COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF HILAL v. THE UNITED KINGDOM

(*Application no. 45276/99*)

JUDGMENT

STRASBOURG

6 March 2001

FINAL

06/06/2001

In the case of Hilal v. the United Kingdom,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mrs F. TULKENS,
Mr K. JUNGWIERT,
Sir Nicolas BRATZA,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 8 February 2000 and 13 February 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 45276/99) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Tanzanian national, Mr Said Mohammed Hilal ("the applicant"), on 5 January 1999.

2. The applicant, who had been granted legal aid, was represented by Sen & Co., solicitors in Wembley. The United Kingdom Government ("the Government") were represented by their Agent, Ms R. Mandal, of the Foreign and Commonwealth Office.

3. The applicant alleged that his expulsion to Tanzania placed him at risk of torture or inhuman or degrading treatment, that he would not receive a fair trial if he were returned to Tanzania and that he had no effective remedy available to him in respect of these matters. He relied on Articles 3, 6, 8 and 13 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. The President of the Chamber and subsequently the Chamber decided to apply Rule 39, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings that the applicant should not be expelled to Tanzania pending the Court's decision.

6. By a decision of 8 February 2000, the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in Pemba, one of the Zanzibar islands, in 1968. Zanzibar is part of the United Republic of Tanzania. It has its own President, parliament and government and enjoys considerable autonomy.

9. According to the applicant, in 1992 he joined the Civic United Front ("the CUF"), an opposition party in Zanzibar. He was an active member, attending meetings and contributing money to the party funds. In August 1994 the applicant was arrested by Chama Cha Mapinduzi ("the CCM", the ruling party) officers because of his involvement with the CUF. He was detained at Madema police station in Zanzibar for three months, where he was tortured. He was repeatedly locked in a cell full of water for days at a time so he was unable to lie down. He was hung upside down with his feet tied together until he bled through the nose, and he was also subjected to electric shocks.

10. In November 1994 the applicant stated that he was released from detention following pressure from CUF leaders on the Tanzanian government. He was admitted to hospital, where a medical officer recorded that the applicant was haemorrhaging severely through the nose as a result of his treatment and had been subjected to harm endangering life.

11. The applicant stated that his brother had been taken into detention shortly before he was. He had been ill-treated and died in January 1995 in hospital where he had been taken from prison.

12. Following his release, the applicant stated that he only contributed funds to the CUF. In January 1995 the police came looking for him while he was out. The police detained his wife overnight and questioned his friends. He decided to leave his home and Tanzania, fearing for his safety.

13. On 9 February 1995 the applicant arrived in the United Kingdom and claimed asylum. That day a pro forma interview was held with an immigration officer, where the applicant was assisted by an interpreter. According to the form, the purpose of the interview was to enable the immigration officer to take down the initial details of the asylum application. When asked what the basis of his asylum claim was, the applicant was noted as having said: "Because of the problems in the country and my safety. I have been threatened a lot by the ruling party so I decided

to leave the country." The applicant stated that he had been a member of the CUF since 1992.

14. At the full asylum interview held on 15 March 1995, the applicant was recorded as stating that he had had no problem in obtaining a passport as he was a businessman, and that he had organised his passage to the United Kingdom himself. When asked what the basis for his asylum claim was, he stated that he had been taken away and detained for three months, from August to November 1994, at Madema police station, where he had been tortured. He had been locked in a room with a very low ceiling, where he could not stand up, and then placed for one and a half days in a room filled with water up to the chest, where he could not lie down. He was taken out and returned there twice a week. A few days before he was released he was hung upside down and given electric shocks. He had been arrested because he gave money to the CUF. He was told that he had been released because the CUF leaders had approached the authorities in Dar es Salaam. After his release, he was treated in a private clinic. He produced his CUF card. He had been an ordinary member, doing nothing more than give money. He had not taken part in the demonstration which had been allowed. He mentioned that his brother had been arrested in January 1995 and died after being in police custody. His brother had been badly beaten and was vomiting blood, so they had released him to hospital on 20 January 1995 as they knew he was going to die. His uncle had helped him to leave, obtaining an income-tax clearance and an airline ticket. His uncle checked in with the ticket for him and he was able to board the plane.

15. On 29 June 1995 the Secretary of State refused asylum, finding the applicant's account implausible and noting inconsistencies in his answers. The applicant's appeal to a special adjudicator was dismissed on 8 November 1996. During the proceedings the applicant had claimed that the Tanzanian authorities intercepted the letters he was sending home, knew that he had claimed asylum, and had summoned his parents to explain

> "about [their] son who [was] in a foreign country to abuse the government which [was] in power ..."

He provided correspondence from the Royal Mail concerning his enquiries about money which had gone missing from a registered letter dated 27 November 1995 which he had sent to his parents in Tanzania.

16. In his decision the special adjudicator noted inconsistencies between the evidence given by the applicant before him and the answers given in his asylum interviews. He placed considerable weight on the fact that the applicant had not mentioned his arrest and torture at his first asylum interview and did not accept the applicant's explanation that the interviewing officer told him that it was not necessary to give details at this stage or that he was having difficulties with the interpreter. He also noted that the evidence concerning his brother's arrest was contradictory and that

no documentary evidence such as a death certificate had been produced. He therefore did not accept that the applicant's brother was arrested, tortured or killed. He also observed that the applicant had not provided documentary evidence that the Zanzibar authorities were accusing him of tarnishing Tanzania's good name, and therefore did not accept that it existed. Looking at the evidence as a whole, he concluded that there was no well-founded fear of persecution for a Convention reason established to the required standard.

17. Leave to appeal to the Immigration Appeal Tribunal was refused on 10 January 1997.

18. The applicant obtained a copy of his brother's death certificate and a medical report which recorded that his brother died on 20 January 1995, after being brought to hospital from prison with a history of severe chest pain and general body weakness associated with a fever. He also obtained the summons from the Pemba police headquarters to his parents dated 25 November 1995 requesting their attendance to explain the applicant's unlawful conduct in embarrassing the government and country. He made representations to the Secretary of State dated 30 January 1997, providing copies and requesting that his letter be considered as a fresh asylum application.

19. By letter dated 4 February 1997 the Secretary of State expressed the view that the police summons was self-serving and not significant, while the death certificate did not disclose proof that his brother, who died of a fever, had been murdered by the authorities. He had, accordingly, decided not to treat the representations as a fresh application for asylum, but to reconsider the original asylum application on all the evidence available to him. He refused on that basis to reverse his decision.

20. By letter dated 4 February 1997 the applicant's representatives requested, alternatively, that the new material be referred to the special adjudicator under section 21 of the Immigration Act 1971. By letter dated 5 February 1997 the Secretary of State informed them that he had decided not to refer the material in question.

21. By letter dated 29 April 1997 the applicant's representatives submitted to the Secretary of State a medical report about the applicant's treatment following detention in Zanzibar, and requested that the new materials be submitted to the special adjudicator under section 21. They submitted further representations on 26 March 1998.

The hospital medical report, dated 8 November 1994, from a medical officer recorded that the applicant had suffered a severe nasal haemorrhage, that this was of a "dangerous harm" degree and that the injury had been inflicted by hanging upside down.

22. By letter dated 23 April 1998 the Secretary of State informed the applicant that he had considered the new material, but that this evidence did not cause him to reverse his decision to refuse asylum. He noted that the

documents would have been available to the applicant at the time of his appeal hearing but were not produced, which cast doubt on their authenticity. Even if the medical certificate and police summons were authentic, however, he saw no reason why the applicant could not return to live safely and without harassment in mainland Tanzania. He refused to make a reference under section 21.

23. The applicant applied for leave to apply for judicial review of the Secretary of State's refusal to refer the new material to the special adjudicator. He submitted an expert opinion confirming that the documents were genuine. The Secretary of State submitted that the documents were irrelevant because the applicant could live safely in mainland Tanzania. He relied on a letter from the British High Commission in Tanzania dated 8 April 1998 which stated that in general there was no evidence of politically motivated detentions on the mainland, although there were "more general human rights problems such as arbitrary detentions and poor penal conditions" on the mainland.

24. On 1 July 1998 the application for leave was rejected by the High Court. Mr Justice Jowitt stated:

> "The Secretary of State's decision [is] that things have changed and that as matters now stand, whatever was or was not the case in November 1996 and whatever ought or ought not to have been the outcome of the appeal heard then, the applicant can safely return to his home country, provided he goes to the mainland. Having looked at the letter [from the British High Commission], I can see no arguable grounds for saying that the Secretary of State has acted with Wednesbury unreasonableness in concluding that in the light of this new material he has no need to refer the matter to the Special Adjudicator and this application must be refused."

25. The applicant appealed to the Court of Appeal arguing that the Secretary of State's refusal was wrong in law and "Wednesbury unreasonable" and that, in claiming that the applicant could live safely on the mainland, he was not complying with international obligations by failing to take into account the applicant's specific case or documentation.

26. On 1 December 1998 the Court of Appeal refused leave to apply for judicial review. In its judgment it noted that the hospital records showed that his brother had died of fever and did not support the applicant's evidence that his brother had been tortured. Even assuming that the medical report on the applicant and the summons by the police to his parents were genuine, there was no evidence to suggest that the conclusion reached by the Secretary of State that the applicant could live without harassment on the mainland was wrong.

27. On 23 December 1998 the applicant was notified that he would be removed to Zanzibar on 11 January 1999.

28. On 22 February 1999 the applicant's wife arrived in the United Kingdom and claimed asylum shortly afterwards. It was recorded that she stated in her interview that the police had harassed her due to her husband's

involvement with the CUF. She had been detained for one day in April 1995 and questioned about her husband's whereabouts. The police came to her house on 12 February 1999, wanting to know if her husband was back in Zanzibar as there was a rumour that the United Kingdom had sent back most of the asylum-seekers from Zanzibar. They were angry because he had claimed asylum and tarnished the name of the President. They threatened to arrest her instead.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Immigration legislation and rules

29. Asylum applications are determined by the Secretary of State, pursuant to paragraph 328 of the Immigration Rules and section 3 of the Immigration Act 1971 ("the 1971 Act"). Where leave to enter is refused by the Secretary of State pursuant to section 4 of the 1971 Act, the person may appeal against the refusal to a special adjudicator on the grounds that the removal would be contrary to the United Kingdom's obligations under the Geneva Convention (section 8 of the 1971 Act).

30. An appeal lies from the special adjudicator to the Immigration Appeal Tribunal (section 20 of the 1971 Act).

31. Section 21 of the 1971 Act provides:

> "(1) Where in any case:
>
> (a) an adjudicator has dismissed an appeal, and there has been no further appeal to the Appeal Tribunal, or the tribunal has dismissed an appeal made to them ...; or
>
> (b) the Appeal Tribunal has affirmed the determination of an adjudicator dismissing an appeal ... the Secretary of State may at any time refer for consideration under this section any matter relating to the case which was not before the adjudicator or Tribunal ..."

32. Rule 346 of the Immigration Rules provides that the Secretary of State will treat representations as a fresh application if the claim advanced is sufficiently different from the earlier claim. He disregards, in considering whether to treat the representations as a fresh claim, material which is not significant, or is not credible, or was available to the applicant at the time when the previous application was refused or when any appeal was determined.

B. Domestic immigration decisions on Tanzania

33. There have been a number of domestic cases where special adjudicators have rejected "internal flight" possibilities for CUF members

from Zanzibar. In *Masoud Mussa v. the Secretary of State* (30 July 1998), the Government pointed out that the Secretary of State's counsel had not been present to argue the point. In *Omar Machano Omar v. the Secretary of State* (24 June 1998), the asylum claimant was an escaped prisoner from Zanzibar and a target for internal extradition proceedings. In *Salim Saleh Salim v. the Secretary of State* (15 January 1998), the adjudicator found that there was no evidence before him to show that the claimant would be any safer on the mainland than in Zanzibar.

34. In the case of *Adam Houiji Foum v. the Secretary of State* (10 January 2000), the Immigration Appeal Tribunal allowed the appeal of a Tanzanian asylum-seeker who had been involved in CUF activities, on the basis that, as he had suffered torture in Zanzibar and a summons had been issued against him in Tanzania generally, there was a very reasonable prospect that he would be picked up by the police and undergo ill-treatment similar to that previously received in Zanzibar, either at the hands of the Zanzibar authorities or of the police in mainland Tanzania who also exercised brutality on prisoners in their custody. It therefore rejected the "internal flight" option.

C. Judicial review in immigration cases

35. Decisions of the Home Secretary to refuse asylum, to make a deportation order or to detain pending deportation are liable to challenge by way of judicial review and may be quashed by reference to the ordinary principles of English public law.

36. These principles do not permit the courts to make findings of fact on matters within the jurisdiction of the Secretary of State or to substitute their discretion for the minister's. The courts may quash his decision only if he has failed to interpret or apply English law correctly, if he has failed to take account of issues which he was required by law to address, or if his decision was so irrational or perverse that no reasonable Secretary of State could have made it (*Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1948] 1 King's Bench Reports 223).

37. In the recent case of *R. v. Home Secretary, ex parte Turgut* (28 January 2000), concerning the Secretary of State's refusal of asylum to a young male Turkish Kurd draft evader, Lord Justice Simon Brown, in the Court of Appeal's judgment, stated as follows:

> "I therefore conclude that the domestic court's obligation on an irrationality challenge in an Article 3 case is to subject the Secretary of State's decision to rigorous examination and this it does by considering the underlying factual material for itself to see whether it compels a different conclusion to that arrived at by the Secretary of State. Only if it does will the challenge succeed.
>
> All that said, however, this is not an area in which the Court will pay any especial deference to the Secretary of State's conclusion on the facts. In the first place, the

human right involved here – the right not to be exposed to a real risk of Article 3 treatment – is both absolute and fundamental: it is not a qualified right requiring a balance to be struck with some competing social need. Secondly, the Court here is hardly less well placed than the Secretary of State himself to evaluate the risk once the relevant material is before it. Thirdly, whilst I would reject the applicant's contention that the Secretary of State has knowingly misrepresented the evidence or shut his eyes to the true position, we must, I think, recognise at least the possibility that he has (even if unconsciously) tended to depreciate the evidence of risk and, throughout the protracted decision-making process, may have tended also to rationalise the further material adduced so as to maintain his pre-existing stance rather than reassess the position with an open mind. In circumstances such as these, what has been called the 'discretionary area of judgment' – the area of judgment within which the Court should defer to the Secretary of State as the person primarily entrusted with the decision on the applicant's removal ... – is decidedly a narrow one."

III. RELEVANT INTERNATIONAL MATERIAL

38. In January 1997 the US Department of State released the Tanzania Country Report on Human Rights Practices for 1996. It stated:

"The Government's human rights record did not improve and problems persisted. Although the 1995 multiparty elections represented an important development, citizens' right to change their government in Zanzibar is severely circumscribed. Although new opposition parties were competitive in many 1995 races and won in some constituencies, police often harassed and intimidated members and supporters of the opposition. Other human rights problems included police beatings and mistreatment of suspects, which sometimes resulted in death. Soldiers attacked civilians, and police in Zanzibar used torture, including beatings and floggings. Prison conditions remained harsh and life threatening. Arbitrary arrest and prolonged detention continued and the inefficient and corrupt judicial system often did not provide expeditious and fair trials ...

Since the 1995 election, police in Zanzibar, particularly on Pemba, have regularly detained, arrested and harassed CUF members, and suspected supporters. Despite orders from the Union Government's Inspector General of Police, officers in Zanzibar continue these activities ...

The Wairoba Commission found that pervasive corruption affected the judiciary from clerks to magistrates. Clerks took bribes to decide whether or not to open cases and to hide or misdirect the files of those accused of crimes. Magistrates often accept bribes to determine guilt or innocence, pass sentence, withdraw charges or decide appeals ...

There are reports of prisoners waiting several years for trial because they could not pay bribes to police and court officials. Authorities acknowledge that some cases have been pending since 1988. The Government initiated efforts as early as 1991 to highlight judicial corruption and increased its oversight ...

In the 2 years since the election, government security forces and CCM gangs harassed and intimidated CUF members on both of the two main Zanzibar islands, Pemba and Ugunja. Because CUF won all 20 seats on Pemba, Pembans living on Ugunja were regarded as CUF supporters and as a result were harassed. CUF members

accused police of detaining dozens of its members ... Safety is not ensured in Pemba, where security forces dispersed gatherings, intimidated and roughed up individuals ...”

39. In the Amnesty International Annual Report 1997, it was stated:

“Prisoners of conscience were among scores of government opponents arrested and briefly detained on the islands of Zanzibar and Pemba. Many were held without charge or trial; others faced criminal charges and were denied bail. Scores of political prisoners were tortured and ill-treated on the islands ...

Criminal charges such as sedition, vagrancy and involvement in acts of violence, often accompanied by the denial of bail for periods of two weeks or more, were also used as a method of intimidating government critics or opponents.”

40. In their 1998 report, Amnesty International stated:

“In December [1997], 14 possible prisoners of conscience on Zanzibar were charged with treason and refused bail. The men, supporters of the CUF, were arrested and initially charged with sedition in November and December, during the week the CUF won a by-election to the Zanzibar House of Representatives.”

41. On 8 July 1998 Amnesty International issued a press release expressing concern that the vice-chairperson of the CUF might be arrested on a fabricated treason charge. In Tanzania it noted treason carried a mandatory death penalty. On 24 July 1998 Amnesty called for the immediate release of eighteen leading CUF members or supporters, most of them imprisoned since November 1997 on fabricated treason charges. It expressed concern about their deteriorating health and a denial of adequate medical treatment.

42. The 1998 US State Department report on Tanzania noted that serious problems remained in that government’s human rights record.

“... the police regularly threaten, mistreat or beat suspected criminals during and after their apprehension and interrogation. Police also use the same means to obtain information about suspects from family members not in custody ... Police in Zanzibar use torture ... Repeated reports from credible sources indicate that the police use torture, including beatings and floggings in Zanzibar, notably on Pemba Island. Both the Zanzibar and Union Governments have denied these charges. Police have not yet explained the deaths of six detainees in the town of Morogoro who were electrocuted at the end of 1997 ...

Prison conditions remained harsh and life-threatening. Government officials acknowledge that prisons are overcrowded and living conditions are poor. Prisons are authorised to hold 21,000 persons but the actual prison population is estimated at 47,000 ... The daily amount of food allotted to prisoners is insufficient to meet their nutritional needs and even this amount is not always provided ... Earlier the Commissioner of Prisons stated that his department received inadequate funds for medicine and medical supplies. Prison dispensaries only offer limited treatment, and friends and family members of prisoners generally must provide medication or the funds with which to purchase it. Serious diseases, such as dysentery, malaria and cholera are common and result in numerous deaths. Guards continued to beat and abuse prisoners.

> ... There were no reports of political prisoners on the mainland. At the year's end, there were 18 political prisoners in Zanzibar."

43. The report noted that in January 1998 the police had searched the offices of the CUF party in Tanzania and removed files. In the three years since the election in 1995, government security forces and CCM gangs harassed and intimidated CUF members on both the main Zanzibar islands of Pemba and Ugunja.

44. The Amnesty International 1999 Report for Tanzania stated that:

> "Eighteen prisoners of conscience, including three arrested during the year, were facing trial for treason on the island of Zanzibar, an offence that carries the death penalty. Scores of other opposition supporters in Zanzibar were imprisoned for short periods; some were possible prisoners of conscience. More than 300 demonstrators arrested on the mainland in the capital Dar es Salaam were held for several weeks and reportedly tortured. Conditions in some prisons were harsh ..."

The eighteen prisoners, CUF members, included fifteen arrested in 1997 and three arrested in Zanzibar in May 1998, and many had reportedly fallen ill due to a denial of access to medical treatment. According to the report, the conditions in some mainland prisons amounted to cruel, inhuman and degrading treatment, which in the case of Mbeya Prison led to forty-seven deaths in the first half of the year.

45. In its press release of 27 January 2000 Amnesty International, reporting on the imminent trial of the eighteen CUF members, referred to them "as prisoners of conscience who are imprisoned solely on account of their non-violent opinions and peaceful political activities". It described how between the 1995 and the 1998 elections, numerous CUF supporters had been arrested on trumped-up criminal charges, tortured in custody and imprisoned. On more recent events, it commented:

> "Following lengthy attempts by the Secretary General of the Commonwealth and the United Nations Secretary General to settle the political crisis in Zanzibar, an agreement was finally reached between the CCM and CUF in April 1999. Far-reaching reforms for democratisation, human rights and fair elections were set out in the Commonwealth Agreement, but few have yet been implemented. Although the CUF is allowed to operate more freely, the Zanzibar government continues to press ahead with the trial, intent on convictions and death sentences."

46. In the 1999 US State Department report on Tanzania, issued on 25 February 2000, it was reported, *inter alia*, that the authorities had been responsible for a number of extrajudicial killings and that several prisoners had died as a result of harsh prison conditions, including inadequate nutrition, medical care and sanitation:

> "... the police regularly threaten, mistreat or occasionally beat suspected criminals during and after their apprehension and interrogation ... Repeated reports indicate that the police use torture, including beatings and floggings, in Zanzibar, notably on Pemba island."

The situation in Zanzibar was less favourable in a number of respects. It was stated that, except in Zanzibar, Tanzanian citizens generally enjoyed the right to discuss political alternatives freely and opposition party members openly criticised the government, although the government had used the provision prohibiting "abusive language" against the leadership to detain some opposition figures. Opposition parties had generally been more able to hold rallies, although CUF meetings in Zanzibar had been far more restricted than those of other parties. Police continued to break up meetings attended by persons thought to be opposed to the Zanzibar government. In Pemba the security forces broke up gatherings and intimidated opposition party officials and the government continued to arrest opposition politicians for holding meetings.

> "In the four years since the election, government security forces and CCM gangs harassed and intimidated CUF members on both main Zanzibar islands, Pemba and Ugunja ... The CUF accused police of detaining dozens of its members including several local leaders ... citizen's safety is not assured in Pemba, where security forces dispersed gatherings and intimidated persons ... Almost all international donors have suspended direct assistance to Zanzibar in response to the authorities' human rights abuses. Under pressure from the international community, the ruling CCM party and the main opposition party, the CUF, signed a political agreement in June to make the political process in Zanzibar fairer; however the provisions of the agreement were not fully implemented by the year's end and observers believe that the Government did not act in good faith in the period following the signing of the agreement."

IV. REPORTS ON THE SITUATION IN TANZANIA PROVIDED BY THE PARTIES

47. In a letter dated 8 April 1998 the British High Commission in Dar es Salaam commented that there were concerns about the situation in Zanzibar but that on the mainland there had been no evidence of political killings, disappearances or politically motivated arrests. There were more general human rights problems, such as arbitrary detentions and poor penal conditions, which were systemic and not related to political activity.

48. In a letter dated 25 May 1998 Michael Hodd of the University of Westminster commented that there was evidence of human rights violations in Zanzibar, including a list of sixty-six missing persons. Although there was a good human rights record in mainland Tanzania, it was possible for the Zanzibar government to demand extradition, which had been successful in the case of Abdallah Kassim Hanga, whom a well-informed source reported as having been beheaded.

49. According to a report dated 16 March 1999 obtained by the applicant, Professor Parkin, professor of social anthropology at All Souls College, Oxford, an expert on Uganda, Kenya and Tanzania, stated that while there was less likelihood of persecution in mainland Tanzania than on Zanzibar, he observed a deteriorating situation also affecting the mainland.

He referred to particular members of the Zanzibari CCM visiting the mainland and harassing and persecuting CUF dissidents who had taken refuge there. The Zanzibari CUF leader was living in Dar es Salaam but only ever moved out of his flat surrounded by CUF party aides able to protect him.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicant complained that he would be placed at risk of torture or inhuman or degrading treatment contrary to Article 3 if he were expelled from the United Kingdom to Tanzania.

51. Article 3 of the Convention provides:

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

A. The parties' submissions

1. The applicant

52. The applicant submitted that he faced a real and immediate risk of ill-treatment if he were to be returned to Tanzania. He had been badly treated in detention before he left, suffering ill-treatment which included being kept in a room full of cold water. His feet were tied together and he was hung upside down, until he bled through the nose. His brother had also died on being released from detention, in circumstances in which it can properly be deduced that this resulted from his ill-treatment in detention. Both he and his brother had been detained on account of their involvement with the CUF. The reports on the situation in Tanzania showed that there was still active persecution of CUF members, that the government's human rights record remained poor, that police committed extra-judicial killings and mistreated suspects, that throughout the country prison conditions remained harsh and life-threatening, and that arbitrary and prolonged detentions remained a problem.

53. The applicant submitted that the Tanzanian authorities continued to demonstrate an active interest in his whereabouts, as shown by the police summons which indicated disapproval of the fact that he had claimed asylum in the United Kingdom. This was further substantiated by the

experiences of his wife, who stated that on 12 February 1999 the police had come to her house enquiring if he had returned to Zanzibar.

54. The applicant disputed the Government's arguments that his account of events lacked credibility. In particular, the reason that he did not give details of the ill-treatment suffered at the first interview with an immigration officer was that he understood that it was only to draw a rough outline. No inference could be drawn from his failure to mention specific details. He had been consistent in his account of torture since and had provided independent and verified evidence of his ill-treatment, corroborating his account. He disputed that there was any sustainable option of "internal flight" as he was still at risk of ill-treatment in mainland Tanzania. He referred to the decisions of special adjudicators in other cases which had also rejected this possibility for even low-level CUF members. There would in any event be the possibility that Zanzibar would demand his extradition from the mainland.

55. The applicant in addition argued that Article 3 imposed a positive obligation on the respondent State to investigate properly, in the light of all the evidence, his assertion that he would be exposed to a real risk of treatment contrary to Article 3 if removed to Tanzania.

2. The Government

56. The Government submitted that there were significant factual inconsistencies in the applicant's account and that he had been found to lack credibility by the special adjudicator. This cast overwhelming doubt upon the applicant's claim that he had been tortured. For example, the applicant was asked directly by the immigration officer at the first interview on 9 February 1995 to identify the basis of his asylum claim in response to which he did not refer to being tortured during detention. He did not mention torture until over a month later. His explanation for this – that the officer failed to record his answer or that the interpreter did not translate it – was rejected by the adjudicator, who had the opportunity to evaluate the applicant's oral evidence and demeanour. His accounts also showed a confusion relating to the date of his brother's detention and there was no support in the death certificate for the assertion that his brother had been tortured.

57. The Government rejected the applicant's claim that he would be at risk of ill-treatment if he were returned to Tanzania. They pointed to his low level of involvement in the CUF, the absence of any evidence to suggest that the authorities had shown any interest in him, his family or friends since November 1995, and to the fact that he would not be at risk in mainland Tanzania, which had a good human rights record. They submitted that it was clear from the documentation, such as the Amnesty International press release of 24 July 1998, that an individual with minor CUF involvement would face no significant difficulties in mainland Tanzania.

There was no evidence that the Tanzanian authorities would return the applicant to Zanzibar or that he would be detained as a person wanted by the authorities for the offence of bringing the country into disrepute. There was only one recorded incident of extradition to Zanzibar and no indication that grounds existed for the applicant to be so removed. In addition, there was no evidence to support the contention that the authorities were aware that the applicant was in the United Kingdom. While the applicant stated that a summons was issued following the interception of a letter from his parents, it may be noted that the summons was dated 25 November 1995 and the letter posted on 27 November 1995.

58. They submitted that there was therefore no basis on which to infer that the applicant was of interest to the Zanzibar or mainland authorities. Accordingly, his expulsion would not violate Article 3 of the Convention.

B. The Court's assessment

59. The Court recalls at the outset that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. However, in exercising their right to expel such aliens, Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies. The expulsion of an alien may give rise to an issue under this provision where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In such circumstances, Article 3 implies an obligation not to expel the individual to that country (see, for example, *Ahmed v. Austria*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2206, §§ 38-39, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1853, §§ 73-74).

60. In determining whether it has been shown that the applicant runs a real risk, if deported to Tanzania, of suffering treatment proscribed by 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 following judgments: *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, Series A no. 215, p. 36, § 107, and *H.L.R. v. France*, 29 April 1997, *Reports* 1997-III, p. 758, § 37). Ill-treatment must also attain a minimum level of severity if it is to fall within the scope of Article 3, which assessment is relative, depending on all the circumstances of the case.

61. The Court recalls that the applicant arrived in the United Kingdom from Tanzania on 9 February 1995, where he claimed asylum. In the domestic procedures concerning his asylum application, his claim was based on his membership of the CUF, an opposition party in Tanzania, and the

fact that he had been detained and tortured in Zanzibar prior to his departure. He also claimed that his brother had been detained and had died due to ill-treatment and that the authorities were accusing him of tarnishing Tanzania's good name, increasing the risk that he would be detained and ill-treated on his return.

62. The Government have urged the Court to be cautious in taking a different view of the applicant's claims than the special adjudicator who heard him give evidence and found him lacking in credibility. The Court notes however that the special adjudicator's decision relied, *inter alia*, on a lack of substantiating evidence. Since that decision, the applicant has produced further documentation. Furthermore, while this material was looked at by the Secretary of State and by the courts in the judicial review proceedings, they did not reach any findings of fact in that regard but arrived at their decisions on a different basis – namely, that even if the allegations were true, the applicant could live safely in mainland Tanzania (the "internal flight" solution).

63. The Court has examined the materials provided by the applicant and the assessment of them by the various domestic authorities. It finds no basis to reject them as forged or fabricated. The applicant has provided an opinion from the professor of social anthropology at AllSoulsCollege, Oxford, that they are genuine. Though the Government have expressed doubts on the authenticity of the medical report, they have not provided any evidence to substantiate these doubts or to contradict the opinion provided by the applicant. Nor did they provide an opportunity for the report and the way in which the applicant obtained it to be tested in a procedure before the special adjudicator.

64. The Court accepts that the applicant was arrested and detained because he was a member of the CUF opposition party and had provided them with financial support. It also finds that he was ill-treated during that detention by, *inter alia*, being suspended upside down, which caused him severe haemorrhaging through the nose. In the light of the medical record of the hospital which treated him, the apparent failure of the applicant to mention torture at his first immigration interview becomes less significant and his explanation to the special adjudicator – that he did not think he had to give all the details until the full interview a month later – becomes far less incredible. While it is correct that the medical notes and death certificate of his brother do not indicate that torture or ill-treatment was a contributory factor in his death, they did give further corroboration to the applicant's account which the special adjudicator had found so lacking in substantiation. They showed that his brother, who was also a CUF supporter, had been detained in prison and that he had been taken from the prison to hospital, where he died. This is not inconsistent with the applicant's allegation that his brother had been ill-treated in prison.

65. The question remains whether, having sought asylum abroad, the applicant is at risk of ill-treatment if he returns home. The Government have queried the authenticity of the police summons, pointing out that it was dated 25 November 1995, while the package to his parents intercepted by the authorities was sent on 27 November 1995. It may be observed however that the special adjudicator's summary of the applicant's evidence referred to his claim that his parents had not been receiving any of his letters. Nevertheless, his only proof of postage related to a registered package with money concerning which he had entered into correspondence with the Royal Mail. He provided this correspondence to prove that his mail had been interfered with; it does not appear from the documents that he claimed that it was from interception of this particular item that the police first knew that he was in the United Kingdom. His account is therefore not inconsistent on this point.

66. The Court recalls that the applicant's wife, who has now also claimed asylum in the United Kingdom, informed the immigration officer in her interview that the police came to her house on a number of occasions looking for her husband and making threats. This is consistent with the information provided about the situation in Pemba and Zanzibar, where CUF members have in the past suffered serious harassment, arbitrary detention, torture and ill-treatment by the authorities (see paragraphs 38-46 above). This involves ordinary members of the CUF and not only its leaders or high-profile activists. The situation has improved to some extent, but the latest reports cast doubt on the seriousness of reform efforts and refer to continued problems faced by CUF members (see paragraph 46 above). The Court concludes that the applicant would be at risk of being arrested and detained, and of suffering a recurrence of ill-treatment if returned to Zanzibar.

67. The Government relied on the "internal flight" option, arguing that even assuming that the applicant was at risk in Zanzibar, the situation in mainland Tanzania was more secure. The documents provided by the parties indicate that human rights infringements were more prevalent in Zanzibar and that CUF members there suffered more serious persecution (see paragraphs 47-49 above). It nonetheless appears that the situation in mainland Tanzania is far from satisfactory and discloses a long-term, endemic situation of human rights problems. Reports refer in general terms to police in Tanzania ill-treating and beating detainees (see paragraph 46 above) and to members of the Zanzibari CCM visiting the mainland to harass CUF supporters sheltering there (see paragraph 49 above). Conditions in the prisons on the mainland are described as inhuman and degrading, with inadequate food and medical treatment leading to life-threatening conditions (see paragraphs 44 and 46 above). The police in mainland Tanzania may be regarded as linked institutionally to the police in Zanzibar as part of the Union and cannot be relied on as a safeguard against

arbitrary action (see *Chahal*, cited above, p. 1861, § 104, where the applicant, of Sikh origin, was at particular risk of ill-treatment within the Punjab province but could not be considered as safe elsewhere in India as the police in other areas were also reported to be involved in serious human rights violations). There is also the possibility of extradition between Tanzania and Zanzibar (see the special adjudicator's decision cited at paragraph 33 and the report cited at paragraph 49 above).

68. The Court is not persuaded, therefore, that the "internal flight" option offers a reliable guarantee against the risk of ill-treatment. It concludes that the applicant's deportation to Tanzania would breach Article 3 as he would face a serious risk of being subjected to torture or inhuman or degrading treatment there.

69. The applicant's complaints concerning the remedies available to him in respect of the breach of Article 3 fall, in the circumstances of this case, to be examined under Article 13 of the Convention (see *İlhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII).

II. ALLEGED VIOLATIONS OF ARTICLES 6 AND 8 OF THE CONVENTION

70. The applicant relied on Article 6 (right to a fair trial) and Article 8 (right to respect for private life), alleging that the expulsion to Tanzania would place him at risk of arbitrary and unfair criminal proceedings if he was arrested, and would threaten his physical and moral integrity.

71. In the light of its conclusion above, the Court finds that no separate issue arises under these provisions.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

72. The applicant complained that he did not have an effective remedy against the proposed expulsion. He relied on Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] 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."

A. The parties' submissions

73. The applicant submitted that he had no effective remedy available to him by which he could challenge the decision of the Secretary of State to deport him to Tanzania. He obtained the supporting documentation for his claims after the hearing before the independent adjudicator. However, the Secretary of State took the view that this material was irrelevant and refused

to accede to the applicant's request that the documents be made available to the adjudicator to examine whether it altered his view. The application for judicial review did not, in his view, provide an opportunity to have his claim assessed by an independent judicial body on the basis of all the evidence. The application only challenged the decision not to refer the material back to the adjudicator. Neither the High Court nor the Court of Appeal undertook any form of review of the claim in the light of all the evidence, assessing neither his veracity nor the risks existing if he were returned. The courts' review was limited in its scope to an examination of the rationality of the decision and the question whether the refusal was so unreasonable that no reasonable Secretary of State could have reached it. The test of irrationality was extremely high. He argued, however, that where evidence was prima facie genuine and went to the heart of his claim, he should have had the opportunity to have the risks reviewed in the light of that evidence. This inability to determine the substance of his Convention complaint deprived the procedure of effectiveness for the purposes of Article 13 of the Convention.

74. The Government submitted that judicial review furnished an effective remedy, and referred to previous findings of the Court to that effect in expulsion cases (see, for example, *Vilvarajah and Others*, cited above, pp. 39-40, §§ 123-25; *D. v. the United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III; and *T.I. v. the United Kingdom* (dec.), no. 43844/98, ECHR 2000-III). The domestic case-law demonstrated that the courts considered carefully the evidence before them in such cases. While the domestic court would not form its own independent view of the facts which would then necessarily prevail over whatever view had been formed by the Secretary of State, it was clear that in cases involving extradition and expulsion the domestic court would conduct a thorough examination of the available evidence and, if appropriate, would not be slow in forming, or reluctant to form, the view that the Secretary of State's decision was unlawful and should be set aside.

B. The Court's assessment

75. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the

remedy required by Article 13 must be "effective" in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see the following judgments: *Aksoy v. Turkey*, 18 December 1996, *Reports* 1996-VI, p. 2286, § 95; *Aydın v. Turkey*, 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; and *Kaya v. Turkey*, 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

76. On the basis of the evidence adduced in the present case, the Court finds that the applicant's claim that he risked inhuman or degrading treatment contrary to Article 3 of the Convention if expelled to Tanzania is "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52, and *Kaya*, cited above, p. 330, § 107). The Court has therefore examined whether he had available to him an effective remedy against the threatened expulsion.

77. In *Vilvarajah and Others* (cited above, p. 39, § 123) and *Soering v. the United Kingdom* (judgment of 7 July 1989, Series A no. 161, pp. 47-48, §§ 121-24), the Court considered judicial review proceedings to be an effective remedy in relation to the complaints raised under Article 3 in the contexts of deportation and extradition. It was satisfied that English courts could effectively control the legality of executive discretion on substantive and procedural grounds and quash decisions as appropriate. It was also accepted that a court effecting judicial review would have power to quash a decision to expel or deport an individual 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. This view was followed more recently in *D. v. the United Kingdom* (cited above, pp. 797-98, §§ 70-71).

78. While the applicant argued that in judicial review applications, the courts will not reach findings of fact for themselves on disputed issues, the Court is satisfied that the domestic courts give careful scrutiny to claims that an expulsion would expose an applicant to the risk of inhuman or degrading treatment. The Court is not convinced that the fact that this scrutiny takes place against the background of the criteria applied in judicial review of administrative decisions, namely, rationality and perverseness, deprives the procedure of its effectiveness. The substance of the applicant's complaint was examined by the Court of Appeal, and it had the power to afford him the relief he sought. The fact that it did not do so is not a material consideration since the effectiveness of a remedy for the purposes of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Vilvarajah and Others*, cited above, p. 39, § 122).

79. The Court concludes, therefore, that the applicant had available to him an effective remedy in relation to his complaints under Article 3 of the

Convention concerning the risk of ill-treatment on expulsion to Tanzania. Accordingly, there has been no breach of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

81. The applicant claimed the sum of 2,000 pounds sterling (GBP) in respect of non-pecuniary damage for the failure to investigate properly the risks on return to Tanzania in violation of Article 3 of the Convention and the failure to provide an effective remedy.

82. The Government submitted that no award of damages was appropriate in the circumstances.

83. The Court recalls that it has found no procedural violations concerning the alleged lack of investigation. As regards its finding of a violation of Article 3 – that the proposed expulsion to Tanzania would place the applicant at risk of ill-treatment contrary to this provision – the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained.

B. Costs and expenses

84. The applicant claimed a total of GBP 12,583.87, exclusive of value-added tax (VAT), for legal costs and expenses. This sum included a sum of GBP 5,000 for counsel's advice, GBP 280 for an expert report and GBP 6,935.63 for solicitors' fees in preparing and submitting the Rule 39 request, the application and two sets of observations.

85. The Government considered that the amounts claimed were excessive, in particular regarding the claim of eighty-seven hours' work for counsel and the hourly rate claimed by the solicitor. They proposed the figure of GBP 7,000 as being appropriate.

86. The Court finds that the sums claimed are reasonable. It awards the amount claimed in full, together with any VAT that may be chargeable, less the 5,100 French francs received by way of legal aid from the Council of Europe.

C. Default interest

87. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the expulsion of the applicant to Tanzania would violate Article 3 of the Convention;

2. *Holds* that no separate issues arise under Articles 6 and 8 of the Convention;

3. *Holds* that there has been no violation of Article 13 of the Convention;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, for costs and expenses, GBP 12,583.87 (twelve thousand five hundred and eighty-three pounds sterling eighty-seven pence), together with any value-added tax that may be chargeable, less FRF 5,100 (five thousand one hundred French francs) to be converted into pounds sterling at the exchange rate applicable at the date of delivery of the judgment;
   (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President