CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 24171/05
by Fazlul KARIM
against Sweden

The European Court of Human Rights (Second Section), sitting on 4 July 2006 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar,*

Having regard to the above application lodged on 5 July 2005,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Fazlul Karim, is a Bangladeshi national who was born in 1975 and is currently in Sweden. He is represented before the Court by Ms A. Enochsson, a lawyer practising in Stockholm.

The respondent Government are represented by their Agent Mr C.H. Ehrenkrona of the Ministry for Foreign Affairs.

A. The circumstances of the case

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

1. The background and proceedings before the national authorities

On 25 May 2003 the applicant arrived in Sweden and, on the following day, he applied to the Migration Board (*Migrationsverket*) for asylum and a residence permit. On 28 May 2003 an initial interview was held with the applicant and, on 15 July 2003, the Migration Board conducted a second interview. During these interviews, the applicant stated that he had been active within the Jatiya Party [Ershad] in the district of Rajshahi where he lived. He had commenced his political activities in 1997 and, in 2000, he became the organisation's secretary within the district. He had been responsible for organising meetings and demonstrations and for recruiting new members to the party.

On 1 July 2002 he had been arrested during a demonstration and had been beaten by the police while being taken to the police station. During his detention, he had been tortured two to three times per day. He had, *inter alia*, been beaten all over his body with sticks, suspended with his hands and feet tied from a pipe, burnt with cigarettes and had had water mixed with chilli thrown in his face. He had been told that the ill-treatment would continue until he stopped his political activities. After he had been detained for 26 days, one of the leaders of the Jatiya Party [Ershad] had managed to get him out.

He had been arrested a second time, on 10 January 2003, in connection with a meeting in one of the party's offices. He had been detained for 30 days before his father had managed to bribe the police, paying 500,000 Bangladeshi Taka (around EUR 6,500), to get him released. Also this time he had been badly tortured and had had to stay at a private hospital for one week following his release to get treatment for his injuries. He had not reported the torture to the authorities since it was the police and supporters of the governing party who had carried it out. The police had also ordered him to present himself at the police station twice a month but he had only done so on one occasion. However, he had continued his political activities and, on 5 March 2003, the police and some supporters of the governing

party had come to his home, looking for him. As he had not been at home, they had destroyed his belongings and had harassed his father, saying that they would kill the applicant should they find him. Following this, the applicant had gone into hiding.

On 10 March 2003 a supporter of the governing party had been murdered in his neighbourhood and the applicant claimed that he had been accused of the murder as yet another means of persecuting him because of his political affiliation. Due to these incidents, he had travelled to some relatives in Dhaka who had arranged for him to leave the country with the help of smugglers, to whom the applicant's father had paid 800,000 Taka (around EUR 10,500).

The applicant alleged before the Migration Board that he would be arrested and tortured if he was returned to Bangladesh and that the political persecution of him would continue. To support his claims, he submitted a medical certificate from Bangladesh made by Dr. Serajul Islam at the Raj Clinic in Rajshahi. It stated that the applicant had been cared for at the hospital between 11 and 18 February 2003 as he had scars and wounds after receiving blows to his body. He had been given antibiotics and painkillers, as well as medication to subdue his anxiety. The applicant also relied on a certificate from the District Secretary, Mr Muklesur Rahman, of the Jatiya Party [Ershad] in Rajshahi which stated that he had been very active within the party and had been arrested and tortured on two occasions.

The applicant further invoked medical certificates from Sweden from which it appeared that he had been admitted to psychiatric care between 26 June and 8 August 2003, and thereafter had been in regular contact with the psychiatric service for asylum seekers in Stockholm. He had been diagnosed as suffering from post traumatic stress disorder (PTSD) and depression.

In a submission of 18 September 2003, the applicant claimed that he had been raped and subjected to serious sexual abuse while in detention in Bangladesh and that he had repeated flashbacks and nightmares from the abuses. He stated that he had been too ashamed and afraid to recount these events during the interviews with the Migration Board.

On 8 December 2003 the Migration Board rejected the application. It first noted that the general situation in Bangladesh was not good but that it was not such that it could grant the applicant asylum solely on this basis. The Migration Board did not question that the applicant had been involved in the Jatyia Party [Ershad] in the Rajshahi district or that he had been the victim of abuse and torture, which it regarded as serious. However, the Migration Board considered that the applicant's political involvement had been on a local level and that he had not held a prominent position within the party. Moreover, the harassment and abuse of which he had been the victim seemed to be personal aggressions from supporters of the governing party and police officers who had acted on their own initiative. Thus, it found that the abuses were not sanctioned by the Bangladeshi authorities

and that the applicant would not be of interest to the authorities because of his political involvement. Consequently, he would not face a real risk of torture or ill-treatment if returned to his home country. Furthermore, with regard to the applicant's claim that he had been accused of murder, the Migration Board considered that he would have the opportunity to defend himself in a court of law and that the legal system in Bangladesh worked relatively well. Even if he were to be convicted in the first instance, he could appeal to the higher courts in Bangladesh which were considered to be independent and fair. In these circumstances, the applicant could not be granted asylum in Sweden.

As concerned the applicant's mental health, the Migration Board noted that, in October 2003, he had requested to be exempt from having a working permit in order to be able to work in Sweden. The Board considered this as a sign of improvement of the applicant's health. Moreover, it observed that there was psychiatric care available in Bangladesh where the applicant should be able to get adequate treatment. The Board further found that the applicant was not suffering from a serious mental disorder or any other disorder of such a serious nature that he could be granted leave to stay in Sweden based on humanitarian grounds.

The applicant appealed to the Aliens Appeals Board (*Utlänningsnämnden*), maintaining his claims and adding that, although torture was prohibited by Bangladeshi law, it was widespread. Moreover, the Bangladeshi authorities sanctioned persecution of political opponents and, if he was prosecuted for murder, he would risk being kept in detention for a very long time before the case was heard by the courts. The applicant further stated that he had continuous nightmares about the torture and the sexual abuse of which he had been a victim, and had serious thoughts of suicide. According to him, his friends had to keep an eye on him all the time. He relied on medical certificates which supported his statements concerning his poor mental health.

On 22 April 2004 the Aliens Appeals Board rejected the appeal. It shared the Migration Board's reasoning and conclusion that the applicant could not be granted asylum. With regard to his poor mental health, the Aliens Appeals Board noted that he was not undergoing regular treatment except that he met with a nurse for counselling. Thus, it found that the applicant was not in such poor health that he could be granted a residence permit on humanitarian grounds.

In October 2004 the applicant lodged a new application for a residence permit on humanitarian grounds, invoking his continuously deteriorating mental health. He relied on medical certificates from the Crisis and Trauma Centre which confirmed that he had been subjected to grave and systematic torture, and that it had caused him to develop PTSD with a psychotic strain. He was considered to be in need of extensive treatment. Moreover, between April and September 2004, he had been admitted to psychiatric care on

several occasions (6-11 May 2004, 19 May-7 June 2004, 5-12 July 2004, 10-12 August 2004 and 28-30 September 2004) because he had been considered to be suicidal.

On 19 October 2004 the Aliens Appeals Board decided to stay the enforcement of the deportation of the applicant until further notice. It further requested an independent physician (*förtroendeläkare*) to examine the applicant and to submit her observations and conclusions to the Board.

On 19 November 2004 the physician, Dr A. Voltaire Carlsson, a specialist in psychiatry, submitted her findings which were based on a personal examination of the applicant and access to all his medical journals and certificates. She observed that the applicant suffered from flashbacks from the torture and rape, and that he blamed himself for the abuses. Moreover, he was constantly anxious and depressed but the psychiatrist found no sign of psychotic symptoms or paranoia. However, his health had not improved and, although he had never injured himself, he had expressed suicidal thoughts and plans. Thus, she considered that a risk of suicide in the future could not be excluded and she concluded that there existed certain impediments against the enforcement of the deportation order.

In response to the independent physician's conclusion, two of the applicant's regular physicians, Dr G. Roth and Dr H.P. Søndergaard, replied that they considered that there were clear and absolute impediments against the enforcement of the deportation order since the applicant suffered from grave PTSD and depression, and because there was a real risk that he would try to commit suicide.

On 31 January 2005 the Aliens Appeals Board rejected the new application. It first noted that the applicant had only invoked humanitarian grounds based on his poor mental health and that it was only in exceptional cases that leave to stay could be granted on that basis. The Aliens Appeals Board found that the medical certificates and the independent physician's report did not show that the applicant had a serious mental disorder for which a residence permit should be granted on medical grounds. It considered that the applicant could receive proper treatment in his home country and noted that his relatives remained there. Thus it concluded that it would not violate the standards of humanity to deport him to Bangladesh.

The applicant then lodged another new application with the Aliens Appeals Board. He stated that, since the last rejection, he had been admitted to psychiatric care on three occasions (4-8 February 2005, 11-23 February 2005 and 17-21 March 2005) due to a high risk of suicide. His treating physicians considered that he suffered from a serious and complicated psychiatric disorder due to his traumas in his home country and that there was an absolute impediment to the enforcement of his deportation order.

On 13 April 2005 the Aliens Appeals Board rejected the new application on the grounds that the applicant had invoked no new circumstances of relevance.

As the applicant refused to leave Sweden voluntarily and went into hiding to avoid deportation, the Migration Board, on 10 June 2005, transferred the responsibility for implementing the deportation order to the police authority.

On 1 July 2005 the applicant lodged yet another new application with the Aliens Appeals Board because he had, once again, been admitted to psychiatric care.

On 4 July 2005 the Aliens Appeals Board decided not to stay the enforcement of the deportation order.

However, on 6 July 2005, following the Court's indication under Rule 39 of the Rules of Court, the Migration Board decided to stay the deportation of the applicant until further notice. The Migration Board's decision is still in force.

On 5 January 2006 the Court adjourned the case at the request of the Swedish Government following the enactment of an interim amendment to the Swedish Aliens Act, on the basis of which the applicant's case would be reviewed.

On 6 April 2006 the applicant informed the Court that, on 27 March 2006, the Migration Board had decided not to grant him a residence permit in Sweden on the basis of the interim amendment to the Aliens Act. The Migration Board had concluded that the applicant could not be granted leave to stay on medical grounds and that he could get adequate care in his home country.

2. Particulars on the applicant's state of health

According to a medico-legal protocol, dated 26 August 2004, and a medico-legal certificate, dated 8 September 2004, both by Dr E. Edston, a specialist in forensic medicine at the Crisis and Trauma Centre, the applicant had a large number of scars on his body, some of which were typical after burning and severe violence (*skarpt våld*). It was considered very unlikely that the applicant could have caused these injuries himself or that they were the result of accidents. Instead, the findings confirmed that he had been tortured as he had claimed.

With regard to the applicant's mental health, he has submitted several medical reports from the aforementioned psychiatrists (Drs Søndergaard, Roth and Voltaire Carlsson) dating from September 2004 to February 2006, as well a report dated 30 June 2005 from Dr J. Guterstam, assistant physician, and Dr O. Broström, chief physician at the Karolinska Hospital. According to these reports, the applicant was admitted for psychiatric care for the first time between 26 June and 8 August 2003, just one month after his arrival in Sweden on 25 May 2003. Subsequently, he has been admitted to psychiatric care on repeated occasions but for shorter periods, the last time between 30 June and the beginning of July 2005, due to the risk of suicide. However, on no occasion has he been committed to compulsory

psychiatric care (*tvångsvård*), i.e. taken into care against his will. He has had continuous contact with psychiatric services and has had a positive attitude to treatment all along.

All the physicians agreed that the applicant suffered from serious PTSD and depression, and that his health had not improved despite the treatment. Dr Roth and Dr Søndergaard also considered that he had a serious and complicated psychiatric disorder, with which diagnosis, however, Dr Voltaire Carlsson disagreed as she had found no signs of psychotic symptoms when examining the applicant. Nevertheless, she considered that a risk of suicide could not be excluded, although the applicant had never injured himself. Drs Roth and Søndergaard maintained in their reports that there was a real risk of suicide as the applicant was constantly struggling with self-destructive thoughts, and had suicidal impulses and clear flashbacks from torture. Thus, in the view of Dr Voltaire Carlsson, there were certain impediments against the enforcement of the deportation order because of the applicant's mental health condition, whereas Drs Roth and Søndergaard insisted that there was an absolute impediment against the deportation as the applicant was in such poor mental health that he could act in desperation if he were to be deported. These two physicians also stated that the applicant's poor health had been caused by the traumas of which he had been the victim in Bangladesh and by the prolonged insecurity in Sweden. They estimated that he would need extensive treatment, both medical and psychiatric, for a long time and in a secure environment.

In the last certificate, dated 22 February 2006, Dr Roth wrote that the applicant's condition had not improved but rather worsened because he was very frustrated over his uncertain situation in Sweden. He had continuous contact with a psychologist at the clinic and got his medication in doses for one week at a time to prevent a suicide by overdose. He was medicated with the anti-psychotic drug, *Zyprexa*, the anti-depressive drug, *Clomipramine*, as well as with anxiety reducing medication and sleeping pills.

3. Possibilities for treatment in Bangladesh[1]

The Bangladeshi government is the main provider of health services in the country, with the private sector playing an increasingly larger role. Moreover, non-governmental organisations (NGOs) are involved in the provision of primary health care and in rehabilitation. The country has a national mental health programme and there are budget allocations for

[1] Information provided in this section comes from the World Health Organization's (WHO) "Mental Health Atlas 2005" (www.who.int), from the WHO's Bangladeshi office (www.whoban.org), from the Department of Clinical Psychology at the University of Dhaka's home page (www.univdhaka.edu/department/index.php?bodyid=CPS), from Banglapedia (http://banglapedia.search.com.bd/HT/M_0218.htm) and from the Bangladeshi Mental Health Association, Report 2002/2003 (www.wordsmith.demon.co.uk/bmha/report0203.htm).

mental health. However, both the budget and the number of mental health professionals are largely inadequate. Medicines, including antidepressants, are available and commonly used in Bangladesh for the treatment of mental illness. Different types of psychotherapy are also used in treatment.

Formal care and treatment of mentally ill persons started in 1957 when the Pabna Mental Hospital was opened and, in 1969, the first outdoor clinic started functioning in Dhaka Medical College. Since the 1970s, more institutes were opened and, in 2002, the National Mental Health Institute opened as a fully operational hospital and educational centre. Moreover, each military hospital has a mental health department and there are mental health sections in hospitals in several cities around the country. Several smaller, private clinics have also been established, in particularly in and around Dhaka, such as the Bidyut Mental Clinic.

Furthermore, the Bangladesh Association of Psychiatrics, the Bangladesh Psychological Association and the Bangladesh Clinical Psychology Association have their seats in Dhaka and are affiliated to the Dhaka Medical College, the Department of Psychology and the Department of Clinical Psychology at the University of Dhaka, respectively. Also, in 1992, an NGO, the Bangladeshi Mental Health Association, was created with the mission to provide community-based mental health service to the people in Bangladesh. It has its base at the Monorog Clinic in Dhaka.

B. Relevant domestic law and practice

The basic provisions, applied in the present case, concerning the right of aliens to enter and to remain in Sweden were laid down in the 1989 Aliens Act (*utlänningslagen*, 1989:529 – hereinafter referred to as "the 1989 Act"). However, the 1989 Act was replaced, on 31 March 2006, by a new Aliens Act (*Utlänningslag*, 2005:716 – hereinafter referred to as "the 2005 Act"). Both the 1989 Act and the 2005 Act define the conditions under which an alien can be expelled from the country, as well as the procedures relating to the enforcement of decisions under the Acts.

Chapter 1, Section 4 of the 1989 Act provided that an alien staying in Sweden for more than three months should have a residence permit. Such a permit could be issued, *inter alia*, to an alien who, for humanitarian reasons, should be allowed to settle in Sweden (Chapter 2, Section 4). For example, serious physical or mental illness could, in exceptional cases, constitute humanitarian reasons for the granting of a residence permit if it was a life-threatening illness for which no treatment could be provided in the alien's home country.

Further, according to the 1989 Act, an alien who was considered to be a refugee or otherwise in need of protection was, with certain exceptions, entitled to residence in Sweden (Chapter 3, Section 4). The term "refugee" referred to an alien who was outside the country of his nationality owing to

well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who was unable or, owing to such fear, unwilling to avail himself or herself of the protection of that country. This applied irrespective of whether the persecution was at the hands of the authorities of the country or if those authorities could not be expected to offer protection against persecution by private individuals (Chapter 3, Section 2). By "an alien otherwise in need of protection" was meant, *inter alia*, a person who had left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 3, Section 3).

An alien who was to be refused entry or expelled in accordance with a decision that had gained legal force could be granted a residence permit if he or she filed a so-called new application based on circumstances which had not previously been examined, and if the alien was entitled to a residence permit under Chapter 3, Section 4, or it would be contrary to the requirements of humanity to enforce such a decision (Chapter 2, Section 5 b). Regard could also be had to serious illness under this provision. Such new applications were filed with and examined by the Aliens Appeals Board (Chapter 7, Section 7).

When it came to enforcing a decision on refusal of entry or expulsion, account had to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien could not be sent to a country where there were reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 8, Section 1).

In essence, there have not been any major changes to the provisions referred to above in the 2005 Act, with the exception of the following:

Through the enactment of the 2005 Act, the Aliens Appeals Board has been replaced by the Migration Court and the Migration Court of Appeal (Chapter 14, Section 3). Moreover, it is no longer possible to lodge so called new applications but, instead, the Migration Board shall, on its own initiative, determine whether there is any impediment to the deportation or expulsion (Chapter 12, Section 18).

Furthermore, between 15 November 2005 and 30 March 2006, some interim amendments to the 1989 Act were in force, according to which the Migration Board, upon application by an alien or on its own initiative, could re-determine final decisions already taken by the Aliens Appeals Board. The object of these temporary amendments was to grant residence permits to aliens who, *inter alia*, had been in Sweden for a very long time or where there existed "urgent humanitarian interests" (*humanitärt angeläget*). Special consideration was given to the situation of children.

COMPLAINT

The applicant complained under Article 3 of the Convention that, if deported to Bangladesh, he would be arrested and tortured because of his political activities and also prosecuted for murder. Moreover, due to his very poor mental health, a deportation would cause him irreparable damage and entail a serious risk for his life and health.

THE LAW

The applicant complained that a deportation to Bangladesh would constitute a violation of his rights 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."

1. The applicant first stated that his deportation would expose him to a real risk of being arrested, imprisoned and tortured upon return to Bangladesh because of his political activities there and the accusation of having committed a murder.

The Government submitted that this complaint should be declared inadmissible as being manifestly ill-founded. They acknowledged that the general human rights situation in Bangladesh was problematic, with the police reportedly using physical and psychological torture during arrests and interrogations. However, respect for human rights had steadily improved in the country following the introduction of democratic rule in the early 1990's. In any event, the Government observed that it had to be established whether the applicant personally would face a real risk of treatment contrary to Article 3 of the Convention if returned to Bangladesh. In examining this question, the Government considered that great weight had to be attached to the opinion of the Swedish migration authorities as they had been in a good position to assess this, and the same considerations were taken into account under the Aliens Act as under Article 3 of the Convention.

The Government did not contest that the applicant had been the victim of physical violence in Bangladesh but insisted that he would not risk persecution or ill-treatment if he were to be returned there.

In this respect, they first noted that the Jatiya Party [Ershad], to which the applicant claimed to belong, was a legal political organisation which currently held 14 seats in the Bangladeshi Parliament and, reportedly, supported the government on many issues. There was no known systematic persecution by the authorities of members or other supporters of the Jatiya Party [Ershad]. Moreover, the applicant had not held a leading position within the party and his activities had been on a local level. Thus, should a

real risk of harassment still be considered to exist, the Government recalled that he could relocate within the country to ensure his safety.

Furthermore, the Government stated that the applicant, apparently a well-educated person holding a university degree who had been raised in a relatively wealthy family, had never filed any report with the responsible Bangladeshi authorities regarding the physical abuse of which he had been the victim. In this connection, the Government referred to international sources[1] which had reported that, since 2002, the Bangladeshi government had made specific efforts to combat criminality, including police abuse, and that police officers had been convicted for such abuse by Bangladeshi courts. Against this background, the Government considered it odd, having regard to the applicant's social background and education, that he had not investigated the possibility of reporting the abuse to the authorities or of obtaining redress. The applicant's claim that it was the Bangladeshi authorities who had been responsible for his detention and ill-treatment, had, according to the Government, not been established. On the contrary, they contended that he had failed to show that the Bangladeshi authorities neither would have nor could have protected him against abuse and harassment from individual persons.

The Government also noted that the applicant had submitted no substantial evidence whatsoever in support of his allegation that he was wanted by the Bangladeshi authorities on suspicion of murder. He had only claimed that his relatives in Bangladesh had provided him with this information, and he had told the Swedish migration authorities that he had no certain knowledge whether he was officially wanted or searched for by the Bangladeshi authorities.

In his new applications to the Aliens Appeals Board for re-examination of the deportation order, the Government pointed out that the applicant had limited himself to invoking his poor mental health and had not continued to invoke the risk of persecution if returned to his home country.

In conclusion, the Government contended that the applicant had not substantiated that he would face a real risk of being subjected to treatment contrary to Article 3, or otherwise attract any particular interest on the part of the Bangladeshi authorities on account of his political activities or the purported murder suspicion.

The applicant maintained that he would face a real risk of being subjected to treatment or punishment in breach of Article 3 of the Convention if he were to be deported to his home country.

The Court first observes that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and

[1] *Inter alia*, the U.S. Department of State Country Reports on Human Rights Practices 2004, Reports from the British Home Office and Reports on Human Rights 2004 of the Swedish Ministry for Foreign Affairs.

expulsion of aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, *H.L.R. v. France*, judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 757, §§ 33-34).

While aware of the occurrence of reports of continuous human rights violations in Bangladesh, including police brutality and torture and ill-treatment of persons in detention and prison, the Court has to establish whether the applicant's personal situation is such that his return to Bangladesh would contravene Article 3 of the Convention.

The Court, like the Swedish migration authorities and the Government, does not question that the applicant has been subjected to ill-treatment in Bangladesh before he left the country.

However, the Court observes that the applicant belongs to a lawful political party which hold seats in the Bangladeshi Parliament (14 out of 300) and thereby is the fourth largest party in Parliament. Furthermore, the Court finds it established that the applicant did not hold a prominent position within the party but rather carried out work on the local level, making him less prone to harassment by members of other parties or the authorities (see *Liton v. Sweden*, (dec.), no. 28320/03, 12 October 2004). In this respect, the Court stresses the fact that, since March 2003 when he left Bangladesh, the applicant has not been politically active. Moreover, it would appear that, since the incident on 5 March 2003, his father has not been harassed or otherwise inconvenienced by the Bangladeshi authorities concerning the applicant's whereabouts. Thus, all of the above circumstances differentiate the present case from that of *Chahal v. the United Kingdom* case (judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V), where the applicant, a well-known supporter of Sikh separatism in the United Kingdom, had been labelled a terrorist in his home country, India. He had figured in the Indian press and a number of his relatives and acquaintances had been detained and ill-treated in India because of their connection to him. It had also been established that Sikh militants risked persecution and ill-treatment by the security forces, in particular in Punjab, but also elsewhere in India.

As noted above, the present applicant was only active on a local level and his detention and the abuse he suffered was carried out by local police. Thus, the Court considers that if he were to have problems in his home town, nothing would hinder his move to Dhaka where he has relatives, and with whom he had already stayed before leaving the country.

Furthermore, the Court is not persuaded by the applicant's allegation that he would risk arrest and imprisonment on return to Bangladesh because of a murder charge. As pointed out by the Swedish Government, the applicant has submitted no documents in support of this claim but only stated that he has been informed about this by his relatives in Bangladesh. If it were true, then a formal warrant for his arrest would have been issued and, considering the importance for the applicant of such a charge, the Court considers that it could reasonably have been expected that he obtain, through his family, the necessary documentary proof in substantiation. Having failed to do so, the Court is not convinced that there is any formal suspicion against the applicant of having committed a murder in Bangladesh.

Having regard to the above, the Court finds that the applicant would not face a substantial risk of being persecuted, arrested or ill-treated, contrary to Article 3 of the Convention, if he were to be returned to Bangladesh.

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

2. The applicant further claimed that his deportation from Sweden to Bangladesh would cause him irreparable damage, if he would at all survive it, as he was in such poor mental health.

The Government submitted that this complaint should also be declared inadmissible as being manifestly ill-founded. They recognised that the material in the case attested to the seriousness of the applicant's condition, but noted that there were different opinions, *inter alia*, with regard to the impediments to enforcement of the deportation order. In the Government's view, the material indicated that the deterioration of the applicant's mental condition was directly linked to the immediate threat that the deportation order would be enforced. For example, he had been able to leave the psychiatric clinic shortly after the deportation order had been stayed in July 2005 by the Court and had not been hospitalised again since then. They further observed that the applicant had been admitted to psychiatric care on his own request and that he had had a very positive attitude to treatment throughout.

In view of the possible link between suicidal tendencies and the deportation threat, the Government noted that the Court had held that the potential health risk did not require a State to abstain from enforcing the deportation, provided that steps were taken to prevent that risk from materialising (*Dragan and Others v. Germany* (dec.), no 33743/03, 7 October 2004). In Sweden, the Government stated, one of the main considerations in planning and carrying out the enforcement of deportation orders in cases where the rejected asylum seeker suffered from ill-health was to see to it that his or her condition would not deteriorate as a consequence of the actual deportation. Thus, no enforcement of the deportation would occur unless the authority responsible for the deportation (in this case the police) deemed that the medical condition of the individual

so permitted. In executing the deportation, the authority in question was also able to ensure that the measures taken would be appropriate with regard to the circumstances of the particular case. For instance, if considered necessary, a special airplane could be chartered for the journey and arrangements could be made for medical staff and any necessary equipment to be available on board during the flight. On condition that the individual concerned consented to such measures being taken, arrangements could also be made for his or her assistance in the country of origin upon return. For example, medical records and other medical documentation could be sent in advance so that proper care could be prepared and arrangements could be made for the individual to be met and taken care of by medical staff upon arrival.

Furthermore, the Government observed that appropriate treatment appeared to be available in Bangladesh, both within the public health care system and at private clinics. The Swedish Embassy in Dhaka had even confirmed that there existed help for people who had been subjected to torture, such as the Bangladesh Rehabilitation Centre for Traumatization. In this respect the Government also stressed that the applicant would benefit from the support of his family and relatives in Bangladesh.

In the present circumstances, the Government submitted that, having regard to the high threshold set by Article 3 of the Convention, and particularly where the case did not concern the direct responsibility of the receiving State for the infliction of harm, the enforcement of the deportation order against the applicant would not be contrary to the standards of this provision.

The applicant insisted that his deportation would be contrary to the standards of Article 3 of the Convention due to his very poor mental health. He also maintained that there would not be appropriate treatment available for him in Bangladesh.

The Court reiterates that, due to the fundamental importance of Article 3, the Court has reserved to itself the possibility of scrutinising an applicant's claim under Article 3 where the source of the risk of the proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, do not in themselves infringe the standards of that Article. In that context, however, the Court is obliged to subject all the circumstances surrounding the case to rigorous scrutiny, especially the applicant's personal situation in the deporting State (see *D. v United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III, § 49).

Consequently, the Court will examine whether the deportation of the applicant to Bangladesh would be contrary to Article 3 having regard to all the material before it, including the most recently available information on the applicant's state of health.

In this respect, the Court would highlight that, according to established case-law, aliens who are subject to deportation 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 deporting State. However, in exceptional circumstances the implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a violation of Article 3 (see, for example, the *D. v. United Kingdom* judgment, cited above, § 54).

The Court accepts the seriousness of the applicant's medical condition and does not question that he has been through some traumatic experiences in the past which has affected him deeply, causing him to develop PTSD and depression. Moreover, he has visibly suffered from the uncertain situation as an asylum seeker in Sweden as he has not responded satisfactorily to the treatment offered by the Swedish health care system.

The Court notes that mental health treatment and care are available in Bangladesh at the primary level, at hospitals and also at private clinics. Moreover, according to the respondent Government, there also exists rehabilitation centres for traumatised persons, including victims of torture. The Court is aware that such care and treatment, if specialized, most probably would come at considerable cost for the individual. However, it notes that the applicant, in the past, has been able to obtain financial assistance from his family. Moreover, the Court observes that the applicant was in fact hospitalised for one week after his detention in January 2003, during which he received care and treatment for his injuries, including antibiotics, painkillers and medication against his anxiety. Thus, there is no reason to believe that he would not benefit from care if he was returned to his home country, even though it might not be of the same standard as in Sweden.

In any event, the fact that the applicant's circumstances in Bangladesh would be less favourable than those enjoyed by him in Sweden cannot be regarded as decisive from the point of view of Article 3 (see, *Bensaid v. United Kingdom*, no. 44599/98, § 38, ECHR 2001-I; *Salkic and others v. Sweden*, (dec.), no. 7702/04, 29 June 2004).

Furthermore, concerning the risk that the applicant would try to commit suicide if the deportation order were enforced, the Court reiterates that the fact that a person, whose deportation has been ordered, threatens to commit suicide does not require the Contracting State to refrain from enforcing the deportation, provided that concrete measures are taken to prevent the threat from being realised (see *Dragan and Others v. Germany*, cited above, and, *mutatis mutandis*, *Ovdienko v. Finland*, (dec.), no. 1383/04, 31 May 2005). In the present case, the Court notes that the physicians who have examined the applicant have found that there is a risk that he might try to commit suicide if the deportation order were carried out, and his treating physician has estimated that this risk is a very real one as the applicant has constantly

been struggling with self destructive thoughts. However, the Court observes that the applicant has neither attempted to commit suicide while in Sweden nor has he ever been committed to closed psychiatric care by force. On the contrary, he has requested help and support when he has needed it and then been admitted to psychiatric care for short periods, following a rejection of leave to stay in Sweden or when the execution of his deportation had been planned. Moreover, since he left the psychiatric clinic in July 2005, following the stay of the deportation order upon request by the Court, he has been in regular contact with his doctors for medication and counselling, but has not been admitted anew.

The Court further takes note of the respondent Government's submission that no enforcement of the deportation order will occur unless the police authority responsible for the deportation deems that the medical condition of the applicant so permits and that, in executing the deportation, the police will also ensure that appropriate measures are taken with regard to the applicant's particular needs (such as chartering a special airplane for the journey and arranging for medical staff and any necessary equipment to be available on board during the flight).

Thus, having regard to the high threshold set by Article 3, particularly where the case does not concern the direct responsibility of the Contracting State for the possible harm, the Court does not find that the applicant's deportation to Bangladesh would be contrary to the standards of Article 3 of the Convention. In the Court's view, whilst acknowledging the applicant's poor mental heath, the present case does not disclose the exceptional circumstances established by its case-law (see, among other, *D v. United Kingdom*, cited above, § 54, where the applicant was in the final stages of a terminal illness and had no prospect of medical care or family support in his home country, St. Kitt's).

It follows that this part of the application is also manifestly ill-founded in accordance with Article 35 § 3 of the Convention, and that the application as a whole, therefore, must be rejected pursuant to Article 35 § 4 of the Convention. Accordingly, the application of Rule 39 of the Rules of Court should be discontinued.

For these reasons, the Court by a majority

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President