AS TO THE ADMISSIBILITY OF

Application No. 26727/95
by Rustem KADYROV
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 29 November 1995, the following members being present:

Mrs. G.H. THUNE, Acting President
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, 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 3 February 1995 by Rustem Kadyrov against Sweden and registered on 17 March 1995 under file No. 26727/95;

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

The applicant was born in Russia in 1961. He was formerly a citizen of the Soviet Union, but is now stateless. He arrived in Sweden in 1990 and was granted a permanent residence permit. Previously, he lived in Latvia for three years. Before the Commission he is represented by Ms. Karin Falkvall, a lawyer practising at Helsingborg.

On 22 June 1994 the Latvian Prosecutor-General issued a warrant of arrest concerning the applicant, as he was suspected of aggravated smuggling of goods, an offence under Section 73 of the Latvian Penal Code. Allegedly, the applicant had organised the smuggling of several thousand tons of petrol into Latvia between November 1993 and January 1994.

The applicant was arrested by the Swedish police on 29 June 1994 and placed in detention on 17 August 1994.

By note of 2 August 1994 to the Swedish Embassy in Riga, the Latvian Ministry of Foreign Affairs requested that the applicant be extradited to Latvia.

The matter was, in accordance with Section 15 of the Swedish Extradition Act (Lagen om utlämning för brott, 1957:668), referred to

the Swedish Prosecutor-General (Riksåklagaren), who carried out an investigation. During this investigation, the police confiscated certain personal notes written by the applicant and submitted them to the Latvian Prosecutor-General. These notes allegedly concerned the applicant's thoughts on the work of the Latvian police, the KGB and the Latvian mafia and on the extent of corruption in Latvia. They were allegedly later published in Latvian newspapers.

On 6 September 1994 the National Immigration Board (Statens invandrarverk) rejected the applicant's request for a declaration of refugee status (flyktingförklaring), as he was not considered a refugee under the Aliens Act (Utlänningslagen, 1989:529) or the United Nations Convention relating to the Status of Refugees. The decision was upheld by the Aliens Appeals Board (Utlänningsnämnden) on 2 February 1995.

In an opinion of 22 November 1994, the Swedish Prosecutor-General considered that there were no impediments under the Extradition Act to the extradition of the applicant to Latvia. The Prosecutor-General expressed that the investigation showed that the applicant was suspected on reasonable grounds of having committed the offence in question.

The matter was then, in accordance with Section 17 of the Expulsion Act, referred to the Supreme Court (Högsta domstolen). After having held an oral hearing on 29 December 1994, the Supreme Court, by decision of 4 January 1995, agreed with the findings of the Prosecutor-General.

By decision of 9 February 1995, the Swedish Government, referring to the decision the Supreme Court, granted the Latvian request for the applicant's extradition.

The applicant was extradited on 3 March 1995. Allegedly, he has been in custody in Riga awaiting trial since that date.

COMPLAINT

The applicant claims that his expulsion to Latvia violated Article 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 February 1995.

On 7 February 1995 the President of the Commission decided not to recommend to the Government of Sweden, pursuant to Rule 36 of the Commission's Rules of Procedure, to stay the extradition of the applicant to Latvia.

Following further correspondence with the applicant, the application was registered on 17 March 1995.

THE LAW

The applicant complains of a violation of 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 applicant claims that the rights of the Russian minority is not respected in Latvia. He fears that, because of his Russian extraction, he will be in custody for an indefinite period of time awaiting trial and will not receive a fair hearing. He further fears that he will receive a ten year prison sentence for the offence of which he has been charged. Moreover, as he is stateless, no diplomatic mission in Latvia will see to it that his rights are respected.

Finally, he fears that, due to the submission of his personal notes to the Latvian Prosecutor-General and their subsequent publication in the Latvian press, persons and organisations named in these notes might put his life and personal security in jeopardy.

The Commission recalls that the decision by a Contracting State to extradite a person 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, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country (cf. Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, p. 35, para. 91). A mere possibility of ill-treatment is not in itself sufficient (cf., mutatis mutandis, Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, Series A no. 215, p. 37, para. 111).

In the present case, the Commission notes that the applicant claims that he will receive treatment contrary to Article 3 (Art. 3) of the Convention upon return to Latvia. The Commission, however, does not find a possible ten year prison sentence for the alleged offence so severe as to raise an issue under Article 3 (Art. 3). Moreover, even assuming that the other treatment feared by the applicant would attain the minimum level of severity required for the application of Article 3 (Art. 3), the Commission considers that the applicant's submissions fail to substantiate his fears. Accordingly, the applicant has not shown substantial grounds for believing that he will face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention in Latvia.

It follows that the application is 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	Acting President of the Second Chamber
(M.-T. SCHOEPFER)	(G.H. THUNE)