CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

# FIRST SECTION

# DECISION

# AS TO THE ADMISSIBILITY OF

Application no. 45922/99
by Marko MARIC
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 Marko Maric against Sweden and registered on 3 February 1999 under file no. 45922/99;

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 1968, 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.

a. Particular circumstances of the case

On 5 February 1994 the applicant arrived in Sweden. He requested asylum the next day. He stated that he is an ethnic Croat from Kakanj in Bosnia-Hercegovina. As from April 1992 he served in the Bosnian-Croatian army. In the beginning of 1993 he was taken prisoner by Muslim troops and held in captivity for 15 days. In June 1993 Kakanj was occupied by Muslim troops who started an ethnic cleansing of the village. In October 1993 he deserted from his military unit and travelled to Stolac where he joined another unit. In January 1994 he absconded also from that unit and left for Croatia. He arrived in Sweden via Munich. During his journey he used his Croatian passport which he tore apart upon arrival in Sweden. The applicant claimed to be a citizen of Bosnia-Hercegovina only. He feared that, if deported to Croatia, he would be sent back to Bosnia-Hercegovina.

On 26 August 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, there was no reason to assume that Croatia would not afford the applicant protection. Further, persons in the applicant's situation did not risk to be sent from Croatia to Bosnia-Hercegovina against their will. Neither was there any risk that Croatian citizens in general would be forced to take part in armed conflict. Moreover, the applicant had failed to show that he would risk persecution or other harassment if deported to Croatia.

The applicant appealed to the Aliens Appeals Board (*Utlänningsnämnden*). On 18 May 1995 the Appeals Board granted the applicant a temporary residence 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 22 November 1995 the applicant submitted a new application for a residence permit. He referred to his previous statements and added that, being an ethnic Croat, he could not return to the Muslim-dominated Kakanj or to any other part of Bosnia-Hercegovina. He risked punishment for having deserted from the Bosnian-Croatian army. Moreover, he could not go to Croatia where he had no place to live. His Croatian passport did not entitle him to full civic rights in Croatia and he would thus be forced to return to Bosnia-Hercegovina.

On 12 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 circumstances had been invoked by the applicant which could lead to the conclusion that he was unable to go to Croatia. Consequently, the Immigration Board reiterated the conclusions drawn in its previous decision concerning the applicant. Furthermore, the Immigration Board found that there were no reasons of a humanitarian nature to grant the applicant a residence permit.

On 5 March 1998 the Aliens Appeals Board upheld the Immigration Board's decision.

In medical certificates issued by the psychiatric clinic at the hospital in Karlskrona on 25 June and 2 December 1998 physicians C.F. and M.N. stated that the applicant suffered from anxiety and suicide thoughts. He had been treated with antidepressant medication. As from 19 November 1998 he had been treated at the clinic for a post-traumatic stress syndrome. M.N. found that the applicant was in need of qualified psychiatric care and that there was a considerable risk that he would commit self-destructive acts. The clinic submitted the certificate of 2 December to the Appeals Board and requested that the enforcement of the deportation order be suspended.

On 7 December 1998 the Appeals Board decided not to suspend the enforcement of the deportation order.

b. Relevant domestic law

Under Section 29 of the Act on Compulsory Mental Care (*Lagen om psykiatrisk tvångsvård*, 1991:1128), such care shall be terminated at the request of the competent police authority whenever the person placed in care is ordered to be deported. This presupposes, however, that the chief physician finds that the alien's condition allows that the deportation takes place. According to Section 33, no appeal lies against the chief physician's decision.

## 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 latest decision in regard to the applicant's request for a residence permit was taken by the Aliens Appeals Board on 5 March 1998. It is thus questionable whether the applicant has complied with the six months' time limit set out in 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 medical certificates showing that he is suffering from a post-traumatic stress syndrome and that the enforcement of the deportation order could seriously affect his mental health. 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).

In so far as the applicant's mental problems relate to his fear of what will happen to him in Croatia, the Court recalls its above finding that no substantial basis has been shown for this fear. Moreover, the Court is satisfied that the police authority in charge of the enforcement of the deportation order will take into account the applicant's state of health when deciding how the deportation is to be carried out. In this connection, it is to be noted that, should the applicant be taken into compulsory psychiatric care due to his mental problems, the deportation could under no circumstances take place without the permission of the chief physician responsible for his care (see application no. 27249/95, decision of 14 September 1995, DR 83, p. 91).

In these circumstances, the Court does not find it established that the applicant's deportation would amount to a violation of Article 3 of the Convention on account of his present state of health.

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