AS TO THE ADMISSIBILITY OF

Application No. 20470/92
by M.K.
against Sweden

The European Commission of Human Rights sitting in private on 10 September 1992, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Sir Basil HALL
MM. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

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 28 May 1992 by M.K. against Sweden and registered on 11 August 1992 under file No. 20470/92;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Russian citizen of Jewish origin born on 12 December 1959. She is presently staying at an unknown address in Sweden.

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

The applicant left her home in Leningrad on 26 August 1989 for a holiday trip to Sweden to which country she had been invited by her cousin who has resided there for the last two years. She arrived in Sweden on 27 August 1989 by boat from Helsinki on a tourist visa valid for 69 days.

On 11 October 1989 she applied for asylum, refugee status, a residence permit, travel documents, and an aliens passport. At the ensuing police interrogation she stated, inter alia, the following. She had never been engaged in any political activities. She was divorced 1 1/2 years ago and the father had received the custody of their child. She did not want to go back to Russia as she had been harassed and

battered there by the economic police after she had publicly denounced certain economic crimes which took place at her workplace. If she were sent to Russia she would risk encountering serious problems upon her return.

On 22 May 1990 she was heard again by the police. In addition to the information already supplied, the applicant stated, inter alia, the following. No member of her family had been convicted for political crimes. An important reason for her wish to be allowed to stay in Sweden was that this would enable her, through the Red Cross, to be reunited with her child. When her cousin had visited Russia after the applicant's arrival in Sweden she had been summoned by the KGB and asked questions about the applicant and her whereabouts.

On 6 September 1990 the applicant's counsel submitted further observations to the Government reiterating the substance of her earlier submissions and adding, inter alia, the following details. One of the main reasons why she had not received the custody of her child was that she was seen as an unreliable person because she had a cousin who had emigrated to Sweden. She was very close to this cousin as they had been brought up together after the applicant's mother died when the applicant was 12 years old. Her father was an alcoholic and died in 1978. Furthermore, the applicant's Jewish origin had caused her problems at her workplace. After she had been beaten up by the economic police she decided to use the visa she had received in May to visit her cousin as a means of fleeing to Sweden. She left the country without permission and without giving proper notice to her employer.

Her application for asylum was rejected by the National Immigration Board (statens invandrarverk) on 2 April 1991 and the Board decided that the applicant should be expelled (avvisad) from Sweden and prohibited from returning to the country before 1 May 1993 without special permission from the Board. In its decision the Board stated, inter alia, the following:

> "The Board has no reason to question the [applicant's] submissions with regard to the harassment and battery she claims to have suffered in her home country. What has been put forward in support of her application for asylum can, however, not be considered sufficient to make [the applicant] a refugee within the meaning of Chapter 3, Section 2 of the Aliens Act (utlänningslagen) or of the 1951 Geneva Convention relating to the status of refugees. Neither are the circumstances relied on such as are envisaged in Chapter 3, Section 1, No. 3 of the Aliens Act [de facto refugee].
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> Her application for asylum must accordingly be rejected. No other ground for granting a residence permit exists. [The applicant] shall accordingly be expelled and the decision be combined with a prohibition to re-enter the country.
>
> In accordance with the above conclusion, the Board also rejects her requests for refugee status, travel documents and an aliens passport."

The applicant appealed to the Government. On 4 July 1991 her counsel submitted, inter alia, the following additional information. The applicant's cousin had become seriously mentally ill after her fiancé had attempted to murder her in Russia. She received treatment for her problems in Sweden. She had no close relative other than the applicant and depended on the applicant's presence for her recovery. The applicant expressed great fears as to the fate of her cousin if she was not allowed to stay and help her. The applicant had no close relative in Russia and feared very much what would happen to her if she was sent back. She did not think that she would ever be allowed to leave the country.

In the course of the autumn 1991 the applicant engaged in a relationship with a Polish man who had been living in Sweden for 20 years with a permanent residence permit.

The Government rejected the appeal on 7 November 1991. It stated in its decision that it shared the opinion expressed by the Board and what had come to light in the proceedings before it could not lead to any change in the decision appealed against.

However, when the applicant was informed of the decision on 8 November 1991, she was by mistake told that the Government had granted her request, to be informed a few hours later that this information was incorrect. The same evening she took an overdose of sleeping pills, Rohypnol. Her boyfriend found her and took her to hospital where her life was saved. She was sent to a closed psychiatric ward for observation, but as she appeared capable of taking care of herself and had abandoned her suicidal thoughts she was released on 10 November 1991.

A medical certificate dated 28 November 1991 and signed by Dr L., a physician and psychotherapist, stated that the applicant was suffering from a reactive depression and was unable to control her impulses. It concluded that, as she had recently required closed psychiatric treatment following a suicide attempt, there was a risk of suicide in case of new stress, for example in the event of execution of the expulsion order.

On 4 December 1991 the applicant submitted a new request for residence and work permits. She also asked for a stay in the execution of the expulsion order. She maintained that there were strong humanitarian grounds for granting her request. She invoked the medical files established after her suicide attempt and the medical certificate of 28 November 1991 and stated that she was still in a suicidal state of mind. In addition, she invoked the fact that she had been living together with her Polish boyfriend for four months and that she had been staying in Sweden for 25 months.

By decision of 9 December 1991, the Board rejected all the applicant's requests. The Board's decision stated summarily that the humanitarian reasons invoked were not sufficiently strong for the granting of a resident permit, nor were her connections with Sweden. The Board's decision was not subject to any appeal.

On 8 January 1992 the applicant married her Polish boyfriend.

A new medical certificate issued by Dr. L. on 2 March 1992 described the applicant's mental situation as worse than that existing at the time of the previous certificate. It concluded that further stress in the form of execution of the expulsion decision could lead to suicide.

On 4 March 1992 the applicant submitted to the Board a new request for residence and work permits, for a cancellation of the expulsion order and for a stay in the execution of this order. In this request the applicant stated the following.

Everything she had submitted so far was true but still not her complete story. In fact, in 1986 she had started to work for the KGB to help them to get information from foreigners, in particular Asians, by becoming the foreigners' friend and, if need be, by seducing them. However, after some time she had become fed up with her work and the strict scrutiny she was subjected to by the KGB. The KGB allowed her to stop and found her another place of work - in fact the one where she later encountered the serious problems she had already described to the police. The organisation also offered to find her a suitable husband. However, she had not been able to stand the situation and had contacted her cousin in Sweden in order to have her help to obtain a visa to

Sweden. She had promised the KGB to stay in Sweden only for two months. The KGB had allowed her to leave as they deemed that she had sufficient ties with the Soviet Union through her son and her employment. She had not dared to tell the Swedish authorities about her involvment with the KGB for fear that they should distrust her and believe that she planned to act for the KGB also in Sweden. She had reported to the consulate of the Soviet Union upon her arrival in Sweden but had not had any further contacts with the Soviet authorities. Since her arrival, she had, however, received three convocations to interrogations in Leningrad. The first arrived in January 1991 and the last, which was annexed in original, stated that she was to be heard on 4 November 1991. She was absolutely sure that if she returned to Russia, she would never be allowed to leave the country again. In addition, she did not know what the KGB would do to her upon her return. She referred to another woman who had worked in the same way as she had done but who had fallen in love with a foreigner and who had planned to leave the country with him. Shortly, before this woman was to leave the country she was murdered, probably by the KGB.

The applicant also invoked her marriage with her Polish boyfriend and stated that she had had a very good influence on him: earlier he had been in very bad company but, after meeting her, he had broken with all his earlier friends. If she were expelled to Russia there would be a great risk that they would never be able to reunite in Sweden.

Finally, she also invoked her mental condition as described by Dr. L. in his certificate of 2 March 1992, and her plans to commit suicide if expelled.

On 10 March 1992 the Board rejected the application. It stated summarily that neither her work as "bait" for the KGB, nor her marriage, nor her mental condition were circumstances of a character as to warrant the granting of asylum or special reasons of a humanitarian character warranting the granting of a residence permit. The Board's decision was not subject to appeal.

On 24 March 1992 the applicant reiterated her request of 4 March 1992. She invoked the increased importance attached to connections with Sweden in new regulations issued by the Government on 19 December 1991 and entered into force on 1 January 1992. According to these regulations a residence permit could, unless there were special reasons to the contrary, be granted an alien who had, by 1 January 1992, been in Sweden for at least 18 months after an application for such a permit, but who had not, within that time, had the application finally decided. The applicant pointed to the fact that she had been in Sweden for almost 2 1/2 years and had applied for asylum already on 11 November 1989, and to the strengthening of her connections with the country which resulted from her marriage with her Polish boyfriend. She also reiterated her fears of persecution in Russia on account of her previous work for the KGB and her bad mental state and the risk of sucidie.

By decision of 27 March 1992, the Board rejected the application. The reasons for the Board's decision were stated as follows:

> "[The applicant] mainly invokes the length of her stay in Sweden.
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> The Board starts by noting that there are no grounds for granting asylum.
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> The Board also finds that [the applicant] has been in Sweden for a long time. The length of the period an alien has stayed in Sweden may, according to practice, be an essential element in determining whether there are especially strong reasons of a humanitarian character to grant a residence permit. However, the mere fact that an alien may have been in Sweden for a long time

should not lead to a granting of his/her application for such a permit; certain further circumstances have also to be present in order for such special reasons to exist. Considering all the elements of the case, the Board cannot find that sufficiently strong reasons have been shown for changing the decision challenged - which has gained legal force - and granting a residence permit."

The Board's decision was not subject to any appeal.

On 2 April 1992 the applicant appealed to the Government for "mercy" and for a stay in the execution of her expulsion. In her application she reiterated in substance the arguments made in her above-mentioned application of 24 March 1992. She also stated that she would obtain a statement from the Swedish security police regarding the risks faced by former KGB collaborators in Russia.

By decision of 29 April the Government refused to examine the application.

On 13 May 1992 the security police sent a letter to the applicant's lawyer informing the latter, inter alia, that they did not know with any certainty what fate awaited a former KGB agent who was returned to Russia after having fled abroad.

On 14 May 1992 the applicant requested the Board to order a stay of execution of the expulsion decision, to annul this decision and to grant her residence and work permits. She invoked all her earlier submissions and emphasised the security police's statement that they could not provide any information on what would happen to a former KGB agent who was returned to Russia after having fled abroad. She maintained that the insecurity as to her fate if returned to Russia was so great that she should, having regard also to her connections with Sweden, be allowed to stay in the country.

On 15 May 1992 the Board rejected the new application as it found that it was in all important respects identical to her earlier requests, even taking into account the information submitted by the security police. The Board's decision was not subject to any appeal.

On 20 May 1992 the applicant requested the Government to reconsider the case, reiterating her fears of reprisals upon her return to Russia.

According to a medical certificate dated 6 August 1992 and signed by Mr. P, a psychologist at the Southern Hospital in Stockholm (Södersjukhuset), the applicant's husband suffers from serious reactions of panic and anguish which, after he had suffered a heart attack in 1986, have resulted in his admittance to the intensive care unit of the heart department of the hospital. The certificate adds that his mental condition is still very unstable and that the only points of light in his condition are his contacts with his son and his new wife.

COMPLAINTS

The applicant requests the Commission to help her to be allowed to stay in Sweden. She does not invoke any provision of the Convention but refers to her fears of reprisals if returned to Russia and her family connections in Sweden.

THE LAW

The Commission recalls that no right to asylum or freedom from expulsion are as such guaranteed by the Convention. The expulsion of

a person may nevertheless, in certain exceptional circumstances, raise issues under the Convention, in particular under Article 3 (Art. 3) where substantial grounds have been shown for believing that the person concerned faces 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 returned (see, inter alia, Eur. Court H.R. Vilvarajah and Others judgment of 30 October 1991, Series A No. 215, p. 34, para. 103) and under Article 8 (Art. 8) to the extent that the expulsion excludes the person concerned from a country in which his or her close relatives reside (see, inter alia, No. 12122/86, Dec. 16.10.86, D.R. 50 p. 268, at p. 272).

As regards the questions raised under Article 3 (Art. 3) of the Convention, the Commission observes that a mere possibility of ill-treatment in the country to which the person concerned is to be sent is not in itself sufficient to give rise to a breach of this provision (see the above-mentioned Vilvarajah judgment, p. 37, para. 111). In the light of this judgment and considering the circumstances of the present case, the Commission does not find that the applicant has shown substantial grounds for believing that she would be exposed to a serious risk of being subjected to treatment contrary to Article 3 (Art. 3) if returned to Russia.

As regards questions raised under Article 8 (Art. 8) of the Convention, the Commission notes that the applicant is being expelled as she does not have a valid residence permit and has not been found to fulfil the legal conditions for the granting of one or for the granting of political asylum. The Commission also notes that the family connections invoked by the applicant consist of her relations with her cousin and her husband.

The Commission notes with regard to her family relations that these are of a rather weak nature. Her cousin and herself are now grown up persons and even if their family ties may have been very strong at an earlier stage as a result of the circumstances obtaining after the death of the applicant's mother, there is today a question of whether these go beyond normal emotional ties (cf. No. 10375/83, Dec. 10.12.84, D.R. 40 p. 196). The applicant established a relationship with her husband only in the autumn of 1991 when she was already under the expulsion order at issue. When she married him on 8 January 1992 she was still under the expulsion order and her chances of being allowed to stay in Sweden had not improved in the meantime. They have no children.

The Commission has not found it necessary to determine whether these relationships fall under the protection afforded by Article 8 (Art. 8) as a possible interference would in any case be justified under the Article's second paragraph (cf. above-mentioned No. 12122/86, D.R. 50 p. 272).

There is in the present case nothing to indicate that any potential interference with the applicant's family life would not be in accordance with the law within the meaning of the second paragraph of Article 8 (Art. 8). When considering whether it was necessary in a democratic society to decide to expel her and, subsequently, to refuse to repeal this decision and to grant a residence permit, the Commission must weigh the seriousness of the potential interference with the applicant's family life against the considerations relating to the proper enforcement of immigration controls. In this connection the Commission recalls that the applicant is only prohibited from returning to Sweden until 1 May 1993 and that she may, even before this date, request a special permit to visit her husband and her cousin in Sweden.

In addition, the applicant has not provided any information to the effect that it would be impossible for her to reunite with either of them in Russia. The Commission would finally emphasize the close connection between the policy of immigration control and important

considerations pertaining to public order. In the circumstances of the present case the Commission accordingly finds that any potential interference with the applicant's family life would be justified under the second paragraph of Article 8 (Art. 8).

It follows that the application must 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) | (C.A. Nørgaard) |