AS TO THE ADMISSIBILITY OF

Application No. 24485/94
by Redzep BACOVIC
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 30 November 1994, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, 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 7 March 1994 by Redzep BACOVIC against Sweden and registered on 28 June 1994 under file No. 24485/94;

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 citizen of former Yugoslavia, born in Kosovo in 1963. He is currently residing at Kalmar, Sweden. He owns a restaurant at Bergkvara, Sweden. Before the Commission he is represented by Ms. Åsa Adolfsson, a lawyer practising at Kalmar.

Particular circumstances of the case

Following a visit to Sweden in 1987 the applicant started a relationship with a Swedish woman, H. In 1988 he was granted a short-term residence permit in Sweden. He entered the country in October 1988 and started cohabiting with H.

On 16 December 1989 a daughter, S., was born to the applicant and another Swedish woman, L., who received sole custody of the child.

On 22 November 1990 the applicant was granted a permanent residence permit.

In January 1991 the applicant's and H.'s relationship ended.

In December 1991 a relative of the applicant, N., entered Sweden together with her three children. In their requests for a residence permit they referred to the applicant as their husband and father.

Having decided to expel N. and her three children, the National Immigration Board (statens invandrarverk), on 28 January 1993, revoked the applicant's permanent residence permit and ordered him also to be expelled from Sweden. He was further prohibited from returning there before 1 February 1995. The Board observed that, when requesting his residence permits in 1988 and 1990 on account of his connection with H., the applicant had stated that he was not married and that he had no children. The applicant had subsequently admitted having neglected to inform the Swedish authorities of his wife and children in former Yugoslavia, whom he had visited every year and with whom he had been in regular telephone contact. The applicant had further submitted that he was "probably" the father of S. The Board also noted that the youngest of N.'s children had been born in March 1990. Having made an overall assessment, the Board concluded that the applicant's relationship with H. on account of which he had been granted a permanent residence permit had not been a serious one, at least not on his part. Although he had a child in Sweden, his family ties in former Yugoslavia to N. and their three children were considered stronger.

The applicant appealed, referring, inter alia, to a court judgment of 16 November 1992 declaring him to be the father of S.

On 4 November 1993 the Aliens Appeals Board (utlänningsnämnden) rejected the appeal and further extended the applicant's prohibition on return until 4 November 1995.

Subsequently the applicant, referring to new circumstances, requested that he again be granted a residence permit. He referred to official documents issued in former Yugoslavia showing that N. had, in 1984, married his brother, who was also the father of her three children. On 25 November 1993 the National Immigration Board rejected the applicant's request.

Relevant domestic law

1. The Aliens Act

According to the 1989 Aliens Act (utlänningslag 1989:529) a permanent residence permit may be revoked if the alien has deliberately neglected to inform the authorities of circumstances of relevance to the granting of his permit (Chapter 2, Section 10). In the absence of particular reasons the revocation shall be combined with an expulsion order (Chapter 4, Section 6). The expulsion order may furthermore be combined with a prohibition on the alien's return issued either for a certain period of time or indefinitely (Chapter 4, Section 14). An alien who has been prohibited from returning to Sweden may, nevertheless, be granted a permit to visit the country in extremely important matters. For particular reasons, such a permit may be granted at the request of someone else than the alien himself (Chapter 4, Section 15).

2. The Parental Code

Under the 1949 Parental Code (föräldrabalken) the custodian of a child shall see to it that the child receives, inter alia, a satisfactory education (Chapter 6, Section 2).

COMPLAINTS

1. The applicant complains that his impending expulsion would separate him from his daughter and thus violate his right to respect for his family life as guaranteed by Article 8 of the Convention. He emphasises that his daughter is a Swedish citizen and that he is seeing her three to four times a week.

2. The applicant further complains that his impending expulsion would prevent him from obtaining joint custody of his daughter together

with L. Thus, he would be denied the right to found a family as enshrined in Article 12 of the Convention.

3. The applicant finally complains that his impending expulsion would deny him his right as a parent to ensure that his daughter receive education and teaching in conformity with his own religious and philosophical convictions. He invokes Article 2 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant complains that his impending expulsion would separate him from his daughter and thus violate his right to respect for his family life as guaranteed by Article 8 (Art. 8) of the Convention. This provision 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 the Contracting States are in principle free to control the entry, residence and expulsion of aliens. Expulsion of a person from a country in which close members of his family live may, however, amount to an unjustified interference with his right to respect for his family life as guaranteed by Article 8 (Art. 8) of the Convention (e.g. Eur. Court H.R., Moustaquim judgment of 18 February 1991, Series A no. 193, pp. 19 et seq., paras. 43 et seq.).

The Commission considers that the applicant's expulsion from Sweden and the related prohibition on his return would interfere with his right to respect for his family life due to his relationship with his daughter residing in Sweden. It must next be examined whether this interference would be justified under the terms of para. 2 of Article 8 (Art. 8). Under that paragraph such an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the aims enumerated in para. 2 and it must be "necessary in a democratic society" for that aim or those aims. The necessity requirement implies the existence of a pressing social need and, in particular, requires that the measure be proportionate to the legitimate aim pursued (the above-mentioned Moustaquim judgment, pp. 18 et seq., paras. 37 et seq.). Regard should further be had to the margin of appreciation afforded to the Contracting States (Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, pp. 15-16, para. 28).

The Commission is satisfied that the expulsion order was issued "in accordance with the law". It also considers that the enforcement of the deportation order would pursue a legitimate aim under Article 8 para. 2 (Art. 8-2), i.e. the economic well-being of the country. As regards the question whether the interference was "necessary in a democratic society" in pursuit of the above-mentioned aim, the Commission takes particular note of the nature of the applicant's relationships with H., L. and N., as assessed by the National Immigration Board in its decision of 28 January 1993. The Commission further finds no indication that the expulsion order concerning the applicant has yet been enforced and notes that the prohibition on his return to Sweden is to expire in November 1995. Should an enforcement take place, the applicant could apply for a short-term residence permit enabling him to visit his daughter in Sweden even while the prohibition

on return is valid.

Taking into account the margin of appreciation left to the Contracting States, the Commission concludes that the enforcement of the expulsion order would be justified under Article 8 para. 2 (Art. 8-2) of the Convention in that it can reasonably be considered "necessary in a democratic society" in pursuance of the above-stated aim. Accordingly, the enforcement of the expulsion order would not violate Article 8 (Art. 8).

It follows that this complaint 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 complains that his impending expulsion would deny him the right to found a family as enshrined in Article 12 (Art. 12) of the Convention. This provision reads as follows:

> "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

The Commission has found above under no. 1 that the applicant's right to respect for his family life would not be violated on account of his impending expulsion. No further issue concerning his right to found a family therefore arises under Article 12 (Art. 12) (cf. No. 8166/78, Dec. 3.10.78, D.R. 13 p. 241).

3. The applicant finally complains that his impending expulsion would deny him his right as a parent to ensure that his daughter receives education and teaching in conformity with his own religious and philosophical convictions. He invokes Article 2 of Protocol No. 1 (P1-2) to the Convention which reads as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

Leaving aside any question related to Sweden's reservation to the provision at issue, the Commission considers this complaint to be inadmissible for the following reason. The applicant is not the custodian of S. and therefore has no formal power under Swedish law to decide matters pertaining to S.'s education. Even if the provisions of Swedish law are not taken into account, the Commission finds no indication that the applicant's impending expulsion would violate his rights under Article 2 of Protocol No. 1 (P1-2).

It follows that this complaint must also be rejected as being 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.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)