at the material time. The Rules in HC 394, of which the applicants complain, contained no element of discretion in respect of which the appellate authorities could have substituted their evaluation for that of the Home Secretary. The Rules clearly prohibited the entry or stay of the foreign husbands of women who are not United Kingdom citizens born in the United Kingdom or one of whose parents was born there.
132. The Commission observes that these authorities may, at their discretion, recommend that the Secretary of State change his decision. making an exception to the Rules, but such recommendations, although taken very seriously by the Secretary of State, are not binding upon him.
133. The rights of appeal concerning deportation procedures are not relevant to the present cases, no such procedures having been instigated against the applicants' husbands.
b) Representations to the Secretary of State through Members of Parliament
134. It is clear that many Members of Parliament show active concern with the problems of their immigrant constituents. They often make representations to the Secretary of State in the hope of persuading him to exercise his discretion outside the relevant Immigration Rules. However it cannot be overlooked that such representations depend upon the willingness of the Member of Parliament to assist, and are not binding upon the Secretary of State.
c) The role of the Secretary of State
135. The Commission also observes that in respect of the remedies put forward by the Government, the ultimate decision concerning an immigrant's right to reside in the United Kingdom lies with the Secretary of State. It is he who issued the restrictive Rules of which the applicants complain, he who refused entry or permission to remain, to him that recommendations can be made by the appellate authorities or representations by Members of Parliament and he alone who can waive the Rules when all other avenues have been tried, despite the fact that one of his principal concerns must be to implement a uniform immigration policy. Furthermore, the Commission would add that it has found that the Home Secretary's Immigration Rules HC 394, as applied in the present cases, are not compatible with the Convention by virtue of sexual discrimination (para 109 above).
d) The courts
136. The Government have not made submissions concerning the supervisory role of the British courts in immigration matters. It suffices to note, however, that the courts would, like the aforementioned appellate authorities, be obliged to uphold the lawful application of the

immigration Rules in question. The refusal of immigration authorities to waive the requirements of the Immigration Rules HC 394 would not have been an exercise of discretion which could have been reviewed by the courts. Moreover they would not have been competent to deal with claims of discrimination or interference with the right to respect for family life allegedly caused by the lawful application of those Rules.

e) Conclusions of fact

137. The Commission finds that there is no domestic remedy available to the applicants which presents sufficient guarantees of independence and efficacy, and which could have satisfactorily dealt with their claims of discrimination, unjustified interference with their right to respect for family life or degrading treatment.

f) Conclusion under the Convention

138. The Commission is of the opinion by a vote of 11 against one that the absence of effective domestic remedies for the applicants' claims under Arts 3, 8 and 14 constitutes a violation of Art 13 of the Convention.

5. *Bozano v. France*

Appl. no. 9990/82, DR 39 p. 119 (143); YB 27 p. 118.

Admissibility Decision

15 May 1984

Extract: In the Commission's opinion, however, in the case of infringement of the right to liberty and security of person, Article 5 para. 4 must be considered as a *lex specialis* in relation to the general principle that an effective remedy must be available to any victim of a breach of the Convention. The Commission has just considered the complaint under Article 5 para. 4 and consequently considers it unnecessary to examine the merits of the question whether the facts amount to a violation of the more general principle contained in Article 13 (see No. 7341/78 Dec. 11.12.76, D.R. 6 p. 170, 180).

C1. *Abdulaziz, Cabales and Balkandali Case*

15/1983/71/107-109 Series A , no. 94, §§ 93.

Court Judgment

28 May 1985

(See Article 13 Court Cases)

6. *N.K. v. United Kingdom*

Appl. no. 9856/82, np.

Admissibility Decision

14 May 1987

Extract: It is relevant in this context that the applicant was able to take proceedings on a destination appeal and subsequently, by way of judicial review with an appeal to the House of Lords. These proceedings did not offer the applicant the opportunity to have his complaint of an alleged violation of Article 3 (Art. 3) of the Convention examined by the English courts. It appears that these remedies were not effective for this complaint and so did not satisfy the

requirements of Article 13 (Art. 13) of the Convention. Notwithstanding the limited scope of these proceedings, as a practical fact and as a matter of national law and practice they had suspensive effect upon the decision to remove the applicant to Sri Lanka. In .addition, although the applicant contends that he was not able to appeal against the substance of the Secretary of State's decision to deport him to Sri Lanka on the grounds that such deportation would have involved a violation of the Convention and thereby bring his claim to political asylum before the judicial authorities, the applicant has in fact been granted special leave to remain in the United Kingdom. Furthermore, this decision was made in the light of the political circumstances in Sri Lanka, and with reference to the contentions which the applicant has submitted as to the risks which his deportation to Sri Lanka would involve.
The respondent Government acknowledge that the applicant had no right of appeal against the merits of the decision of the Secretary of State to accept the recommendation of the Magistrates' Court that the applicant be deported following his arrest and conviction for overstaying. Nevertheless, the respondent Government have also explained a change in their policy as to the procedure which is now to be applied to persons who apply for asylum, after their leave to remain in the United Kingdom has expired. In this connection it is recalled that one of the applicant's complaints is specifically that he was deprived of any appeal on the merits of such a decision because of his status as an overstayer at the time of his asylum application. Under the new system, if an application for asylum is refused, the Secretary of State's notice of intention to deport on the ground that the .applicant is .an overstayer will be served under Section 3 (5)(a) of the 1971 Act, with the result that a would be asylum seeker would h.ave the right of appeal under Section 15 of the 1971 Act. In the course of such an appeal to the Adjudicator and then to the Immigration Appeal Tribunal such an asylum seeker will now be able to appeal against such notice of intention to deport on the basis that it would expose him to treatment contrary to Article 3 (Art. 3) of the Convention. In consequence, the legal circumstances in which the applicant found himself have been changed in such a way as to prevent their recurrence both for him, or for other individuals.
In view of these events the Commission concludes that as a matter of practical fact, the development in the circumstances of the present application have been such as to resolve the substance of the applicant's complaints. In these exceptional factual circumstances the applicant can now no longer claim to be a victim in respect~ of the alleged absence of a remedy as required by Article 13 (Art. 13) of the Convention for his allegation that his deportation would involve a breach of Article 3 (Art. 3) of the Convention.

7. *M v. United Kingdom*

Appl. no. 12268/86, DR 57 p. 136 (141-142).

Admissibility Decision

7 September 1988

Extract: The applicant submits that the remedy of judicial review is not effective in his case since the courts will not substitute their view of the merits of the asylum decision for that of the Secretary of State and limit their examination to the decision-making process. The applicant contends that his complaint is directed to the merits of the Secretary of State's decision to refuse asylum and not to the manner in which he took this decision.
The Commission considers that the applicant is required under Article 26 to have recourse to those remedies which would be adequate and effective to redress his complaints under the Convention. In this respect the Commission notes that the proceedings for judicial review which, according to the submissions of the respondent Government would still be open to him, would enable the applicant to seek to quash the Secretary of State's refusal of asylum with reference to many of the claims that the applicant makes to the Commission in the context of his complaint under Article 3 of the Convention. Some of these claims criticise the exercise of discretion by the Secretary of State in reaching his decisions on asylum and thus provide a possible basis on which proceedings for judicial review can be grounded. In the Commission's opinion such a remedy would have to be tried before the Commission

could examine the applicant's complaints, no evidence having been submitted which indicates that in the circumstances of this case the remedy is inadequate or ineffective .
The Commission concludes that the applicant has failed to exhaust domestic remedies as required by this provision and that his application must be rejected under Article 27 para. 3 of the Convention.

8. *Soering v. United Kingdom*

Appl. no. 14038/88

Admissibility Decision - (Admissible - to Court)

10 November 1988

Extract: The applicant complains under Article 3 of the Convention of his imminent extradition to the Commonwealth of Virginia in the United States of America on a charge of capital murder...
the applicant complains under Article 13 of the Convention that there exists under United Kingdom law no effective remedy in respect of his Article 3 complaint that he is likely to be subjected to the "death row phenomenon"...
The Commission considers, in the light of the parties' submissions, that the application as a whole raises complex issues of law and fact under the Convention, the determination of which depends on an examination of the merits of the application.
It concludes, therefore, that the application cannot be regarded as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention and no other ground for declaring it inadmissible has been established.

9. *Soering v. United Kingdom*

Appl. no. 14038/88

Commission Report

19 January 1989

Extract: 159. The applicant submits that he has no effective remedy in respect of his complaint under Article 3 of the Convention that he is likely to receive the death penalty and be subjected to the "death row phenomenon". He claims that the Secretary of State cannot be regarded as sufficiently independent and impartial to constitute an effective remedy. Furthermore, judicial review of the Secretary of State's decision is limited to the question of whether he acted reasonably and not to whether his decision is in conformity with the Convention.
160. The respondent Government contend, in the first place, that Article 13 does not apply because the applicant's complaint under Article 3 of the Convention is not 'arguable'. They further submit that this provision has no application in respect of an anticipated violation of the Convention since it would create potential difficulties for the domestic authorities both in terms of deciding whether a breach of the Convention was likely to occur and the nature of the remedy to be granted. Finally the Government accept that the courts could not review the exercise of discretion by the Secretary of State on the basis that the applicant might be exposed ~o treatment in breach of Article 3 but maintain that this provision is satisfied by the following remedies, taken on their own or in aggregate, an action for habeas corpus, a petition to the Secretary of State and judicial review of his decision...
162. The Commission recalls that the applicant's complaint under Article 3 of the Convention is a admissible complaint. Article 13 is thus applicable in the present case since the complaint is obviously "arguable" under Article 3 of the Convention.

163. Further, the Commission considers that this provision also applies in respect of "arguable claims" under Article 3 of the Convention which are prospective or anticipatory in nature. As the Commission stated above (see para. 108), the examination of such a complaint after extradition has taken place would hardly be consonant with an effective system of individual application. It follows from the nature of the guarantee under Article 13 that the requirement to provide an effective remedy must also extend in this domain to arguable claims made by a person whose extradition or expulsion is imminent and who may be exposed to harm which is irremediable in nature. Any other interpretation would substantially weaken the guarantee of an effective remedy under this provision.
164. As to the effectiveness of the remedies available under United Kingdom law in respect of this complaint, the Commission notes, firstly, that the remedy of habeas corpus was open to the applicant after the committal proceedings before Bow Street Magistrates' Court on 16 June 1987. However, it is clear that the courts can only examine the question whether the extradition proceedings were properly conducted in accordance with the law of the United Kingdom and cannot examine the applicant's allegations as to the treatment he would be exposed to in the United States. This remedy is not, therefore, an effective remedy for purposes of this provision.
165. Further, as regards a petition to the Secretary of State for Home Affairs, the Commission observes from Section 11 of the Extradition Act 1870 that it is incumbent on the Secretary of State to take the final decision to order the applicant's extradition following committal by a Magistrate. Moreover, it is the Secretary of State who orders the Magistrate to arrest a person with a view to extradition. In the light of the Secretary of State's role in the extradition procedure it cannot be said that he is independent of the parties in the exercise of his discretion under Section 11 (see paras. 38 and 39 above). For this reason the Commission does not consider that the possibility of petitioning the Secretary of State constitutes an effective remedy under this provision.
166. As regards judicial review proceedings following the Secretary of State's order, the Commission notes that it is not contested by the Government that the courts limit their examination to the question of whether the Secretary of State has acted illegally, irrationally or improperly and do not examine the applicant's fear that he might be exposed to inhuman or degrading treatment and punishment (see para. 40 above). Accordingly the Commission does not consider that judicial review proceedings constitute an effective remedy as required by this provision.
167. Finally, the Commission does not consider that the above remedies considered in aggregate provide an effective remedy. In the Commission's view the lack of effectiveness of each remedy, considered in isolation, is not cured by considering the aggregate of remedies as a whole since the imperfections which taint each ~ingle remedy remain (see Nos. 9659/87 and 9658/82, Rice and Boyle ~. the United Kingdom, Comm. Report 7.5.86, p. 126, para. 85).
168. It follows that the applicant does not have a~ effective remedy under the law of the United Kingdom in respect of his complaint under Article 3 as required by Article 13 of the Convention.
169. The Commission concludes, by seven votes to four, that there has been a violation of Article 13 in the present case.

10 *Vilvarajah and others v. United Kingdom*

Appl. nos. 3163-5/87 and 13447-8/87.

Admissibility Decision - (Admissible - to Court)

7 July 1989

Extract: The applicants have complained that their removal to Sri Lanka in February 1988 by the United Kingdom Government was in violation of Article 3 of the Convention, in respect of which alleged breach they claim to have no effective remedies, contrary to Article 13 of the Convention...

The Government ... contended that, even if the applicants could be said to have an arguable claim under Article 3 of the Convention, the applicants had had effective domestic remedies to test this claim, in particular by way of judicial review of the Secretary of State's refusal of political asylum and the appeals to an independent adjudicator under section 13 of the Immigration Act 1971 (cf. Eur. Court H.R., Soering judgment of 7 July 1989, paras. 120-124)...

The Commission considers, in the light of the parties' submissions, that the five cases raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the applications as a whole. The Commission concludes, therefore, that the applications are not manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention. No other grounds for declaring them inadmissible have been established.

C2. *Soering Case*

1/1989/161/217 Series A , no. 161, §§ 116-124.

Court Judgment

7 July 1989

(See Article 13 Court Cases)

11. *Vilvarajah and others v. United Kingdom*

Appl. nos.13163-5/87 and 13447-8/87

Commission Report

8 May 1990

Extract: 146. The applicants complained that they had no effective domestic remedy, contrary to Article 13 of the Convention to test their substantive Article 3 claim. They contended that the possibilities of representations by the United Kingdom Immigrants Advisory Service (UKIAS) and Members of Parliament on behalf of asylum seekers could not be considered remedies, there being no mandatory element involved in such interventions. The possibility of an appeal to an adjudicator under section 13 of the Immigration Act 1971 was rendered ineffective, in the applicants' view, by the fact that it could only be exercised from outside the United Kingdom, i.e. from Sri Lanka, in their case.

147. Finally, they submitted that judicial review was ineffective in their cases because it is limited to a review of whether the Secretary of State's decision refusing asylum was perverse, in the sense that he omitted to have regard to material evidence...

148. The Government relied on judicial review, the UKIAS referral system, representations by Members of Parliament and an appeal to an adjudicator under section 13 of the Immigration Act 1971 as remedies which, in aggregate, satisfied Article 13 of the Convention. Moreover, judicial review alone, as recognised by the Court in the Soering case, would satisfy the requirements of Article 13...

152. The Commission considers that the UKIAS referral system and representation by Members of Parliament (paras. 122-124 above) cannot be deemed effective remedies for the purposes of Article 13 of the Convention. Although UKIAS or a Member of Parliament may be able to influence the Secretary of State, who otherwise might have refused an asylum application, their intervention on behalf of an asylum seeker has no mandatory effect on that decision.

153. As regards the appeal to an independent adjudicator under section 13 of the Immigration Act 1971, the Commission finds that in many instances it would fully satisfy the requirements of Article 13 of the Convention. The adjudicator is empowered to examine the

full merits of each case, both as regards fact and law, and may hear evidence. The adjudicator may also substitute his evaluation for that of the Secretary of State and his decisions are largely binding. However this remedy was fatally flawed in the applicants' cases because it could only be exercised from outside the United Kingdom. The Commission finds that the protection required by Article 3 of the Convention cannot be ensured if a person has to return to the very country where he fears persecution before he can effectively appeal against the asylum refusal.

154. The Commission now turns to the remaining possibility of judicial review of the Secretary of State's decision to refuse asylum. It notes that in the Soering case the Court found that judicial review satisfied Article 13 of the Convention in respect of a claim that extradition from the United Kingdom to the United States of America, where the accused would probably face the "death row phenomenon", would be in breach of Article 3 of the Convention (Soering judgment, loc. cit. paras. 121-124). The Government have relied on this judgment as demonstrating the efficacy of judicial review for the purposes of the present cases. The applicants have sought to distinguish their cases from the Soering judgment.

155. The Commission considers that the remedy of judicial review does not meet the requirements of Article 13 of the Convention in the present case. The Commission notes that judicial review is available in respect of decisions taken under prerogative powers as well as in respect of decisions taken under statutory powers (see Council of Civil Service Unions v. Minister of the Civil Service <1984> 3 All E.R. 935). A successful challenge to a decision could however only be made on the Wednesbury basis (see para. 114 above) or, as formulated in the Civil Service Unions case, on the ground of illegality, irrationality or procedural impropriety. In the present cases the only ground on which the refusal of the Secretary of State to allow the applicants to remain in the United Kingdom could be challenged was that the decision was irrational, that is to say, a decision which no reasonable Secretary of State could have made. The Commission is of the opinion that the consideration of the possible perversity of the executive's decision in these cases is too restrictive an examination in view of what may be at stake, namely the possibility of someone being returned to a country where he would allegedly be a target for arbitrary detention, torture, disappearance or the like...

157. The Commission is also of the opinion that the present applications can be distinguished on the facts from the Soering case. In the Soering case the applicant, charged with particularly heinous offences, was to be returned to a stable country, the United States of America, where the rule of law and due process are respected. Mr. Soering had the benefit of proceedings before the magistrates court, whose findings led to the decision of the Secretary of State to extradite him to the United States. He also had the possibility of seeking a writ of habeas corpus, as well as judicial review. Moreover, the evidential issues on the question of the risk of the death penalty and the ensuing "death row phenomenon" were comparatively simple in that case.

158. ...The examination of the situation in Sri Lanka at the relevant time raised complex evidential issues which were not decided by the English courts. There was only one independent forum, that of limited judicial review by the High Court of the reasonableness of the Secretary of State's decision, before whom the present applicants could put their case prior to removal, but, as the Commission has already noted, this court did not even seek the disclosure of the material upon which the Secretary of State based his decision.

159. In the Commission's view, the remedies afforded to asylum applicants, for the purposes of Article 13 of the Convention, should be equal to, if not greater than, the judicial safeguards afforded in extradition proceedings. Yet in the present cases it seems that adequate safeguards were not forthcoming in the judicial review proceedings.

160. The Commission is not persuaded that the four remedies relied on by the Government could, as an aggregate, be said to satisfy Article 13 of the Convention. In matters as vital as asylum questions it is essential to have a fully effective remedy providing the guarantees of a certain independence of the parties, a binding decision-making power and a thorough review of the reasonableness of the asylum seeker's fear of persecution.

161. The Commission concludes, by 13 votes to one, that there has been a violation of Article 13 of the Convention, in that the applicants did not have any effective domestic remedies available to them in respect of their claim under Article 3 of the Convention.

C3. *Vilvarajah and others Case*

45/1990/236/302-306 Series A , no. 215, §§ 117-127.

Court Judgment

30 October 1991

(See Article 13 Court Cases)

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1. *Abdulaziz, Cabales and Balkandali Case*

15/1983/71/107-109 Series A , no. 94, §§ 70-89.

Court Judgment

28 May 1985

Extract: 70. The applicants claimed that, as a result of unjustified differences of treatment in securing the right to respect for their family life, based on sex, race and also - in the case of Mrs. Balkandali - birth, they had been victims of a violation of Article 14 of the Convention, taken together with Article 8...

71. ...The Court has found Article 8 to be applicable (see paragraph 65 above). Although the United Kingdom was not obliged to accept Mr. Abdulaziz, Mr. Cabales and Mr. Balkandali for settlement and the Court therefore did not find a violation of Article 8 taken alone (see paragraphs 68-69 above), the facts at issue nevertheless fall within the ambit of that Article. In this respect, a parallel may be drawn, mutatis mutandis, with the National Union of Belgian Police case (see the judgment of 27 October 1975, Series A no. 19, p. 20, para. 45).
Article 14 also is therefore applicable.
For the purposes of Article 14, a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, inter alia, the above-mentioned "Belgian Linguistic" judgment, Series A no. 6, p. 34, para. 10, the above-mentioned Marckx judgment, Series A no. 31, p. 16, para. 33, and the above-mentioned Rasmussen judgment, Series A no. 87, p. 14, para. 38). The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (see the above-mentioned Rasmussen judgment, ibid., p. 15, para. 40), but it is for the Court to give the final ruling in this respect.

73. In the particular circumstances of the case, the Court considers that it must examine in turn the three grounds on which it was alleged that a discriminatory difference of treatment was based.

Alleged discrimination on the round of sex

74. As regards the alleged discrimination on the ground of sex, it was not disputed that under the 1980 Rules it was easier for a man settled in the United Kingdom than for a woman so settled to obtain permission for his or her non-national spouse to enter or remain in the country for settlement (see paragraphs 23-25 above). Argument centred on the question whether this difference had an objective and reasonable justification...

78. The Court accepts that the 1980 Rules had the aim of protecting the domestic labour market...

78. ...Although the Contracting States enjoy a certain "margin of appreciation" in assessing whether and to what extent differences in otherwise similar situations justify a different treatment, the scope of this margin will vary according to the circumstances, the subject-matter and its background (see the above-mentioned Rasmussen judgment, Series A no. 87, p. 15, para. 40).
As to the present matter, it can be said that the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention...

79. ...In any event, the Court is not convinced that the difference that may nevertheless exist between the respective impact of men and of women on the domestic labour market is sufficiently important to justify the difference of treatment, complained of by the

applicants, as to the possibility for a person settled in the United Kingdom to be joined by, as the case may be, his wife or her husband...
81. The Court accepts that the 1980 Rules also had, as the Government stated, the aim of advancing public tranquillity. However, it is not persuaded that this aim was served by the distinction drawn in those rules between husbands and wives. 82. There remains a more general argument advanced by the Government, namely that the United Kingdom was not in violation of Article 14 by reason of the fact that it acted more generously in some respects - that is, as regards the admission of non-national wives and fiancees of men settled in the country - than the Convention required.
The Court cannot accept this argument. It would point out that Article 14 is concerned with the avoidance of discrimination in the enjoyment of the Convention rights in so far as the requirements of the Convention as to those rights can be complied with in different ways. The notion of discrimination within the meaning of Article 14 includes in general cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention.
83. The Court thus concludes that the applicants have been victims of discrimination on the ground of sex, in violation of Article 14 taken together with Article 8.[unanimous]
Alleged discrimination on the ground of race...
85. ...The 1980 Rules, which were applicable in general to all "non-patrials" wanting to enter and settle in the United Kingdom, did not contain regulations differentiating between persons or groups on the ground of their race or ethnic origin. The rules included in paragraph 2 a specific instruction to immigration officers to carry out their duties without regard to the race, colour or religion of the intending entrant (see paragraph 20 above), and they were applicable across the board to intending immigrants from all parts of the world, irrespective of their race or origin.
As the Court has already accepted, the main and essential purpose of the 1980 Rules was to curtail "primary immigration" in order to protect the labour market at a time of high unemployment. This means that their reinforcement of the restrictions on immigration was grounded not on objections regarding the origin of the non-nationals wanting to enter the country but on the need to stem the flow of immigrants at the relevant time.
That the mass immigration against which the rules were directed consisted mainly of would-be immigrants from the New Commonwealth and Pakistan, and that as a result they affected at the material time fewer white people than others, is not a sufficient reason to consider them as racist in character: it is an effect which derives not from the content of the 1980 Rules but from the fact that, among those wishing to immigrate, some ethnic groups outnumbered others.
The Court concludes from the foregoing that the 1980 Rules made no distinction on the ground of race and were therefore not discriminatory on that account. This conclusion is not altered by the following two arguments on which the applicants relied.
(a) The requirement that the wife or fiancee of the intending entrant be born or have a parent born in the United Kingdom and also the United Kingdom ancestry rule (see paragraphs 23, 24 and 20 above) were said to favour persons of a particular ethnic origin. However, the Court regards these provisions as being exceptions designed for the benefit of persons having close links with the United Kingdom, which do not affect the general tenor of the rules.
(b) The requirement that the parties to the marriage or intended marriage must have met (see paragraphs 22-24 above) was said to operate to the disadvantage of individuals from the Indian sub-continent, where the practice of arranged marriages is customary. In the Court's view, however, such a requirement cannot be taken as an indication of racial discrimination: its main purpose was to prevent evasion of the rules by means of bogus marriages or engagements. It is, besides, a requirement that has nothing to do with the present cases.
86. The Court accordingly holds that the applicants have not been victims of discrimination on the ground of race. [unanimous]
Alleged discrimination on the ground of birth...
87. ...It was not disputed that the 1980 Rules established a difference of treatment on the ground of birth, argument being centred on the question whether it had an objective and reasonable justification...
88. The Court is unable to share the Commission's opinion. The aim cited by the Government is unquestionably legitimate, for the purposes of Article 14. It is true that a person who, like Mrs. Balkandali, has been settled in a country for several years may also

have formed close ties with it, even if he or she was not born there. Nevertheless, there are in general persuasive social reasons for giving special treatment to those whose link with a country stems from birth within it. The difference of treatment must therefore be regarded as having had an objective and reasonable justification and, in particular, its results have not been shown to transgress the principle of proportionality. This conclusion is not altered by the fact that the immigration rules were subsequently amended on this point.
89. The Court thus holds that Mrs. Balkandali was not the victim of discrimination on the ground of birth. [unanimous]

2. *Moustaquim Case*

31/1989/191/291 Series A , no. 193, §§ 48-49.

Court Judgment

18 February 1991

Extract: 48. Mr Moustaquim claimed to be the victim of discrimination on the ground of nationality, contrary to Article 14 taken together with Article 8, vis-a-vis juvenile delinquents of two categories: those who possessed Belgian nationality, since they could not be deported; and those who were citizens of another member State of the European Communities, as a criminal conviction was not sufficient to render them liable to deportation.
The Government made no observations on the matter.
49. Like the Commission, the Court would reiterate that Article 14 safeguards individuals placed in similar situations from any discriminatory differences of treatment in the enjoyment of the rights and freedoms recognised in the Convention and its Protocols (see, among other authorities, the Marckx judgment of 13 June 1979, Series A no. 31, pp. 15-16, § 32).
In the instant case the applicant cannot be compared to Belgian juvenile delinquents. The latter have a right of abode in their own country and cannot be expelled from it; this is confirmed by Article 3 of Protocol No. 4.
As for the preferential treatment given to nationals of the other member States of the Communities, there is objective and reasonable justification for it as Belgium belongs, together with those States, to a special legal order.
There has accordingly been no breach of Article 14 taken together with Article 8. [unanimous]

3. *Beldjoudi Case*

55/1990/246/317 Series A , no. 234-A, §§ 79-81

Court Judgment

26 March 1992

Extract: 79. Having regard to these various circumstances, it appears, from the point of view of respect for the applicants' family life, that the decision to deport Mr Beldjoudi, if put into effect, would not be proportionate to the legitimate aim pursued and would therefore violate Article 8...
81. In view of the finding in paragraph 79 above, the Court does not consider it necessary also to examine the complaint that the applicants would, if Mr Beldjoudi were deported, suffer discrimination contrary to Article 14 in the enjoyment of their right to respect for their family life. [by eight votes to one]

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1. *Agee v. United Kingdom*

Appl. no. 7729/76, DR 7 p. 164 (176).

Admissibility Decision

17 December 1976

Extract: The applicant has alleged that, in addition to being a victim of a violation of Articles 3, 5, 6, 8, 10 and 11 in themselves, he has also been the victim of a violation of Article 14 in conjunction with these Articles. However, the Commission finds no indication that he has been discriminated against in his enjoyment of any of the rights in question contrary to Article 14. His status as an alien would in itself provide objective and reasonable justification for his being subject to different treatment in the field of immigration law to persons holding United Kingdom citizenship.

2. *48 Kalderas Gipsies v. Federal Republic of Germany and Netherlands*

Appl. nos. 7823-4/77. DR 11 p. 221 (231).

Admissibility Decision

6 July 1977

Extract: 56 In this application the applicants complain that they are being subjected to degrading treatment because the authorities of the Federal Republic have failed to issue them with aliens' passports or other documents of identity. Having regard to the fact that the Romanovs have left the territory of the Federal Republic this complaint must be regarded as being made by the remaining applicants of the Denisov and Nicolic families.
57. The Commission's case law establishes that there is no right as such in the Convention to obtain identity papers, but the Commission accepts, in the special circumstances of this case and considering that the applicants are nomads and have other ethnical peculiarities, that questions might arise under Articles 3 and 14 of the Convention concerning the respect for their human dignity and concerning their treatment.
53. However, the Commission is not required to decide whether or not the application discloses any appearance of a violation of these provisions as, under Article 26 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

3. *X and others v. United Kingdom,*

Appl. no. 9504/81, np, DS 4, p. 169.

Admissibility Decision

12 December 1977.

Extract: It is further complained that the deportation of the first applicant constitutes an unlawful discrimination contrary to Article 14 of the Convention. In this regard it is submitted that

there are a large number of immigrants with a worse criminal record than the applicant who are not deported. Furthermore the applicant complains of a statutory discrimination to be found in Section 7, subsection 1 (b) of the 1971 Act, which provides for an exemption from deportation for certain Commonwealth residents...
In so far as this complaint falls to be examined under Article 14 in connection with the right to respect for family life (Article 8), the Commission notes first of all that there is no evidence that the applicant was treated differently from other immigrants with a history of criminal convictions. Moreover, in respect of the applicant's second alleged head of discrimination, the Commission finds that the distinction between a Commonwealth citizen and other immigrants finds a reasonable and objective justification in the special relationship which exists between citizens of the Commonwealth and the United Kingdom. Accordingly, the Commission is not of the opinion that the applicant's complaints reveal discrimination contrary to Article 14.

4. *X v. United Kingdom,*

Appl. no. 7229/73, np, DS 4, p. 168.

Admissibility Decision

15 December 1977.

Extract: The applicants complain finally that their rights under Articles 8 and 12 have not been secured by reason of discrimination on the grounds of the sex of the second applicant, and/or the race, colour and national or social origin of both applicants, contrary to Article 14. However, the Commission finds no indication that the applicants have been discriminated against in the enjoyment of their rights under the above-mentioned articles, the second applicant, a citizen of India, having been subject only to the normal immigration restrictions applicable to Commonwealth citizens.

5. *Caprino v. United Kingdom*

Appl. no. 6871/75, YB 21 p. 284 (288-296)

Admissibility Decision

3 March 1978

Extract: The fact that deportation measures and the related detention are reserved for aliens is common to the legal systems of most member States of the Council of Europe and expressly covered by Art. 3 of the 4th Protocol. Although this Protocol has not been ratified by the United Kingdom there is certainly no room for declaring discriminatory under Art. 14 of the Convention a practice which is a legal obligation of other High Contracting Parties within the Convention system. There is therefore no possible basis for a complaint of discrimination in relation to nationals who are not subject to detention in view of deportation.
As regards a possible discrimination in relation to other aliens who are detained in view of deportation for other reasons than national security, the Commission finds that a difference of treatment in national security and other cases is based on a reasonable distinction which is not of itself discriminatory within the meaning of Art. 14. The wider discretion of the Minister to detain proposed deportees in national security cases and to withhold information from them as well as the limitation of legal remedies available to them to challenge the lawfulness of their detention can be justified. It is however essential that the minimum requirements laid down in Art. 5 of the Convention, and in particular in paras. (1) f, (2) and (4) thereof, are also respected in national security cases.

to respect for family life, the application of the relevant immigration rules (HC 394) being disproportionate to the purported aims of the measure. It is of the opinion, by a unanimous vote, that there has been a violation of Art 14 (on the ground of sexual discrimination), in conjunction with Art 8 in the present applications.

Extract: 110. The applicants have made the secondary claim that the Immigration Rules HC 394, as applied in their cases, subjected them to racial discrimination, the avowed aim of the Rules being to prevent immigration from the New Commonwealth and Pakistan. 114. As regards the policy, contained in the Immigration Rules HC 394, which is challenged in the present cases the Commission finds that the text of the Rules was not racist. It made no reference to particular racial groups and it was intended to be applied to all persons equally who fell within its scope. The fact that in the short-term the practical side-effect of the Rules was to exclude more men from the New Commonwealth and Pakistan than other countries, does not of itself, in the Commission's opinion, render them abhorrent on grounds of racial discrimination. The question still remains, however, whether the applicants have been victims of racial discrimination in the actual protection of their right to respect for family life.

115. The Commission finds no evidence of a difference in treatment of the applicants on grounds of their race. The case of the third applicant illustrates that the Rules, HC 394, were applied in these applications regardless of such considerations. She is of Egyptian origin; her husband is Turkish. Thus neither of them originates from the countries of the New Commonwealth or Pakistan. These Immigration Rules are thus shown to have been applied equally, without racial discrimination, to the foreign husbands of women who are not United Kingdom citizens born in the United Kingdom or one of whose parents was born there.

116. The Commission concludes that the applicants have not been subjected to racial discrimination in the protection of their right to respect for family life. It is of the opinion by a vote of 9 against 3 that there has been no violation of Art 14 (on the grounds of racial discrimination), in conjunction with Art 8 in the present applications.

Extract: 117. The third applicant has complained of discrimination under Art 14 in conjunction with Art 8, on the ground of her place of birth. The case of the third applicant has a special dimension in that she is a United Kingdom citizen, unlike the other two applicants.

118. The Commission considers that in granting a person citizenship, a State accepts that the individual has established close ties with its territory. By implementing a difference in the protection of the right to respect for family life, a difference based, like sex discrimination, on the mere accident of birth, with no account being taken in the Rules of the individual's person circumstances or merits, discrimination is perpetrated on the ground of birth contrary to Art 14, combined with Art 8.

119. The Commission notes, however, that the new Statement of Changes in Immigration Rules, HC 66, ended this difference in treatment between women British Citizens and that the applicant's husband was recently given leave to remain in the United Kingdom. The Commission welcomes this development, which goes a long way to settling the factual basis of the applicant's case. Nevertheless the Commission considers it appropriate to give its opinion on this aspect of the third applicant's claim, for reasons of general interest, in view of the fact that at the time of the Commission's decision on admissibility she was still subject to the original refusal under the Immigration Rules HC 394 and in view of the possible temporary nature of immigration rules.

120. The Commission is of the opinion, by a vote of 11 with one abstention, that the original application of the Rules HC 394, in the case of the third applicant, constituted discrimination on the ground of birth contrary to Art 14 in conjunction with Art 8.

Mmes X, Cabales and Balkandali v. United Kingdom

Appl. nos. 9214/80, 9473/81 and 9474/81.

Dissenting Opinion to Commission Report
Mr Carrillo, joined by MM Melchior and Weitzel

12 May 1983

Extract: we note that the massive immigration to the United Kingdom over the last thirty years has been from the Caribbean and Indian sub-continent. Since pressure of further immigration comes from black populated countries obviously the Rules in question will affect more black people than white, and it is an uncontested fact that in the short-tern the practical side-effect of the Rules was to exclude more men from the New Commonwealth and Pakistan than other countries.
We believe that "colour", "national origin" and "ethnic origin" must be considered as factors included in the concept of race. We fully agree with the majority of the Commission that racial discrimination includes discrimination on grounds of colour and national or ethnic origin, being elements of the same problem.
That the Rules did not affect only coloured people and no white people, we do not challenge, but that their main effect was to bear adversely on persons from the New Commonwealth and Indian sub-continent is conceded by the United Kingdom Government in these test cases.
We do not think that this was purely the result of accident or merely coincidental. It was the very purpose of the Rules to lower the number of coloured immigrants, and the history of the Rules shows clearly that in fact It was aimed at distinguishing substantially colour and national origin.
We agree that the text of the Rules was not directly racist, such as a policy prohibiting the entry of any person or group of any particular skin colour. Nevertheless, we think that the Rules, by their practical .side-effect, in the short term and by their very purpose, were indirectly racist.
Accordingly, it is our opinion that the first and second applicants, in these test cases, have been subjected to indirect racial discrimination in the protection of their right to respect for family life on grounds of national and ethnic origin.

C1. *Abdulaziz, Cabales and Balkandali Case*

15/1983/71/107-109 Series A , no. 94, §§ 70-89.

Court Judgment

28 May 1985

(See Article 14 Court Cases)

12. *Family K and W v. Netherlands*

Appl. no. 11278/84, DR 43 p. 216 (219-220).

Admissibility Decision

1 July 1985

Extract: The applicants have complained that they were discriminated against on the ground of sex in their right to respect for family life. as the former Act on Dutch Citizenship made it possible for the foreign wife of a male Dutch citizen to obtain Dutch nationality by,a mere declaration of her wish to do so to the local mayor. Had this been possible for the second applicant, as a male foreign spouse of a Dutch citizen, he would have obtained Dutch nationality and the Dutch authorities would not have had the possibility to expel him. The applicants have invoked Article 14 of the Convention in conjunction with Article 8 of the Convention in this respect...
However, the Commission recalls that Article 14 of the Convention only prohibits discrimination with respect to the enjoyment of the rights and freedoms set forth in the

Convention. It is true that the applicants have invoked Article 8 of the Convention, read in conjunction with Article 14 of the Convention, but the Commission finds that the right to acquire a particular nationality is neither covered by, nor sufficiently related to, this or any other provision of the Convention.

13. *W.J. and D.P. v. United Kingdom*

Appl. no. 12513/86, np.

Admissibility Decision

13 July 1987

Extract: 5. Finally, the applicants have complained of discrimination contrary to Article 8 (Art. 8) of the Convention, read in conjunction with Article 14 (Art. 14), because homosexual relationships do not receive the same protection under the Statement of Changes in Immigration Rules HC 169 as heterosexual relationships.
It is true that these Immigration Rules make no provision for the reunification of homosexual couples in the United Kingdom, whereas they do permit, inter alia, certain foreign spouses and fiancés to join their partners in the United Kingdom, where the latter have the right of abode.
The Commission has had occasion to consider such policy distinctions between homosexual and heterosexual couples. In a case concerning a lesbian relationship and housing policies, the Commission decided as follows:
"The Commission accepts that the treatment accorded to the applicant was different from the treatment she would have received if the partners had been of different sexes.
The Commission finds that the aim of the legislation in question was to protect the family, a goal similar to the protection of the right to respect for family life guaranteed by Article 8 (Art. 8) of the Convention. The aim itself is clearly legitimate. The question remains, however, of whether it was justified to protect families but not to give similar protection to other stable relationships. the Commission considers that the family (to which the relationship of heterosexual unmarried couples living together as husband and wife can be assimilated) merits special protection in society and it sees no reason why a High Contracting Party should not afford particular assistance to families. The Commission therefore accepts that the difference in treatment between the applicant and somebody in the same position whose partner had been of the opposite sex can be objectively and reasonably justified." (No. 11716/85, Dec. 14.5.86 to be published in D.R...)
The Commission adopts these general considerations for the purposes of the present case and the immigration laws which are involved here. With regard to the principle of proportionality (Eur. Court H.R., Belgium Linguistic judgment of 23 July 1968, Series A no. 6, p. 34) the Commission finds that no issue of proportionality arises between the aims of the relevant Immigration Rules and their application to the applicants, as the family life provisions of the Rules did not apply in this case. The first applicant was refused leave to remain further in the United Kingdom, not because he was homosexual, but because he was not in employment approved by the Department of Employment (Statement of Changes in Immigration Rules HC 169 para. 100). In this respect the Commission considers that the principle of proportionality between the means employed and the aim sought to be realised, i.e. the economic well-being of the country, was respected.
After its examination of this aspect of the applications the Commission concludes that it discloses no appearance of discrimination contrary to Article 14 (Art. 14) of the Convention.

14. *M and O.M. v. Netherlands*

Appl. no. 12139/86, np.

Admissibility Decision

5 October 1987

Extract: 2. The first applicant also complains that he has been discriminated .against on ground of birth by the Dutch policy of distinguishing between children born out of different marriages. He invokes Article 14 (Art. 14) of the Convention read in conjunction with Article 8 (Art. 8) of the Convention...
When considering immigration on the basis of family ties, a Contracting St.ate cannot be required under the Convention to give full recognition to polygamous marriages which are in conflict with their own ordre public. This does not mean, however that there is no right to respect for the family life of a father and his children born by different wives in a polygamous marriage.
The Commission notes that the Dutch authorities have adopted a policy, according to which the husband, who resides in the Netherlands, is only allowed to bring with him one of his wives, according to his own choice, .and the children of that wife. although this rule could give rise to some problems in relation to minor children born by another wife, there is no such problem in the present case, when the child in question is 26 years old. Since there is no interference with the first .applicant's right to respect for his family life, the Commission considers that the complaint of discrimination in respect of that right is .also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

15. *B v. United Kingdom*

Appl. no. 13031/87, np.

Admissibility Decision

9 December 1987

Extract: The applicant has complained to the Commission of discriminatory Immigration Rules by which student husbands may be accompanied by their dependent wives and children, but which contain no equivalent provision for the dependent husbands of student wives. The applicant was therefore, refused permission to prolong his stay in order to care for his child and be with his wife in the United Kingdom where she had limited study leave...
However the Commission does not find it necessary to determine whether there has been sexual discrimination, contrary to Article 14 (Art. 14) of the Convention read in conjunction with Article 8 (Art. 8), entrenched in the Immigration Rules challenged by the applicant, because the facts of the present case do not show that the .applicant actually suffered such discrimination. Although he was issued with .a formal refusal of leave to remain in June 1986 he was not deported. He was able, therefore, to remain in the United Kingdom for over a year with his wife .and child, until his wife completed her study course. In these circumstances the Commission concludes that the .applicant may no longer claim to be a victim of a violation of the Convention and that the.application must be rejected .as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

16 *Beldjoudi and Teychene v. France*

Appl. no. 12083/86.

Admissibility Decision - (Admissible - to Court)

11 July 1989

Extract: The applicants complain that enforcement of the deportation order issued in respect of the first applicant in 1979 would interfere with their right to respect for their private and family life as guaranteed by Article 8 of the Convention...

18 February 1991

(See Article 14 Court Cases)

C3. *Beldjoudi Case*

55/1990/246/317 Series A , no. 234-A, §§ 79-81.

Court Judgment

26 March 1992

(See Article 14 Court Cases)

Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

No reference to Article 16 appears to exist in the case-law of the Commission or the Court despite the appearance of relevant cases (e.g. Agee v. United Kingdom, Appl. no. 7729/76, DR 7 p. 164). On 25 January 1977 The Parliamentary Assembly of the Council of Europe adopted the following text instructing the committee of experts to make proposals for the amendment of Article 16.

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

TWENTY-EIGHTH ORDINARY SESSION

Recommendation 799 (1977)
on the political rights and position of aliens

The Assembly,

1. Considering that substantial numbers of aliens reside permanently or semi-permanently in Council of Europe member states;

2. Observing that many of these persons have no means of playing any part in the political life of their countries of origin;

3. Considering that, in matters which may be judged to be political, more or less strict limitations are imposed on the exercise by aliens of even the most elementary civil liberties, and that these restrictions tend to be particularly severe in the case of recognised refugees;

4. Affirming its belief that, provided no individual is injured nor public order endangered, freedom of speech, assembly and association constitute fundamental human rights;

5 Noting that the conditions of life and work of many aliens leave much to be desired, and that in these respects at least those concerned may legitimately insist that their voice be heard;

6. Emphasising that many of those concerned are citizens of member states of the Council of Europe;

7. Considering that certain member states of the Council of Europe have already extended to aliens considerable rights of participation in local political life;

8. Recalling its Recommendation 712 (1973). on the integration of migrant workers with the society of their host countries. Recommendation 769 (1975). on the legal status of aliens. and Recommendation 773 (1976). on the situation of *de facto* refugees:

9. Welcoming Resolution 85 (1976), adopted by the 11th Session of the Conference of Local and Regional Authorities of Europe .

10. Recommends that the Committee of Ministers:

a. instruct the competent committee of experts to make detailed proposals for the establishment. where appropriate, of consultative councils to represent the views of aliens at

aliens cannot be expelled collectively. It is true that the Netherlands have not acceded to this Protocol, but nothing prevents them from adopting, autonomously or by reason of international obligations other than those derived from the Fourth Protocol, measures aimed at the respect of these rights.
Indeed, the Government have drawn the attention of the Commission in particular in the light of Article 60 of the Convention, to the Netherlands' international obligations under the International Convention on the Elimination of all Forms of Racial Discrimination of 1965, to which the Netherlands acceded in 1971.
The Netherlands' authorities, in allowing the applicants to proclaim freely and without penalty their ideas would certainly encourage the discrimination prohibited by the provisions of the European Convention on Human Rights referred to above and the above Convention of New York of 1965.
The Commission holds the view that the expression of the political ideas of the applicants clearly constitutes an activity within the meaning of Article 17 of the Convention.
The applicants are essentially seeking to use Article 10 to provide a basis under the Convention for a right to engage in these activities which are, as shown above, contrary to the text and spirit of the Convention and which right, if granted, would contribute to the destruction of the rights and freedoms referred to above.
Consequently, the Commission finds that the applicants cannot, by reason of the provisions of Article 17 of the Convention, rely on Article 10 of the Convention.

2 *X, Y and Z v. United Kingdom*

Appl. no. 9285/82, DR 29 p. 205 (212).

Admissibility Decision

6 July 1982

Extract: 5. The applicants have next complained that the change of attitude by the Secretary of State to the first applicant's immigration status (from illegal immigrant to overstayer) constituted a manipulation of internal administrative decisions in breach of Article 17 of the Convention...
The Commission considers, however, that the classification of the first applicant as an overstayer can only be deemed advantageous to him as it provided him with significant procedural guarantees against deportation including a right of full appeal to the Adjudicator and Immigration Appeal Tribunal, both bodies having the power to overturn the Secretary of State's decision to deport.
Accordingly, the Commission concludes that the applicants have not submitted any evidence whatsoever that might indicate that the measures taken against the first applicant were aimed at the destruction of any of the family's Convention rights or limited them to a greater extent than is provided for in the Convention in breach of Article 17 of the Convention.

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

1. *Bozano Case*

5/1985/91/138 Series A , no. 111, §§ 61.

Court Judgment

18 December 1986

Extract: 61. Mr. Bozano also relied on Article 18, taken together with Article 5 § 1...
The Court has already noted, in connection with Article 5 § 1 taken alone, that the deportation procedure was abused in the instant case for objects and purposes other than its normal ones. The Court does not deem it necessary to examine the same issue under Article 18. [unanimous]

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

1. *Bozano v. France*

Appl. no. 9990/82, DR 39 p. 119; YB 27 p. 118.

Admissibility Decision - (Admissible - to Court)

15 May 1984

Extract: a. The applicant maintained that in this case there has been a breach of Article 18 of the Convention in that the deportation was effected in order to circumvent the judicial authorities' veto on extradition.
The Commission has already held that Article 18 of the Convention has no role to play on its own; it can only apply when taken together with order articles of the Convention (see No. 4771/71, Dec. 14.7.74, D.R. I p. 4).
It also follows from the terms of Article 18 that there can be no breach of it unless the right or freedom in question is in fact subjected to "the restrictions permitted under this Convention".
The right to liberty" may be restricted in accordance with sub-paragraphs (a) - (f) of Article 5 para. 1. There could therefore have been a breach of Article 18 in this case. in connection with the applicant's right to liberty under Article 5.
The Commission also notes that the Limoges Administrative Court found there had been a misuse of powers in relation to the deportation.
It accordingly considers that this complaint by the applicant cannot be declared to be manifestly ill-founded at this stage of the proceedings and must also be examined as to its merits.

Extract: b. The applicant also complains that the French authorities prearranged with The Swiss authorities and possibly also with the Italian authorities to convey the applicant to Italy by a roundabout way in breach of the decision by the Indictment Division of the Limoges Court of Appeal on 15 May 1979. In support of this allegation the applicant has said that the choice of Switzerland as the country to which he was deported was significant in this connection and that prior contacts must have taken place between the French and Swiss police so that the former could hand over the applicant to the latter.
Assuming that such a complaint comes under Article 18 taken together with Article 5 of the Convention, the Commission must have regard to the fact that an identical complaint was considered in detail by the Swiss Federal Court in its judgement of 13 June 1980 authorising the applicant's deportation from Switzerland to Italy.
After ruling that international law does not secure a deportee the right to choose the country to which he is deported. the court noted that the applicant had not shown in what respect the fact of his being conveyed to Switzerland rather than some other country was more adverse than any other arrangement. It found, further, that nothing justified the assertion that France had been convinced that, unlike some other country, Switzerland would extradite the applicant to Italy.
The Commission considers it must give great weight to this decision by the supreme court of a State with which the applicant accuses France of having made a prior arrangement to his detriment, which is a decision in which the Commission can detect no trace of arbitrariness.
The Commission is of the opinion that the, aforementioned circumstances alleged by the applicant, even if proved to be true are not such as to weaken the conclusions that may be drawn from that court's opinion.
This complaint must therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. *Bozano v. France*

Appl. no. 9990/82, np.

Commission Report

7 December 1984

Extract: 78. The Commission also points out that the Limoges Administrative Court considered that there had been "a misuse of powers". By Article 18 of the Convention, no permitted restriction on a secured right - such as the right to liberty - shall be applied for any purpose other than that for which it has been prescribed. The question thus arises whether the unlawfulness of the enforcement of the deportation order affects the applicant's detention in respect of Article 18 of the Convention as well.

79. The Commission considers that it is not required to express a general view on the question whether and under what circumstances what are sometimes known as "disguised extraditions" by means of deportations might raise problems with regard to the Convention.

80. The Commission further notes that it has already had occasion to consider these problems, particularly as regards the obligations that arise for States to which persons against whom such expulsion measures have been taken are sent (c.f. the Decisions as to Admissibility of Application Nos. 8916/80, Decisions and Reports 21 p. 250 and 10689/83, Decisions and Reports 37, p. 225).

81. It points out, however, that the Limoges Administrative Court found that the enforcement of the deportation order- and hence the applicant's detention - was unlawful also on the ground that the executive, by proceeding in this way, had sought to circumvent the competent judicial authority's veto on extraditing the applicant, which was binding on the French Government.

82. The Commission consequently considers that since detention with a view to extradition was no longer possible in French law, the applicant's detention had a purpose different from detention with a view to deportation, as provided for in Article 5 (1) (f).

C1. *Bozano Case*

5/1985/91/138 Series A , no. 111, §§ 61.

Court Judgment

18 December 1986

(See Article 18 Court Cases)

1. The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

2. Such declarations may be made for a specific period.

3. The declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.

4. The Commission shall only exercise the powers provided for in this Article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs.

1. *Cruz Varas and others Case*

46/1990/237/307 Series A , no. 201, §§ 90-104.

Court Judgment

20 March 1991

Extract: 90. It remains to be determined whether the failure by the Swedish Government to comply with the Commission's request under Rule 36 of its Rules of Procedure not to expel the applicants amounted to a breach of their obligation under Article 25 § 1 not to hinder the effective exercise of the right of petition...

94. As has been noted on previous occasions the Convention must be interpreted in the light of its special character as a treaty for the protection of individual human beings and its safeguards must be construed in a manner which makes them practical and effective (see, inter alia, the above-mentioned Soering judgment, Series A no. 161, p. 34, § 87). While this approach argues in favour of a power of the Commission and Court to order interim measures to preserve the rights of parties in pending proceedings, the Court cannot but note that unlike other international treaties or instruments the Convention does not contain a specific provision with regard to such measures (see, inter alia, Article 41 of the Statute of the International Court of Justice; Article 63 of the 1969 American Convention on Human Rights; Articles 185 and 186 of the 1957 Treaty establishing the European Economic Community).

95. The European Movement, which first proposed the drafting of a European Convention on Human Rights, originally included in a draft Statute of the European Court of Human Rights an interim measures provision (Article 35) based in substance on Article 41 of the Statute of the International Court of Justice (see Collected Edition of the Travaux Preparatoires, Vol. I, p. 314). The travaux preparatoires of the Convention are, however, silent as to any discussion which may have taken place on this question.

96. The absence of a specific interim measures provision in the Convention gave rise to a Recommendation by the Consultative Assembly of the Council of Europe calling on the Committee of Ministers to draft an additional Protocol to the Convention which would empower the Convention organs to order interim measures in appropriate cases (see Recommendation 623 (1971), Yearbook of the Convention, Vol. 14, pp. 68-71 (1971). The Committee of Ministers subsequently decided that the conclusion of such a protocol was not expedient on the ground, inter alia, that the existing practice of the Commission in requesting governments to postpone the measure complained of worked satisfactorily...

97. The question arises for consideration in this case whether, notwithstanding the absence of a specific provision in the Convention, a power for the Commission to order interim measures can nevertheless be derived from Article 25 § 1 considered separately or in conjunction with Rule 36 of the Commission's Rules of Procedure or from other sources.
98. Firstly it must be observed that Rule 36 has only the status of a rule of procedure drawn up by the Commission under Article 36 of the Convention. In the absence of a provision in the Convention for interim measures an indication given under Rule 36 cannot be considered to give rise to a binding obligation on Contracting Parties. Indeed this is reflected in the wording both of Rule 36 itself ("may indicate any interim measure the adoption of which seems desirable") and of the indications made under it in the present case ("to indicate to the Government of Sweden that it was desirable ... not to deport the applicants to Chile") (see paragraph 56 and similar wording in paragraph 61 above).
99. ...In its ordinary meaning Article 25 § 1 imposes an obligation not to interfere with the right of the individual effectively to present and pursue his complaint with the Commission. Such an obligation confers upon an applicant a right of a procedural nature distinguishable from the substantive rights set out under Section I of the Convention or its Protocols. However it flows from the very essence of this procedural right that it must be open to individuals to complain of alleged infringements of it in Convention proceedings. In this respect also the Convention must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory (see the above-mentioned Soering judgment, Series A no. 161, p. 34, § 87, and the authorities cited therein).
Nevertheless, as seen above, no specific provision in the Convention empowers the Commission to order interim measures. It would strain the language of Article 25 to infer from the words "undertake not to hinder in any way the effective exercise of this right" an obligation to comply with a Commission indication under Rule 36. This conclusion is not altered by considering Article 25 § 1 in conjunction with Rule 36 or - as submitted by the Delegate of the Commission - in conjunction with Articles 1 and 19 of the Convention.
100. The practice of Contracting Parties in this area shows that there has been almost total compliance with Rule 36 indications. Subsequent practice could be taken as establishing the agreement of Contracting States regarding the interpretation of a Convention provision (see, mutatis mutandis, the above-mentioned Soering judgment, Series A no. 161, pp. 40-41, § 103, and Article 31 § 3 (b) of the Vienna Convention of 23 May 1969 on the Law of Treaties) but not to create new rights and obligations which were not included in the Convention at the outset (see, mutatis mutandis, the Johnston and Others judgment of 18 December 1986, Series A no. 112, p. 25, § 53). In any event, as reflected in the various recommendations of the Council of Europe bodies referred to above, the practice of complying with Rule 36 indications cannot have been based on a belief that these indications gave rise to a binding obligation (see paragraph 96 above). It was rather a matter of good faith co-operation with the Commission in cases where this was considered reasonable and practicable.
101. Finally, no assistance can be derived from general principles of international law since, as observed by the Commission, the question whether interim measures indicated by international tribunals are binding is a controversial one and no uniform legal rule exists.
102. Accordingly, the Court considers that the power to order binding interim measures cannot be inferred from either Article 25 § 1 in fine, or from other sources. It lies within the appreciation of the Contracting Parties to decide whether it is expedient to remedy this situation by adopting a new provision notwithstanding the wide practice of good faith compliance.
103. In this connection, it must be borne in mind that Rule 36 indications are given by the Commission or its President only in exceptional circumstances. They serve the purpose in expulsion (or extradition) cases of putting the Contracting States on notice that, in the Commission's view, irreversible harm may be done to the applicant if he is expelled and, further, that there is good reason to believe that his expulsion may give rise to a breach of Article 3 of the Convention. Where the State decides not to comply with the indication it knowingly assumes the risk of being found in breach of Article 3 following adjudication of the dispute by the Convention organs. In the opinion of the Court where the State has had its attention drawn in this way to the dangers of prejudicing the outcome of the issue then pending before the Commission any subsequent breach of Article 3 found by the Convention organs would have to be seen as aggravated by the failure to comply with the indication.

104. The applicants claimed that the expulsion of the first applicant actually hindered the effective presentation of the application to the Commission.
Compliance with the Rule 36 indication would no doubt have facilitated the presentation of the applicants' case before the Commission. However, there is no evidence that they were hindered in the exercise of the right of petition to any significant degree. The first applicant remained at liberty following his return to Chile and was free to leave the country (see paragraphs 36-38 above). Their counsel was in fact able to represent them fully before the Commission notwithstanding the first applicant's absence during the Commission's hearing.
Neither is it established that his inability to confer with his lawyer hampered the gathering of evidence additional to that already adduced during the lengthy immigration proceedings in Sweden or the countering of the Government's submissions on questions of fact...
For these reasons, the Court holds by ten votes to nine that there has been no violation of Article 25 § 1 in fine.

Cruz Varas and others Case

46/1990/237/307 Series A , no. 201.

Dissenting Opinion
of Judges Cremona, Vilhjalmsson, Walsh, Macdonald,Bernhardt, De Meyer, Martens, Foighel and Morenilla.

20 March 1991

Extract: In our view there has been a violation of Article 25 insofar as the first applicant was expelled to Chile on 6 October 1989, that is, one day after the application was lodged with the European Commission of Human Rights and a few hours after the Commission had asked the Government "not to deport the applicants to Chile ..."
1. The present judgment confirms the view expressed in the Soering judgment that extradition and expulsion may contravene the Convention. It cannot be otherwise since the Convention provides for a real and effective protection of human rights for all persons present in the member States; their governments cannot be permitted to expose such persons to serious violations of human rights in other countries. This should be beyond doubt in cases where torture or violations of other basic human rights are to be feared.
The protection under the Convention would be meaningless if a State had the right to extradite or expel a person without any prior possibility of clarification - as far and as soon as possible - of the consequences of the expulsion. The Court has repeatedly underlined that "the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective" (see the Soering judgment of 7 July 1989, Series A no. 161, p. 34, § 87). This basic principle must be kept in mind when we consider the procedural guarantees contained in the Convention.
2. It is true that Article 25 § 1, second sentence, of the Convention seems, according to its wording, to protect only the effective exercise of the right to lodge a complaint. However, this does not imply that States are permitted to make the possible result of an application devoid of any practical relevance. Otherwise States would be obliged to allow a person to lodge a petition with the Commission but would be able to expel him immediately thereafter irrespective of the consequences however serious they might be. We cannot accept such an interpretation. In our view, the procedural guarantee contained in Article 25 presupposes and includes the right of the individual to be afforded, at the least, an opportunity to have the application considered more closely by the Convention organs and to have his basic rights finally protected if need be.
3. These principles do not lead to the result that every application under Article 25 automatically inhibits extradition or expulsion to another country. The mere fact that a complaint under Article 25 has been lodged concerning a decision to extradite or expel should not restrict the power of governments to consider and to weigh the available evidence and to decide whether the decision should, nevertheless, be enforced. In reaching

this decision they can take into account that applications are often obviously unfounded. Considerations of State security and public policy and other facts (including the length of the procedure before the Convention organs) may also be relevant. But at this stage - and only at this stage - the indication of provisional measures under Rule 36 of the Commission's Rules of Procedure comes into play. Such an indication gives the respondent State the assurance that the Commission considers the application to be of great importance under the Convention and that it will investigate the matter speedily (see paragraphs 52-55 above). Seen in this perspective, measures indicated under Rule 36 bind the State concerned since this is the only means to protect the applicant against a possible violation of his or her rights causing irreparable harm. Furthermore, it is, in our view, implicit in the Convention that in cases such as the present the Convention organs have the power to require the parties to abstain from a measure which might not only give rise to serious harm but which might also nullify the result of the entire procedure under the Convention.

In the final analysis, it is incompatible with Article 25 of the Convention that the first applicant in this case was expelled immediately after he had lodged his complaint contrary to the indication made under Rule 36 of the Commission's Rules of Procedure.

4. It cannot be of any relevance in the present case that in the event the applicant was not tortured on his return to Chile and that he was able to take the necessary steps in the procedure before the Convention organs. The critical date is 6 October 1989. At that date a grave violation of human rights following deportation could not have been excluded and the Commission had clearly indicated that closer investigation appeared necessary and would be conducted speedily.

5. It is true that, unlike some other international instruments, the Convention does not contain any express provision as to the indication of provisional measures. But this does not exclude an autonomous interpretation of the European Convention with special emphasis placed on its object and purpose and the effectiveness of its control machinery. In this context too, present-day conditions are of importance. Today the right of individual petition and the compulsory jurisdiction of the Court have been accepted by nearly all the member States of the Council of Europe. It is of the essence that the Convention organs should be able to secure the effectiveness of the protection they are called on to ensure.

1. The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

2. Such declarations may be made for a specific period.

3. The declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.

4. The Commission shall only exercise the powers provided for in this Article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs.

1 *Mansi v. Sweden*

Appl. no. 15658/89, np.

Admissibility Decision - (Admissible - Friendly settlement)

7 December 1989

Extract: 2. The applicant also alleges that Sweden's failure to comply with the indications under Rule 36 of the Commission's Rules of Procedure hinders the effective exercise of his right to have his case properly examined by the Commission. He submits that Sweden has violated Articles 1 and 25 (Art. 1, 25) of the Convention...
"The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in anyway the effective exercise of this right."
The Government submit that there is no obligation under the Convention to comply with an indication under Rule 36 of the Commission's Rules of Procedure. They submit that this complaint is incompatible ratione materiae with the Convention or manifestly ill-founded.
The Commission considers that the respondent State's failure to comply with the indications made under Rule 36 of the Commission's Rules of Procedure raises the question whether there has been a violation of Article 25 para. 1 (Art. 25-1) of the Convention in conjunction with Article 1 in view of the special nature of the alleged violation of Article 3 (Art. 3) of the Convention. This question involves issues which, in the Commission's view, justify further examination.

2. *Cruz Varas and his family v. Sweden*

Appl. no. 15576/89

Admissibility Decision - (Admissible - to Court)

7 December 1989

Extract: 5. The applicants also allege that Sweden's failure to comply with the Commission's indications under Rule 36 of its Rules of Procedure hinders the effective exercise of their right to have their case examined by the Commission. They submit that Sweden has violated Articles 1 and 25 of the Convention.
Article 1 of the Convention reads:
"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of the Convention."...
The Government submit that there is no obligation under the Convention to comply with an indication under Rule 36. This complaint is therefore incompatible ratione materiae with the Convention or manifestly ill-founded.
The Commission considers that the respondent State's failure to comply with the indications made by the Commission under Rule 36 of its Rules of Procedure raises the question whether there has been a violation of Article 25 para. 1 of the Convention in conjunction with Article 1 in view of the special nature of the alleged violation of Article 3 of the Convention. This question involves issues which, in the Commission's view, justify further examination.

3. *Cruz Varas, Lazo and Cruz v. Sweden*

Appl. no. 15576/89.

Commission Report

7 June 1990

Extract: 105. The Commission has examined whether Sweden failed to comply with its obligations under Article 25 para. 1 of the Convention when it expelled Mr. Cruz Varas despite the Commission's indication under Rule 36 of the Rules of Procedure that it was desirable not to expel him to Chile until the Commission had had an opportunity to further examine the application at its session held from 6 to 10 November 1989...
107. Article 36 of the Convention authorises the Commission to draw up its rules of procedure. In the Rules of Procedure which have been adopted on the basis of this Article, a provision dealing with interim measures was included in Rule 36. It has not been alleged that the Commission, when including this provision, acted outside its competence under Article 36 of the Convention. Moreover, it should be noted that the European Court of Human Rights has acted in a similar way by including in Rule 36 of the Rules of Court a provision which gives the Court and its President competence to indicate to a party or an applicant any interim measure which it is advisable for them to adopt.
108. In these circumstances, there is no doubt that the Commission has power to indicate interim measures under Rule 36. This view also finds support in the Court's judgment in the Soering case (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, paras. 4 and 111 in fine)...
112. The Commission considers that the indication given must be seen in the light of the nature of the proceedings before the Convention organs and of the Commission's role in these proceedings.
113. As provided for in Article 19 of the Convention the Commission is one of the two organs, set up by the Convention "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention."
114. The machinery set up by the Convention must be seen as a whole. The proceedings before the Convention organs, will terminate either with a decision declaring the application inadmissible or with a friendly settlement, or with a binding decision by the Court or the Committee of Ministers. The purpose of an indication under Rule 36 is to preserve the rights of the parties, and to safeguard the general interest, until a final decision has been taken by the Strasbourg organs.
115. As the Government rightly submit the proceedings before the Convention organs are of a declaratory nature. The Commission cannot issue a binding decision that a High Contracting Party has violated the Convention, whereas the Court and the Committee of Ministers have that power. The Commission's task is of a preliminary nature as regards the

merits of the case, and its opinion as to whether there is a violation is not binding. The terms of the Commission's indication under Rule 36 must be read against this background.
116. The Commission has noted that the question whether interim measures indicated by international tribunals are binding or not is the subject of controversy in international law and that no uniform legal view exists. The Commission is however not required in the present case to decide whether in general an indication under Rule 36 is binding on the respondent State. Its examination can be limited to the question whether in the circumstances of the present case, the fact that Sweden did not act in accordance with the Commission's indication under Rule 36 of its Rules of Procedure constituted a failure by Sweden to comply with its obligations under Article 25 of the Convention.
117. Under Article 25 para. 1 in fine, the High Contracting Parties, who have recognised the right of individual petition, have undertaken not to hinder the effective exercise of this right. This undertaking does not imply a general duty on the State to suspend measures at the domestic level or not to enforce domestic decisions when an individual has lodged an application with the Commission.
118. However, the Commission is of the opinion that there are special circumstances where the enforcement of a national decision would be in conflict with the effective exercise of the right to petition. That is the case, in particular, when enforcement of the decision would lead to serious and irreparable damage to the applicant and the Commission has given an indication under Rule 36 of its Rules of Procedure that it is desirable not to enforce that decision.
120. In the Commission's view it follows from Article 25 para. 1 and the above statement by the Court [Soering judgment, pp. 34-35, paras. 87 and 90] that, on the one hand, an applicant is entitled to the "effective exercise" of his right to petition the Commission, within the meaning of Article 25 para. 1 in fine, i.e. a Contracting State shall not prevent the Commission from making an effective examination of the application and, on the other hand, an applicant who claims a violation of Article 3 of the Convention is entitled to an effective examination of whether an intended extradition or expulsion would be a violation of Article 3. An indication under Rule 36 of the kind at issue here serves the purpose of enabling the Commission, and subsequently the Court or Committee of Ministers, to examine effectively an application and to ensure the effectiveness of the safeguard provided by Article 3.
121. The Commission also notes that, before the present case, no Contracting State had ever failed to comply with an indication given by the Commission in expulsion cases...
122. Turning to the present case, the Commission therefore considers that to deport Mr. Cruz Varas, although an indication under Rule 36 had been given frustrated its examination and thereby rendered his right of petition ineffective. Such an action is, in the Commission's opinion, contrary to the spirit of the Convention and is incompatible with the effective exercise of the right to petition guaranteed by Article 25 para. 1 of the Convention. These considerations apply notwithstanding the fact that the Commission has, after a full examination of the merits of the complaint under Article 3 of the Convention, concluded that there has been no violation of that provision...
128. The Commission concludes, by 12 votes to 1, that Sweden has failed to comply with its obligations under Article 25 para. 1 of the Convention.

C1. *Cruz Varas and others Case*

46/1990/237/307 Series A , no. 201, §§ 90-104.

Court Judgment

20 March 1991

(See Article 25 Court Cases)

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

1. *15 Foreign Students v. United Kingdom*

Appl. no. 7671/76 and 14 other applications. DR 9 p. 185 (186-187).

Admissibility Decision

19 May 1977

Extract: 3. The applicants submit that the refusal of permission to remain as students in the United Kingdom violates their "right to education" under Article 2, first sentence, of Protocol No. 1. They argue "that where a person has been accepted as a bona fides student by a recognised college, the Government may not refuse to let him take his place" and conclude that the Government do not, in this respect, retain their complete discretion with regard to control of immigration.

4. The Commission observes that Article 2, first sentence, does not grant a right for an alien to stay in a given country. An alien's "right to education" is independent of his right, if any, to stay in the country and does not protect or, as a corollary, include this latter right. The refusal of permission to remain in the country cannot therefore be regarded as an interference with the right to education, but only as a control of immigration which falls outside the scope of Article 2.

5. The applicants suggest that considerations developed under Articles 3 and 8 of the Convention must lead to a different interpretation of Article 2 of Protocol No. 1 as regards its scope. The Commission does not share this view...

Firstly, unlike the present complaints, the said case-law under Article 3 of the Convention relates, in its appreciation of the possible indirect effect of an expulsion, to treatment in a third country. Secondly, it concerns alleged violations of human rights of a particularly serious nature which cannot be compared to the present complaints under Article 2 of Protocol No. 1.

7. The Commission also does not consider that its case-law under Article 8 of the Convention is relevant to the present complaints under Article 2 of Protocol No. 1. According to that case-law the expulsion of, or refusal of entry to, a foreign spouse does not interfere with the couple's family life in the sense of Article 8, paragraph 1 if there is no legal obstacle preventing them from establishing their family life in another country (Application No.

5269/71, Collection 39, p. 104, Yearbook 15, p. 564; Application No. 5301/71, Collection 43, p. 82).
In the present cases it has not been shown that the applicants, if deported from the United Kingdom, would be unable to receive elsewhere such further education as they might be able to claim under Art. 2 of Protocol No. 1. The Commission observes in this connection that the right to education envisaged in Art. 2 is concerned primarily with elementary education and not necessarily with advanced studies (Application No. 5962/72, Decisions and Reports 2, p. 50).
8. The Commission concludes that the applicants' complaints concerning the refusal of permission to remain in the United Kingdom do not raise any issue under Art. 2 of Protocol No. 1 and that they are therefore manifestly ill-founded within the meaning of Art. 27 (2) of the Convention.

2. *Fadele Family v. United Kingdom*

Appl. no. 13078/87, np.

Admissibility Decision - (Admissible - Friendly settlement)

12 February 1990

Extract: The applicants have complained of the refusal of British immigration authorities to allow the first applicant (a Nigerian) to join the other three applicants, his children (British), in the United Kingdom after the death of the wife/mother...
the Commission concludes that it is unable to deal with the applicants' complaint under Article 13 (Art. 13) of the Convention as they have failed to respect the six months' rule laid down in Article 26 (Art. 26) of the Convention. This part of the application must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.
As regards the remainder of the application, the Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under Articles 3 and 8 (Art. 3, 8) (private and family life and home) of the Convention and Article 2 of Protocol No. 1 (P1-2), the determination of which should depend on an examination of the merits. The Commission concludes, therefore, that the remainder of the application is not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and that no other grounds for declaring this part of the case inadmissible have been established.

Article 2

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

Article 4

Collective expulsion of aliens is prohibited.

1. *X v. Sweden*

Appl. nos. 3803/68 and 3804/68, np, DS 5 p. 890.

Admissibility Decision

4 October 1968

Extract: Whereas, furthermore, Article 4 of the Fourth Protocol prohibits collective expulsion of aliens but not expulsion strictly limited to individuals; whereas in the present case it clearly appears from the applicants' submissions that the decision to expel them was based on particular circumstances relating to each of the applicants as individuals; whereas, therefore, this decision concerned an expulsion strictly limited to particular individuals and the said Article is therefore not applicable;

2. *X v. Federal Republic of Germany*

Appl. no. 3745/68, CD 31 p. 107 (110).

Admissibility Decision

15 December 1969

Extract: Whereas, finally, the Commission has made an *ex officio* examination of the application with reference to the Fourth Protocol, and particularly Article 3 (1)...
Whereas it finds, firstly, that although the facts of the case and the proceedings initiated by the applicant pre-dated the coming into force of the Fourth Protocol for the Federal Republic of Germany, i.e. occurred prior to 4 June 1968, the expulsion order served on the applicant may still be enforced and thus creates a continuing situation which is open to examination with reference to Article 3 (1) of the Fourth Protocol;

Whereas the Commission notes, secondly, that the danger of expulsion referred to by the applicant results from the refusal of the authorities concerned to grant him German nationality; whereas, although examination of the applicant's complaint regarding the right to nationality as such lies outside the Commission's competence *ratione materiae* (see above, The Law, first paragraph), the question arises as to whether there is a causal link between the German authorities' decision refusing the applicant German nationality and their decision ordering his expulsion, giving rise to the presumption that the sole purpose of this refusal was his expulsion from the territory of the Federal Republic of Germany.

3. *X v. Federal Republic of Germany*

Appl. no. 4436/86, CD 35 p. 169 (172-173); YB 13 p. 1028 (1032-1034).

Admissibility Decision

26 May 1970

Extract: Whereas, in addition, in so far as the applicant alleges violation of Article 2 of the Fourth Protocol to the Convention, in that he is not permitted freely to leave the territory of the Federal Republic of Germany, the Commission recognises that Article 2 (2) states that "everyone shall be free to leave any country including his own", but nevertheless Article 2 (3) makes the exercise of this right subject to certain restrictions that "are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public,* for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"; whereas, consequently, the Commission is of the opinion that a person whose deportation has been ordered and who is detained with a view to enforcement of the order may not avail himself of the right stated in Article 2 (2) of the Fourth Protocol, seeing that the restrictions placed on his movements, which may go so far as to prevent him from freely leaving the territory of the country that has issued the deportation order, as in this case, are among those provided for in Article 2 (3)...

4. *X v. Federal Republic of Germany*

Appl. no. 4256/69, CD 37 p. 67 (68-69).

Admissibility Decision

14 December 1970

Extract: Whereas Article 27 (1) (b) states that "the Commission shall not deal with any petition submitted under Article 25 which ... is substantially the same as a matter which has already been examined by the Commission ... and if it contains no relevant new information"; whereas, however, the applicant expressly cites in this connection Protocol No. IV which came into force as regards the Federal Republic of Germany on I June 1968; whereas Article 2 (2) of the said Protocol guarantees the right of everyone "to leave any country..."; whereas, firstly, the applicant's claims are concerned with a continuing situation and, secondly, the coming into force of the said Protocol has brought about a change in the legal classification of these claims; whereas, accordingly, Article 27 (1) (b) does not apply in this instance;
Whereas, in so far as the applicant bases his case on Protocol No. IV and requests that the Federal German authorities allow him to return to Poland and even supposing that he has exhausted the remedies available in domestic law although it is true that Article 2 (2) of the said Protocol states that "everyone shall be free to leave any country, including his own", para. 3 of the same Article nonetheless provides for restrictions on this freedom, "such as are in accordance with law and are necessary in a democratic society ... *(inter alia)* for the maintenance of *ordre public...*"; whereas, in this connection, the Commission recalls that the

applicant is detained in the prison at Saarbrucken following conviction on a criminal charge. He complains of the German authorities' refusal to allow him to leave for Poland, but the refusal to release a person regularly detained in a penitentiary institution clearly constitutes a lawful restriction within the meaning of Article 2 (2) of Protocol No. IV; whereas this interpretation is confirmed by the *travaux preparatoires* on the said Protocol (cf. Doc. MS 65/161, p. 18), which shows that the concept of the maintenance of *ordre public* used in Article 2 (2) covers situations resulting, as in the present case, from the need to prevent crime, and particularly detention measures ordered in the course of proceedings connected with investigation of and prosecution for criminal offences; whereas the Commission also refers, in this connection, to its Decision of 5 February 1970 as to the Admissibility of Application No. 3962/69 (Collection 32, p. 68); whereas this part of the application must accordingly be rejected as being manifestly ill-founded (Article 27 (2) of the Convention);

5. *X v. Luxembourg*

Appl. no. 4987/71, np, DS 5 p. 879.

Admissibility Decision

1 October 1971

Extract: The applicant has complained that he was expelled from Luxembourg. However, under Article 25 (1) of the Convention, it is only the alleged violation of one of the rights and freedoms set out in the Convention that can be the subject of an application presented by a person, non-governmental organisation or group of individuals. While Article 2 (1) of Protocol No. IV establishes the right of a person, who is lawfully within the territory of a State, to choose his residence, there is no general right to reside in a foreign country (see Decisions as to the Admissibility of Application Nos. 2951/66; 3140/67).

6. *X v. Federal Republic of Germany*

Appl. no. 5350/72, np, DS 5 p. 878.

Admissibility Decision

5 October 1972

Extract: The Commission has also examined the applicant's complaint that he was not allowed to re-enter German territory and to resume his residence there. The Commission has here, ex *officio,* considered the possible application of Protocol No. IV to his situation. However, no right to residence in a country of which the applicant, as in the present case, is not a national is as such included among the rights and freedoms guaranteed by the Convention and in particular in this Protocol.

7. *X v. Federal Republic of Germany*

Appl. no. 6189/73, CD 46 p. 214 (214).

Admissibility Decision

13 May 1974

Extract: It is true that Article 3 (1) of Protocol No. IV provides protection against expulsion. This term means that a person is obliged permanently to leave the territory of the State of which he is

Article 1

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4

No reservation may be made under Article 64 of the Convention in respect of the provisions of this Protocol.

1. *Y v. Netherlands*

Appl. no. 16531/90, np.

Admissibility Decision

16 January 1991

Extract: The question arises whether analogous considerations apply to Article 1 of Protocol No. 6 (P6-1) to the Convention, In particular whether this provision equally engages the responsibility of a Contracting State where, upon deportation, the person concerned faces a real risk of being subjected to the death penalty in the receiving State...
However, the Commission need not resolve these issues since the complaints at issue are in any event manifestly ill-founded.
The Commission notes that even if Article 1 of Protocol No. 6 (P6-1) and Article 3 (Art. 3) of the Convention were applicable, substantial grounds would have to be shown for believing that the person concerned faces a real risk of being subjected to the treatment complained of (see Eur. Court H.R., Soering judgment, loc. cit., p. 35, para. 91).
In the present case, the applicant claims that, upon his return to Malaysia, he will be prosecuted and eventually subjected to the death penalty for illicit drug traffic, namely for transporting drugs from Malaysia to the Netherlands. He also claims that he is suspected of having transported money to Malaysia relating to heroin traffic.
The Commission considers that the applicant was convicted in the Netherlands of drug offences on 25 May 1987. On the other hand, the Commission notes that the applicant has not shown any case where person has been convicted and subjected to the death penalty in Malaysia following his conviction for the same offence elsewhere. He has also not sufficiently demonstrated that upon his return to Malaysia he will be prosecuted and eventually sentenced to the death penalty for transporting money to Malaysia...
The applicant has therefore not shown substantial grounds which would enable the conclusion that he will be subjected to treatment falling within the ambit of Article 1 of Protocol No. 6 (P6-1) and of Article 3 (Art. 3) of the Convention.

Article 1

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

   a. to submit reasons against his expulsion,

   b. to have his case reviewed, and

   c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1. a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

On 1 November 1988, Protocol no. 7 entered into force with respect to Denmark, France and Greece, on 1 July 1989 with respect to Luxembourg and on 1 February 1992 with respect to Italy. As of 18 October 1991 (i.e. following the 225th Session of the Commission) - the date to which complete print-outs of Commission Decisions on Admissibility are available from Strasbourg - no applications invoking Article 1 of Protocol no. 7 had been examined.

ANNEX I — EC RATIFICATIONS

EUROPEAN CONVENTION ON HUMAN RIGHTS

Member States	Date of signature	Date of ratification	Date of entry into force	R: Reservations D:Declarations T: Territorial D.
Belgium	04/11/50	14/06/55	14/06/55	
Denmark	04/11/50	13/04/53	03/09/53	
France	04/11/50	03/05/74	03/05/74	R/T
Germany	04/11/50	05/12/52	03/09/53	R
Greece	28/11/50	28/11/74	28/11/74	
Ireland	04/11/50	25/02/53	03/09/53	R
Italy	04/11/50	26/10/55	26/10/55	
Luxembourg	04/11/50	03/09/53	03/09/53	
Netherlands	04/11/50	31/08/54	31/08/54	T
Portugal	22/09/76	09/11/78	09/11/78	R
Spain	24/11/77	04/10/79	04/10/79	R/D
United Kingdom	04/11/50	08/03/51	03/09/53	T

PROTOCOL NO. 4 TO THE CONVENTION

Member States	Date of signature	Date of ratification	Date of entry into force	R: Reservations D:Declarations T: Territorial D.
Belgium	16/09/63	21/09/70	21/09/70	
Denmark	16/09/63	30/09/64	02/05/69	
France	22/10/73	03/05/74	03/05/74	T
Germany	16/09/63	01/06/68	01/06/68	
Greece				
Ireland	16/09/63	29/10/68	29/10/68	D
Italy	16/09/63	27/05/82	27/05/82	D
Luxembourg	16/09/63	02/05/68	02/05/68	
Netherlands	15/11/63	23/06/82	23/06/82	D/T
Portugal	27/04/78	09/11/78	09/11/78	
Spain	23/02/78			
United Kingdom	16/09/63			

PROTOCOL NO. 7 TO THE CONVENTION

Member States	Date of signature	Date of ratification	Date of entry into force	R: Reservations D:Declarations T: Territorial D.
Belgium				
Denmark	22/11/84	18/08/88	01/11/88	R/T
France	22/11/84	17/02/86	01/11/88	R/D/T
Germany	19/03/85			
Greece	22/11/84	29/10/87	01/11/88	
Ireland	11/12/84			
Italy	22/11/84	07/11/91	01/02/92	D
Luxembourg	22/11/84	19/04/89	01/07/89	R
Netherlands	22/11/84			D
Portugal	22/11/84			
Spain	22/11/84			
United Kingdom				

FRANCE

Reservations and declarations

contained in the instrument of ratification, deposited on 3 May 1974 - Or. Fr.

In depositing this instrument of ratification, the Government of the Republic makes the following declaration :

Articles 5 and 6

The Government of the Republic, in accordance with Article 64 of the Convention, makes a reservation in respect of Articles 5 and 6 thereof, to the effect that those articles shall not hinder the application of the provisions governing the system of discipline in the armed forces contain~ in Section 27 of Act No. 72-662 of 13 July 1972, determining the general legal status of military servicemen, nor of the provisions of Article 375 of the Code of Military Justice.

Article 10 (1)

The Government of the Republic declares that it interprets the provisions of Article 10 as being compatible with the system established in France under Act No. 72-553 of 10 July 1972, determining the legal status of the French Radio and Television.

Article 15, paragraph 1

The Government of the Republic, in accordance with Article 64 of the Convention, makes a reservation in respect of paragraph 1 of Article 15, to the effect, firstly, that the circumstances specified in Article 16 of the Constitution regarding the implementation of that Article, in Section 1 of the Act of 3 April 1878 and in the Act of 9 August 1849 regarding proclamation of a state of siege, and in Section 1 of Act No. 55-385 of 3 April 1955 regarding proclamation of a state of emergency, and in which it is permissible to apply the provisions of those texts, must be understood as complying with the purpose of Article 15 of the Convention and that, secondly, for the interpretation and application of Article 16 of the Constitution of the Republic, the terms to the extent strictly required by the exigencies of the situation shall not restrict the power of the President of the Republic to take the measures required by the circumstances.

The Government of the Republic further declares that the Convention shall apply to the whole territory of the Republic, having due regard, where the overseas territories are concerned, to local requirements, as mentioned in Article 63.

FEDERAL REPUBLIC OF GERMANY

Reservation

contained in the instrument of ratification deposited on 13 November 1952 - Or. Engl.

In conformity with Article 64 of the Convention the German Federal Republic makes the reservation that it will only apply the provisions of Article 7 paragraph 2 of the

Convention within the limits of Article 103 clause 2 of the Basic Law of the German Federal Republic. This provides that any act is only punishable if it was so by law before the offence was committed.
The territory to which the Convention shall apply extends also to Western Berlin.

IRELAND

Reservation contained in the instrument of ratification deposited on 25 February 1953 - Or. Engl.

The Government of Ireland do hereby confirm and ratify the aforesaid Convention and undertake faithfully to perform and carry out all the stipulations therein contained, subject to the reservation that they do no interpret Article 6 (3) c of the Convention as requiring the provision of free legal assistance to any wider extent than is now provided in Ireland.

NETHERLANDS

Declaration (1) (2) contained in the letter from the Permanent Representative of the Netherlands, dated 29 November 1955, handed to the Secretary General at the time of the instrument of ratification on 1 December 1955 - Or. Fr.

The Convention shall apply to Surinam and the Netherlands Antilles except as regards the provisions of free legal assistance under Article 6 (3) c.

(1) By letter of 10 December 1980 from the Permanent Representative of the Netherlands, the reservation relating to Article 6 with regard to the Netherlands Antilles was withdrawn.

(2) The Convention no longer applies to Surinam since this territory became independent on 25 November 1975.

Declaration contained in a letter from the Permanent Representative of the Netherlands, dated 24 December 1985, registered at the Secretariat General on 3 January 1986 - Or. Engl.

The island of Aruba, which is at present still part of the Netherlands Antilles, will obtain internal autonomy as a country within the Kingdom of the Netherlands as of 1 January 1986. Consequently the Kingdom will from then on no longer consist of two countries, namely the Netherlands (the Kingdom in Europe) and the Netherlands Antilles (situated in the Caribbean region), but will consist of three countries, namely the said two countries and the country Aruba.

As the changes being made on 1 January 1986 concern a shift only in the internal constitutional relations within the Kingdom of the Netherlands, and as the Kingdom as such will remain the subject under international law with which treaties are concluded, the said changes will have no consequences in international law regarding to treaties concluded by the Kingdom which already apply to the Netherlands Antilles, including Aruba. These treaties will remain in force for Aruba in its new capacity of country within the Kingdom. Therefore these treaties will as of 1 January 1986, as concerns the Kingdom of the Netherlands, apply to the Netherlands Antilles (without Aruba) *and* Aruba.
Consequently the treaties referred to in the annex, to which the Kingdom of the Netherlands is a Party and which apply to the Netherlands Antilles, will as of 1 January 1986 as concerns the Kingdom of the Netherlands apply to the Netherlands Antilles *and* Aruba.

List of Conventions referred to by the Declaration

Convention for the Protection of Human Rights and Fundamental Freedoms...

PORTUGAL

Reservations contained in the letter from the Permanent Representative of Portugal, dated 8 November 1978, handed to the Secretary General at the time of deposit of the instrument of ratification, on 9 November 1978 - Or. Fr.

In pursuance of Article 64 of the Convention, the Government of the Portuguese Republic formulates the following reservations :

I. Article 5 of the Convention will be applied subject to Articles 27 and 28 of the Military Discipline Regulations, which provide for the placing under arrest of members of the armed forces.

Articles 27 and 28 of the Military Discipline Regulations read as follows :

Article 27

1. Arrests consist of the detention of the offender in a building intended for the purpose, in an appropriate place, barracks or military establishment, in suitable quarters on board ship or, failing these, in a place determined by the competent authority.

2. Between the reveille and sundown, during the period of detention, the members of the armed forces can perform the duties assigned to them.

Article 28

Close arrest consists of the detention of the offender in a building intended for the purpose.

II. Article 7 of the Convention will be applied subject to Article 309 of the Constitution of the Portuguese Republic, which provides for the indictment and trial of officers and personnel of the State Police Force (PIDE-DGS).

Article 309 of the Constitution reads as follows :

Article 309

1. Law No. 8/75 of 26 July 1975 shall remain in force with the amendments made by Law No. 16/75 of 23 December 1975 and Law No. 18/75 of 26 December 1975.

2. The offences referred to in Articles 2 (2), 3, 4 (b) and 5 of the Law referred to in the foregoing paragraph may be further defined by law.

3. The exceptional extenuating circumstances as provided for in Article 7 of the said Law may be specifically regulated by law.

(Act No. 8/75 lays down the penalties applicable to officers, officials and associates of the former General Directorate of Security (beforehand the International and State Defence Police), disbanded after 24 April 1974, and stipulates that the military courts have jurisdiction in such cases).

III. (1) Article 10 of the Convention will be applied subject to Article (6) of the Constitution of the Portuguese Republic, which provides that television may not be privately owned.

Article 38 (6) of the Constitution reads as follows :

Article 38

6. The television shall not be privately owned.

IV. (1) Article 11 of the Convention will be applied subject to Article 6(of the Constitution of the Portuguese Republic, which prohibits lockouts.

Article 60 of the Constitution reads as follows :

Article 60

Lock-outs shall be prohibited.

V. (1) Article 4 (3) b. of the Convention will be applied subject to Article 276 of the Constitution of the Portuguese Republic, which provide for compulsory civic service.

Article 276 of the Constitution reads as follows :

Article 276

1. The defence of the country is a fundamental duty of every Portuguese.

2. Military service shall be compulsory, for a period and on conditions to be laid down by law.

3. Persons considered unfit for armed military service and conscientious objectors shall perform unarmed military service or civic service suited! their situations.

4. Civic service may be established as a substitute for or as a complement to military service and may be made compulsory by law for citizens not subject to military service.

5. No citizen shall keep or obtain any office in the state or in any other public body if he fails to perform his military service or civic service, if compulsory.

6. Performance by a citizen of military service or compulsory civic service shall be without prejudice to his post, social security benefits~ permanent career.

VI. (1) Article 11 of the Convention will be applied subject to Article 4 (4) of the Constitution of the Portuguese Republic, which prohibits organisations with allegiance to a fascist ideology.

Article 46 (4) of the Constitution reads as follows :

Article 46

4. Armed, military-type, militarised or para-military associations outside the state and the Armed Forces and organisations which adopt Fascist ideology shall not be permitted.

(1) Reservation withdrawn by letter form the Permanent Representative of Portugal registered at the Secretariat General on 11 May 1987 - Or. F

SPAIN

Reservations and declarations

made at the time of deposit the instrument of ratification, on 4 October 1979 - Or.

I. Reservations

In pursuance of Article 64 of the Convention, Spain makes reservations respect of the application of the following provisions :

1. Articles 5 and 6, insofar as they may be incompatible with the disciplinary provisions concerning the armed forces, as they appear in] 2, Part XV and Book 3, Part XXIV of the Code of Military Justice.

Brief statement of the relevant provisions :

The Code of Military Justice provides that the punishment of minor offences may be ordered directly by an offender's official superior, after having elucidated the facts. The punishment of serious offences is subject to investigation of a judicial character, in the course of which the accussed must be given a hearing. The penalties and the power to

impose them are defined by law. In any case, the accused can appeal against the punishment to his immediate superior and so on, up to the Head of State.

(These provisions have been replaced by Basic Law 12/1985 of 27 November Chapter II of Part III and Chapters II, III and IV of Part IV - concern: the disciplinary regime of the Armed Forces, which entered into force o June 1986.

The new legislation amended the former provisions by reducing the duration of the sanctions imposing deprivation of liberty which can be applied without judicial intervention by increasing the guarantees of persons during the preliminary investigation.

By letter of 28 May 1986 the Permanent Representative of Spain nevertheless confirmed Spain's reservation to Articles 5 and 6 to the extent to which those articles might be incompatible with the latter law.)

2. Article 11, insofar as it may be incompatible with Articles 28 and 1 of the Spanish Constitution.

Brief statement of the relevant provisions :

Article 28 of the Constitution recognises the right to organise, but provides that legislation may restrict the exercise of this right or make it subject to exception in the case of the armed forces or other corps subject to military discipline and shall regulate the manner of its exercise in the case of civil servants.

Article 127, paragraph 1, specifies that serving judges, law officers a prosecutors may not belong to either political parties or trade unions provides that legislation shall lay down the system and modalities as t professional association of these groups.

II. Interpretative Declarations

Spain declares that it interprets :

1. The provisions of the last sentence in Article 10, paragraph 1, as being compatible with the present system governing the organisation of radio and television broadcasting in Spain.

2. the provisions of Articles 15 and 17 to the effect that they permit adoption of the measures contemplated in Articles 55 and 116 of the Spar Constitution.

contained in the letter from the Permanent Representative of Portugal, dated 8 November 1978, handed to the Secretary General at the time of deposit of the instrument of ratification, on 9 November 1978 - Or. Fr.

Reservation At the time of deposit of the instrument of ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, on 29 September 1979, Spain formulated a reservation to Articles 5 and 6 to the extent to which those articles might be incompatible with the provisions of the Code of Military Justice - Chapter XV of Part II and

Chapter XXIV of Part III - concerning the disciplinary regime of the Armed Forces.

I have the honour to inform you, for communication to the Parties to the Convention, that these provisions have been replaced by Basic Law 12/1985 of 27 November - Chapter II of Part III and Chapters II, III and IV of Part IV - concerning the disciplinary regime of the Armed Forces, which will enter into force on 1 June 1986.

The new legislation amends the former provisions by reducing the duration of the sanctions imposing deprivation of liberty which can be applied without judicial intervention by increasing the guarantees of persons during the preliminary investigation.

Spain confirms nevertheless its reservation to Articles 5 and 6 to the extent to which those articles might be incompatible with the provisions of Basis Law 12/1985 of 27 November - Chapter II of Part III and Chapters II, III and IV of Part IV - concerning the disciplinary regime of the Arm Forces, which will enter into force on 1 June 1986.

UNITED KINGDOM

Declaration contained in a letter from the Permanent Representative dated 23 October 1953, registered at the Secretariat General on 23 October 1953 - Or. Engl.

Her Majesty's Government have considered the extension of the European Convention of Human Rights to those territories for whose international relations they are responsible and in which that Convention would be applicable.

In accordance with the provisions of Article 63 of the Convention, Her Majesty's Government in the United Kingdom declare that the European Convention on Human Rights signed in Rome on the 4th November 1950 shall extend to those territories on the enclosed list for whose international relations they are responsible.

Aden Colony, The Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Solomon Islands, Channel Islands (The Bailiwick of Jersey, The Bailiwick of Guernsey), Cyprus, Falklands Islands, Fiji, Gambia, Gilbert and Ellice Islands, Gold Coast, Jamaica, Kenya, Gibraltar, Leeward Islands, Federation of Malaya, Malta, Isle of Man, Mauritius, Nigeria, Northern Rhodesia, North Borneo, Nyassaland, St. Helena, Sarawak, Seychelles, Sierra Leone, Singapore, Somaliland, Swaziland, Tanganyika, Trinidad, Uganda, Windward Islands (Dominica, Grenada, St. Lucia, St. Vincent), Zanzibar.

and at the request of the Government of that Kingdom, for whose international relations Her Majesty's Government in the United Kingdom is responsible, Kingdom of Tonga

Declaration contained in a letter from the Permanent Representative dated 9 June 1964, registered at the Secretariat General on 10 June 1964 - Or. Engl.

I have the honour to inform you, with reference to Mr Scarlett's letter (61/48/53) of October 23, 1953 on the extension of the Human Rights Convention to certain territories for whose international relations Her Majesty's Government were responsible, that of the territories named in that declaration, the following have since become independent.

Cyprus (August 16, 1960); Gold Coast (Ghana - March 6, 1957); Jamaica (August 6, 1962); Kenya (December 12, 1963); Federation of Malaya (August 31, 1957); Federation of Nigeria, including North and South Cameroons (These two territories were under United Kingdom Trusteeship and administered with Nigeria until Nigerian independence. A plebiscite was then held and North Cameroons opted to join Nigeria and South Cameroons to join the Cameroon Republic, Federation - October 1, 1960, South Cameroons - June 1, 1961, North Cameroons - October 1, 1961); North Borneo (September 16, 1963); Sarawak (September 16, 1963); Sierra Leone (April 27, 1961); Singapore (September 16, 1963); Somaliland (June 26, 1960); Tanganyika (December 9, 1961); Trinidad and Tobago (August 31, 1962); Uganda (October 9, 1962); Zanzibar (December 10, 1963).

2. The responsibilities which Her Majesty's Government assumed under the Human Rights Convention on behalf of these countries lapsed on the dates indicated.

3. I enclose a revised list of the territories for whose international relations Her Majesty's Government are now responsible, and to which the European Convention on Human Rights has been extended.

Foreign Office - May 1964

List of Territories for whose international relations Her Majesty's Government in the United Kingdom are responsible and to which the European Convention on Human Rights has been extended :

State of Adden, The Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Solomon Islands, Channel Islands (The Bailiwick of Jersey, The Bailiwick of Guernsey), Falklands Islands, Fiji, Gambia, Gilbert and Ellice Islands, Gibraltar, Leeward Islands, Malta, Isle of Man, Mauritius, Northern Rhodesia, Nyassaland, St. Helena, Seychelles, Kingdom of Tonga, Windward Islands (Dominica, Grenada, St. Lucia, St. Vincent).

Declaration contained in a letter from the Permanent Representative dated 12 August 1964, registered at the Secretariat General on 14 August 1964 - Or. Engl.

In my letter of June 9th, I enclosed a list of territoires for whose international relations Her Majesty's Government are responsible and to which the European Convention on Human Rights has been extended.

I regret that certain omissions were made in this list and I therefore have the honour to transmit to you the enclosed revised list of the territories in question. I should be grateful if you would circulate this to member Governments as an amendment. I should

also be grateful if, following its independence dating from July 6th, Malawi could be added to the list of territories which have become independent since the 1953 declaration.

Foreign Office - August 1964

List of Territories for whose international relations Her Majesty's Government in the United Kingdom are responsible and to which the European Convention on Human Rights has been extended :

State of Adden, The Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Solomon Islands, Cayman Islands, Channel Islands (The Bailiwick of Jersey, The Bailiwick of Guernsey), Falklands Islands, Fiji, Gambia, Gilbert and Ellice Islands, Gibraltar, Leeward Islands (Antigua, British Virgin Islands, Montserrat, St. Christopher-Nevis-Anguilla), Malta, Isle of Man, Mauritius, Northern Rhodesia, St. Helena, Seychelles, Kingdom of Tonga, Turks and Caicos Islands, Windward Islands (Dominica, Grenada, St. Lucia, St. Vincent).

Declaration contained in a letter from the Permanent Representative dated 5 August 1966, registered at the Secretariat General on 5 August 1966 - Or. Engl.

I have the honour to inform you that since May 1964 the following territories have become independent and that as a consequence Her Majesty's Government's responsibilities in respect of them under the Human Rights Convention lapsed on the dates indicated :

Malta	21 September, 1964
Northern Rhodesia (now Zambia)	24 October, 1964
The Gambia	18 February, 1965
British Guiana (now Guyana)	26 May, 1966

I have also been instructed to transmit to you the enclosed revised list of the territories for whose international relations Her Majesty's Government are still responsible, and to which the European Convention on Human Rights was extended in their declaration of the 23rd of October 1953.

Foreign Office - August 1966

List of Territories for whose international relations Her Majesty's Government in the United Kingdom are responsible and to which the European Convention on Human Rights has been extended :

State of Adden, The Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Honduras, British Solomon Islands, Cayman Islands, Channel Islands (The

Bailiwick of Jersey, The Bailiwick of Guernsey), Falklands Islands, Fiji, Gilbert and Ellice Islands, Gibraltar, Leeward Islands (Antigua, British Virgin Islands, Montserrat, St. Christopher-Nevis-Anguilla), Isle of Man, Mauritius, St. Helena, Seychelles, Swaziland, Kingdom of Tonga, Turks and Caicos Islands, Windward Islands (Dominica, Grenada, St. Lucia, St. Vincent).

Declaration contained in a letter from the Permanent Representative dated 12 January 1967, registered at the Secretariat General on 13 January 1967 - Or. Engl.

I have the honour to inform you that since July 1966 the following territories have become independent, and that as a consequence Her Majesty's Government's responsibilities in respect of them under the Human Rights Convention lapsed on the dates indicated :

Bechuanaland (now Botswana)	30 September, 1966
Basutoland (now Lesotho)	4 October, 1966
Barbados	30 November, 1966

Declaration contained in a letter from the Permanent Representative dated 12 September 1967, registered at the Secretariat General on 12 September 1967 - Or. Engl.

On instructions from Her Majesty's Principal Secretary of State for Foreign Affairs I have the honour to declare, in accordance with the provisions of Article 63(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on the 4th November 1950, that the Convention shall hereby extend to the State of Brunei.

Declaration contained in a letter from the Permanent Representative dated 12 June 1969, registered at the Secretariat General, on 13 June 1969 - Or. Engl.

I have the honour to inform you that since January 1967 the following territories have become independent, and that as a consequence Her Majesty's Government responsibilities in respect of them under the Human Rights Convention lapsed on the dates indicated :

State of Aden	30 November 1967
Mauritius	12 March 1968
Swaziland	6 September 1968

June 1969

Declaration contained in a letter from the Permanent Representative dated 30 June 1969, registered at the Secretariat General, on 1 July 1969 - Or. Engl.

ANNEX II

RESERVATIONS
EUROPEAN CONVENTION

List of Territories for whose international relations Her Majesty's Government in the United Kingdom are responsible and to which the European Convention on Human Rights has been extended :

The Bahamas, Bermuda, British Honduras, British Solomon Islands, Cayman Islands, Channel Islands (The Bailiwick of Jersey, The Bailiwick of Guernsey), Falkland Islands, Fiji, Gilbert and Ellice Islands, Gibraltar, Leeward Islands (Antigua, British Virgin Islands, Montserrat, St. Christopher-Nevis-Anguilla), Isle of Man, St. Helena, Seychelles, State of Brunei, Kingdom of Tonga, Turks and Caicos Islands, Windward Islands (Dominica, Grenada, St. Lucia, St. Vincent).

Declaration contained in a Note Verbale from the Permanent Representative dated 17 January 1979, registered at the Secretariat General, on 18 January 1979 - Or. Engl.

Her Majesty's Government in the United Kingdom ceased to be responsible on the dates shown below for the international relations of the following territories, to which the European Convention on Human Rights had been extended under Article 63 :

British Solomon Islands	7 July 1978
Seychelles	28 June 1976
Tuvalu	1 October 1978
Dominica	3 November 1978

Declaration contained in a Note Verbale the Permanent Representative dated 29 March 1979, registered at the Secretariat General, on 30 March 1979 - Or. Engl.

Her Majesty's Government in the United Kingdom ceased to be responsible on 22 February 1979 for the international relations of the territory of St. Lucia, to which the Convention on Human Rights had been extended under Article 63.

Declaration contained in a Note verbale from the Permanent Representative dated 27 July 1979, registered at the Secretariat General, on 30 July 1979 - Or. Engl.

Her Majesty's Government in the United Kingdom ceased to be responsible on 12 July 1979 for the international relations of the Gilbert Islands (Kiribati), to which the Convention on Human Rights had been extended under Article 63.

Declaration contained in a Note Verbale the Permanent Representative dated 22 February 1980, registered at the Secretariat General, on 27 February 1980 - Or. Engl.

Her Majesty's Government in the United Kingdom ceased to be responsible on 27 October 1979 for the international relations of the territory of St. Vincent, to which the Convention on Human Rights had been extended under Article 63.

Declaration contained in a letter from the Permanent Representative dated 30 September 1981, registered at the Secretariat General, on 1 October 1981 - Or. Engl.

I have the honour to refer to Article 63 of the Convention for the Protection of Human Rights and Fundamental Freedoms, under which the Convention was extended to Belize in 1953.

On instructions from Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, I now have the honour to inform you that since the independence of Belize from 21 September 1981, the Government of the United Kingdom is no longer responsible for this territory.

Declaration contained in a letter from the Permanent Representative dated 2 December 1981, registered at the Secretariat General, on 14 December 1981 - Or. Engl.

I have the honour to refer to Article 63 of the Convention for the Protection of Human Rights and Fundamental Freedoms, under which the Convention was extended to the Leeward Islands (including Antigua) in 195:

On instructions from Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, I now have the honour to inform you that since the independence of Antigua and Barbuda (as Antigua is now known) from 1 November 1981, the Government of the United Kingdom is no longer responsible for this territory.

Declaration contained in a letter from the Permanent Representative dated 8 November 1983, registered at the Secretariat General, on 9 November 1983 - Or. Engl.

I have the honour to refer to Article 63 of the Convention for the Protection of Human Rights and Fundamental Freedoms, under which the Convention was extended to the Leeward Islands (including St Kitts-Nevis) in 1953.

On instructions from Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, I now have the honour to inform you that since the independence of St Kitts-Nevis from 1 November 1981, the Government of the United Kingdom is no longer responsible for this territory.

Declaration contained in a letter from the Permanent Representative dated 3 April 1984, registered at the Secretariat General, on 3 April 1984 - Or. Engl.

I have the honour to refer to Article 63 of the Convention for the Protection of Human Rights and Fundamental Freedoms, under which the Convention was extended to Brunei on 12 September 1967.

On instructions from Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, I now have the honour to inform you that since Brunei Darussalam resumed full international responsibility as a sovereign and independent

state on 31 December 1983, the Government of the United Kingdom is no longer responsible for her external affairs.

April 1984

List of Territories for whose international relations Her Majesty's Government in the United Kingdom are responsible and to which the European Convention on Human Rights has been extended:

Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat, St. Helena, Turks and Caicos Islands.

ANNEX II

RESERVATIONS
FOURTH PROTOCOL

FRANCE

Declaration contained in the instrument of ratification, deposited on 3 May 1974 - Or. Fr.

The Protocol shall apply to the whole territory of the Republic, having due regard, where the overseas territories are concerned, to local requirements, as mentioned in Article 63 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

FEDERAL REPUBLIC OF GERMANY

Declaration made at the time of deposit of the instrument of ratification, on 1 June 1968 - Or. Fr.

This Protocol applies also to the Land Berlin with effect from the date on which it entered into force in respect of the Federal Republic of Germany.

IRELAND

Declaration made at the time of signature, on 16 September 1963 - Or. Engl.

The reference to extradition contained in paragraph 21 of the Report of the Committee of Experts on this Protocol and concerning paragraph 1 of Article 3 of the Protocol includes also laws providing for the execution in the territory of one Contracting party of warrants of arrest issued by the authorities of another Contracting Party.

ITALY

Declaration made at the time of deposit of the instrument of ratification, on 27 May 1982 - Or. Fr.

Paragraph 2 of Article 3 cannot prevent the application of the transitory disposition XIII of the Italian Constitution concerning the interdiction of entry and residence of some Members of the House of Savoy on the territory of the State.

NETHERLANDS

Declaration contained in the instrument of ratification, deposited on 23 June 1982 - Or. Fr.

We approve herewith, for the Kingdom in Europe and the Netherlands Antilles, the said Protocol.

Declaration contained in a letter from the Minister of Foreign Affairs, dated 9 June 1982, handed to the Secretary General at the time of deposit of the instrument of ratification, on 23 June 1982 - Or. Fr.

Since, following ratification by the Kingdom of the Netherlands, Protocol No 4 to the Convention on Human Rights and Fundamental Freedoms, recognising certain rights and freedoms other than those already specified in the Convention and the first Protocol, applies to the Netherlands and to the Netherlands Antilles, the Netherlands and the Netherlands Antilles are regarded as separate territories for the application of Articles 2 and 3 of the Protocol, in accordance with Article 5, paragraph 4. Under Article 3, no-one may be expelled from or deprived of the right to enter the territory of the state of which he is a national. There is, however, only one nationality (Netherlands) for the whole of the Kingdom. Accordingly, nationality cannot be used as a criterion in making a distinction between the "citizens" of the Netherlands and those of the Netherlands Antilles, a distinction which is unavoidable since Article 3 applies separately to each of the parts of the Kingdom.

This being so, the Netherlands reserve the right to make a distinction in law, for purpose of the application of Article 3 of the Protocol, between Netherlands nationals residing in the Netherlands and Netherlands nationals residing in the Netherlands Antilles.

Declaration contained in a letter from the Permanent Representative of the Netherlands, dated 24 December 1985, registered at the Secretariat General on 3 January 1986 - Or. Engl.

The island of Aruba, which is at present still part of the Netherlands Antilles, will obtain internal autonomy as a country within the Kingdom of the Netherlands as of 1 January 1986. Consequently the Kingdom will from then on no longer consist of two countries, namely the Netherlands (the Kingdom in Europe) and the Netherlands Antilles (situated in the Caribbean region), but will consist of three countries, namely the said two countries and the country Aruba.

As the changes being made on 1 January 1986 concern a shift only in the internal constitutional relations within the Kingdom of the Netherlands, and as the Kingdom as such will remain the subject under international law with which treaties are concluded, the said changes will have no consequences in international law regarding to treaties concluded by the Kingdom which already apply to the Netherlands Antilles, including Aruba. These treaties will remain in force for Aruba in its new capacity of country within the Kingdom. Therefore these treaties will as of 1 January 1986, as

concerns the Kingdom of the Netherlands, apply to the Netherlands Antilles (without Aruba) *and* Aruba.

Consequently the treaties referred to in the annex, to which the Kingdom of the Netherlands is a Party and which apply to the Netherlands Antilles, will as of 1 January 1986 as concerns the Kingdom of the Netherlands apply to the Netherlands Antilles *and* Aruba.

List of Conventions referred to by the Declaration

46. Protocol No 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto.

ANNEX II

RESERVATIONS
SEVENTH PROTOCOL

DENMARK

Reservation contained in a letter from the Chargé d'affaires a.i. of Denmark, dated 18 August 1988, handed to the Secretary General at the time of deposit of the instrument of ratification, on 18 August 1988 - Or. Engl.

The Government of Denmark declares that Article 2, paragraph 1 does not bar the use of rules of the Administration of Justice Act ("Lov om rettens pleje") according to which the possibility of review by a higher court - in cases subject to prosecution by the lower instance of the prosecution ("politisager") - is denied

(a) when the prosecuted, having been duly notified, fails to appear in court ;
(b) when the court has repealed the punishment ; or
(c) in cases where only sentences of fines or confiscations of objects below the amount or value established by law are imposed.

Declaration contained in a letter from the Permanent Representative of Denmark, dated 9 September 1988, registered at the Secretariat General on 12 September 1988 (see enclosed explanatory Note) - Or. Fr.

Under the terms of Article 6, paragraph 1, of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Government of Denmark hereby declares that the said Protocol shall not apply to the Feroe Islands.

Explanatory Note On 25 July 1988, the Government of Denmark addressed to the Majesty the Queen a recommendation aiming at obtaining the authorisation to ratify Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms. This recommendation provided for the formulation of the following declaration concerning the territorial application :

"Under the terms of Article 6, paragraph 1, of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Government of Denmark hereby declares that the said Protocol shall not apply to the Feroe Islands."

Due to an omission, the declaration was not made to the Secretary General, depository of the treaty, upon deposit of the instrument of ratification on 18 August 1988, as it should have been under the terms of Article 6, paragraph 1, of the Protocol.

The Government of Denmark corrects today this clerical mistake by forwarding to the Secretary General the text of the above mentioned declaration, to take effect at the date of entry into force of the Protocol in respect of the Kingdom of Denmark.

FRANCE

Interpretative Declaration made at the time of signature, on 22 November 1984 - Or. Fr.

The Government of the French Republic declares that, in accordance with the meaning of Article 2, paragraph 1, the review by a higher court may be limited to a control of the application of the law, such as an appeal to the Supreme Court.

Reservations made at the time of signature, on 22 November 1984 - Or. Fr.

The Government of the French Republic declares that only those offences which under French law fall within the jurisdiction of the French criminal courts should be considered as offences within the meaning of Articles 2 to 4 of the present Protocol.

The Government of the French Republic declares that :

a. Article 5 must not prevent the application of the provisions of Chapter II, Title V of the Third Book of the Civil Code or the application of Article 383 of the Civil Code ;

b. Article 5 should not be interpreted as implying that parental authority may be exercised in common in situations where the French law would recognise the exercise of such authority by only one of the parents.

Declaration contained in the instrument of ratification, deposited on 17 February 1986 - Or. Fr.

The Government of the French Republic declares that, the review by a higher court within the meaning of Article 2 (1) may be limited to ensuring the application of the law, for example by means of an appeal to the Court of Cassation.

Reservations contained in the instrument of ratification. deposited on 17 February 1986 - Or. Fr.

The Government of the French Republic declares that only those offences which under French law fall within the jurisdiction of the French criminal courts may be regarded as offences within the meaning of Articles 2 to 4 of this Protocol ;

The Government of the French Republic declares that Article 5 may not impede the application of the rules of the French legal system concerning the transmission of the patronymic name.

Article 5 may not impede the application of provisions of local law in the territorial collectivity of Mayotte and the territories of New Caledonia and of the Wallis and Futuna Archipelago.

Protocol N° 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms shall apply to the whole territory of the Republic, due regard being had where the overseas territories and the territorial collectivity of Mayotte are concerned, to the local requirements referred to in Article 63 of the European Convention on Human Rights and Fundamental Freedoms.

FEDERAL REPUBLIC OF GERMANY

Declarations made at the time of signature, on 19 March 1985 - Or. Engl.

1. By "criminal offence" and "offence" in Articles 2 to 4 of the present Protocol, the Federal Republic of Germany understands only such acts as are criminal offences under its law.

2. The Federal Republic of Germany applies Article 2(1) to convictions or sentences in the first instance only, it being possible to restrict review to errors in law and to hold such reviews in camera; in addition, it understands that the application of Article 2(1) is not dependent on the written judgment of the previous instance being translated into a language other than the language used in court.

3. The Federal Republic of Germany understands the words "according to the law or the practice of the State concerned" to mean that Article 3 refers only to the retrial provided for in section 359 et seq. of the Code of Criminal Procedure. (cf. Strafprozessordnung).

ITALY

Declaration contained in a letter dated 7 November 1991 handed to the Secretary General at the time of deposit of the instrument of ratification, 7 November 1991- Or. Fr.

The Italian Republic declares that Articles 2 to 4 of the Protocol apply only to offences, procedures and decisions qualified as criminal by Italian law.

LUXEMBOURG

Reservation made at the time of deposit of the instrument of ratification, on 19 April 1989 - Or. Fr.

The Grand Duchy of Luxembourg declares that Article 5 of the Protocol must not prevent the application of the rules of the Luxembourg legal system concerning transmission of the patronymic name

NETHERLANDS

Declaration made at the time of signature, on 22 November 1984 - Or. Engl.

The Netherlands Government interprets paragraph 1 of Article 2 thus that the right conferred to everyone convicted of a criminal offence to have conviction or sentence reviewed by a higher tribunal relates only to convictions or sentences given in the first instance by tribunals which according to Netherlands law are in charge of jurisdiction in criminal matters.

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