AS TO THE ADMISSIBILITY OF

Application No. 18288/91
by M.L. and A.S.
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 13 May 1992, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H. G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS

Mr. K. ROGGE, Secretary to the Second 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 28 September 1990 by M.L. and A.S. against Sweden and registered on 30 May 1991 under file No. 18288/91;

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 first applicant is a Finnish citizen born in 1968 and resident at Örebro, Sweden. She is a children's nurse by profession. The second applicant is a stateless Palestinian born in 1961 and currently living in a refugee camp in Lebanon.

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

The second applicant came to Sweden in October 1985 without a residence permit. He subsequently requested refugee status, alternatively a residence and work permit in Sweden, referring to the risk of being politically persecuted if expelled to Lebanon.

On 17 March 1986 the National Immigration Board (statens invandrarverk) rejected the request, considering that he could not be considered a refugee under Section 3 of the 1980 Aliens Act (utlänningslagen) or under the UN Convention Relating to the Status of Refugees. No further particular reasons enabling him to stay in Sweden were found. He was expelled from Sweden and prohibited from returning before 1 April 1988.

In April 1986 he appealed to the Government, submitting inter alia that in Lebanon he had been the principal witness of the murder of M.K. and that, having described the perpetrators, he had been forced to interrupt his studies and leave Lebanon. By that time he had already received threats that he would be killed if he exposed the murderers.

Subsequently, when it became clear that he had described the perpetrators, he had been captured allegedly for questioning and execution. He further referred to two articles regarding the murder in the PLO newspaper Palestine Al-Thawra of November and December 1985. He alleged that he knew that the perpetrators were Syrian agents and that he was being sought by these and their sympathisers. He further referred to the critical situation of the stateless Palestinians in Lebanon loyal to the PLO, alleging that they were being persecuted by inter alia Syrian security police, pro-Syrian Palestinian factions and involved in fights with Israeli troops. He finally referred to his refugee status as granted to him by UNRWA.

On 18 June 1989 the applicants were engaged to be married. Prior to that date they had started living together.

On 21 December 1989 the Government (Ministry of Labour) rejected the second applicant's appeal. The Government found that he could not be considered a refugee or otherwise be eligible for asylum in Sweden. The Government took into account inter alia a confidential opinion of the National Police Board (rikspolisstyrelsen) of 16 December 1986. The Government further considered that, although he had requested asylum prior to 1 January 1988, there were special reasons not to allow him to remain in Sweden. Moreover, there were no other reasons for which he should be allowed to stay there.

In March 1990 he again requested refugee status, alternatively a residence permit, stating that he had already stayed in Sweden for a considerable length of time and that he was engaged to the first applicant. He furthermore referred to a statement by the Refugee Services of the Swedish Red Cross according to which the interests of national security had to be weighed against his need of protection. The Red Cross further questioned the accuracy of the opinion of the National Police Board, having regard inter alia to the fact that it dated from December 1986.

On 29 March 1990 the National Immigration Board rejected the request, as it was based on facts which had already been taken into account by the Government in their decision of 21 December 1989. No appeal lay against this decision.

A further request was lodged on 10 April 1990 by the Swedish section of Amnesty International, submitting inter alia:

(translation from Swedish)

> "... AI confirms that Palestinians arrested in Lebanon also have included persons with no PLO connections. A mere suspicion that someone is sympathising with Yassir Arafat has been enough to warrant an arrest. These persons have been arrested in Lebanon by Syrian troops or factions cooperating with such troops. They are being detained for an indefinite period of time without being charged or tried, and they are being tortured. In view of this, Palestinians such as [the second applicant], [who are] political or military activists within the PLO, run an even greater risk of being subjected to encroachments of the above kind.
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> ...
>
> [I]n the light of [the second applicant's] alleged connections with PLO/Fatah AI considers his fear of persecution in case of a deportation to Lebanon to be well-founded. Should he be deported to Lebanon he would risk being detained immediately and indefinitely as well as being tortured.

...

> [AI] cannot [therefore] share the opinion of the National Immigration Board and the Government that [the second applicant] can be deported to Lebanon without risking persecution."

On 20 April 1990 the National Immigration Board rejected the request on the grounds mentioned in its decision of 29 March 1990. No appeal lay against this decision.

On 22 May 1990 the second applicant was deported to Lebanon, where he was allegedly detained for three days and assaulted. The applicants have submitted a medical report of 7 June 1990 from the Palestine Red Crescent Society, which reads as follows:

(translation from Arabic)

> "We, staff members of the hospital, certify that [the second applicant] ... has been at the El Hamfari hospital on 25 May 1990. He was in a very bad condition due to a number of beatings and after examination we could establish that he had swellings under his feet and a strong pain in his back. Due to this he was admitted to the hospital for eleven days and discharged on 4 June 1990. This medical certificate is issued at his own request."

In July 1990 the second applicant, referring to the above medical report, lodged a further request for a residence and work permit in Sweden. This was rejected on 21 August 1990.

On 6 September 1990 the Government dismissed a request for an annulment of the deportation order, as under Chapter 7, Section 1, para. 2 of the Aliens Act the Government lacked competence to deal with the matter.

In an undated letter of 1992 addressed to the Commission the second applicant states as follows:

(translation from Swedish)

> "I am a stateless Palestinian ... . I want you to know that the present situation in Lebanon is very difficult and very bad and [that] the risk of dying is great. For instance, on 17 February the Israeli air force bombed my area in the Ein el Helweh refugee camp in southern Lebanon and many civilians died and this event can be [repeated] at any time.
>
> Another difficulty is the risk of being murdered. Many groups don't like the Arafat policy - "the peace process" - and Arafat opponents murdered many Palestinians. "It could be me", so I feel no safety or security at all. Another problem is the Lebanese Army and the Syrian Army which limit our freedom of movement and if we go outside our refugee camp the risk is great to be kidnapped and then tortured and murdered just because I [belong to] the Arafat group."

The applicants have submitted a copy of a report on stateless Palestinians by the Asylum Department of the Danish Refugee Aid (Dansk Flygtningehjælp; hereinafter "DF") of 9 August 1990 drawn up following a mission to Cyprus and Syria in the beginning of 1990 and based on discussions with representatives of international organisations, staff members of embassies, journalists, other international observers as well as its own sources. The report states inter alia:

(translation from Danish)

> "...[T]he camp of Ein el-Hilweh consists of 33.253 inhabitants and is the biggest camp in Lebanon.
>
> ...
>
> After the troops loyal to Arafat had, in the summer of 1988, been banished by pro-Syrian radical factions from the camps in Beirut, the camps of ... and Ein el-Hilweh are the most important haunts and power centres of the moderate PLO troops. "Fatah" is the dominant faction in both camps and has it headquarters in Ein el-Hilweh ... Notwithstanding air and artillery bombings by Israeli forces the two camps are in a relatively good condition, due to PLO support. ..."

A further report of 13 September 1991 drawn up following a further mission to Cyprus and Syria and based on DF's traditional sources considered the danger to the Palestinian minority in Lebanon to be greater than ever since 1982. It continued inter alia:

(translation from Danish)

> "... It must be emphasised that the stabilisation, which has taken place in the country in connection with the disarmament of the militias, cannot be seen as an improvement in the safety of the Palestinians, which are/seem to be in the spotlight of the Syrians...
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> ...
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> Therefore, there are substantial grounds for emphasising the conclusion in DF's reports of 9 August 1990 and 24 June 1991: Palestinians known to be or possibly only suspected of being active within "Fatah" but also within other factions loyal to Arafat run a great risk of facing serious problems upon [their] return to Lebanon. ..."

The applicants have submitted statements of four persons who certify that the applicants were living together at the time of the second applicant's deportation.

COMPLAINTS

The applicants complain that the second applicant was and is being refused a residence permit in Sweden because of his Palestinian origin. They submit that they are engaged to be married; that before their engagement they had already been living together; and that their private and family life was violated because of the second applicant's deportation. They further submit that, as the National Police Board considered the second applicant a national security risk he should have been allowed the guarantees provided under Article 6 of the Convention for a person charged with a criminal offence.

The applicants invoke Articles 3, 5, 6, 8 and 14 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 28 September 1990 and registered on 30 May 1991.

On 9 December 1991 the Rapporteur, in accordance with Rule 47 para. 2 (a) of the Commission's Rules of Procedure, requested further

information from the applicants. The information was submitted on 17 March 1992.

THE LAW

(a) The Commission has first considered the complaint under Article 3 (Art. 3) of the Convention as lodged on behalf of the second applicant.

Article 3 (Art. 3) of the Convention reads:

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

Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". In the present case the second applicant's appeal against the National Immigration Board's decision of 1986 was rejected on 21 December 1989, whereas the application to the Commission was introduced on 28 September 1990, that is more than six months after the date of that decision.

Subsequently, the second applicant, invoking new grounds, again requested refugee status or alternatively a residence permit. The decision upon the first of those requests was made on 29 March 1990, that is less than six months before the application was introduced.

However, even assuming that the second applicant has complied with the six month rule this complaint is manifestly ill-founded for the following reasons.

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to political asylum is not protected in either the Convention or its Protocols (Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, para. 102, to be published in Series A no. 215).

However, expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he was expelled (ibid., para. 103).

The Commission's assessment of the risk of ill-treatment to which an applicant may be exposed must be made in the light of all the material placed before it. The assessment must be a rigorous one in view of the absolute character of Article 3 (Art. 3) of the Convention (ibid. paras. 107-108). The existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion. Regard may, however, also be had to information which comes to light subsequent to the expulsion, as such information may be of value in confirming or refuting the appreciation made by the Contracting State or the well-foundedness or otherwise of an applicant's fears (Eur. Court H.R., Cruz Varas and Others judgment of 20 March 1991, Series A no. 201, p. 30, para. 76).

In the present case, the Commission finds no indication that the information available to the Government at the time of the second applicant's deportation showed that he, upon his return to Lebanon, would run a substantial risk of being exposed to treatment contrary to Article 3 (Art. 3) of the Convention. The Commission notes, in particular, the second applicant's appeal to the Government of April 1986 in which he referred to, inter alia, death threats as a reason for leaving Lebanon. In the appeal he claimed to have been captured for

"questioning and execution" because of his description of the alleged murderers of M.K. However, he did not identify the alleged perpetrators or the reason for his release. The same is true as regards the alleged assault which took place following his return to Lebanon. Thus, the information regarding the second applicant's treatment upon his return to Lebanon is not such as to refute the appreciation made by the Government.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(b) The Commission has next considered the complaint under Article 8 (Art. 8) of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
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> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission first observes that neither of the applicants is a Swedish citizen. In the light of the Nordic Convention on the Abolition of Passport Controls at the Boundaries between the Nordic Countries (överenskommelsen om upphävande av passkontrollen vid de internordiska gränserna) as well as the Nordic Convention on a Common Labour Market (överenskommelsen om en gemensam nordisk arbetsmarknad) the first applicant must, however, be considered to be lawfully and permanently resident in Sweden (cf. Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, pp. 31-32, para. 60).

Assuming that the refusal to grant the second applicant a residence permit in Sweden amounts to an interference with the applicants' rights under Article 8 (Art. 8) of the Convention it must be examined whether the interference was justified under the terms of para. 2 of that provision. In order to be justified under Article 8 (Art. 8) an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the aims enumerated in para. 2 and it must be necessary in a democratic society for that aim or those aims (Eur. Court H.R., Beldjoudi judgment of 26 March 1992, para. 68, to be published in Series A no. 234-A).

There is no indication that the refusal was unlawful, nor that it did not pursue one or more of the aims under para. 2 of Article 8 (Art. 8-2).

As regards the question whether the interference was "necessary in a democratic society" the Commission recalls that it is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens. However, their decisions in the field must, in so far as they may interfere with a right protected under para. 1 of Article 8 (Art. 8), be necessary in a democratic society, i.e. be justified by a pressing social need and, in particular, be proportionate to the legitimate aim pursued (the above-mentioned Beldjoudi judgment, para. 74). Regard should further be had to the margin of appreciation allowed to Contracting States (e.g. Eur. Court H.R., Berrehab judgment of 21 June 1988, Series A no. 138, pp. 15-16, para. 28).

In the present case the Commission observes, in particular, that the applicants' cohabitation appears to have commenced some time after the National Immigration Board's expulsion order of March 1986, that is, at a time when it was highly unlikely that the second applicant would be allowed to stay in Sweden. The same is true as regards their engagement.

In the circumstances of the case the Government's interest in controlling immigration to the country must be considered to outweigh the applicants' interest in establishing family life there. The refusal must, therefore, be considered to fall within the State's margin of appreciation and thus be necessary in a democratic society for one or more of the aims enumerated in Article 8 para. 2 (Art. 8-2).

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(c) The Commission has finally considered the complaints under Articles 5, 6 and 14 (Art. 5, 6, 14) of the Convention as lodged on behalf of the second applicant. It finds, however, that these do not disclose any appearance of a violation of the provisions invoked.

It follows that this part of the application is also 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 Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)