AS TO THE ADMISSIBILITY OF

Application No. 28275/95
by Fasika KIFLE
against Sweden

The European Commission of Human Rights sitting in private on 26 October 1995, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

Mr. M. de SALVIA, Deputy 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 27 April 1995 by Fasika Kifle against Sweden and registered on 22 August 1995 under file No. 28275/95;

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 applicant is an Ethiopian citizen, born in 1959 and currently in compulsory psychiatric care at Bollnäs, Sweden.

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

The applicant claims to be a former Lieutenant Colonel of the Ethiopian army and the grandson of the "former Ethiopian emperor

Menilik II". In May 1989 he allegedly plotted a coup d'état against the Government but left the country before the regime was finally overthrown. In March 1990 he arrived in Sweden, where he has a sister and a brother. In 1990 he underwent short-term psychiatric treatment. It appears that he was granted a residence permit in Sweden.

On 27 April 1995 the District Court (tingsrätten) of Sandviken found the applicant guilty of aggravated rape committed in December 1994. He was sentenced to placement in compulsory psychiatric care and ordered to be deported. He has been diagnosed as schizophrenic and paranoid.

On 3 July 1995 the Court of Appeal (hovrätten) of Lower Norrland upheld the District Court's judgment. Leave to appeal to the Supreme Court (Högsta domstolen) was refused on 3 August 1995.

On 30 August 1995 the County Administrative Court (länsrätten) of Gävleborg ruled that the applicant could be kept in psychiatric care until 30 March 1996.

The applicant has submitted a certificate issued by the Stockholm Embassy of the Transitional Government of Ethiopia on 2 July 1994. According to this document, the applicant was "a member of the disbanded Ethiopian military establishment" and served the military "of the past regime" as a Major "before his departure from Ethiopia in opposition to the military regime before its overthrow in 1991".

According to the 1989 Aliens Act (utlänningslag 1989:529), a court convicting an alien of a criminal offence may, on certain conditions, also order his or her deportation (chapter 4, sections 7 and 8). A residence permit may nevertheless be granted if a request to this effect, lodged by an alien who is to be refused entry or expelled by virtue of a decision which has acquired legal force, is based on new circumstances and provided the alien is either entitled to asylum or there are weighty humanitarian reasons for allowing him or her to stay in Sweden (chapter 2, section 5, subsection 3).

When considering a new request for a residence permit lodged by an alien who is to be expelled according to a decision which has acquired legal force, the National Immigration Board (Statens invandrarverk), and in certain cases also the Government, may stay the enforcement of that decision. For particular reasons the Board may also otherwise stay enforcement (chapter 8, section 10). Similarly, the Aliens Appeals Board (Utlänningsnämnden) may decide to stay the enforcement of a previous expulsion order.

If the Government find that a judgment or a decision ordering the deportation of an alien on account of a criminal offence cannot be enforced or if, for other particular reasons, it should no longer be in force, it may quash the judgment or decision either wholly or partly. In this connection the Government may also decide to grant the alien a residence and work permit. If the judgment or decision is not quashed, the Government may, for particular reasons, issue a temporary residence and work permit. The deportation order shall not be enforced while such a permit is valid (chapter 7, section 16, as amended by Act no. 1991:1573).

COMPLAINT

The applicant complains about his forthcoming deportation to Ethiopia. He refers to his past as a high-ranking officer in the army of a previous regime of that country. He also refers to his present mental state. He invokes no particular provision of the Convention.

THE LAW

The Commission understands that the applicant complains about his

forthcoming deportation to Ethiopia on the following grounds. On the one hand, he fears ill-treatment on account of his military past, if returned to that country. On the other hand, he considers that his present mental state is such that an enforcement of the deportation order would in itself violate his Convention rights.

The Commission considers that these two aspects of the application would both fall to be considered under 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 Commission nevertheless first recalls that under Article 26 (Art. 26) of the Convention it may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. Where doubts exist as to the effectiveness of a remedy, that remedy must be tried (e.g., No. 10148/82, Dec. 14.3.85, D.R. 42, p. 98; cf. also Eur. Court H.R., Cardot judgment of 19 March 1991, Series A no. 200, p. 18, para. 34).

In the present case the Commission finds no indication that the applicant, at any stage during the criminal proceedings ending on 3 August 1995, invoked the alleged risk that he could be persecuted on his return to Ethiopia on account of his alleged military background. Nor is there any indication that he has requested a residence permit on humanitarian grounds in pursuance of chapter 2 of the Aliens Act, referring to his current mental state. Finally, there is no indication that he has requested the Government to issue him with a temporary residence permit in pursuance of chapter 7 of the Act.

The Commission therefore concludes that the applicant has not exhausted all domestic remedies available to him under Swedish law. An examination of the complaint does not disclose the existence of any special circumstance which might have absolved him, according to the generally recognised rules of international law, from exhausting the remedies at his disposal.

It follows that the application must as a whole be rejected for non-exhaustion of domestic remedies under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(M. de SALVIA) — (S. TRECHSEL)