

AS TO THE ADMISSIBILITY OF

Application No. 22174/93
by A.A. and Others
against Norway

The European Commission of Human Rights sitting in private on
21 October 1993, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
E. BUSUTTI
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANIELIUS
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

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 23 March 1993 by
A.A. and Others against Norway and registered on 7 July 1993 under file
No. 22174/93;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The applicants are a family of six. They are:

A.A., born in 1954 and his wife
F.A., born in 1965, and their four children
A.A., born in 1985,
I.A., born in 1987,
V.A., born in 1988,
B.A., born in 1989.

All the applicants are Kosovo-Albanians and Muslims. They are at
present in hiding in Norway. Before the Commission they are represented
by Mr. Eric Rundhovde, a lawyer practising in Bergen.

In March 1990 the first applicant engaged himself in certain
political activities within the LDK (Lidhja Demokratike e Kosovës, a

legal political party in Kosovo dominated by Kosovo-Albanians). He submits that he was involved in humanitarian assistance to persons who had lost their jobs due to their ethnic origin.

On 14 November 1990 the first applicant was arrested and detained after having called a meeting for the local members of the LDK. He submits that he was ill-treated while detained. The following day he was supposed to appear before a court, but he managed to escape and went into hiding. The police searched his home and beat his wife. His father and other family members were taken to the police station and kept there for six hours. The applicant submits that they were also ill-treated.

On 7 January 1991, after having managed to get hold of passports, the family left for Sweden where they arrived on 9 January 1991. They applied for asylum which, however, was rejected by the Swedish authorities on 10 August 1991. An appeal was rejected on 26 October 1992 and in order to avoid deportation to Kosovo, the family went to Norway where they arrived on 1 November 1992.

Their request for asylum was rejected by the Directorate for Aliens (Utlendingsdirektoratet) on 13 November 1992. In its decision the Directorate stated as regards the first applicant:

(translation)

"The Directorate considers that it cannot be established that [the applicant] has been subjected in his home country to actions by the authorities which may be characterised as persecution within the meaning of the Aliens Act (Utlendingsloven) or the Refugee Convention. [The applicant] has not been engaged in such political activities either which may give reason to fear persecution.

[The applicant] submits that he has been a member of the legal political party LDK, Lidhja Demokratike e Kosovës. He did not occupy any central position in the party.

[The applicant's] engagement was the participation in humanitarian activities. He submits that he was arrested on 14 November 1990 and interrogated due to these activities. He furthermore submits that he was supposed to appear before a court the following day, but managed to escape and leave the country after some time. The Directorate considers this incident to be of a minor character and not such that it may constitute the basis for asylum.

[The applicant] has been refused asylum and residence/work permit in Sweden. The Directorate finds that the Swedish authorities have made a thorough examination of the case. The Norwegian authorities have not received information which could lead to another conclusion than the one reached in Sweden.

There is no reason either to give [the applicant] a residence/work permit in Norway in accordance with Section 8, subsection 2, of the Aliens Act.

[The applicant] came to Norway together with four children. The children's situation does not require either that the family should receive a residence permit in Norway.

[The applicant] must accordingly be returned to Sweden in pursuance of Sections 27 a and 28 of the Aliens Act as he has no valid travel documents or visa.

The Swedish authorities have agreed to accept the return in

accordance with the Nordic Passport Control Agreement. A copy of the acceptance is enclosed.

Section 15, subsection 1, of the Aliens Act does not prevent a return to the country of origin."

For similar reasons the first applicant's wife and children were also refused asylum and they were to be returned to Sweden together.

The applicants appealed against the decisions to the Ministry of Justice. As in the proceedings before the Directorate for Aliens they were also represented here under a grant of legal aid.

In its decision of 9 February 1993 rejecting the appeal the Ministry stated inter alia in respect of the first applicant:

(translation)

"[The applicant] submits that he fears a return to Sweden as he is convinced this will lead to a return to his home country. He alleges that the situation is such that he cannot return with four small children. He also submits that he and his family have now been in Scandinavia for two years and that he fears arrest and detention if returned.

...

The reasons set out in the Directorate's decision are upheld. As the Directorate the Ministry would point out that [the applicant] has not been engaged in such political activities which may give reason to fear persecution. Having regard to the other circumstances of the case it is not considered likely that [the applicant] upon return will be subjected to such reactions which may be characterised as persecution within the meaning of the Aliens Act or the (Refugee) Convention.

After considering the case as a whole, the Ministry does not find either that such strong human considerations or particular connections with Norway exist that [the applicant] ought to receive a residence permit under Section 8, subsection 2, of the Aliens Act. In this respect the Ministry has also considered the situation of [the applicant's] children without this being sufficient for a permit under this provision.

Moreover, the Ministry is well aware of the situation in Kosovo, but does not consider this situation to be such that this in itself could constitute the basis for a residence permit under this provision.

The Ministry does not find either that such circumstances exist as are set out in Section 15, subsection 1, and does not consider, therefore, that this could prevent a return to Sweden. The Ministry points out that a number of persons have been deported to Kosovo and the Norwegian authorities do not find either that the situation is such that this in itself requires a protection against deportation."

The first applicant's wife and children received a similar decision. The case has not been brought before the ordinary courts of law. On 26 February 1993 the applicants were ordered to leave Norway by 12 March 1993. They are, however, still in Norway.

COMPLAINTS

The applicants complain that it would be in violation of Article 2 para. 1 and Article 3 of the Convention to return them to Kosovo in the present circumstances.

They submit that it is clear that Sweden is only a transit country and that, therefore, the decision of the Norwegian authorities in reality means that they will be returned to Kosovo.

In respect of Article 2 of the Convention the applicants submit, in particular, that it is very likely that an armed conflict breaks out in Kosovo soon.

As regards Article 3 they submit that it is likely that the first applicant will be arrested and detained and subjected to ill-treatment by the Serbian dominated authorities. He also refers to the fact that he will not receive a fair trial, and to what might happen to him if an armed conflict breaks out while he is detained, suspected of being a Kosovo-Albanian activist.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 March 1993. On the same day the President of the Commission decided to indicate to the respondent Government, pursuant to Rule 36 of the Commission's Rules of Procedure, that it was desirable not to deport the applicants until the Commission had had an opportunity to examine the case further.

On 7 April 1993 the Commission decided not to prolong the above indication pursuant to Rule 36 of its Rules of Procedure.

On 29 June 1993 the applicants informed the Commission that they nevertheless intended to pursue the application.

The application was registered on 7 July 1993.

THE LAW

The applicants maintain that although the Norwegian authorities' decisions relate to an expulsion to Sweden, this nevertheless amounts to a return to Kosovo as Sweden can only be regarded as a transit country. Accordingly, they complain that they risk being subjected to treatment contrary to Article 2 para. 1 (Art. 2-1) and Article 3 (Art. 3) of the Convention which read as follows:

"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."

and

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

In support of their contention the applicants refer to the general situation in former Yugoslavia and the particular situation of the Kosovo Albanians. Furthermore, they maintain that it is very likely that an armed conflict breaks out in Kosovo soon. In addition the applicants maintain that the first applicant will be arrested and detained by the Serbian dominated authorities. They also submit that there is no guarantee that the courts in Kosovo would comply with the fair trial requirements or that prison conditions would be in accordance with Article 3 (Art. 3) of the Convention. The situation in Kosovo is very turbulent and fully under Serbian control.

The Commission does not find it necessary to determine whether Sweden is only a transit country because even assuming this to be the case and that, therefore, the applicants risk being returned to Kosovo,

the application is inadmissible for the following reasons.

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 (*ibid.*, p. 37, para. 111).

The examination of the present case involves, on the one hand, the applicants' personal situation and, on the other, the general situation in Kosovo. For this purpose the applicants have provided relevant material which includes information from the United Nations High Commissioner for Refugees and Amnesty International as well as information concerning their particular situation. Having regard thereto, the Commission finds that the general situation in Kosovo at present is not of such a kind that an expulsion to that area of former Yugoslavia would as such amount to a violation of the Convention or its Protocols. In order to raise an issue under the provisions invoked there should accordingly be some substantiation as to the existence of a specific risk of treatment contrary to Articles 2 or 3 (Art. 2, 3) of the Convention.

In the present case the Commission has not found such specific circumstances. Accordingly, the Commission concludes, on the evidence before it concerning the applicants' background and the general situation in Kosovo, that it has not been established that there are substantial grounds for believing that they would be exposed to a real risk of being subjected to treatment contrary to Articles 2 or 3 (Art. 2, 3) of the Convention if returned to Kosovo.

It follows 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.

For these reasons, the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)