

AS TO THE ADMISSIBILITY OF

Application No. 23157/94  
by A.B.  
against Sweden

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

MM. C.A. NØRGAARD, President  
S. TRECHSEL  
A. WEITZEL  
E. BUSUTTIL  
G. JÖRUNDSSON  
A.S. GÖZÜBÜYÜK  
J.-C. SOYER  
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

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

Having regard to the application introduced on 12 November 1993 by  
A.B. against Sweden registered on 3 January 1994 under file No. 23157/94;

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 applicant is a Libyan citizen, born in 1963. He is presently  
detained with a view to being expelled from Sweden to Libya. He is  
represented by Mr. Jamal Msellati in Sörberge.

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

The applicant entered Sweden in February 1990 and immediately  
requested asylum, claiming to be wanted by Libyan authorities for having  
painted anti-government slogans on walls at his university. Although  
allegedly innocent, he claimed that he had been searched for by the  
police at his home on the day of the incident. He then decided to leave  
the country.

In his asylum request the applicant further claimed that his father had been detained since 1987, suspected of having connections with "the Muslim Brotherhood". The applicant further feared that the Libyan authorities were surveying his family and tapping their telephone.

On 14 March 1991 the Swedish National Immigration Board (statens invandrarverk) rejected the asylum request and found no grounds for granting the applicant a residence permit.

The applicant's appeal to the Aliens Appeals Board (utlänningsnämnden) was transferred to the Government following an opinion by the Security Police according to which he was being suspected of having contacts with the Libyan Embassy in Sweden between September 1990 and March 1991.

The applicant apparently attempted to refute these suspicions, but on 28 October 1993 the Government rejected his appeal, considering that he was not a refugee. Moreover, particular reasons militated against the granting of a residence permit, notably in the light of the information provided by the Security Police.

Having been suspected of attempting to avoid the enforcement of the expulsion order, the applicant was, on 9 November 1993, detained with a view to proceeding to the enforcement of the order. The applicant appealed against the detention order, but on 16 November 1993 his appeal was rejected.

On 24 November 1993 the applicant lodged a further request for a residence permit with the National Immigration Board. This was refused on 26 November 1993.

#### COMPLAINTS

1. The applicant complains that he will be sentenced to lengthy imprisonment and possible capital punishment if expelled to Libya. He claims that he is being wanted on account of several anti-Libyan activities both in Libya and abroad. He submits that already staying in a foreign country for more than six months without special permission is punishable with a lengthy prison or death sentence. Dissident activities are punishable with 20-25 years' imprisonment or, most likely, a death sentence.

The applicant further complains of his treatment during his present detention in Sweden. He is allegedly suffering from claustrophobia and is therefore unable to eat or drink. He claims to have been sent to a emergency ward for psychiatric care on several occasions.

2. The applicant further alleges that his present detention is unlawful.

3. The applicant finally complains that the expulsion proceedings have been unfair.

#### PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 November 1993 and registered on 3 January 1994.

On 10 December 1993 the Commission decided not to indicate to the respondent Government, in accordance with Rule 36 of the Rules of Procedure, that it would be desirable in the interests of the parties and the proper conduct of the proceedings not to deport the applicant until the Commission had examined the application further.

#### THE LAW

1. The applicant complains that his expulsion to Libya would expose him

to serious risks in Libya in view of his anti-Libyan activities. He further complains of the treatment during his present detention in Sweden, having regard to his alleged mental suffering.

Article 3 (Art. 3) of the Convention reads as follows:

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

(a) As regards the expulsion order, 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.*, 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 observes that the applicant has not specified the activities on account of which he claims to be wanted by Libyan authorities. It is therefore not clear on what basis he would risk to be subjected to inhuman or degrading treatment or punishment.

The Commission therefore concludes, on the evidence before it, that it has not been established that there are substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention, if expelled to Libya.

(b) As regards the applicant's alleged mental suffering the Commission finds no evidence in support of his contention that his detention has made him suffer from claustrophobia and that he has been taken into psychiatric care.

It follows that there is no appearance of a violation of Article 3 (Art. 3) in this regard and that this part 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 further alleges that his present detention is unlawful.

The Commission has considered this complaint under Article 5 para. 1 (f) (Art. 5-1-f), which reads, as far as relevant, as follows:

"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:

...

f. the lawful arrest or detention ... of a person against whom action is being taken with a view to deportation or extradition."

The Commission finds no indication that the applicant's detention did not comply with the requirements of this provision.

It follows that this part 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 finally complains that the expulsion proceedings have been unfair.

The Commission has considered this complaint under paragraph 1 of Article 6 (Art. 6), which reads, as far as relevant, as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ..."

The Commission recalls that, according to the Commission's case-law, procedures with a view to determining whether an alien should be allowed to stay in a country or should be expelled do not involve any determination of the alien's civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (e.g. No. 13162/87, Dec. 9.11.87, D.R. 54 p. 211). The said provision is therefore not applicable.

It follows that this part of the application must be rejected as being incompatible *ratione materiae* with the provisions of the Convention in accordance with Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)