AS TO THE ADMISSIBILITY OF

Application No. 21839/93
by Dany and Regina GOURKIS
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
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 29 December 1992 by Dany and Regina GOURKIS against Sweden and registered on 12 May 1993 under file No. 21839/93;

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 first applicant, Dany Gourkis, was born in 1970. His nationality is not known. The second applicant, Regina Gourkis, is a Swedish citizen born in 1971. They reside at Södertälje, Sweden. Before the Commission they are represented by Mr. Hans Engström, a lawyer practising in Skärholmen, Sweden.

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

The first applicant grew up in Beirut, Lebanon. At the age of 10, he lost his parents, who were of Turkish origin. Thereafter, he lived in a Syrian-Orthodox monastery. He used to work for different Christian militias before the Syrian take-over of Beirut. He was allegedly later persecuted, and decided to flee the country. On 24 March 1991 he entered Sweden where he applied for asylum.

In June 1991 he met the second applicant, who is of Syrian-Orthodox origin and who came to Sweden with her parents at an early age. In July 1991 the applicants became engaged. On 1 November 1991 and 11 January 1992, respectively, they were married by a judge at the District Court (tingsrätten) and in the Syrian-Orthodox church in Södertälje, Sweden. They live together since 1 December 1991.

On 6 August 1991 the National Immigration Board (Statens invandrarverk) rejected the first applicant's application for asylum on the ground that his allegations concerning the risk of being

persecuted or killed upon return to Lebanon were exaggerated and did not constitute grounds for granting him asylum. According to the decision, he would be expelled to Lebanon, if he did not show that another country would receive him.

The first applicant appealed to the Aliens Appeals Board (Utlänningsnämnden) and submitted, as a second ground for a residence permit, that he was living with a Swedish citizen, the second applicant.

On 30 September 1992, the Aliens Appeals Board rejected the appeal, stating, inter alia, that the invoked connection to the second applicant did not constitute a ground for granting the first applicant a residence permit.

A fresh application for asylum and a request for a stay of enforcement of the deportation order were rejected by the National Immigration Board on 22 March 1993.

After a further request, the first applicant was, by decision of the National Immigration Board on 31 August 1993, granted a permanent residence permit.

COMPLAINTS

1. The applicants complain that the initial decisions to refuse the first applicant a residence permit and to order his expulsion from Sweden constitute a violation of their right to respect for their family life and their right to found a family under Articles 8 and 12 of the Convention. They submit that, if the first applicant had been expelled to Lebanon, he would have faced the risk of persecution and would not have been able to return to Sweden. Furthermore, it was unreasonable to expect the second applicant to follow him to Lebanon.

2. The applicants further submit that, although the first applicant has since been granted a residence permit, the earlier rejections involved a lot of suffering for them, as they were uncertain whether they would be able to live together. They also felt harassed by the procedure of the immigration authorities. Furthermore, they have not felt safe after the decision to grant the first applicant a residence permit. They have not invoked any Article in respect of this complaint.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 29 December 1992.

On 15 January 1993 the Commission decided not to apply Rule 36 of its Rules of Procedure.

Following further correspondence with the applicants, the application was registered on 12 May 1993.

THE LAW

1. The applicants complain that the decisions by which the Swedish authorities initially refused the first applicant a residence permit and ordered his expulsion from Sweden violated their right to respect for their family life and their right to found a family under Articles 8 and 12 (Art. 8, 12) of the Convention.

The Commission recalls that, although no right of an alien to enter or to reside in a particular country is as such guaranteed by the Convention, the expulsion of a person from a country where close members of his or her family are living may amount to an infringement of the right to respect for family life guaranteed in Article 8 para. 1 (Art. 8-1) (cf. No. 9203/80, Dec. 5.5.81, D.R. 24 p. 239). However, in the present case the first applicant has been granted a residence

permit and the applicants have apparently been living together since 1 December 1991. No decisions taken by Swedish authorities have led to their separation. In these circumstances, the Commission finds that there is no appearance of a violation of their rights under Articles 8 and 12 (Art. 8, 12) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants further submit that they suffered a lot as a result of the decisions to reject the first applicant a residence permit, that they felt harassed by the procedure of the immigration authorities and that they have not felt safe after the decision to grant the first applicant a residence permit.

The Commission has considered this part of the application under Article 3 (Art. 3) of the Convention, which reads as follows:

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

The Commission, recalling that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) (cf. Eur. Court H.R., Ireland v. United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162), considers that the treatment alleged by the applicants clearly does not attain this level of severity.

It follows that this part of the application is also 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 Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)