CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45918/99
by Perica MAJIC
against Sweden

The European Court of Human Rights (First Section) sitting on 23 February 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mrs E. Palm,
Mr L. Ferrari Bravo,
Mr G. Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 6 November 1998 by Perica Majic against Sweden and registered on 3 February 1999 under file no. 45918/99;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1969, presently resides in Karlskrona, Sweden. In his application form, he states that he has Croatian nationality.

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

On 21 February 1994 the applicant arrived in Sweden and requested asylum. He stated that he is an ethnic Croat from Ljubuski in Bosnia-Hercegovina. Between May 1992 and January 1994 he served in a Croatian infantry unit and was involved in many battles in Bosnia-Hercegovina. In January 1994 he refused to comply with an order for active duty and was put in a military prison for a month. Upon release, he was ordered to report to his unit but, instead, he fled to Croatia where he obtained a passport with which he travelled to Sweden. He claimed that, if returned to Bosnia-Hercegovina, he would be put in prison or sent to the front-line.

On 14 September 1994 the National Immigration Board (*Statens invandrarverk*) rejected the applicant's request and ordered his deportation to Croatia. Finding that the applicant held both Bosnian and Croatian citizenship, the Board referred to a decision concerning asylum seekers with such double nationality taken by the Swedish Government on 26 May 1994. According to the decision, the prevailing situation in Bosnia-Hercegovina rendered deportations to that country impossible. Consequently, in assessing applications from these asylum seekers, the crucial question was whether they could be afforded protection in Croatia. The Board noted that, according to available information, persons in the applicant's situation did not risk to be sent from Croatia to Bosnia-Hercegovina against their will. Moreover, no acts of warfare had taken place on Croatian territory for some time and a cease-fire had been agreed upon by the contending parties. Thus, there was no apparent risk that Croatian citizens in general would be forced to take part in armed conflict. Further, the applicant had failed to show that he personally faced such a risk.

The applicant appealed to the Aliens Appeals Board (*Utlänningsnämnden*). On 13 March 1995 the Appeals Board, sharing the opinion of the Immigration Board, rejected the appeal.

The applicant later requested a temporary residence permit in Sweden. By a decision of 30 August 1995 the Appeals Board granted the applicant such a permit until 1 December 1995 and quashed the deportation order. In so doing, the Board referred to a Government decision of 5 May 1995 according to which the worsened situation in Croatia constituted an impediment to the deportation of asylum seekers to that country.

On 24 November 1995 the applicant submitted a new application for a residence permit. He referred to his previous statements. Further, at an oral hearing held by the Immigration Board on 20 May 1997 he claimed that he could not return to Croatia, as he would not receive any help and would have great difficulties in supporting himself. Consequently, if returned to that country, he would be forced to go back to Bosnia-Hercegovina where he would be punished for having evaded military service. Further, as the most extreme Croats lived in his home district in Bosnia-Hercegovina, he would be at risk due to the evasion and the fact that he had applied for asylum in a foreign country. He

submitted a document showing that he was wanted for draft evasion by the military authorities of Herceg-Bosna. The applicant referred also to the time he had spent in Sweden and claimed that he had adjusted himself to Swedish society.

On 30 June 1997 the Immigration Board rejected the applicant's new application and ordered his deportation to Croatia. The Board had regard to guiding decisions taken by the Swedish Government and found that the applicant should not be sent back to Bosnia-Hercegovina. With regard to the possible deportation to Croatia, the Board noted that no new circumstances had been invoked by the applicant. Consequently, the Immigration Board reiterated the conclusions drawn in the previous decisions concerning the applicant. Furthermore, the Immigration Board found that there were no reasons of a humanitarian nature to grant the applicant a residence permit.

The applicant's appeal against the Immigration Board's decision is still pending before the Aliens Appeals Board.

In a medical certificate issued at a psychiatric clinic in Karlskrona on 21 April 1998 chief physician P.R. stated that the applicant showed signs of depression, powerlessness and insomnia as a result of having spent four years in refugee camps in Sweden. However, the applicant refused to take medication as he did not consider that he was suffering from any serious illness.

COMPLAINT

Invoking Article 4 of Protocol No. 4 to the Convention, the applicant claims that he will be collectively expelled together with other Bosnian Croats. He states that, in assessing his applications, the Swedish Government and immigration authorities have treated him as belonging to a group of Bosnian Croats and have failed to properly examine his individual claims.

THE LAW

1. The applicant complains that his deportation to Croatia would involve a violation of Article 4 of Protocol No. 4 to the Convention, which provision reads as follows:

"Collective expulsion of aliens is prohibited."

The Court finds that collective expulsion is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group. Moreover, the fact that a number of aliens receive similar decisions does not lead to the conclusion that there is a collective expulsion when each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis (see application no. 14209/88, decision of 16 December 1988, DR 59, p. 274).

In the present case, the Court first notes that the applicant's appeal against the National Immigration Board's decision of 30 June 1997 is still pending before the Aliens Appeals Board. It is thus questionable whether the applicant has complied with the requirement to exhaust domestic remedies in accordance with Article 35 § 1 of the Convention. However, the Court finds that it need not resolve this issue as the application is, in any event, inadmissible for the reasons set out below.

The Court recalls that the Swedish Government issued guidelines for the assessment of asylum applications submitted by persons holding both Bosnian and Croatian citizenship. The Government found that, due to the situation in Bosnia-Hercegovina, these persons could not be sent back to that country. The crucial question was thus whether they could be afforded protection in Croatia. Furthermore, in examining the applicant's case, the National Immigration Board and the Aliens Appeals Board had regard to the general situation for persons with double nationality in Croatia.

However, the applicant submitted individual applications to the immigration authorities and was able to present any arguments he wished to make against his possible deportation to Croatia. The authorities took into account not only the general situation in Croatia but also the applicant's statements concerning his own background and the risks allegedly facing him upon return. In rejecting his applications, the authorities issued individual decisions concerning the applicant's situation.

In these circumstances, the Court considers that the applicant's possible deportation does not reveal any appearance of a collective expulsion within the meaning of Article 4 of Protocol No. 4 to the Convention.

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

2. The Court finds that the present application should be examined also under Article 3 of the Convention. This provision reads as follows:

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

The Court recalls 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 expulsion of aliens. However, an expulsion decision may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of the State, where substantial grounds have been shown for believing that the person concerned would face 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 expelled (see, among other authorities, the Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 34, §§ 102-103). A mere possibility of ill-treatment is not in itself sufficient (*ibid.*, p. 37, § 111).

In the present case, the Court recalls that the Swedish immigration authorities have ordered the applicant's deportation to Croatia. The applicant is an ethnic Croat holding Croatian citizenship. Having regard to the applicant's statements, the Court cannot find any indication that he will be subjected to ill-treatment in that country. Further, there is no

evidence that he will be sent from Croatia to Bosnia-Hercegovina. Thus, the Court considers that there are not substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to Article 3 of the Convention upon return to Croatia.

However, without making a special reference in his complaint, the applicant has submitted a medical certificate showing that he is suffering from depression and other mental strain on account of having spent several years in Swedish refugee camps. In this connection, the Court notes that, in assessing whether a deportation involves such a trauma that it in itself constitutes a breach of Article 3 of the Convention, its physical and mental effects and the state of health of the person concerned are to be taken into account (see Eur. Court HR, Cruz Varas and Others v. Sweden judgment of 20 March 1991, Series A no. 201, p. 31, §§ 83-84, and the opinion of the Commission, p. 87, §§ 87-90). Nevertheless, having regard to the statement of chief physician P.R., the Court cannot find that the applicant's deportation would involve such hardship for him that it would reach the minimum level of severity required for the application of Article 3.

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

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Josep Casadevall
President