AS TO THE ADMISSIBILITY OF

Application No. 17387/90
by A.
against Sweden

The European Commission of Human Rights sitting in private on 7 March 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
MM. L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 26 October 1990 by A. against Sweden and registered on 5 November 1990 under file No. 17387/90;

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

Having regard to the observations submitted by the Government on 28 November 1990 and 30 January 1991;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a citizen of Bangladesh, born in 1964. Before the Commission he is represented by Mrs. Madelaine Seidlitz, Stockholm.

The applicant arrived in Sweden from Bangladesh on 28 June 1988. He had been granted a visa by the Swedish National Immigration Board (statens invandrarverk) on 17 May 1988. The visa granted permitted the applicant to stay in Sweden for a maximum of 30 days in total and he was to leave Sweden on 31 August 1988 at the latest. When applying for this visa the applicant stated that he wished to come and visit his sister who was in Sweden and who at that time, according to the applicant, was ill. He also stated that he intended to go back to

Bangladesh after his visit in Sweden.

On 27 July 1988 the applicant, however, applied for a residence permit on political grounds at the local police authority of Stockholm.

On 12 September 1988 the applicant was heard by the police regarding his request for a residence permit. On this occasion he stated that he was wanted by the police in Bangladesh due to the fact that he was present when a police officer was shot and killed by a friend of his during a political demonstration in Dinajpur on 10 November 1987 arranged by the Awami League, the political party in Bangladesh in which the applicant is said to have been active. There were, according to the applicant, about 4000-5000 persons taking part in the demonstration. He and four other persons were pointed out by the police as guilty of the killing, and the reason for this was, according to the applicant, that he is always suspected when something occurs, that the four other persons were just standing by and that he is a friend of the person who fired the gun.

The applicant also stated that in 1984 he had taken part in a demonstration and had been arrested. He was held for twelve days and had been beaten by the police at a police station in Kotowwali after which he was hospitalised for ten days.

On 12 September 1988 the local police authority of Stockholm decided to refer the applicant's case to the National Immigration Board in accordance with Sections 33 and 34 of the Aliens Act (utlänningslagen), in view of the fact that there were, according to the police authority, grounds for refusal of entry and since the applicant had invoked political reasons for his request to remain in Sweden.

On 31 October 1988 the applicant submitted certain additional remarks to the police report concerning the alleged treatment he had received; that he had lived in hiding in Bangladesh and that his brother-in-law had provided him with a passport.

On 30 June 1989 the National Immigration Board rejected the applicant's request for a residence permit and ordered that he should be expelled. The Board found that the information which the applicant had submitted was not credible. The reasons which he had invoked were not sufficiently strong for considering him as a refugee within the meaning of the Aliens Act or under the Geneva Convention of 1951 relating to the status of refugees. Nor were the facts invoked of such weight that he should otherwise be allowed to remain in Sweden and granted a residence permit.

On 6 July 1989 the applicant lodged an appeal against the Board's decision with the Government.

On 2 August 1989 the applicant submitted a document written in Bangla. This document appeared to be a copy of minutes from a trial before a Court of Appeal in Dinajpur in Bangladesh. A translation of the document into Swedish was made. The document contained a report on a case brought i.a. against the applicant concerning the murder of a policeman during a demonstration held in Dinajpur on 10 November 1987. It contained a verdict according to which the applicant and four other accused had been found guilty of planned and premeditated murder in violation of Sections 144, 148, 302 and 109 of the Penal Code of Bangladesh and sentenced to death.

On 12 September 1989 the National Immigration Board requested the Swedish Embassy in Dhaka to make an inquiry concerning the authenticity of the said document and concerning the question whether there actually existed a judgment of the said character or whether there were any proceedings instituted against the applicant.

On 29 October 1989 the Embassy informed the Immigration Board that its inquiry showed that the document was a falsification. No case of the said number (105:88) existed. Also the number from the General Register (GR No. 42/1987) had proven to be non-existent. According to information obtained by the Embassy from the Court in Dinajpur there were only 73 cases registered during 1988. According to the lawyer mentioned in the document as representing the applicant in the proceedings before the Court in Dinjapur, the case was invented and the content of the document was false.

In support of his appeal to the Government the applicant subsequently submitted medical certificates issued on 22 December 1988 and 24 October 1989 according to which he suffers from mental disturbances that will make psychiatric treatment necessary for many years ahead.

On 15 January 1990 the National Immigration Board recommended the Government not to grant the applicant's appeal. It maintained its view that the applicant was not entitled to a residence permit on political or on other grounds.

The applicant then submitted two new medical certificates of 20 December 1989 and 19 February 1990 in which he was described as a "mental wreck".

On 26 April 1990 the Government rejected the applicant's appeal agreeing with the views expressed by the National Immigration Board.

On 9 May 1990 the applicant made a new request for a residence permit and maintained that the expulsion order should not be carried out. On 11 May 1990 this request was rejected by the Immigration Board.

On 31 August 1990 another request was made by the applicant. He invoked a new medical certificate issued on 27 August 1990 indicating that his mental situation was still critical. On 4 September 1990 the Immigration Board rejected the applicant's second request.

On 14 September 1990 the applicant asked for a re-opening of the proceedings requesting that the Government's decision of 26 April 1990 be quashed and the matter be transmitted to the National Immigration Board for a re-examination.

On 19 October 1990 the Supreme Administrative Court (Regeringsrätten) turned down the applicant's request. According to the Court the applicant had not substantiated any facts that could constitute grounds for a re-opening of the proceedings.

COMPLAINTS

The applicant complains that his expulsion to Bangladesh would amount to a violation of Article 3 of the Convention because of his health problems, in that he is facing a death sentence there and in that it is likely that he would be subjected to torture and inhuman treatment if returned.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 26 October 1990 and registered on 5 November 1990.

On 7 November 1990 the Commission decided to invite the respondent Government to submit written observations on the admissibility and merits of the application. Furthermore, it was

decided to indicate to the Government, in accordance with Rule 36 of the Commission's Rules of Procedure, that it was desirable in the interest of the parties and the proper conduct of the proceedings, not to deport the applicant to Bangladesh until the Commission had had an opportunity to examine the application further.

The Government's observations were submitted on 28 November 1990 and 30 January 1991. The applicant has not submitted any observations in reply but has requested the Commission to decide the case on the basis of the available information.

THE LAW

The applicant complains that he runs the risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention should he be deported to Bangladesh.

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

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

The Commission first recalls that according to its established case-law the right to asylum and the right not to be expelled are not as such included among the rights and freedoms mentioned in the Convention but that the expulsion of a person may nevertheless, in certain exceptional circumstances, raise an issue under the Convention and in particular under Article 3 (Art. 3) where there are serious grounds for fearing that the person concerned would be subjected, in the State to which he is to be sent, to treatment which is in violation of this Article (see e.g. No. 10308/83, Dec. 3.5.84, D.R. 36 pp. 209, 231 and No. 10564/83, dec. 10.12.84, D.R. 40 pp. 262, 265).

In the Soering case, the European Court of Human Rights stated as follows (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, pp. 35-36, para. 91):

> "In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 (Art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 (Art. 3) of the Convention."

In the Commission's view, this test also applies to cases of expulsion. Consequently, it must be examined whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention, if deported to Bangladesh. Such treatment must attain a certain level of severity if it is to fall within the scope of this provision. The assessment of this level depends on all the circumstances of the case, such as, for example, the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects (cf. Eur. Court H.R., Soering judgment, loc. cit., with further references).

In the present case the applicant maintains that the treatment he received while in Bangladesh made him mentally ill and he has also referred to the death sentence which he maintains awaits him if returned.

The Government contend that the applicant's submissions

concerning his treatment in Bangladesh are not credible. According to the Government there was no shooting in Dinajpur on 10 November 1987 at all and the judgment which the applicant claims has been rendered against him is a falsification, a fact that the Government have verified through their Embassy in Dhaka. Furthermore the Government submit that on 6 December 1990 the Government of Bangladesh was overthrown by, among others, the Awami League in which the applicant claims to have been active. An interim Government has taken over and general elections have been scheduled. Accordingly there exists no risk of the applicant being persecuted if returned to Bangladesh.

The Commission notes that the general situation in Bangladesh has recently changed considerably. The applicant's alleged political opponents are no longer in power whereas new general elections have taken place, inter alia on the basis of demands from the party to which the applicant claims to belong. In these circumstances the Commission does not find that the general situation in Bangladesh is such that the applicant's expulsion to this country would as such be a violation of Article 3 (Art. 3) of the Convention. In order to raise an issue under this provision there should therefore be some substantiation of a specific risk of treatment contrary to Article 3 (Art. 3).

The Commission has examined the applicant's submissions and documents in support of such an allegation. However, from the information available it does not conclude that there exists a substantial risk that the applicant would be subjected to treatment contrary to Article 3 (Art. 3) of the Convention if returned to Bangladesh at the present time.

The Commission has not overlooked the fact that the applicant has, according to the medical certificates submitted, developed certain mental problems and is in need of treatment. As regards this particular problem the Government submit that the applicant's medical condition will be taken into account when it comes to an enforcement of the expulsion order. In these circumstances the Commission is satisfied that the applicant's health problems would not make an expulsion to Bangladesh a measure contrary to Article 3 (Art. 3) of the Convention either.

It follows that the application is 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 — President of the Commission

(H.C. KRÜGER) — (C. A. NØRGAARD)