AS TO THE ADMISSIBILITY OF

Application No. 26516/95
by Mashiur Rahman BHUYIAN
against Sweden

The European Commission of Human Rights sitting in private on 14 September 1995, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN

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 14 February 1995 by Mashiur Rahman Bhuyian against Sweden and registered on 15 February 1995 under file No. 26516/95;

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

Having regard to the observations submitted by the respondent Government on 24 March 1995 and the observations in reply submitted by the applicant on 28 April 1995;

Having regard to the supplementary observations submitted by the applicant on 9 and 30 June 1995 and by the respondent Government on 16 June and 4 July 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Bangladesh, born in 1967 and

currently placed in compulsory psychiatric care in a hospital at Skellefteå, Sweden. He is represented by Ms. Ewa Lilliesköld, a lawyer in Stockholm.

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

Particular circumstances of the case

The applicant first entered Sweden on 16 February 1990. On 19 February 1990 he requested asylum in Sweden, fearing persecution for political reasons. He had allegedly, on three occasions, been arrested and ill-treated by the police of Bangladesh on account of his position as Chairman of a branch of the youth league of the Bangladesh Nationalist Party ("BNP"). The most recent arrest had allegedly occurred in November 1989 during a demonstration organised by the BNP. He had also been charged with and convicted of various offences following false accusations made by his political opponents.

On 23 November 1990 the National Immigration Board (Statens invandrarverk) refused the applicant's request.

On 13 June 1991 the Government upheld the refusal, considering that the applicant's fears of ill-treatment on his return to Bangladesh were highly exaggerated, having regard to his political connections and the political changes in that country.

Between December 1991 and January 1992 the applicant lodged three unsuccessful new requests for a residence permit, invoking humanitarian grounds. In one of these requests, of 16 December 1991, he invoked a medical report of November 1991 reproducing, inter alia, the applicant's statements to the effect that he had been tortured during his arrest in 1986 and that he had been assaulted during subsequent arrests in 1987 and 1989.

On 16 December 1991 the applicant was hospitalised at his own request. According to the hospital diary for 19 December 1991 the applicant had ripped his bed cover and placed it around his neck. He had also broken a glass and scratched himself with it before the staff were able to stop him.

On 4 January 1992 the applicant was examined by Dr. Anette Voltaire-Carlsson, a psychiatrist, who concluded that his health did not constitute an obstacle to the enforcement of the expulsion order.

The expulsion order was enforced on 30 January 1992, the applicant being transported in a wheel-chair and having been given sedatives. In Bangladesh he was met by staff of the Swedish Embassy, who assisted him through the passport control.

On 18 December 1992 the applicant again entered Sweden. On 30 December 1992 he lodged a fresh asylum request, again referring to his fear of being persecuted on political grounds in Bangladesh. In the alternative, he requested a residence permit on humanitarian grounds. He alleged that he had been excluded from the BNP in May 1991. Subsequently he had been wanted by the police, having falsely been accused of robbery. This allegedly false accusation had been made by his political opponents. In May 1992 he had escaped to India, where a smuggler had provided him with a false passport. His brother had allegedly been arrested in Bangladesh in November 1992 and the police had assaulted him in order to obtain information about the applicant's whereabouts. Subsequently the brother had also left the country.

On 25 August 1993 the applicant was granted an eighteen-month passport by the Embassy of Bangladesh in Sweden.

On 26 November 1993 the National Immigration Board rejected the

applicant's asylum request. It noted, in particular, that in his initial asylum request he had referred to his membership of the BNP, whereas his fresh request had referred to his exclusion from that organisation in May 1991. The Board also took note of the fact that the applicant had obtained a Bangladeshi passport. It considered therefore that he was not wanted in that country. The Board furthermore found no grounds for granting him a residence permit.

The applicant's appeal was rejected by the Aliens Appeals Board (Utlänningsnämnden) on 25 March 1994 following which his mental health allegedly deteriorated.

On 12 August 1994 the applicant lodged a new request for a residence permit, invoking humanitarian grounds and referring to, inter alia, a medical report of 6 August 1994 by Dr. Mikael Brune, a psychiatrist and neurologist. According to Dr. Brune, an enforcement of the expulsion order concerning the applicant would entail a risk that he might commit suicide.

On 19 August 1994 the Aliens Appeals Board rejected the applicant's new request.

On 21 November 1994 the applicant voluntarily sought psychiatric care and was admitted to the hospital clinic where he is presently staying.

In a medical report of 21 December 1994 written by Dr. Mikael Granström, Senior Physician specialising in psychiatry, and confirmed by Dr. Bengt Häggqvist, Senior Physician specialising in neurology, the applicant was considered seriously mentally ill. He was found to suffer from schizophrenia and paranoia. He was suffering from insomnia. He was refusing to eat, fearing food poisoning. He was showing suicidal symptoms and was often found beating his head against the wall. On one occasion he had slashed his wrist.

On 9 January 1995 the applicant lodged a further request for a residence permit on humanitarian grounds, invoking the report of 21 December 1994. This request was rejected by the Aliens Appeals Board on 12 January 1995.

According to a further medical report of 18 January 1995 written by Dr. Granström and by Dr. Maia Alvariza, Acting Senior Physician, the applicant's mental health had deteriorated further. As he had committed several suicide attempts, his care had been converted from voluntary to compulsory treatment. He was not considered fit to be transported.

According to an oral medical report given by Dr. Granström to the applicant's lawyer of 30 January 1995, the applicant was considered to be "dying" and could no longer be "force-fed".

In view of the fresh reports concerning his health the applicant lodged a request for a reconsideration of the Aliens Appeals Board's decision of 12 January 1995, alternatively a request that the matter be referred to the Government. The requests were considered as a new request for a residence permit which was rejected by the Aliens Appeals Board on 31 January 1995.

According to a further oral medical report given by Dr. Granström to the applicant's lawyer of 3 February 1995, the applicant's state of health was deteriorating day by day. He had lost considerable weight and was being fed with the help of a probe.

On 3 February 1995 the applicant lodged a further request for a residence permit on humanitarian grounds, invoking Dr. Granström's report of that day. On 10 February 1995 he also requested that the Aliens Appeals Board should hear one of the physicians whom it normally consulted in expulsion matters (förtroendeläkare). The applicant

referred to an entry in his medical journal dated 9 February 1995 and worded as follows:

(translation from Swedish)

"[The applicant] is now clearly expressing a wish that he should no longer receive nourishment through a probe. He is unable to mount any active resistance. Force-feeding is inconsistent with the patient's right to self-determination. It is therefore necessary to subject him to compulsory treatment."

On 10 February 1995 the Aliens Appeals Board rejected the applicant's requests of 3 and 10 February 1995.

On 17 February 1995 the County Administrative Court (länsrätten) of Västerbotten consented to the compulsory care of the applicant for four months.

A report of 7 June 1995 submitted at the applicant's request by Dr. Granström and Dr. Carl-Gustaf Olofsson, Chief Medical Officer, states, inter alia, as follows:

(translation from Swedish)

"... On 31 January an intravenous drip was installed because it was becoming increasingly difficult for the patient to eat and drink and he had lost several kilogrammes. He had visual and olfactory hallucinations concerning food, saying that things were moving in it (worms, spiders) and that it smelt odd. He was unable to eat and vomited on ingestion. On 1 February it was decided to insert a feeding tube because the condition appeared to be prolonged. He made many attempts to pull the tube out and succeeded on a few occasions.

The medical condition with worsening depressive psychosis and continuing need to forcefeed the patient by tube because of further loss of weight led to the decision to place the patient in compulsory care on 9 February. He had declined physically and his life was in danger as a result of his general mental derangement. ... The force-feeding continued until 21 March.

Virtually every evening and night the patient shows symptoms such as agitation and anxiety. He does not dare to sleep, partly because of bad nightmares which wake him up and make him afraid and partly because he thinks that someone will harm him while he is asleep. He becomes more secure if staff are by the bed. He nevertheless sleeps normally for a few hours a night. He is very susceptible, flinches when somebody bangs a door, keys jangle or when staff or other patients run or suddenly come towards him. With even more disturbance in the unit the patient is very negatively affected: motor agitation, fear, anguish; he wants to get out of the department and bangs his head against the wall. He states that when the anguish overcomes him he loses control over himself and his existence; he does not know what he is doing and something inside him says he is going to die. This is judged to be a condition of prepsychosis-psychosis. Suicide attempts form part of the psychotic symptom.

The psychotic symptoms are attenuated by the use of psychopharmacological drugs. The psychotic outbreaks which are still seen are a consequence of the pronounced fear, and spring from both the outer stresses and the inner world

of paranoic ideas.

It should be noted that physically the patient has lost a lot of weight and has generalised pronounced muscular tension. He has a serious difficulty with aches in the muscles and joints, though a certain improvement has been observed thanks to the physiotherapy given.

Short description of suicide attempts:

4.1.95 Broke a bottle and cut himself on the left wrist and the stomach, and tried to throttle himself with a sheet ripped into strips. Later the same day he crushed a glass in his hand and tried to cut himself with it, despite close supervision (suicide watch).

18.1.95 Tried to hang himself from a curtain rail using torn bed linen (released by staff).

21.3.95 Pulled out the nasogastric feeding tube and tried to throttle himself with it. Cut his throat with a glass that he broke.

8.5.95 Cut his wrist with a broken bottle. Later tried to hang himself from the curtain rail with string.

29.5.95 Out for exercise with staff, he darted out into the road and tried to throw himself in front of a car, but was prevented by staff. Took a table knife and tried to cut himself with it. ..."At the respondent Government's request Dr. Sten Lindgren on 13 June 1995 submitted a report based on his evaluation of the existing medical documentation of the applicant's physical and mental health as well as on his own examination of the applicant on 9 June 1995. Dr. Lindgren is one of the physicians normally consulted by the Swedish Immigration Board in cases of this kind (förtroendeläkare). His report reads, inter alia, as follows:

(translation from Swedish)

"...
The diary kept by the psychiatric clinic in Skellefteå: ...
The report by Nurse Anette Henrysson covers the period from 30 January to 18 February 1995. She states that MR [i.e. the applicant] was not able to eat and that he drank less and less. He is said to be more and more worried and depressed and losing weight the whole time. He spends most of the time lying in bed, has a good deal of pain, is stiff in the joints and sometimes cannot manage to go to the smoking room. Tube feeding began on 1 February 1995, split up into four times a day. MR will take only half the prescribed quantity of tube gruel, which results in big conflicts and much persuasion on the part of the staff. Because of stiff joints and muscles, thermotherapy has begun and efforts are made to get the patient to walk as much as possible. MR pulled the tube out twice during the period. He is said to know that the European Commission [of Human Rights] has taken up his case. A slight improvement is noted as from 15 February 1995 when MR begins to sit in the day-room more, is significantly more talkative than before and a "spark" of hope is to be seen. He can talk of other things than his death wish, joins in games and thinks

of writing to his relatives. He is also willing to try to eat something liquid.

The report by Nurse Barry Lundmark covers the period 19 February to 3 April 1995. MR is stated to have been tube fed from 1 February to 21 March 1995. He is said to have pulled the tube out on 21 March and performed a number of violent acts of a self-destructive nature. A new tube was not inserted immediately because it was desired to see whether MR would manage to take his own responsibility for eating. For the first few days he was overcome by worry, but then there was a certain improvement as regards both his capacity for initiative and his mood. MR is stated to still have great anxiety with visual and auditory hallucinations and is said to be tense and agitated while waiting for the decision [of the Commission] which is expected soon.

The report by Nurse Anette Henrysson covers the period 3 March to 14 May 1995. MR is stated as having a better appetite and finally getting bigger portions at his own request. At the end of April he has some really good days when he has no serious anxiety and is much happier and alert. He takes part in the activities of the ward in another fashion than before, tidying up, playing games and being very keen to make contacts. But he still sleeps badly at nights and is often woken up by nightmares. It is also said that nearly every day MR has aches and pains, especially in the shoulders and neck, and is receiving physiotherapy. He spoke by telephone to his relatives in Bangladesh and is said to miss them, especially his mother. In the beginning of May he became more depressed and cried more often. He does not believe the forthcoming decision [of the Commission] will be favourable and starts having fits of anxiety again, with thoughts of death as the only way out. In the night of 8 May 1995 he cut himself with a broken bottle and tried to hang himself from the curtain rail.

The entry for 29 May 1995 by Senior Physician Mikael Granström states that while out for a walk with staff, MR ran into a roadway and tried to throw himself in front of a car. When he came back into the ward he took a table knife and tried to cut himself with it. The patient was considered to be so mentally unstable that his freedom was restricted and a suicide watch established.

The entry for 30 May 1995 by Senior Physician Mikael Granström states that MR says he can promise not to do anything to himself, so that the suicide watch was removed.
...
The report by Nurse Anette Henrysson covers the period 15 May to 4 June 1995. MR is stated to be becoming increasingly agitated and anxious in the days preceding the decision [of the Commission]. On one occasion he tries to smash the window in his room because he is so desperate and wants to get away from the ward. He learns on 25 May that the case [before the Commission] is held over until 7 July and after this the feelings of anxiety and hopelessness get worse. His appetite declines greatly in a few days. On 29 May it is said that MR shows more motor agitation. During the day he cuts one arm with a table knife and breaks glass. MR begins to feel better afterwards and attempts are made to liven him up with gymnastic games and walks. He is not in such a black mood, but does not know how he will manage to live until July and says he will take his life straight away if he gets negative news.

...
In a hand-written report sheet it is stated that on the evening of 1 June MR went along to the gym ... While there he played volleyball and badminton and thought it was real fun. He went for a walk on 2 June with the contact person to go out and buy things and was talkative and somewhat happier. MR again played games in the evening. According to the entry for 3 June he slept more than usual the previous night. He plays games and has quite a good day, but cannot see how he will be able to wait a month for the decision [of the Commission]. In the entry for 6 June it is stated that MR slept between 12.30 am and 5 am. He woke up in a state of acute anxiety and wanted to get out of the ward and harm himself. ... In the evening MR is said to have tried to break open the knife drawer in the kitchen. In the entry for 9 June it is stated that MR had slept for about three hours and was anxious about receiving a visit from the consulting physician [Dr. Lindgren].
...
I personally examined MR on the care ward in Skellefteå ... Before the consultation I observe that the curtain rails on the ward consist of weak I-shaped sections on wall brackets.

Account of the consultation: ... When I ask MR about how he felt when he first came to Sweden, he says that it was fine at first, but later it became awful and was now just as bad as it was in Bangladesh. He is hunted by the police here too. MR does not care any more about what is happening in the refugee camp, but just wants to die. He asks for help in taking his life. MR cannot say how he would go about committing suicide. The only thing people can do for him from now on is put flowers on his grave.

When I ask MR what he thinks of the food on the ward, he says it's fine, but he has a poor appetite. After three mouthfuls he can't eat any more.

Regarding sleep, MR says that he has nightmares and difficulty in sleeping. When I ask him to describe what he usually dreams about he says that it can be regarded as fire but does not give any more detail despite further questioning.

I ask MR if he has ever had the experience of hearing or seeing something beyond the normal reality. He says that he constantly hears noise in the ears as from a TV set which is out of order. Concerning visual hallucinations, he says that he can see blood, but does not describe any context into which the blood fits.

I again take up the self-destructive episodes which have been described during his period in care and ask MR whether he thought he would die through these actions. He says that he doesn't remember. I ask him to explain why he was not injured or killed in the incident where he ran into the roadway and tried to throw himself in front of a car. I suggest three alternative explanations: according to the first there was no car, according to the second the staff rushed to prevent him, and according to the third he was not capable of taking this step. MR says he can't remember.

The treatment with mainly anti-psychotic and anxiety-reducing drugs which has been used on the ward has, according to MR, had a positive effect on his sleep.

I ask MR how he thinks his life will look in five years' time if he is allowed to stay in Sweden. He says he has neither dreams nor plans and repeats that his life is over and that it doesn't matter any more what happens. He says that he would be dead within five minutes if he got out of the ward, but does not say how he would take his life.

MR confirms that he has spoken by telephone with his parents in Bangladesh, but did not tell them how he was living his situation in Sweden.
...

Somatic condition: MR is slightly built and weighs 49 kg without clothes. ... His appearance is generally appropriate to his age. MR appears thin but not emaciated. Normal skin colour and moist mucous membranes. He is not badly affected and does not need to stay in bed.

Heart and lungs were listened to and the belly palpated, all OK. ... Pupil reaction, eye movements and ... reflexes were examined, OK. Range of movement in hip and knee joints and the elbows OK, but movement in the shoulders is restricted and the patient has difficulty in raising his left arm for the finger-nose test.

MR indicates that he has a scar on the forehead somewhat to the right of the centre line and a couple of centimetres above the edge of the scalp. The scar is bowed and about 3 cm long. It is said to have been caused by a blow with a brick. He also points out a scar midway up the front of the lower leg with irregular hyperpigmentation and a size of 2x1 cm. This is also said to have been caused by a brick.

Mental condition: During the consultation MR looks anxious but is judged to be clear and well-oriented. He sometimes does not answer and sometimes answers with a variable delay to the questions asked, and speaks with a fairly weak voice. The answers he gives are considered appropriate to the context. Eye contact is limited. Sometimes he gives the impression of being absent, but appears at the same time to note what is happening in the room and to react to noise from various sources. His attitude is interpreted as sometimes seeking help and sometimes rejection. MR is generally capable of sitting still during the consultation, but stands up on a few occasions and stands for a while before sitting down again of his own accord or after being urged to do so. The anxiety level appears to be high and MR looks tense. He appears well-controlled all the time. The basic mood is understood as being somewhat down. In moving about the ward the patient moves relatively slowly and hesitantly, but this is not interpreted as any manifestation of motor impairment. There is no hallucinatory behaviour and the reported visual and auditory experiences are not considered to have psychotic significance. The sleeping difficulties mentioned are described as are the reduced appetite and refusal to eat and drink at times. The thought process is considered to be normal and no bizarre features are noted in the thought content. The patient's fear appears to be appropriate in the present situation. MR describes his hopelessness and reports death wishes and suicidal intentions, but does not describe any concrete suicide plans. He appears to have a good intellectual capacity.

... The present physical and mental state and the various suicide attempts:

In the case file there is a medical/psychiatric report from MR's previous period in Sweden and medical reports subsequent to his return and the diary for the current stay in the Skellefteå Psychiatric Clinic. In addition I have conferred with Senior Physician Mikael Granström.

The available documents clearly indicate that MR has in the past been physically and mentally healthy, with good intellectual capacities. Earlier reports indicate that before the expulsion of 30 January 1992 MR was in a reactive state triggered by his situation, with anxiety and depression as the main symptoms. There do not seem to have been any psychotic element. Self-destructive behaviour is stated to have occurred on various occasions. On one such occasion MR hit himself on the head with a soft drink bottle, causing bumps to appear. The "foster parents" did not note any direct suicide attempt. During a period in care in Sundsvall, it was not considered that there was any suicide risk. While MR was in the Säter Hospital, when he was informed of a negative decision [by the National Immigration Board] he ripped his bed-cover and pulled in round his neck and also broke a glass and scratched himself with it before the staff could intervene. His suicidal thoughts were considered to be conditional and there was thought to be no risk of suicide in the ward. MR weighed 68 kg when he first came to Sweden. He refused to eat or drink in the Säter Hospital and according to the report weighed no more than about 40 kg when expelled. The report on the actual expulsion states that he ate and drank and remained calm on the homeward journey.

After MR's return to Sweden the medical report of 6 August 1994 written by Dr. Brune stated that as a result of the circumstances there was a long-lasting crisis situation leading to reactive depression with probably hysterical elements. Instability and poor control over his impulses would in the case of enforcement probably involve a significant risk of self-destructive behaviour with a danger of suicide.

In a medical report of 21 December 1994, Dr. Granström considers that there is a schizophreniform psychosis. MR is stated to have smashed a glass and cut himself on one occasion. It is judged that he could be a danger to himself and it is also expected that he would be capable of acting destructively against other people in an enforcement situation.

According to the diary, on 4 January 1995 he broke a bottle and cut his left wrist and stomach. He also ripped up a sheet and tried to throttle himself with it. In addition he took a glass and crushed it in his hand to cut himself. Following a negative decision, MR tried on 18 January 1995 to hang himself from a curtain rail using torn bedclothes and also broke a glass and cut his arms.

In a medical report of 13 February 1995, Dr. Granström considers that MR is suffering from reactive depression bordering on psychotic values which manifests itself in the refusal to eat.

According to the diary, in the night of 8 May 1995 MR cut himself with a broken bottle and tried to hang himself from the curtain rail. On 29 May when out for a walk with staff, he ran into the roadway and tried to throw himself under a car. Back on the ward he took a table knife and tried to cut himself with it.

In a medical report of 9 June 1995, Dr. Granström judges MR's condition to be prepsychosis-psychosis and the suicide attempts to be part of the psychotic symptoms.Certain obvious damage in connection with the reported self-destructiveness has never been documented. Aggressiveness directed against the environment has not been described either.

According to the diary, MR refused to eat or drink in the ward and for this reason was fed by tube from 1 February to 21 March 1995. On this last date he pulled the tube out and he is said to have performed several violent acts of a self-destructive type, without giving any more detail. His weight was 46 kg on 9 February 1995 and 49 kg when I examined him on 9 June. In April MR was given bigger portions at his own request and had some really good days towards the end of that month.

A note from the medical clinic in February states that there is scarcely any sign of critical malnutrition. A laboratory note at the same time indicates normal values.

Dr. Granström considers in his various reports that MR's condition has psychotic significance. Other material however, including my own examination, points towards the elements in MR's behaviour and experience which can lead to such an interpretation resulting instead from an obvious regression and from MR's cultural background.

Summarising, I consider that MR has a reactive mental insufficiency condition with anxiety, depression and sleeping difficulties stemming from prolonged uncertainty and stressful living conditions. Instability and impulsive acts with self-destructive manifestations cannot be excluded in an expulsion situation. The risk of serious harm or actual suicide is nevertheless considered to be limited in view of what has happened in the past. The present uncertainty can be seen as constituting a destabilising factor. The family in the home country can on the other hand be expected to have a calming effect.

Neither the physical nor the mental condition of MR at present can be seen as constituting any obvious impediment to enforcement. However, since he cannot be expected to cooperate in an expulsion situation, the maintenance of adequate safety therefore requires continuous supervision from the time the applicant is informed of the expulsion as well as an escort during the journey home. ...

Since the physical condition can deteriorate in a short time if MR refuses to eat and drink, it is important that the time between an eventual expulsion decision and its enforcement should be kept to a minimum.
...

Conclusion: Impediments to enforcement on medical/psychiatric ground cannot be considered to exist provided that the measures outlined above are taken in an expulsion situation. ..."

On 16 June 1995 the County Administrative Court consented to continued compulsory care of the applicant for a further period of six months.

Relevant domestic law

According to the 1989 Aliens Act (utlänningslag 1989:529), a

residence permit may be granted to an alien for humanitarian reasons (chapter 2, section 4, subsection 1 (2)). A so-called new request for a residence permit may only be granted if the request, lodged by an alien who is to be refused entry or expelled by a decision which has acquired legal force, is based on new circumstances and provided the applicant is either entitled to asylum or there are weighty humanitarian reasons for allowing him or her to stay in Sweden (chapter 2, section 5, subsection 3).

As from 1 July 1994 a request pursuant to chapter 2, section 5, shall be lodged with the Aliens Appeals Board. This Board consists of a Chairman and a number of members appointed by the Government. The Chairman and his or her deputies shall be lawyers (chapter 7, section 3). New requests are normally decided by three members.

When considering whether to refuse an alien entry or to issue an expulsion order, the authorities must examine, pursuant to chapter 8, sections 1-4, of the Aliens Act, whether the alien can be returned to a particular country or whether there are other special obstacles to the enforcement of such a decision. Any necessary instructions regarding the enforcement order shall be given by the Government, the Aliens Appeals Board or the National Immigration Board in their decisions (chapter 4, section 12).

If the enforcement meets no obstacles under chapter 8, an alien is to be expelled or returned to the country of origin or, if possible, to the country from which he or she came to Sweden. If the decision cannot be enforced in one of these manners or if special reasons exist, the alien may be sent to another country (chapter 8, section 5).

If the enforcing authority finds that the enforcement cannot be carried out or that further information is needed, it shall notify the National Immigration Board accordingly. In such a case, the Board may decide on the question of enforcement or take such other measures as are necessary (chapter 8, section 13).

If an expulsion order or a decision refusing entry contains no instructions regarding its enforcement or if it is evident that the instructions cannot be complied with, the enforcing authority shall decide how to carry out the enforcement, provided it does not proceed in accordance with chapter 8, section 13 of the Aliens Act (chapter 7, section 2 of the 1989 Aliens Ordinance (utlänningsförordning 1989:547)).

When considering a new request for a residence permit lodged by an alien who is to be expelled according to a decision which has acquired legal force, the National Immigration Board (and in certain cases also the Government) may stay the enforcement of that decision. For particular reasons the Board may also otherwise stay enforcement (chapter 8, section 10). Similarly, the Aliens Appeals Board may decide to stay the enforcement of a previous expulsion order.

The National Immigration Board or the Aliens Appeals Board may refer a matter to the Government if, for instance, its outcome is of particular importance to the future application of the Aliens Act or if other particular circumstances warrant the Government's consideration of the case (chapter 7, section 11).

According to the 1991 Act on Compulsory Mental Care (lag 1991:1128 om psykiatrisk tvångsvård), such care shall be terminated at the request of the competent police authority whenever the person placed in care is ordered to be expelled. This presupposes, however, that the Chief Physician is of the opinion that the alien's condition allows enforcement to take place and consequently grants the request (section 29; Government Bill no. 1190/91: 58, appendix 1, p. 270). No appeal lies against the Chief Physician's decision upon a request made by the enforcing authority (section 33 of the 1991 Act).

COMPLAINTS

1. The applicant complains that, if returned to Bangladesh, he will be subjected to treatment contrary to Article 3 of the Convention on account of his political background in that country. He also complains about the trauma which the enforcement of the expulsion order would cause him in the light of his present mental and physical state. He claims to have been previously subjected to degrading treatment by the police in the receiving country. His return to Bangladesh would therefore create a real risk that his psychosis would further deteriorate and his suicidal tendencies further increase.

2. The applicant also complains about the absence of an effective remedy within the meaning of Article 13 of the Convention for the purpose of challenging the decisions of the Aliens Appeals Board upon his further requests for a residence permit on humanitarian grounds.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 14 February 1995 and registered on 15 February 1995.

On 14 February 1995 the President indicated to the respondent Government that it would be desirable in the interest of the parties and the proper conduct of the proceedings not to enforce the expulsion order concerning the applicant until the Commission had examined the application at the latest on 3 March 1995. For the same reasons, the President also indicated to the applicant that he should commit no further suicide attempts and no longer refuse to eat. Both indications were given in pursuance of Rule 36 of the Commission's Rules of Procedure. The President further communicated the application to the Government, pursuant to Rules 34 para. 3 and 48 para. 2 (b) of the Rules of Procedure.

On 2 March 1995 the Commission prolonged the President's indications under Rule 36 in respect of both parties until 13 April 1995.

The Government's written observations were submitted on 24 March 1995 after an extension of the time-limit fixed for that purpose.

On 12 April 1995 the Commission prolonged its indications under Rule 36 in respect of both parties until 26 May 1995.

The applicant's written observations in reply were submitted on 28 April 1995, also after an extension of the time-limit. On 25 May 1995 the Commission invited the parties to submit supplementary observations in writing. It furthermore prolonged its indications under Rule 36 in respect of both parties until 7 July 1995.

On 26 May 1995 the Commission granted the applicant legal aid.

Supplementary observations were submitted by the applicant on 9 and 30 June 1995 and by the respondent Government on 16 June and 4 July 1995.

On 6 July 1995 the Commission prolonged its indications under Rule 36 in respect of both parties until 15 September 1995.

THE LAW

1. The applicant complains that, if returned to Bangladesh, he will be subjected to treatment contrary to Article 3 (Art. 3) of the Convention on account of his political background in that country. He also complains about the trauma which the enforcement of the expulsion

order would cause him in the light of his present mental and physical state.

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

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

The Government consider the application manifestly ill-founded. The applicant's fear that he would be persecuted on his return to Bangladesh, having regard to his alleged political background there, is exaggerated. The Government invoke the political changes in the receiving country and refer to inconsistencies in the applicant's account of his activities in that field. For instance, when returning to Sweden the applicant failed to mention to the immigration authorities that he had been tortured in Bangladesh. It is therefore argued that substantial grounds have not been shown for believing that he would, on account of his background in Bangladesh, face a real risk of treatment contrary to Article 3 (Art. 3) if returned to that country.

The Government furthermore consider that the applicant can be returned to Bangladesh despite his current state of health. The enforcement of the expulsion order would thus not involve such a trauma on his part that this would amount to a violation of Article 3 (Art. 3). In the Government's view this provision must be applied with great caution in the present field. They submit that the applicant's present behaviour is similar to that observed prior to the enforcement of the expulsion order in January 1992. Anticipating an enforcement, the applicant has, on both occasions, voluntarily sought hospital treatment and, while in treatment, stopped eating. It can therefore be assumed that he is acting in a manner likely to impair his physical health so as to prevent or postpone the enforcement of the expulsion order.

The Government refer, in particular, to Dr. Lindgren's report of 13 June 1995, according to which the applicant's state of health is such that no impediments to his return to Bangladesh can be considered to exist provided that appropriate measures are taken in connection with the actual enforcement. The Government underline that, according to Dr. Lindgren, there are no documented reports that the applicant has injured himself through his suicidal attempts. For instance, the curtain rods which he has used in order to "hang" himself were weak. Moreover, according to Dr. Lindgren, the risk of serious injuries and an accomplished suicide would be limited if an enforcement of the expulsion were to be carried out.

The Government furthermore submit that the local police authority must, when preparing the enforcement, consider the applicant's state of health and, if necessary, notify the National Immigration Board of any impediment to the enforcement. So far the enforcement preparations have not begun. Should such measures be taken, the applicant's physical and mental state at that time will be decisive. Under domestic law compulsory care of an alien ordered to be expelled can be terminated at the request of the competent police authority only on condition that the Chief Physician is of the opinion that the alien's condition allows enforcement to take place and consequently grants the request. In practice the Chief Physician therefore has the final say in the matter.

The applicant maintains that his complaint is well-founded. Whilst it is true that the human rights situation in Bangladesh has improved somewhat, reports continue to indicate the existence of a pattern of physical and mental torture applied by the police in connection with arrests and interrogations, in particular of prisoners of conscience and political prisoners. Reference is made to the medical evidence confirming the existence of scars on the applicant's body. It remains highly probable that he could again be subjected to torture and

degrading treatment by the police on his return to the receiving country. Even if in a trial he might manage to clear himself from the false accusations against him, there remains a risk that ill-treatment might occur during his detention on remand.

The applicant furthermore contends that his return to Bangladesh despite his current physical and mental health would also violate Article 3 (Art. 3). According to the medical evidence adduced, he is not only physically weak after his hunger-strike but is also suffering from a schizophrenic psychosis, for which reason he has been placed in compulsory care.

In his initial submissions to the Commission the applicant emphasised that, although the medical evidence submitted by psychiatrists described rather complicated symptoms, the material had nevertheless been assessed merely by lawyers without any consultation with, e.g., one of the experts consulted by the immigration authorities in cases of this kind. An examination in the absence of such a consultation left room for arbitrary considerations.

After having been notified of Dr. Lindgren's report the applicant refers, in particular, to the report drawn up on 7 June 1995 by the doctor responsible for his care, Dr. Granström, and Dr. Olofsson. He furthermore maintains that the police may enforce the expulsion order even while he remains in compulsory care. This is evident from the fact that the Aliens Appeals Board has not, following his placement in such care, ordered stay of enforcement. Nor has it referred his request for a residence permit on humanitarian grounds to the Government in accordance with chapter 7, section 11 of the Aliens Act for the purpose of determining whether a person who is in compulsory care can be considered "transportable" within the meaning of the Aliens Act.

(a) The Commission has first examined whether the applicant's return to Bangladesh would, if enforced, violate Article 3 (Art. 3) of the Convention on account of his alleged political background in that country and the surrounding circumstances.

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to political asylum is not protected in either the Convention or its Protocols (Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 3) of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he is to be expelled (ibid., para. 103). A mere possibility of ill-treatment is not in itself sufficient (ibid., p. 37, para. 111).

The Commission notes the Swedish authorities' doubts as to whether the applicant would, on account of his background in Bangladesh, face a real risk of treatment contrary to Article 3 (Art. 3), if returned to that country. It also observes that chapter 8 of the Aliens Act imposes an absolute obligation on the enforcement authority in Sweden to refrain from expelling an alien, should the human rights situation in the receiving country constitute a firm reason to believe that he or she would be in danger of being subjected to capital or corporal punishment, or torture, in that country.

On the basis of all the material before it, the Commission does not find it established that there are substantial grounds for believing that the applicant would, on account of his alleged background in Bangladesh, be exposed to a "real risk" of being subjected to treatment contrary to Article 3 (Art. 3) in that country.

It follows that this aspect of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(b) The Commission has next examined whether, considering the applicant's state of health, an enforcement at present of the expulsion order would in itself involve such a trauma to him that Article 3 (Art. 3) would be violated (cf. Eur. Court H.R., Cruz Varas and others judgment of 20 March 1991, Series A no. 201, p. 31, paras. 83-84). It accepts that the return of a person to a country where he has allegedly already been ill-treated may involve serious hardship for the person concerned (cf., mutatis mutandis, Cruz Varas and others v. Sweden, Comm. Report 7.6.90, Series A no. 201, para. 90, Series A no. 201, p. 46).

The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (the above-mentioned Cruz Varas and others judgment, loc.cit.).

In the present case a substantial amount of medical evidence has been adduced by the parties. The Commission has paid particular attention to the views of Dr. Granström, the physician in charge of the applicant's everyday care. It has furthermore noted the report of 13 June 1995 submitted by Dr. Lindgren after an evaluation of all available documentation on the development of the applicant's state of health and following his own examination of the applicant. The report concludes that enforcement should take place only on condition that the applicant is continuously supervised as from the commencement of the enforcement preparations up to his actual return to Bangladesh and provided that this period remains very short. The Commission assumes that no enforcement will take place without these conditions being met.

Finally, it appears to the Commission that, as long as the applicant remains in compulsory psychiatric care, enforcement can under no circumstances take place without permission of the Chief Physician responsible for his care. Given that the enforcing police authority must request this Physician to terminate the care, he or she still retains a further opportunity of assessing, in a decisive manner, the applicant's state of health at the time of the planned enforcement.

In the above circumstances the Commission does not find it established that the applicant's possible return to Bangladesh would amount to a violation of Article 3 (Art. 3) on account of his current state of health.

It follows that this aspect of the complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains about the absence of an effective remedy within the meaning of Article 13 (Art. 13) of the Convention for the purpose of challenging the decisions of the Aliens Appeals Board upon his new requests for a residence permit on humanitarian grounds.

Article 13 (Art. 13) of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Reiterating their view that the applicant's complaint under Article 3 (Art. 3) of the Convention is manifestly ill-founded, the Government argue that his complaint under Article 13 (Art. 13) is incompatible ratione materiae with the provisions of the Convention or, alternatively, manifestly ill-founded. It is true that no appeal lay against the decisions of the Aliens Appeals Board on the applicant's new requests for a residence permit. The Government recall, however, that over the years the question whether he should be permitted to reside in Sweden has been examined on many occasions and by three instances. The decisions rendered between November 1993 and February 1995 should be seen as a whole, since they all pertained to the question whether he should be allowed to remain in Sweden after his return in December 1992. In the last four decisions the Aliens Appeals Board referred to its decision of 25 March 1994 which in the present circumstances remains the final decision constituting the basis for possible enforcement. The Government finally point out that pending enforcement the applicant may still lodge an unlimited number of new requests with the Aliens Appeals Board for the purpose of obtaining a residence permit. It is very likely that such requests would not be examined by the Board in a constantly identical composition. For instance, the applicant's four most recent requests lodged pursuant to chapter 2, section 5 of the Aliens Act involved ten decision-makers. However, only one of those participated in more than one of the Board's four decisions. The Government finally recall that the activities of the National Immigration Board and the Aliens Appeals Board are subject to the supervision of the Chancellor of Justice and the Parliamentary Ombudsman.

The applicant contends that his four most recent new requests for a residence permit on humanitarian grounds could only be examined by the Aliens Appeals Board. Neither the Ombudsman of Justice nor the Chancellor of Justice has the power to change the Board's decisions. The right to an effective remedy within the meaning of Article 13 (Art. 13) must imply a right to obtain a review by a superior authority.

The Commission recalls that, according to the European Court of Human Rights, an applicant, who is found to have no "arguable claim" that another Convention provision has been violated, is not entitled to a remedy under Article 13 (Art. 13) (see, e.g., Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, pp. 14-15, paras. 31-33 and p. 20, para. 46).

The Commission furthermore recalls that the concept of an arguable claim falls to be determined having regard to the particular facts of the case and the nature of the legal issues raised (cf. Eur Court H.R., Plattform "Ärzte für das Leben" judgment of 21 June 1988, Series A no. 139, p. 11, para. 27; No. 12474/86, Dec. 11.10.88, D.R. 58 p. 94).

In the circumstances of the present case the Commission need not determine whether, in spite of its conclusion concerning the Article 3 (Art. 3) complaint, the applicant has an "arguable claim" of a breach of that provision which would entitle him to a remedy under Article 13 (Art. 13). Even if the applicant were to have such an "arguable claim" the complaint is inadmissible for the following reasons.

The Commission recalls that the concept of an "effective" remedy within the meaning of Article 13 (Art. 13) implies that the remedy is an accessible one and that the authority at issue is competent to examine the merits of a complaint (cf., e.g., No. 11468/85, Dec. 15.10.86, D.R. 50 p. 199).

The Commission accepts that in the present case the decision rendered by the Aliens Appeals Board on 25 March 1994 in the ordinary proceedings concerning the applicant's entitlement to asylum or a residence permit in Sweden remains the basis for possible enforcement.

It notes that, by subsequently requesting the Aliens Appeals Board to grant him a residence permit on humanitarian grounds on account of his state of health, he has had ample opportunity to oppose enforcement of the expulsion order in these new circumstances. The Commission cannot find that the Aliens Appeals Board has not properly taken account of the medical evidence adduced by the applicant in support of his further requests pursuant to chapter 2, section 5 of the Aliens Act. It furthermore notes that the possibility of lodging further requests pursuant to that provision remains open to the applicant up to the actual enforcement moment.

In these circumstances the Commission finds no appearance of a violation of Article 13 (Art. 13), even assuming that the applicant could be considered to have an "arguable claim" that his rights under Article 3 (Art. 3) might be violated as a result of his possible return to Bangladesh.

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 Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)