AS TO THE ADMISSIBILITY OF

Application No. 25849/94
by Mirvat MEZHER
against Sweden

The European Commission of Human Rights sitting in private on 6 July 1995, the following members being present:

MM. C.A. NØRGAARD, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
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
B. MARXER
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

Mr. H.C. KRÜGER, 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 16 November 1994 by Mirvat Mezher against Sweden and registered on 5 December 1994 under file No. 25849/94;

Having regard to the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 19 January 1995 and the observations in reply submitted by the applicant on 24 March 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Lebanese citizen born in 1966, is a medical doctor. She resides at present at Åstorp. Before the Commission she is represented by Mr. Elias Arfwedson, a lawyer practising at Lund.

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

In June 1991 the applicant applied for a visa to enter Sweden and visit her cousin, who had lived in Sweden for several years. The application was rejected by the National Immigration Board (Statens invandrarverk) on 2 July 1991.

On 16 July 1992 the applicant married her cousin. On the basis of this relationship, the applicant was, on 10 June 1993, granted a residence and work permit for the period from 10 June to 10 December 1993. Before the permit was granted, the Immigration Board and the Swedish Embassy in Damascus had heard the spouses and the husband had supported the application.

After the grant of the permit there were certain disagreements between the spouses. The husband was notified of the Board's decision but failed to tell the applicant, who instead was informed by the Embassy in July 1993. On 15 July 1993 the permit was stamped in her passport. During a visit to Lebanon in August 1993, the husband tried to get hold of the passport, but the applicant refused to give it to him.

Some members of the respective families tried to bring about a reconciliation or a divorce between the applicant and her husband. The husband then stated that he would not divorce the applicant, although he still did not want her to come to Sweden. It turned out that he had a girlfriend in Sweden. A reason for his refusal to divorce the applicant appears to be a dispute between the families concerning certain property. Moreover, he would be obliged to compensate the applicant and her family in case of a divorce.

The applicant travelled to Sweden on 9 September 1993. On 20 September 1993 her husband reported to the local police authorities in his home town in Lebanon that she had disappeared and that he had been told that she had left for Sweden. As she was not allowed, as his wife, to travel without his permission, he requested that she be brought back to him and that necessary action be taken on account of her having left alone without informing him.

In Sweden the applicant lived with her siblings at Åstorp. She was not able to reach any agreement with her husband. He refused to divorce her, although she declared that she was willing to renounce the compensation he was liable to pay.

After the expiration of her residence and work permit the applicant applied for a renewal. She stated that she needed time to sort out her relationship with her husband. She claimed that they would probably be able to live together if their respective families would not interfere. However, if living together was not possible, she would try to make her husband agree to a divorce. As soon as such an agreement had been reached she would return to Lebanon. However, if she were to be returned to Lebanon before having reached a divorce agreement with her husband, he could have her placed in a special kind of house arrest for women (Bayt at-Tâ'a) in Lebanon due to her reported disappearance and disobedience. She would have to stay there until he declared that she was obedient.

On 10 May 1994 the National Immigration Board rejected the applicant's application and ordered her deportation. The Board stated that, as she was not living with her husband, she could no more be given a permit on the basis of this relationship. Referring to its knowledge of the situation in Lebanon and the conditions under which the applicant had lived, the Board further found her allegations of house arrest to be considerably exaggerated.

The applicant appealed to the Aliens Appeals Board

(Utlänningsnämnden). She stated that she had lived together with her husband and his parents during the month of June 1994. As her husband could not accept her wish to work but expected her to take care of the household, their cohabitation had, however, ended and the applicant had returned to live with her siblings. The husband had allegedly stated that he was tired of all the trouble and expenses she had caused him and that he did not want to see her again.

The applicant further submitted a written statement by Professor Jan Hjärpe, an expert on Islam at the department for religious studies at the University of Lund. According to Mr. Hjärpe, a husband has, under Islamic law, an unconditional right to divorce his wife. He is, however, liable to pay compensation to the wife and her family. The wife's right to a divorce is conditional in that she has to present before a judge justifiable reasons for her request. By disobeying her husband, the applicant has breached their marriage contract. As the husband refuses to divorce her and there does not seem to be any possibility under the law for the applicant to obtain a divorce, her family is obliged to see to it that the contract is fulfilled. The Lebanese authorities are obliged to assist them. Bayt at-Tâ'a means "the house of obedience", i.e. the applicant may be placed in house arrest until the matter is settled.

By decision of 10 October 1994, the Aliens Appeals Board agreed with the assessment made by the National Immigration Board and upheld the appealed decision.

After the Commission had indicated to the respondent Government, pursuant to Rule 36 of its Rules of Procedure, that it was desirable not to deport the applicant until the Commission had had an opportunity to examine the present application, the National Immigration Board, on 9 December 1994, decided to stay the enforcement of the deportation order.

The applicant later submitted a fresh application for a residence permit to the Aliens Appeals Board. She submitted a copy of the police report of 20 September 1993.

On 8 June 1995 the Aliens Appeals Board rejected the new application. The Board stated that there were strong reasons to call into question the purpose of the husband's report to the police. It further found it unlikely that Lebanese authorities would accept Lebanese citizens to be treated in the way described by the applicant. It concluded that it was improbable that the applicant would be subjected to treatment contrary to Article 3 of the Convention and that no violation of that Article had been substantiated.

COMPLAINTS

The applicant complains that her deportation would violate Article 3 of the Convention, as she would be subjected to inhuman and degrading treatment and punishment upon return to Lebanon.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 16 November 1994 and registered on 5 December 1994.

On 3 December 1994 the Commission decided, pursuant to Rule 36 of the Commission's Rules of Procedure, to indicate to the respondent Government that it was desirable in the interest of the parties and the proper conduct of the proceedings not to deport the applicant to Lebanon until the Commission had had an opportunity to examine the application. The Commission further decided, in accordance with Rule 48 para. 2 (b), to communicate the application to the respondent Government.

By decisions of 2 March, 12 April and 25 May 1995, the Commission prolonged its indication under Rule 36, ultimately until the end of the Commission's session between 26 June and 7 July 1995.

The Government's observations were submitted on 19 January 1995. The applicant replied on 24 March 1995, after an extension of the time-limit fixed for that purpose. Further observations were submitted by the applicant on 12 June 1995 and by the Government on 14 June 1995.

On 13 April 1995 the Commission decided to grant the applicant legal aid.

THE LAW

The applicant complains of a violation of 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 Government submit that the complaint is manifestly ill-founded. The Government argue that Swedish authorities cannot be held responsible for what might occur as a result of a dispute between the families in question concerning the breach of a marriage contract, compensation and property ownership. The Government further find that it is highly unlikely that the applicant will be deprived of her liberty in the manner described by her and that - should a period of detention in fact occur - such treatment cannot per se be regarded as being in breach of Article 3 (Art. 3) of the Convention. The Government thus contend that substantial grounds have not been shown for believing that the applicant would face a real risk of treatment contrary to Article 3 (Art. 3), for which reason the enforcement of the expulsion order would not constitute a violation of that Article (Art. 3).

The applicant submits that, as her husband has reported to the Lebanese police that she is disobedient and has run away from home, the police will capture her upon her return to Lebanon and contact the husband, who will decide where she is to be placed. She will be placed in house arrest until she surrenders to her husband's wishes. This involves an indefinite day and night confinement to a small room, where she will be fed just as much as to make her survive. Thus, the treatment allegedly attains the minimum level of severity required for the application of Article 3 (Art. 3) of the Convention. The applicant further maintains that there is an imminent and real risk that she will be subjected to such treatment, as it would be disgraceful for her husband not to carry out his action against her. Moreover, the Lebanese authorities are obliged to assist him.

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens (cf., e.g., Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, an expulsion decision may give rise to an issue under Article 3 (Art. 3) of the Convention, and hence engage the responsibility of the State under the Convention, 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 (ibid., p. 34, para. 103). A mere possibility of ill-treatment is not in itself sufficient (ibid., p. 37, para. 111).

In the present case, the Commission notes that on 20 September 1993 the applicant's husband reported to the Lebanese police that she had disappeared and requested that necessary action be taken against her as she had left alone without informing him. The applicant alleges that due to this report she will be captured by the police upon her return to Lebanon. Although her family seems to be

obliged to make her fulfil her marital obligations, it appears that it is up to her husband to decide whether to place her in house arrest.

The Commission considers that an issue under Article 3 (Art. 3) of the Convention might arise if a person, in the country to which he or she is to be expelled, faces a real risk of being subjected to treatment of the kind described by the applicant. In the present case, the Commission, however, finds that it has not been established that the applicant faces a real risk of being placed in house arrest upon return to Lebanon. In the above-mentioned police report, there is no mention of Bayt at-Tâ'a or any other similar measures. It has not been alleged that the applicant's husband has expressed an intention to place her in confinement. According to the applicant's appeal to the Aliens Appeals Board, her husband has only stated that he does not wish to see her again as he is disappointed of her intention to work and tired of the trouble and expenses she has caused him. The Commission further considers that there is no reason to believe that her husband would have an interest in having her placed in confinement.

In view of the above, the Commission finds that the applicant has not shown substantial grounds for believing that she will face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention, if she returns to Lebanon.

It follows that the application must be rejected as being 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 Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)