Application No. 22408/93
by H.
against Sweden

The European Commission of Human Rights sitting in private on 5 September 1994, the following members being present:

MM. C.A. NØRGAARD, President
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
I. BÉKÉS
J. MUCHA

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 1 August 1993 by H. against Sweden and registered on 3 August 1993 under file No. 22408/93;

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 29 September 1993 and 1 December 1993 and the observations in reply submitted by the applicant on 8 and 28 November 1993;

- the parties' oral submissions at the hearing on 4 March 1994; - the Commission's decision of 4 March 1994 to declare the application admissible;

- the further observations on the merits submitted by the respondent Government on 22 April, 9 May and 6 June 1994 and the further observations submitted by the applicant on 24 May and 16 June 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Syrian national born in 1965 and currently resident at Härnösand, Sweden. He is a student. Before the Commission he is represented by Ms. Lena Isaksson, a lawyer at Umeå.

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

Particular circumstances of the case

According to the applicant, he took up his military service in the Syrian army in 1986. He was later appointed group commander and became responsible for a tank. While serving in Lebanon he was imprisoned on 23 August 1988 for having refused to attack a refugee camp. He was detained in the Chtoura prison in Lebanon and subsequently in the Tadmur military prison in Syria. During his detention he was allegedly assaulted and tortured three to four times a week. He was hung from his feet and flogged.

In June 1989 the applicant signed, allegedly against his will, a declaration that he would always obey military orders. His military service was further prolonged from 30 to 60 months. He was then released from prison and re-instated as a commander of a tank.

In July 1989 the applicant, according to his submissions, participated in a battle against General Aoun's forces in eastern Beirut. During this battle he and his crew jumped from their tank in order to seek protection. The applicant then broke his leg and was captured by Lebanese troops and brought to a military hospital.

The applicant further states that on 15 August 1989 he was forced to announce his desertion in a television broadcast by a station for the Lebanese forces. On 15 January 1990 he was discharged from the military hospital and was subsequently cared for by his uncle. On 14 March 1990 the Lebanese army demanded that the applicant fight on its side. Refusing to do so, he left his uncle to stay with some other relatives. On 25 May 1990 the applicant escaped from Lebanon with the help of smugglers.

The applicant arrived in Sweden on 5 August 1990 and applied for asylum on 8 August 1990, referring to the risk of his being persecuted as a deserter in Syria.

On 6 September 1991 the National Immigration Board (statens invandrarverk) rejected the request and ordered the applicant's expulsion. The applicant was further prohibited from returning to Sweden before 1 October 1993. The Board stated:

(translation)

"[The Board] does not consider the information submitted by the applicant concerning his desertion as credible. It is not likely that a person who has refused to participate in fighting and who is suspected of having sympathies with the Palestinians would be reinstated in his military rank upon release, be entrusted with the command of a tank and would participate in the planning of an attack. The other reasons invoked ... are not sufficient in order to conclude that ... he should be granted asylum. Making an overall assessment, the Board considers that [the applicant] is not entitled to asylum in accordance with Chapter 3, Section 1 of the [1989] Aliens Act (utlänningslag 1989:529). Nor are there any other reasons for granting him a residence permit."

On 16 October 1992 the Aliens Appeals Board (utlänningsnämnden) upheld the National Immigration Board's decision, stating:

(translation)

"... What has been shown in the case is not such [information] that [the applicant] could be considered a refugee in accordance with Chapter 3, Section 2 [of the 1989 Aliens Act] or a deserter or draft evader (krigsvägrare) in accordance with Chapter 3, Section 3. Nor are there any such circumstances as prescribed in Chapter 3, Section 1(3).

Nor are there any other reasons for granting [the applicant] a residence permit."

The applicant lodged a further request for a residence permit, invoking new evidence consisting of photographs of himself in uniform allegedly taken during his army service, decisions to grant him leave from the military, military forms on which he had ordered clothes, as well as a statement by a military official that he had been granted leave for a week due to illness.

On 26 January 1993 the National Immigration Board rejected the request, considering that the political reasons invoked had in all significant parts already been examined by the Aliens Appeals Board, and finding that no humanitarian reasons had been shown for the granting of the request.

In a further request for a residence permit of 10 March 1993 the applicant invoked a document stating that he had been released from prison on 24 June 1989, a mission order of 25 June 1989 and a warrant of arrest dated 4 February 1993 according to which he was to be arrested for having failed to report for military service.

The applicant has submitted a copy of his military book issued on 21 January 1984 and according to which he was, on 21 February 1986, considered medically fit for service. It includes the number of the applicant's civil identity card issued in 1981. The applicant is further said to have reported to his group between 20 August and 20 September, the year being illegible.

The decision to release the applicant of 24 June 1989 reads:

(translation into English from the translation into Swedish provided by the Government)

"The Arab Republic of Syria
The Headquarters of the Army and Armed Forces
The Military Judiciary
The Office of the Military Prosecutor of Damascus
...

To: The Detention Centre of the Office of the Military Prosecutor of Damascus
We have [today] decided to release Sergeant [the applicant], son of (A.), no. ..., belonging to group no. ..., corps ..., who is detained since 26 August 1988 and has been transferred to us from the Military District of Damascus under no. ... of 1988.

For your knowledge and for the setting of his administrative and financial conditions at zero.
...
Captain ...
Deputy Head of the Office of the Military Prosecutor of Damascus"

The mission order issued on the applicant's release and dated 25 June 1989 reads:

(translation into English from the translation into Swedish provided by the Government)

"The Arab Republic of Syria
The Headquarters of the Army and Armed Forces
The Department of the Military Police
The Central Military Prison
...
Mission order

Sergeant [the applicant], no. ..., belonging to group no. ..., corps ..., is ordered to go to the Central Military Prison [today] to join his unit following his release ... on 24 June 1989. ...
...
Director of the Central Military Prison"

The warrant of arrest of 4 February 1993 reads:

(translation into English from the translation into Swedish provided by the Government)

The Headquarters of the Army and the Armed Forces
The Authority for General Military Service
The Military Service Authority of the County of Aleppo
The Enrolment Department of Al Bab
...
Order of immediate arrest

To the Police Department of the City

You are requested to order the arrest of [the applicant], son of (A.) and (F.), born in 1965, residence number ..., who has failed to report for service as a conscript, and to bring him to the Department for enrolment. If he is not found, minutes shall be drawn up ... so as to have him handed over to the military judiciary. ...
...
(Illegible stamp)
Colonel ...
Head of the Enrolment Department of Al Bab ..."

On 28 February 1994 the applicant provided a further Swedish translation of the warrant carried out by an authorised translator. According to the applicant, this translation shows that he has deserted from the Syrian army, for which reason he shall be arrested in order to have him complete his military service. However, according to a translation of 9 May 1994 from Swedish into English carried out by another authorised translator and provided by the applicant, he is to be apprehended and delivered to the military in order to perform his military service.

The applicant's request for a residence permit was rejected by the National Immigration Board on 11 March 1993. The Board considered that in upholding the decision of 6 September 1991 the Aliens Appeals Board had not questioned the credibility of the applicant's submissions. The political reasons invoked before the National Immigration Board had in all significant parts already been examined by the Aliens Appeals Board. Moreover, no humanitarian reasons had been shown for the granting of the applicant's request. The applicant's request for a stay of enforcement of the expulsion order was also refused.

On 10 May 1993 the applicant lodged yet a further request for a residence permit, attaching extracts from the Syrian Military Penal Code, according to which he would be sentenced to fifteen years' imprisonment or death for his desertion, if returned.

On 19 May 1993 the National Immigration Board rejected the applicant's further request for a residence permit, considering that the circumstances invoked and the documents previously submitted had already been examined by the Aliens Appeals Board and itself. The applicant's request for stay of enforcement was also refused.

No appeal lay against the above-mentioned decisions of the National Immigration Board of 1993.

On 6 August 1993 the National Immigration Board stayed the enforcement of the expulsion order in view of the indication by the President of the Commission (see below, "Proceedings before the Commission").

In a report of 21 April 1994 investigators of the police authority of Stockholm concluded that the applicant, as photographed by them, was not the same person as that pictured in an army uniform on photographs relied on by the applicant before the National Immigration Board and the Commission in support of his purported desertion. The investigators found the uniformed person to be older and also noted differences between the applicant and that person relating to their headlines and chins, the shapes of their faces, their right ears and their eye brows, as well as to the arm on which they were carrying their respective watches. Moreover, it could not be confirmed that all photographs invoked by the applicant pictured the same person.

In a report of 19 April 1994 Dr. Erik Edston, a forensic specialist, concludes that the applicant's scars may have been caused by the alleged torture and assaults. The character and location of the injuries have, however, been "unspecified" and they may therefore also have been caused in other ways. The X-ray examination of the applicant's right leg alleged to have been broken in connection with the applicant's desertion has not shown any sign of a previous fracture.

In a report of 18 April 1994 Mr. Marcello Ferrada-Noli, a psychologist, concludes that the applicant is suffering from a post-traumatic stress syndrome involving suicidal plans, insomnia and nightmares.

In a report of 19 April 1994, Dr. Søndergaard, a psychiatrist, concludes that the applicant is suffering from insomnia and suicidal plans but that he has good emotional contact with others.

In a report of 21 April 1994 Dr. Sten W. Jakobsson, Chief Physician at the Swedish Centre for Torture Victims, concludes that the applicant is credible, that he has been subjected to traumatic experiences comparable with torture and that he has suicidal thoughts relating to a possible expulsion to Syria. The report was based on the above-mentioned reports by Drs. Edston and Søndergaard and Mr. Ferrada-Noli.

The applicant alleges that his eldest brother was arrested in 1987 on account of his activities in the Socialist Union of Syria. His fate is allegedly unknown.

The applicant's mother is a Lebanese citizen and a Christian.

Relevant domestic law

Under Chapter 3, Section 1 an alien may be granted asylum because he is a refugee, a deserter or a draft evader or, without being a refugee, if he does not wish to return to his home country, because of the political situation there and provided he can put forward weighty reasons in support of his wish.

The term "refugee" refers to an alien who is staying outside the country of which he is a citizen because he feels a well-founded fear of being persecuted in that country, having regard to his race, nationality, belonging to a special group in society or his religious or political convictions, and who cannot or does not wish to avail himself of his home country's protection (Chapter 3, Section 2).

The term "deserter or draft evader" refers to an alien who has left a place of war or an alien who has escaped from his country of origin or needs to stay in Sweden in order to avoid forthcoming

military service (Chapter 3, Section 3).

An alien as referred to in Chapter 3, Section 1, is entitled to asylum. Asylum may, however, be refused inter alia if, in the case of an alien falling under Chapter 3, Section 1, no. 3, there are special grounds for not granting asylum (Chapter 3, Section 4).

An alien may be refused entry into Sweden if he lacks a visa, residence permit or other permit required for entry, residence or employment in Sweden (Chapter 4, Section 1, no. 2). When considering whether to refuse an alien entry or to expel him it must be examined whether he, pursuant to Chapter 8, Sections 1-4, can be returned to a particular country or whether there are other special obstacles to the enforcement of such a decision (Chapter 4, Section 12).

Under Chapter 7, Section 4, the National Immigration Board's decision in an asylum matter may be appealed to the Aliens Appeals Board.

An alien who has been refused entry or who is to be expelled may never be conveyed to a country where there is firm reason to believe that he would be in danger of being subjected to capital or corporal punishment or torture, nor to a country where he is not protected from being sent to a country where he would be in such danger (Chapter 8, Section 1).

When a refusal of entry or expulsion order is put into effect, the alien may not be sent to a country where he would risk being persecuted, nor to a country where he would not be protected from being sent on to a country where he would risk being persecuted (Chapter 8, Section 2, subsection 1). An alien may, however, be sent to a country as referred to in subsection 1 if he cannot be sent to any other country and if he has shown, by committing a particular offence, that public order and safety would be seriously endangered by his being allowed to remain in Sweden. This does not apply if the persecution threatening him in the other country implies danger to his life or is otherwise of a particularly grave nature (subsection 2). Similarly, the alien may be sent to a country referred to in subsection 1 if he has engaged in activities endangering the national security of Sweden and if there is reason to suppose that he would continue to engage in such activities in Sweden and he cannot be sent to any other country (subsection 3).

If the enforcement is not subject to any obstacles under, inter alia, Chapter 8, Sections 1 and 2, an alien who has been refused entry or who is to be expelled is to be sent to his country of origin or, if possible, to the country from which he came to Sweden. If the decision cannot be put into effect in the manner indicated in subsection 1 or there are other special grounds for doing so, the alien may be sent to some other country instead (Chapter 8, Section 5).

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

When considering a request for a residence permit lodged by an alien to be expelled according to a decision which has acquired legal force, the National Board of Immigration (and in certain cases also the Government) may stay execution of that decision. For particular reasons the Board may also otherwise stay execution (Chapter 8, Section 10).

If the enforcing authority finds that enforcement cannot be carried out or that further information is needed, the authority is to notify the National Board of Immigration 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).

COMPLAINTS

The applicant alleges that, if returned to Syria, he would be sentenced either to fifteen years' imprisonment or to death for desertion. He invokes Article 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 1 August 1993 and registered on 3 August 1993.

On 3 August the President of the Commission decided, pursuant to Rule 36 of the Commission's Rules of Procedure, to indicate to the respondent Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to return the applicant to Syria until the Commission had had an opportunity to examine the application.

The President further decided, pursuant to Rule 34 para. 3 and Rule 48 para. 2(b), to bring the application to the notice of the respondent Government and to invite them to submit written observations on its admissibility and merits.

On 8 September 1993 the Commission prolonged the indication under Rule 36 until 22 October 1993.

Following an extension of the time-limit the Government's observations were submitted on 29 September 1993. Supplementary observations were submitted on 1 December 1993.

On 21 October 1993 the Commission prolonged its indication under Rule 36 until 10 December 1993.

Following an extension of the time-limit the applicant's observations in reply were submitted on 8 November 1993. Supplementary observations were submitted by him on 28 November 1993.

On 9 December 1993 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application. It further prolonged its indication under Rule 36 until further notice.

On 21 January 1994 the applicant was granted legal aid.

At the hearing, which was held on 4 March 1994, the parties were represented as follows:

The Government

Mr. Carl Henrik EHRENKRONA — Assistant Under-Secretary for Legal Affairs, Ministry for Foreign Affairs, Agent

Mrs. Ulrika DACKEBY — First Secretary, Ministry of Culture and Immigration, Adviser The applicant

Ms. Lena ISAKSSON — Counsel

Mr. Bo JOHANSSON — Assistant counsel

On 4 March 1994 the Commission declared the application admissible and invited the parties to submit further observations on the merits of the case.

The Government submitted further observations on 22 April, 9 May and 6 June 1994. The applicant's further observations were submitted on 24 May and 16 June 1994.

THE LAW

The applicant alleges that, if returned to Syria, he would be sentenced to death or at least fifteen years' imprisonment for desertion. He invokes 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."

In their observations prior to and at the Commission's hearing the Government contended that the application was manifestly ill-founded, as the applicant had not shown any substantial grounds that he would run a real risk of being subjected to treatment contrary to Article 3 (art. 3), if returned to Syria. The Government questioned the information submitted by the applicant and, in particular, whether he had at all performed military service in that country. They also questioned his alleged torture and desertion, as well as the authenticity of the military documents referred to.

Even assuming that the applicant is a deserter, the Government considered that there is no indication that his desertion entailed aggravating circumstances, such as deserting to a country with which Syria was, or is, at war. Accordingly, under the penal provision applicable to the applicant's offence he would only be sentenced to a maximum of ten or fifteen years' imprisonment depending on the circumstances. The Government did not deny the existence of ill-treatment in prisons in Syria, but found no indication that the applicant would be subjected to such treatment on account of his alleged desertion.

In his submissions up to and at the Commission's hearing the applicant contended that he was a deserter and referred to various documents allegedly showing that he had been enrolled in the Syrian army. He further maintained that the applicable penal provision prescribes capital punishment for desertion "into the hands of the enemy". Even if his desertion would fall outside the scope of that provision he would, in any event, face at least a fifteen year prison sentence, during which he would risk further torture. Reference was made to reports by human rights organisations according to which torture is widespread in Syrian prisons and, notably, in the Tadmur military prison.

In their further observations on the merits the Government invoke the report of 21 April 1994 of the police authority of Stockholm concluding that the applicant is not the same person as that pictured in a Syrian army uniform in photographs relied on by him before the National Immigration Board and the Commission in support of his purported desertion. In the Government's view this conclusion seriously undermines the credibility of the applicant's account of his background as well as the medical and psychiatric evidence invoked by the applicant in his further observations on the merits.

The Government also continue to question the authenticity of the warrant of arrest of 4 February 1993. They emphasise, in particular, that the sender of the warrant is supposed to have been sent by a military authority in Al Bab to the police authority in the same district, and that the applicant has not satisfactorily explained how he obtained the original of the document. Moreover, contrary to the other purported military decisions invoked by the applicant, the warrant does not indicate the applicant's purported military rank of sergeant. In any event, the document refers to a draft evader rather

than to a deserter.

The Government further question the applicant's account as a deserter in view of the fact that he has obtained a copy of his military book, as according to Syrian practice this document should have been in the possession of the military during his service and only subsequently returned to him. In any case, the copy submitted by the applicant is not complete.

Even assuming the applicant's purported background as a deserter to be correct, the Government submit that due to the de facto political situation in Lebanon the applicant's desertion in that country would fall within Syrian amnesty laws. In any case, it is reasonable to assume that mainly political detainees in Syrian prisons are being subjected to severe ill-treatment.

In his further observations on the merits the applicant recalls that the Swedish immigration authorities have never questioned his identity. He further challenges the conclusion of the police report of 21 April 1994, it being based merely on a comparison of photographs, whilst the photographs relied on by him should have been compared with him in person. Moreover, his new hair style has misled the investigators to believe that his hair line is not the same as that of the person on the photographs. The applicant further refers to the expert evidence finding his allegations of previous torture credible. He also invokes a photograph allegedly taken in 1989 and picturing his right leg in a cast. He finally invokes a copy of his Syrian civil identity card and submits that the original is still being kept by the Syrian military, as he has not completed his service.

The Commission recalls its decision of 4 March 1994 to declare the application admissible. It further recalls Article 29 (art. 29) of the Convention which provides as follows:

> "After it has accepted a petition submitted under Article 25 (art. 25), the Commission may nevertheless decide by a majority of two-thirds of its members to reject the petition if, in the course of its examination, it finds that the existence of one of the grounds for non-acceptance provided for in Article 27 (art. 27) has been established.
>
> In such a case, the decision shall be communicated to the parties."

The Commission considers, in the light of the parties' further observations on the merits of the case, that there are reasons to doubt the accuracy of the applicant's claim that he is a deserter. It particularly takes note of the expert report of 21 April 1994 concluding that he is not the same person as that person or those persons pictured in an army uniform on the photographs invoked in support of his account of his purported background. This conclusion also negatively affects the credibility of his submissions to the Swedish authorities and the Commission, and the authenticity of the other documents relied on by him.

Assuming that the applicant has avoided service in the Syrian army, the Commission does not consider it established that he would risk capital punishment for the offence of draft evasion if returned to Syria. Concerning his possible imprisonment for that offence, the Commission does not find such a penalty so severe as to raise an issue under Article 3 (art. 3) of the Convention even considering the general situation in Syrian prisons (cf. No. 12364/86, Dec. 17.10.86, D.R. 50 p. 280; No. 11017/84, Dec. 13.3.86, D.R. 46 p. 176).

The Commission concludes, on the evidence before it concerning the applicant's purported background and the current situation in Syria, that it has not been established that there are substantial

grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (art. 3) of the Convention, if expelled to that country.

It follows that the application is to be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

In these circumstances, the Commission is of the opinion that the application should be rejected under Article 29 (art. 29) of the Convention, since one of the grounds for non-acceptance in Article 27 (art. 27) has been established (cf. No. 14056/88, Dec. 28.5.91, D.R. 70 p. 208).

For these reasons, the Commission, by the majority required in Article 29 (art. 29),

REJECTS THE APPLICATION.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)