CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44859/98
by Wiff JAMA
against Sweden

The European Court of Human Rights (First Section) sitting on 12 October 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mrs E. Palm,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,

and Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 August 1997 by Wiff Jama against Sweden and registered on 7 December 1998 under file no. 44859/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having regard to the information provided by the respondent Government on 31 March 1999 under Rule 49 § 2 (a) of the Rules of Court and the comments in reply submitted by the applicant on 23 April 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a national of Ethiopia, born in 1958. At present he is imprisoned. Previously he resided in Gothenburg, Sweden.

The facts of the case may be summarised as follows.

The applicant came to Sweden in 1989 and applied for asylum. He stated that he had not been involved in any direct political activities in Ethiopia but that he had encountered problems due to his Somalian origin. He maintained furthermore that he had assisted the resistance movement by transporting necessities of life to people in the Ogaden province. The applicant was considered a *de facto* refugee by the Swedish authorities, and was granted a permanent residence permit. His request for a travel document and a declaration of refugee status was, however, rejected.

The applicant was convicted of theft in 1993 and of petty larceny and aggravated assault in 1995. For the last two crimes he was, on 1 December 1995, sentenced to one year and ten months' imprisonment by the District Court (*tingsrätten*) of Gothenburg.

On 30 September 1996 the District Court of Gothenburg convicted the applicant of attempted manslaughter (*försök till dråp*). He was sentenced to four years' imprisonment. As regards the question of expulsion the court found, with its chairman and one of the lay assessors dissenting that, being of Somalian origin from the Ogaden province, the applicant would risk persecution if he returned to Ethiopia. The court, therefore, did not issue an expulsion order also bearing in mind that the applicant had resided in Sweden since 1989.

The applicant appealed against the judgment to the Court of Appeal (*hovrätten*). During the proceedings before the Court of Appeal the court obtained an opinion from the National Immigration Board (*Statens invandrarverk*) as to the applicant's need for protection. In its opinion of 23 August 1996 the Board submitted that it had formed its opinion on the basis of an overall assessment of the political situation in Ethiopia. The assessment was founded on several reports from the Swedish foreign administration covering the political situation after the fall of the Mengistu regime in May 1991. According to those reports the human rights situation had improved considerably. A new Constitution had been adopted in 1994 which established, both generally and in detail, that human rights should be respected. The Ethiopian Government had also signed all essential conventions on human rights. The Board therefore considered that the applicant was no longer in need of protection in Sweden.

On 6 December 1996 the Court of Appeal of Western Sweden, at the same time reviewing the judgment of 1 December 1995, sentenced the applicant to five years' imprisonment to be followed by expulsion. The Court took into consideration, *inter alia*, that the applicant during one year had committed two serious crimes of violence, that it could be assumed that he would pursue his criminal activities in Sweden if he was allowed to stay there, that he, whilst residing in Sweden, had been working for only a limited time, that he did not have any relatives in Sweden and that he had not learned Swedish although he had been living in the country for seven years. Furthermore the court took into consideration the the National Immigration Board's opinion that the applicant, due to the new conditions in Ethiopia, was no longer in need of protection in Sweden as a *de facto* refugee.

The applicant appealed to the Supreme Court (*Högsta domstolen*). On 30 January 1997 he was refused leave to appeal.

On 2 October 1997 the Government rejected the applicant's petition to have the expulsion order revoked.

The applicant may be released on probation on 16 October 1999 at the earliest. An expulsion may take place as from that date. The enforcement will be carried out by the local police authority.

COMPLAINTS

The applicant does not invoke any particular Article of the Convention.

1. He claims that the Court of Appeal did not give due regard to all the circumstances in his case. He alludes to several facts that, according to him, would have motivated a more lenient sentence.

2. As regards the expulsion order, the applicant maintains that the political scene in Ethiopia may have changed in general but in the Ogaden province chaos rules and he would risk torture or other inhuman treatment if returned. He also refers to the fact that he suffers from diabetes for which reason an expulsion would be detrimental to his health.

3. Finally, the applicant submits that he has not been sentenced to imprisonment before, that he has good command of Swedish, that he has no relatives in Ethiopia or other ties to that country and that everything of importance to him relates to Sweden, including his girlfriend.

PROCEDURE

The application was introduced on 12 August 1997 and registered on 7 December 1998.

On 8 December 1998 the respondent Government were requested to submit certain factual information, under Rule 49 § 2 (a) of the Rules of Court, in relation to the applicant's possible expulsion from Sweden.

The Government submitted the information requested on 31 March 1999. The applicant submitted his comments in reply on 23 April 1999.

THE LAW

1. The applicant complains that the Court of Appeal did not have due regard to all circumstances in his case and that a more lenient sentence would have been motivated.

However, the Court is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision as Article 35 § 1 of the Convention provides that the Court "may only deal with the matter ... within a period of six

months from the date on which the final decision was taken". The "final decision" within the meaning of Article 35 § 1 refers solely to the final decision involved in the exhaustion of all domestic remedies according to the generally recognised rules of international law.

The Court finds that, in the present case, the applicant's petition to the Government for a revocation of the expulsion order was not an effective remedy under the generally recognised rules of international law in respect of the criminal proceedings against him. Consequently, the decision regarding this petition cannot be taken into consideration in determining the date of the final decision for the purpose of applying the six months time-limit laid down in Article 35 § 1.

The final decision regarding the applicant's conviction and sentence is accordingly the decision of the Supreme Court which was given on 30 January 1997, whereas the present application was submitted on 12 August 1997, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 35 § 4 of the Convention.

2. The applicant furthermore complains he would risk torture or inhuman or degrading treatment if returned to Ethiopia. He also states that, being a diabetic, an expulsion would be detrimental to his health.

The Court finds that this part of the application should be considered under Article 3 of the Convention which reads as follows:

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

The Court recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to asylum is not protected in either the Convention or its Protocols (cf. e.g. the Vilvarajah and Others judgment of 30 October 1991, Series A no. 215, p. 34, § 102). However, expulsion by a Contracting State of an alien may give rise to an issue under Article 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 or she is to be expelled (ibid., p. 34, § 103). A mere possibility of ill-treatment is not in itself sufficient to give rise to a breach of Article 3 (ibid., p. 37, § 111).

In the present case the Court recalls that when he arrived in Sweden in 1989 he had not been politically active in Ethiopia but that his problems derived from his Somalian origin. He was considered to be a so-called *de facto* refugee due to the ongoing civil war in Ethiopia and was for this reason granted a residence permit. However, as set out by the National Immigration Board the situation has changed considerably since 1991 and the circumstances invoked by the applicant in 1989 would not appear to be an obstacle to the applicant's return to Ethiopia.

In these circumstances, the Court shares the Swedish authorities' doubts as to whether the applicant would today, on account of his previous actions as described by him, face a real risk of treatment contrary to Article 3, if returned to Ethiopia. Thus, the Court considers, on the evidence before it concerning the applicant's purported background and the current situation in Ethiopia, 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 of the Convention if expelled to that country.

As regards the applicant's state of health the Court recalls that aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State. However, in exceptional circumstances an implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a violation of Article 3 (cf. the D. v. the United Kingdom judgment of 2 May 1997, Reports of Judgments and Decisions 1997-III, p. 794, § 54).

In the present case, however, the Court finds that the applicant has not submitted any evidence which could lead to the conclusion that such exceptional circumstances exist.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. The applicant has finally referred to his connections in Sweden and to the fact that he has a girlfriend there.

The Court has considered this complaint under Article 8 of the Convention. In this respect, the Court recalls that the expulsion of a person from a country in which close members of his family live may amount to an unjustified interference with the right to respect for family life as guaranteed by said provision (see, for example, the Boughanemi v. France judgment of 24 April 1996, *Reports* 1996-II, p. 609–610, § 41).

The Court finds, however, that this part of the application is unsubstantiated. No evidence has been offered to disclose any appearance of a violation of Article 8 of the Convention.

It follows that also this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Josep Casadevall
President