AS TO THE ADMISSIBILITY OF

Application No. 38960/97
by Skender MEHMETI
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 21 October 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the 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 12 August 1997 by Skender MEHMETI against Sweden and registered on 11 December 1997 under file No. 38960/97;

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, a citizen of Yugoslavia, is an ethnic Albanian from Kosovo. He was born in 1972 and resides in Trelleborg, Sweden.

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

The applicant lived in Sweden between December 1994 and April 1996. In May 1996 he married a woman in Kosovo. Having lived in Sweden for seven years, she acquired Swedish citizenship in 1996. The applicant returned to Sweden on 20 October 1996 and was granted a residence permit until 20 March 1997. The applicant and his wife have two children born in August 1996 and September 1997, respectively. They are both Swedish citizens. The family resides in Sweden where they live on social welfare assistance.

By judgment of 27 March 1997, the District Court (tingsrätten) of Hässleholm convicted the applicant of four counts of aggravated theft (burglaries in January 1996 and February 1997) and for having handled stolen goods and illegally possessed a weapon. He was sentenced to one year in prison. The court further ordered his expulsion from Sweden and issued a five-year ban on his return in accordance with Chapter 4, Section 7 of the Aliens Act (Utlänningslagen, 1989:529). In so deciding, the court took into account the applicant's family situation. However, the court found that there was a risk that he would reoffend. It further noted that he had committed serious crimes during a long period of time.

On appeal the Court of Appeal (hovrätten) of Skåne and Blekinge, on 23 May 1997, upheld the District Court's judgment. As regards the expulsion order, the appellate court noted that the applicant had not refrained from committing further crimes although he had been detained as a suspect on two occasions in February-March 1996.

On an unspecified date the Supreme Court (Högsta domstolen) refused the applicant leave to appeal.

Later the applicant requested the Government to exercise its power under Chapter 7, Section 16 of the Aliens Act to annul the expulsion order. By decision of 11 September 1997, the Government rejected the request.

On 19 October 1997 the applicant was released from prison. Due to the situation in Kosovo, the Swedish authorities have been unable to enforce the expulsion order. Thus, the applicant is still in Sweden.

COMPLAINTS

The applicant claims that his expulsion from Sweden would constitute a violation of his right to respect for his family life. He contends that the expulsion would separate him from his family as his wife and children cannot follow him to Yugoslavia.

THE LAW

The applicant claims that his expulsion from Sweden would constitute a violation of his right to respect for his family life. The Commission notes that his complaint should be examined under Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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 and morals, or for the protection of the rights and freedoms of others."

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens (cf., e.g., Eur. Court HR, Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, the expulsion of a person from a country in which close members of his family live may amount to an unjustified interference with his right to respect for his family life as guaranteed by Article 8 of the Convention (cf., e.g., Eur. Court HR, Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, pp. 19-20, paras. 43-46).

In the present case, the Commission finds that the applicant's expulsion could be considered as an interference with his right to respect for his family life. However, as the expulsion was ordered under the applicable provision of the Aliens Act following the applicant's conviction for several crimes, the interference was in accordance with the law and pursued the legitimate aim of preventing crime. Further, having regard to the applicant's repeated and serious criminal behaviour and to the fact that, at the time of his marriage, he had already been detained as suspected of some of the crimes of which he was later found guilty, the Commission concludes that the Swedish authorities have not failed to fulfil their obligation to strike a fair balance between the relevant interests (cf., e.g., Eur. Court HR, Boujlifa v. France judgment of 21 October 1997, Reports of Judgments and Decisions 1997-VI, pp. 2264-2265, paras. 40-45). Accordingly, the interference with the applicant's right under Article 8 of the Convention is justified in that it can reasonably be considered as necessary in the interest of preventing crime.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER Secretary to the Second Chamber	J.-C. GEUS President of the Second Chamber