AS TO THE ADMISSIBILITY OF

Application No. 27057/95
by Mohammad ASLAM
against Norway

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 1997, the following members being present:

Mr. J.-C. GEUS, Acting President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, 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 10 April 1995 by Mohammad ASLAM against Norway and registered on 20 April 1995 under file No. 27057/95;

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 Pakistani citizen, born in 1950. He resides in Kharian, in the district of Gujrat, Pakistan. Before the Commission the applicant is represented by Mr Leidulv Digernæs, a lawyer practising in Oslo.

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

The applicant was raised in Pakistan where he finished elementary school. In 1969 he married B, a Pakistani citizen, and two daughters, S and M, were born in Pakistan in 1973 and 1974 respectively.

The applicant came to Norway in 1973. He received a residence and work permit there. The applicant's wife and daughters joined him in Norway in 1979. Four children were born in Norway in 1979, 1980, 1983 and 1988 respectively. While in Norway the family remained in contact with their families in Pakistan. The daughters S and M spent several years in Pakistan where they went to school and the four children, born in Norway, visited Pakistan on several occasions. Today S is married and lives in the northern part of Norway. M returned to Pakistan in 1992 and is living there today. The applicant's wife and

the four children born in Norway reside today in Oslo whereas the applicant lives in Pakistan due to the circumstances set out below.

In 1989 the applicant's eldest daughter, S, commenced a relationship with another Pakistani citizen residing in Norway. The applicant did not approve of this and on 30 August 1990 around 15.00 hours he confronted his daughter, who at the time was 16 years old, with his views thereon. Over a period of approximately 11 hours he beat his daughter in the face and on the body with his fists and with different tools, including a plank and the handle of a knife. He forced her to take off all her clothes following which he raped her four times while hitting her when she tried to defend herself. The applicant's wife tried in vain to intervene. S suffered numerous bruises to her head and body and was hospitalised for three days. She was subsequently taken into care and the applicant was arrested and detained on remand.

By judgment of 22 August 1991 the Eidsivating High Court (Lagmannsrett) found the applicant guilty of inter alia assault and rape in particularly aggravating circumstances and sentenced him to three years' imprisonment. Furthermore, he was ordered to pay 60,000 NOK in damages to his daughter.

Following this judgment the Aliens Directorate (utlendingsdirektoratet) decided, on 3 March 1992, to expel the applicant and refused him permission ever to return to Norway. This decision was upheld by the Ministry of Justice on 16 July 1992.

On 20 July 1992 the applicant instituted proceedings against the State represented by the Ministry of Justice maintaining that the decision to expel him forever was illegal and/or disproportionate in the circumstances. By judgment of 10 July 1993 the Oslo City Court (byrett) found against the applicant and upheld the expulsion order. The judgment was upheld by the Eidsivating High Court on 15 November 1993. The High Court judgment was appealed against to the Supreme Court (Høyesterett) which ordered the Oslo City Court to provide further evidence (bevisopptak for Høyesterett). Following this the Supreme Court pronounced judgment on 17 January 1995. In its judgment Justice Backer stated on behalf of the unanimous court inter alia as follows in respect of Article 8 of the Convention:

(Translation)

> "It is clear that this provision applies as part of Norwegian law ... . When applying it reference must be made in particular to the case-law of the Court of Human Rights and the Commission. It is clear that Article 8 has been used in several cases when the expulsion of an alien has led to the splitting up of a family.
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> The first question is whether our case falls under Article 8 para. 1. It has not been considered to be a separation of family members if it would not be unreasonable to expect that the alien's spouse and children could follow him/her to the foreign country ... . Here it is a question of how difficult it would be for [the applicant's] spouse and four youngest children, who live with her in this country, to move to Pakistan. In my opinion a lot speaks in favour of finding that it would be so natural for them to follow the head of the family to Pakistan if they wish to maintain their family life, in spite of what has happened, that Article 8 para. 1 does not apply. The arguments concerning this, however, resembles the argumentation under Article 8 para. 2. Therefore, I find it appropriate to leave the question under Article 8 para. 1 open and to discuss the applicability of para. 2 directly.

Under Article 8 para. 2 the question is whether the imposed separation of the family members can be accepted for any of the following reasons set out therein. The decisive element under the Convention is whether it was 'necessary in a democratic society'. The authorities' interference must, according to case-law, be based on a 'pressing social need'. It is not decisive, however, whether the interference is unavoidable and the authorities have a 'margin of appreciation' when considering the necessity of the interference ... . The point is that a balanced evaluation must be made, having regard to the case-law of the Commission and the Court of Human Rights.

In the present case the Aliens Directorate and the Ministry of Justice have, despite [the applicant's] long stay in Norway, undoubtedly a strong basis upon which to expel him following the gross violations committed vis-à-vis his own daughter. It may appear strange that indeed the respect for family life is relied upon by someone who appears to have violated the preconditions therefor. I refer in this respect to the fact that also [the applicant's] spouse was present when the rape and the ill-treatment of their daughter was committed, and tried in vain to prevent it from happening. Furthermore, I refer to the fact that it

> appears from the Nordstrand social centre's files that complaints were made about [the applicant's] brutal methods of raising his children, something the High Court characterises in the 1991 judgment as criminal offences. However, during the proceedings before the Supreme Court the family members, who were heard, all spoke in favour of [the applicant]. This includes the victimised daughter.

As regards the family's present situation it has been submitted that the spouse and the four children, who stay with her, live off social assistance. In her witness statement the director of the Nordstrand social centre characterises the family's situation as follows:

'... the witness explains that the family has integrated very little into Norwegian society. The family has practised its culture and religion. The boys think in accordance with Pakistani norms. The social centre has tried to explain Norwegian law and norms to the boys but this comes second to the views of their father. The witness expresses doubts as to the boys' future in Norway. Their mother insists on remaining in Norway due to the boys' possibilities of obtaining an education here. This is the father's view and the mother is of the same opinion as the father.

...

... the witness submitted that she has previously worked at the Søndre Nordstrand social centre. There she worked primarily with aliens. Compared with other families of aliens she met there she considers that [the applicant's] family is isolated. They maintain strongly their culture and religion. The family hardly accepts Norwegian rules and norms.

...

... the witness explained that it was her impression that the mother was kept very isolated. She was unable to go to

the post office to collect the children's allowances. The witness does not believe that the family is interested in integrating into Norwegian society.

...

On the basis of the witness's experience with other families of aliens she considers that [the applicant's] family is particularly isolated vis-à-vis Norwegian society.'

It appears further from the evidence that [the applicant's] spouse, who arrived in Norway in 1979, only commenced a Norwegian language course following her husband's arrest, and her knowledge of Norwegian is such that she gave evidence through an interpreter. Members of [the applicant's] and his wife's families all live in Pakistan, except [the applicant's] half-brother who resides in Norway. The family has kept in contact with its relativesin Pakistan through frequent visits.The question whether it would lead to disproportionate negative effects, both in respect of living in Norway without the head of the family and in respect of moving to Pakistan is, in my opinion, first and foremost of relevance vis-à-vis the four children who were born in Norway. I assume it would be unfortunate for their schooling to move to Pakistan at present, at least for the three oldest of them. It has also been submitted that they have not mastered the Pakistani written language whereas the oral language causes no problem to them. On the other hand I consider, on the basis of what has been submitted, that they are relatively poorly integrated into Norwegian society and that their affiliation with Norway is not very strong.

In these circumstances I do not consider that the spouse and the four children in Norway will be placed in such a difficult situation, by choosing between remaining here without the head of their family or moving to Pakistan in order to be reunited with him, that this outweighs the strong public interest in being able to expel a foreigner who has committed such serious criminal offences as is here the case. ..."

The applicant returned to Pakistan in 1993.

COMPLAINTS

The applicant complains of the fact that he cannot return to his wife and children in Norway. He considers that it cannot, in the circumstances, be expected that they move to Pakistan and that the interference with his family life cannot be considered "necessary in a democratic society". He refers in particular to the fact that he has lived his adult life in Norway and there is no reason to believe that he will commit similar offences again. He invokes Article 8 of the Convention.

THE LAW

The applicant complains that his expulsion from Norway, in the circumstances, amounts to an unjustified interference with his right to respect for his family life. He invokes Article 8 (Art. 8) of the Convention which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." The Commission recalls that no right of an alien to enter or to reside in a particular country, nor a right not to be expelled from a particular country, is as such guaranteed by the Convention. However, Article 8 (Art. 8) of the Convention guarantees to everyone, inter alia, a right to respect for his/her family life and in this connection the Commission has held that the exclusion of a person from a country in which his/her close relatives live may raise an issue under this provision (cf. Eur. Court HR, Berrehab v. the Netherlands judgment of 21 June 1988, Series A no. 138, p. 15, para. 28 and No. 11274/84, Dec. 1.7.85, D.R. 43, p. 216).

In situations in which, as in this case, a married man is obliged to leave a State in which he has been living with his wife and children, the Commission considers it relevant in particular to examine the realistic possibilities of the family to follow the husband and father.

In the present case the Commission recalls that the applicant lived the first 23 years of his life in Pakistan. He married there in 1969 and his two eldest children were born there. Following his move to Norway in 1973 it has been established that he kept in close contact with other family members, as well as his wife's family members, by frequent visits to Pakistan and he has remained faithful to Pakistani norms and traditions. Thus, the Commission considers that the fact that the applicant lived 19 years in Norway does not, in the circumstances, give rise to problems under Article 8 (Art. 8) of the Convention.

As regards the applicant's wife and children the Commission recalls that the former came to Norway in 1979 but did not integrate into Norwegian society. From the facts of this case the Commission finds it clear that the applicant's wife would not be confronted with any particular problems should she choose to join her husband in Pakistan.

As regards the applicant's six children the Commission recalls that the eldest daughter, who was the victim of the crimes committed by the applicant, is now married and lives with her own family in northern Norway. No issue under Article 8 (Art. 8) would therefore arise in respect of her. Furthermore, the daughter M actually lives in Pakistan today.

What remains is the question concerning the applicant's four sons who were born in Norway and who are today 17, 16, 13 and 9 years old respectively. Although the Commission acknowledges that living in Pakistan might cause certain difficulties for them, the circumstances of this case do not disclose that these difficulties would be such that it could not be expected of them to move to Pakistan if they wanted to continue their family life with their father. In particular the Commission recalls that all children have been brought up under Pakistani norms and traditions and will, in Pakistan, enjoy the support not only of their parents but also of their uncles, aunts, grandparents and other relatives.

In these circumstances the Commission finds that the Norwegian authorities have not shown any lack of respect for the applicant's family life as no insurmountable obstacles, which would prevent the

family from being reunited in Pakistan, have been established. 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
Acting President
of the Second Chamber