

Application No. 30078/96  
by Aldin Sami Sadek SHARAF  
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 3 December 1997, the following members being present:

Mrs J. LIDDY, President  
MM M.P. PELLONPÄÄ  
E. BUSUTTIL  
A. WEITZEL  
C.L. ROZAKIS  
L. LOUCAIDES  
B. MARXER  
B. CONFORTI  
N. BRATZA  
I. BÉKÉS  
G. RESS  
A. PERENIC  
C. BÎRSAN  
K. HERNDL  
M. VILA AMIGÓ  
Mrs M. HION  
Mr R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

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 October 1995 by Aldin Sami Sadek SHARAF against Austria and registered on 5 February 1996 under file No. 30078/96;

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, born in 1968, is a Lebanese national. His current place of residence is unknown. Before the Commission he is represented by Mr. H. Blum, a lawyer practising in Linz.

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

On 29 June 1994 the applicant came to Austria via Budapest. When he tried to illegally enter Switzerland he was arrested and questioned by the Hohenems police. On 6 July 1994 the Dornbirn District Administrative Authority (Bezirkshauptmannschaft) ordered the applicant's expulsion. The applicant was taken into detention with a view to his expulsion.

On 11 July 1994 the applicant requested asylum. He was questioned by the Linz Federal Asylum Authority (Bundesasylamt) on 14 July 1994. He submitted in particular that he had been the leader of a group of twelve fighters of the "Force Libanaise" (hereinafter FL). The FL's objective was to liberate the Lebanon from foreign groups. It was accused of collaborating with Israel and its members risked to be brought to trial on charges of treason. Between 1992 and his flight in 1994 the applicant had lived in the Lebanon. In January 1994 the

first measures of persecution against the members of the FL had started and the applicant had gone underground. In 1993 he had once been arrested and tortured.

On 21 July 1994 the Federal Asylum Authority dismissed the applicant's asylum request. It had regard to the general situation of the FL in the Lebanon. As to the applicant's situation it found that his alleged arrest in 1993 was not relevant in the asylum proceedings as a considerable amount of time had elapsed between this arrest and his flight. The Federal Asylum Authority found that the applicant's submissions were partly contradictory and therefore not credible. Moreover, the Federal Asylum Authority held that the granting of asylum was also excluded as the applicant had travelled through Hungary, where he had already been safe from persecution.

Also on 21 July 1994 the applicant requested the Dornbirn District Administrative Authority that a declaratory decision be taken under S. 54 in combination with S. 37 of the Aliens Act (Fremdengesetz) that his expulsion to the Lebanon would be unlawful. S. 37 forbids the expulsion of an alien to a State where there are solid reasons to believe that he will be exposed to the risk of inhuman treatment or punishment or the death penalty or that he will be persecuted within the meaning of the Geneva Convention relating to the Status of Refugees. Alternatively, the applicant requested that he be granted a stay of expulsion (Abschiebungsaufschub). In addition to his submissions in the asylum proceedings he claimed that he had been arrested and tortured in January 1994.

On 27 July 1994 the applicant filed an appeal with the Federal Ministry of the Interior (Bundesministerium für Inneres) against the decision refusing to grant him asylum. As to the general situation of the FL in the Lebanon, the applicant quoted examples from Amnesty International reports for 1993 and 1994. According to these reports at least five members of the FL had been arrested in 1993 on suspicion of having disseminated negative propaganda. Twenty further members of the FL charged with offences against national security had been waiting for their trial since 1992. The leader of the FL had been arrested in November 1993. As to his personal situation, the applicant submitted that he had been arrested in January 1994 in order to be questioned about the FL and its activities. On this occasion he had been tortured; in particular his feet had been flogged and he had been beaten in the face with a rifle butt. He had sustained injuries to his head and his right eye and his upper jaw had been broken. Requesting a medical examination in respect of his injuries, he claimed that he had not duly been heard in the first instance proceedings.

On 29 July 1994 the Dornbirn District Administrative Authority, referring to the findings of the Federal Asylum Authority, dismissed the applicant's requests of 21 July 1994 on the ground that the applicant would not be at risk upon being returned to the Lebanon. It considered that the applicant's account was untrustworthy as his submissions were inconsistent. In particular, he had first stated that he had been ill-treated in 1993, while he had later submitted that he had also been tortured in January 1994. However, his allegations that the injuries to his legs and his head were caused by torture were not credible as he had, at his first questioning by the Hohenems police, stated that he had sustained these injuries during an air raid.

On 4 August 1994 the applicant gave Mr. Blum power of attorney to represent him in all issues of asylum law and aliens law.

On 18 August 1994 the Vorarlberg Security Authority (Sicherheitsdirektion) dismissed the applicant's appeal. It rejected the applicant's request under S. 54 of the Aliens Act as being out of time. As to the applicant's request for a stay of the expulsion, the authority, referring also to the asylum proceedings, confirmed the District Administrative Authority's view that the applicant's

allegations of torture were not credible as his statements in this respect had been inconsistent. Thus, he had not shown that he was at risk of being persecuted in the Lebanon.

On 19 August 1994 the Ministry of the Interior dismissed the applicant's appeal in the asylum proceedings. As to the applicant's allegations of torture, it found that there was no indication in the file that he had been prevented from giving a comprehensive account of all relevant events at the questioning on 14 July 1994 in which, moreover, he had been assisted by a translator. Further, the Ministry noted that, on 10 August 1994, the applicant had undergone a medical examination, which had shown several scars on his body. It had not been possible to establish whether he had suffered a fracture of his jaw. However, there was no evidence that any injuries had been caused by torture. On the contrary, he could well have sustained his injuries when fighting for the FL. The Ministry also found that the applicant was not credible, inter alia as he had first stated to have been ill-treated in August 1993, while he only left the Lebanon in June 1994.

On 26 August 1994 the applicant was expelled to the Lebanon.

On 19 January 1995 the Administrative Court rejected the complaint concerning the refusal to stay expulsion. Noting that the applicant had already been expelled to the Lebanon, the Court found that the applicant lacked a legitimate interest to take legal action.

On 19 December 1995 the Administrative Court (Verwaltungsgerichtshof), upon the applicant's complaint of 29 September 1994, quashed the decision of the Ministry of the Interior refusing his asylum request. It found that not only the applicant's submissions, but also the facts stated by the Federal Asylum Authority were contradictory. Moreover, the Federal Asylum Authority had failed to indicate the source of its information concerning the situation in the Lebanon. In these circumstances, the Ministry of the Interior was called upon to carry out further investigations.

By letter of 22 July 1996 the applicant's representative informed the Ministry of the Interior, in the course of the renewed asylum proceedings, that since the applicant's expulsion he had had no possibility to contact him and was, therefore, not in a position to file any observations.

On 26 August 1996 the Ministry of the Interior dismissed the applicant's appeal on the ground that the applicant had come to Austria via Hungary, where he had been safe from persecution. The applicant did not file a further complaint with the Constitutional Court (Verfassungsgerichtshof) or the Administrative Court.

By letter of 23 September 1997 the applicant's representative confirmed that he had lost contact with the applicant and that he did not know anything about his fate following his expulsion.

## COMPLAINTS

1. The applicant complains that his expulsion to the Lebanon where he risks torture and inhuman and degrading treatment constituted a violation of Article 3 of the Convention. He also invokes Article 5 of the Convention.
2. The applicant complains further under Article 13 of the Convention that the Administrative Court refused to decide on the merits of his complaint in the proceedings concerning his request for a stay of the expulsion.

## REASONS FOR THE DECISION

The applicant raises complaints under Articles 3, 5 and 13 of the Convention in relation to his expulsion.

The Commission notes that the applicant was expelled to the Lebanon on 26 August 1994 following the rejection of his asylum request by the Ministry for the Interior. The applicant's representative has, according to his letter of 23 September 1997, not had any contact with the applicant since.

The Commission further notes that the applicant's representative subsequently lodged a complaint against the refusal of the applicant's request for asylum with the Administrative Court which, on 19 December 1995, quashed the Ministry's decision for procedural defects. However, in the renewed asylum proceedings the applicant's representative stated that he was not in a position to file observations as he had lost contact with the applicant since his expulsion. Following the Ministry's decision of 26 August 1996 which again refused the applicant's request, his representative did not lodge further complaints with the Constitutional Court or the Administrative Court.

Having regard to all the circumstances of the case, in particular the long lapse of time since contact broke off between the applicant and his representative, the Commission finds that it is no longer justified to continue the examination of the petition within the meaning of Article 30 para. 1 (c) of the Convention.

Moreover, the Commission finds no reasons of a general character affecting respect for Human Rights, as defined in the Convention, which require the further examination of the application by virtue of Article 30 para. 1 in fine of the Convention.

Finally, the Commission observes that, in accordance with Article 30 para. 3 of the Convention, it would be in a position to restore the petition to its list of cases if circumstances arise which justify such a course.

For these reasons, the Commission, unanimously,

DECIDES TO STRIKE THE APPLICATION OUT OF ITS LIST OF CASES.

M.F. BUQUICCHIO  
Secretary  
to the First Chamber

J. LIDDY  
President  
of the First Chamber