

AS TO THE ADMISSIBILITY OF

Application No. 23634/94
by Ibrahim TANKO
against Finland

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

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

Mr. H.C. KRÜGER, Secretary to the Commission assisted by
Mr. L. BERG.

Having regard to Article 25 of the Convention for the Protection
of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 March 1994 by
Mr. Ibrahim TANKO against Finland and registered on 8 March 1994 under
file No. 23634/94;

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

- the observations submitted by the respondent Government on
4 April 1994 and the observations in reply submitted by the
applicant on 24 April 1994; and
- the additional observations submitted by the applicant on
5 May 1994 and the additional observations in reply submitted by
the Government on 10 May 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Ghana born in 1957. He is a
bricklayer by profession. Before the Commission he is represented by

Ms. Kirsi Tarvainen, a lawyer of the Refugee Advice Centre in Helsinki.

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

Particular circumstances of the case

On 1 April 1988 the applicant was allegedly arrested and detained for two days by his employer on suspicion of having participated in a demonstration arranged by Muslims at his work place. During his detention he was allegedly assaulted. He allegedly managed to escape from detention with the help of a friend.

The applicant left Ghana for Burkina Faso on 5 April 1988, leaving his family behind in Ghana. From Burkina Faso he continued on the same day to Libya. In Libya he remained until 10 April 1989, when he left for Tunisia. On 27 April 1989 he left Tunisia for Turkey, from where he went to Cyprus on 30 April 1989. On 1 May he returned to Turkey and on 6 May 1989 he went back to Cyprus. On 9 May 1989 he again returned to Turkey, from where he went to Syria. On 19 September 1989 he left Syria for Egypt, from where he went to Saudi-Arabia on 8 March 1990. In June 1990 he returned to Egypt.

On 22 September 1990 he left Egypt for Finland, where he immediately requested asylum and a residence permit. This was refused by the Ministry of the Interior (sisäasiainministeriö, inrikesministeriet) on 13 November 1992.

The applicant appealed, referring, inter alia, to the fact that in the autumn of 1992 it had been discovered that he is suffering from glaucoma, an eye illness, which had most likely been caused by the assault to which he had allegedly been subjected during his detention in Ghana. The appeal was rejected by the Asylum Board (turvapaikkalautakunta, asylnämnden) on 10 February 1993 after it had obtained a negative opinion from the Ministry of the Interior.

On 8 June 1993 the Ministry of the Interior ordered the applicant's expulsion. The applicant's appeal against the expulsion order was rejected by the Supreme Administrative Court (korkein hallinto-oikeus, högsta förvaltningsdomstolen) on 11 February 1994.

In a report of 24 August 1993 submitted by ophthalmologist A.V. the following is stated in regard to the applicant's illness:

(translation from Finnish)

"[The applicant's illness] requires regular ophthalmological controls and probably an operation in the near future. The operation might have to be carried out at very short notice. It requires at least the resources of a university hospital and could not successfully be carried out in [Ghana]. [If the applicant is not operated on], the suppression of [his] illness will require continuous medication. If the medication is interrupted [due to] its uncertain availability in [Ghana], ... [the applicant] might lose his eyesight. [H]e might suffer severe pain and his eye might have to be removed. [An eye removal could only be carried out] by a hospital specialised in ophthalmology. ..."

In a further medical report of 22 February 1994 A.V. stated that a sudden increase of the pressure in the applicant's eye might render him blind and necessitate an operation. A.V. further confirmed that the applicant was awaiting examination at the University Hospital of Helsinki in order to have his need for an operation determined.

On 31 March 1994 the Ministry of the Interior decided to postpone the enforcement of the applicant's expulsion order until a possible

operation has taken place and his necessary follow-up treatment has been concluded.

A medical report of 27 April 1994, submitted by ophthalmologist P.P. of the Helsinki University Hospital in regard to the applicant's disease, concludes as follows:

(translation from Finnish)

" ... [The applicant] suffers from a secondary glaucoma in his left eye. ... The eye pressure is normal with [his] current medication. [There is] no need for an operation or laser treatment. The applicant [should] continue his [present] medication. ... [As from now on he should] undergo an ophthalmological examination twice a year and later possibly once a year. ..."

In a further medical report of 5 May 1994 P.P. confirmed that the applicant's illness could for the time being be treated with eye drops twice a day and that an operation was therefore not required. No prediction as to possible further treatment needed by the applicant could be made at present. An ophthalmological examination was recommended in about six months.

In the light of the medical reports of 27 April and 5 May 1994 the Ministry of the Interior on 9 May 1994 revoked its decision of 31 March 1994 and considered that the applicant's expulsion could be carried out.

Relevant domestic law

The 1991 Aliens' Act (ulkomaalaislaki 378/91, utlänningslag 378/91) provides that this Act, any provisions of a lower rank and international treaties by which Finland is bound shall be applied to aliens' entry into and departure from Finland. In the application of the Act aliens' rights shall not be unnecessarily restricted (section 1, subsections 1 and 3).

An alien who has entered Finland without a residence permit may be granted a fixed-term residence permit if he is in need of protection or if there are strong humanitarian or other particular reasons for issuing such a permit (section 20, subsection 1, para. 3).

Whenever the deportation of an alien is being considered, all relevant circumstances must be taken into account and, at least the duration of his stay in Finland, his family or other ties with that country and, if criminal behaviour would form the basis for his deportation, the character of his offence or offences (section 41, subsection 1).

COMPLAINTS

1. The applicant complains that the enforcement of his expulsion would subject him to a risk of losing his eyesight in view of the inadequate facilities for treating him and possibly operating on him in Ghana. He invokes Article 3 of the Convention.

2. On 9 March 1994 the applicant supplemented his application by complaining that his return to Ghana would also constitute a lack of respect for his physical integrity and thereby for his private life, as guaranteed by Article 8 of the Convention.

3. In his observations of 9 March 1994 the applicant also invoked Article 14 of the Convention in conjunction with the above-mentioned provisions, given that his return to Ghana would interrupt his care merely on the basis that he is no longer lawfully resident in Finland.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 4 March 1994 and registered on 8 March 1994.

On 7 March 1994 the Commission decided, pursuant to Rule 36 of the Commission's Rules of Procedure, that it was desirable in the interests of the parties and the proper conduct of the proceedings not to return the applicant to Ghana until the Commission had had an opportunity to examine the application. The Commission further decided, pursuant to Rule 48 para. 2 (b), to bring the application to the notice of the respondent Government and to invite them to submit written observations on its admissibility and merits with reference to Articles 3 and 8 of the Convention.

The Government's observations were submitted on 4 April 1994.

On 15 April 1994 the Commission prolonged its indication under Rule 36 until 20 May 1994.

The applicant's comments on the Government's observations were submitted on 24 April 1994.

Additional observations were submitted by the applicant on 5 May 1994 and by the Government on 10 May 1994.

THE LAW

1. The applicant complains that the enforcement of his expulsion would subject him to a risk of losing his eyesight in view of the inadequate facilities for treating him and operating on him in Ghana. He invokes Article 3 (Art. 3) of the Convention which reads:

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

The Government consider that this complaint is manifestly ill-founded. No substantial grounds have been shown for believing that the applicant, due to the current state of his illness and his allegedly insufficient possibilities of obtaining adequate care in Ghana, would face a real risk of being subjected to treatment contrary to Article 3 (Art. 3), should he be returned to that country. The applicant's assertion that the care facilities in Ghana are insufficient is only corroborated by the statement of ophthalmologist A.V. dated 24 August 1993. His opinion, however, cannot in this respect be regarded as authoritative.

The applicant considers that he has shown that his present treatment and regular ophthalmological examinations are necessary and that an interruption of this care would lead to severe pain and possibly to the loss of his eyesight. Ghana is a poor developing country and the applicant has no financial means of his own. The effects of his expulsion would therefore be serious and irrevocable and subject him to inhuman treatment. Should an operation be considered necessary, it is uncertain when this could take place in Finland and how long his recuperation would last. Both his individual situation at that stage and the general situation in Ghana at that time would be uncertain.

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to political asylum is not protected in either the Convention or its Protocols (Eur. Court H.R., *Vilvarajah and Others* judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 3) of the Convention, and hence engage the responsibility of that State under the Convention, where

substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he is to be expelled (ibid., p. 34, para. 103). A mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Article 3 (Art. 3) (ibid., p. 37, para. 111). The Commission does not exclude that a lack of proper care in a case where someone is suffering from a serious illness could in certain circumstances amount to treatment contrary to Article 3 (Art. 3).

In the present case the Commission observes, however, that the most recent expert opinions concerning the applicant's disease conclude that for the time being he is not in need of an operation, but that he should continue to receive his present medication. On the evidence before it concerning both his individual situation and the general situation in Ghana, the Commission does not find it established that the applicant could not obtain this medication in that country or bring it with him when returned there. The Commission also notes that the applicant's family is residing in Ghana. For the above reasons, there are no substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention, if expelled to that country in his present state of health.

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

2. The applicant also considers that his return to Ghana would constitute a lack of respect for his physical integrity and thereby his private life, as guaranteed by Article 8 (Art. 8) of the Convention. This provision reads as follows:

"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."

The Government primarily submit that Article 8 (Art. 8) of the Convention is not applicable in the case, given that neither the Convention nor any of its Protocols guarantee any explicit or implicit right to obtain medical care. In the alternative, the Government consider that the interference with the applicant's private life caused by the enforcement of the expulsion order would be in accordance with the law, pursue the legitimate aim of preventing disorder, would be in the interests of the economic well-being of the country and, finally, would be proportionate to those aims and thereby necessary in a democratic society.

In the applicant's view it cannot be argued that every expulsion of an alien would be necessary in pursuance of the legitimate aim of maintaining public order. In his case there is no indication that public order would be jeopardised if he were permitted to remain in Finland until his necessary care has come to an end.

The Commission considers that the refusal to grant the applicant asylum or a residence permit in Finland raises the question whether there has been a lack of respect for his private life. It recalls that the notion of "respect" enshrined in Article 8 (Art. 8) is not clear-cut. This is the case especially where the positive obligations implicit in that concept are concerned. Its requirements will vary

considerably from case to case according to the practices followed and the situations obtaining in the Contracting States. In determining whether or not such an obligation exists, regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual, as well as to the margin of appreciation afforded to the Contracting States (Eur. Court H.R., B. v. France judgment of 25 March 1992, Series A no. 232-C, pp. 47 et seq., paras. 44 et seq.). In the field of immigration "Contracting States 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" (Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, pp. 33-34, paras. 67 and 68).

In the present case the Commission refers to the factual conclusions it has already drawn when examining the application under Article 3 (Art. 3) of the Convention above. In the light of these conclusions, it also finds no elements indicating that the respondent Government would exceed their margin of appreciation in striking a fair balance between the general interests of the community and the individual interests of the applicant, should he be returned to Ghana. The Commission concludes, therefore, that his return to that country would not in his present state of health amount to a lack of respect for his private life.

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

3. The applicant has finally invoked Article 14 (Art. 14) of the Convention in support of his application. This provision reads as follows:

"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."

The Commission recalls that Article 14 (Art. 14) of the Convention prohibits discrimination in the securement of Convention rights and freedoms. Article 14 (Art. 14) has no independent existence, since it has effect solely in relation to the "rights and freedoms" safeguarded by those provisions (Eur. Court H.R., Inze judgment of 28 October 1987, Series A no. 126, p. 17, para. 36).

The Commission has found the application to be manifestly ill-founded under both Articles 3 and 8 (Art. 3, 8) of the Convention. In the light of the factual circumstances upon which those findings were made, the Commission also finds no elements in the case which might disclose any appearance of discriminatory treatment of the applicant compared to others in a comparable situation to his. Therefore no issue under Article 14 (Art. 14) of the Convention arises in the present application.

It follows that 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.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)