AS TO THE ADMISSIBILITY OF

Application No. 17426/90
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 11 November 1990 by A. against Sweden and registered on 14 November 1990 under file No. 17426/90;

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

Having regard to the Government's observations submitted on 30 November 1990, 30 January and 31 January 1991 and the observations submitted by the applicant on 5 December 1990 and on 28 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 1963. Before the Commission he is represented by Mr. Hans Bredberg, Stockholm.

The applicant was born in the city of Narangang where he lived together with his parents and five brothers and sisters. His father was employed in an oil company and the family's economy was good. His parents were not politically active and were not members of any political parties. The same applies to his five brothers and sisters.

The applicant finished primary school in 1982 and he continued

his studies at a college from 1982 to 1984. His parents supported him financially. In 1984 he was apprenticed to a friend of his in the textile industry and in 1986 he opened his own shop in Dhaka where he sold children's clothing.

As regards his political activities, the applicant submits that he joined the Bangladesh Nationalist Party (BNP) in 1984. This party was accepted by the then regime in Bangladesh. He was a secretary in a local division in Narangang and his tasks were to plan for the future, to organise meetings in the district and to inform members of the activities. Furthermore, in case of a general strike in Bangladesh it was his job to organise picket lines. From 1984 to 1988, the applicant submits, he participated in many demonstrations.

The applicant has never been charged with or convicted of any political offences in his home country or in any other country but on 25 December 1987 he was arrested in Narangang in connection with a political meeting within the BNP. He was taken to the local prison where he was interrogated. He was detained for two days and interrogated constantly. He was asked about his political activities and what kind of functions he had. He submits that the interrogations were followed by beatings with sticks and kicks during the night and he was threatened with lengthy prison sentences due to his political activities. The beatings were concentrated around the back and the knees and other joints but never against the face. The applicant also submits that he was tortured with cigar burns on his arms. After two days the applicant was released and no charges were brought against him.

The applicant was arrested again on 20 March 1988 in connection with another political meeting which was dissolved by the police. He submits that he was treated in a similar way as described above and he was released after three days without any charges being brought against him. Four days later the police came to his home but while his brother opened the door the applicant left through the back door and went underground.

From March 1988 until November 1988 he lived with various relatives and friends in different areas of Bangladesh. He submits that he decided to leave Bangladesh as he found it unbearable to remain underground and as he could not meet his parents or pursue his business. The BNP managed to get a false passport for the applicant and his father bought him aeroplane tickets. He left Bangladesh on 28 November 1988 on an Aeroflot flight to Stockholm from Dhaka via Bombay, Karachi, Taskam, Moscow and Copenhagen.

The applicant arrived in Stockholm on 29 November 1988. On 1 December 1988 he applied for a residence permit for political reasons. On 3 December 1988 he was interrogated by the police in Stockholm and he explained as indicated above. He did not, however, mention to the police at this stage that he had been ill-treated and tortured on the two occasions in 1987 and 1988 when detained by the police in Bangladesh.

On 9 January 1989, the applicant informed the National Immigration Board (Statens Invandrarverk) that during his arrests in Bangladesh he had been beaten and kicked as described above. He did not, however, mention the cigar burns. He also informed the Board that the police in 1987 had informed his father that the applicant was suspected of having participated in producing so-called molotov cocktails. This was another reason why he had gone underground as he had nothing to do with such production. He was afraid that he would be detained and convicted on false accusations.

On 16 November 1989 the National Immigration Board rejected the applicant's request to be permitted to stay in Sweden and ordered that he should be expelled. The reasons given by the National Immigration Board were that the information provided by the applicant to support his claims was exaggerated and not sufficiently strong for

him to be considered a refugee under the Aliens Act (utlänningslagen). Furthermore, there were no reasons to justify the granting of a resident's permit. Accordingly, as the applicant was in Sweden without a resident's permit, he should be expelled under Section 38 of the Aliens Act.

On 6 February 1990, the applicant appealed against this decision to the Government. He maintained that he had been tortured in Bangladesh and he requested an oral hearing in order to be able to prove his trustworthiness and to show the effects of the torture to which he had been subjected.

On 4 September 1990, the applicant submitted certain additional material including photos of the scars found on his arms and knees. He now maintained that he had sustained cigar burns during the interrogations in Bangladesh in 1987 and 1988.

On 18 October 1990 the Government rejected the applicant's appeal. In its decision the Government stated that the applicant had submitted different information at the various stages of the proceedings and that he had not submitted any explanation why he had not previously informed the authorities of the alleged torture. For this reason, and in making an overall assessment, the Government found that the applicant's claims of torture because of his political activities could not be considered credible.

On 1 November 1990 the applicant submitted a new request for asylum to the National Immigration Board. He referred to his previous submissions and submitted in addition a medical certificate of 12 October 1990 which read as follows:
(translation)

"(The applicant) from Bangladesh has been in Sweden approximately twenty-two months. The patient submits that in his country he studied at the university and had a business. Politically he worked in Bangladesh for the National Party. He submits that this was the reason why he was arrested in 1987. He was arrested in the street, was blindfolded and transported to an unknown place. He was there twenty-four hours, and subjected to torture with, inter alia, ten burns from cigarettes on the left arm. On another occasion he was thrown off a bus by some members of the (then) Government's party. After these two incidents he remained in the country eight months, he submits that he went into hiding.

During the examination twelve scars of 1-2 centimetres are found on the left underarm. He has a 2 x 2 centimetre scar on the left shoulder, a 9 x 9 centimetre scar on the right knee and a O.5 x 2 centimetre (scar) on the left knee. The marks on his left shoulder and extremities derive from the fall from the bus.

Evaluation and measures to be taken: No reason to believe that the patient submits false information. His scars on the left underarm are round and clearly indicate burns from cigarettes. The patient has been here for twenty-two months like this and has developed difficulties in sleeping and depressions. After talking to the patient sufficient reasons appear for granting the patient a resident permit both for political and humanitarian reasons. ...".

On 5 November 1990 the National Immigration Board found that the applicant had not submitted any new evidence which had not already been examined by the Government. His request for a resident's permit was accordingly rejected. There was no appeal against this decision.

On 16 November 1990 the local police authority referred the

question of enforcement to the National Immigration Board which decided on 20 November 1990 that the expulsion order was not to be carried out before 15 December 1990.

On 7 January 1991 the applicant submitted a new application for a residence permit to the National Immigration Board. He enclosed a medical certificate indicating that he had made one suicide attempt and that a risk of further attempts existed as he was found to be in a state of depression. On 11 January 1991 the Immigration Board decided to adjourn the examination of the case pending the outcome of the proceedings in Strasbourg. On 21 January 1991 the Board furthermore decided to stay the enforcement of the expulsion order until 11 March 1991.

COMPLAINTS

The applicant complains that his expulsion to Bangladesh would amount to a violation of Article 3 of the Convention in that it is likely that he would be subjected to torture and inhuman treatment there.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 November 1990 and registered on 14 November 1990.

On 14 November 1990 the President of the Commission decided to indicate to the respondent 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.

On 15 November 1990 the President of the Commission, acting under Rule 34 para. 3 of the Commission's Rules of Procedure, decided, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to invite the respondent Government to submit written observations on the admissibility and merits of the application.

The Government's observations were submitted on 30 November 1990 and the applicant's observations in reply were submitted on 5 December 1990. Certain additional information was submitted by the applicant on 28 January 1991. Additional information was submitted by the Government on 30 and 31 January 1991.

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 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 political murders and police brutality occur in Bangladesh whereas the police officers involved are hardly ever prosecuted therefor. He furthermore submits that there is no reason to believe that his story is incorrect despite the fact that he did not give all details immediately upon arrival in Sweden. His allegations are supported, so the applicant contends, by the medical certificates submitted in the present case.

The Government contend that the applicant's story is not credible due to the fact that he submitted different versions during the examination of his case. Furthermore the Government submit that on 6 December 1990 the Government of Bangladesh was overthrown by, among others, the Bangladesh Nationalist Party 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 considers 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.

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)