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. 45925/99
by Leonard PRANJKO
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 Leonard Pranjko against Sweden and registered on 3 February 1999 under file no. 45925/99;

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 1971, 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 11 December 1992 the applicant arrived in Sweden with his wife and requested asylum. His wife being unhappy with the living conditions in the refugee camp where they were placed, they withdrew the asylum request on 14 April 1993 and left Sweden on 12 May 1993. They went to Croatia where his wife's father lived. The wife later left the applicant and went to Germany with her father. The applicant was left in Croatia without any income or a place to live. He received no help from the Croatian authorities. Before leaving for Sweden he had been active in the defence organisation in his hometown Jajce in Bosnia-Hercegovina. Following disagreements he left the organisation and joined the Bosnian-Croatian army in which he served until 28 October 1992 when Serbian forces took over Jajce. He deserted from the army and, on a second attempt, he was able to cross the border to Croatia. After his return to Croatia from Sweden he was allegedly afraid of being arrested and sent back to Bosnia-Hercegovina to be put on trial for desertion. He therefore left for Sweden a second time. He arrived on 8 January 1994 and requested asylum. He claimed that he could not return to Bosnia-Hercegovina as he could not get any protection there. Nor could he return to Croatia where he would be drafted for military service or punished for desertion. Further, he would be at risk of being sent back to Bosnia-Hercegovina. Despite the fact that he held a Croatian passport, he could not be considered a citizen of that country as he had not applied for Croatian citizenship.

On 20 September 1994 the National Immigration Board (*Statens invandrarverk*) rejected the applicant's request and ordered his deportation to Croatia. The Board found that the applicant held both Bosnian and Croatian citizenship. Noting that the prevailing situation in Bosnia-Hercegovina rendered a deportation to that country impossible, the Board examined the applicant's situation with respect to Croatia. The Board found that he did not risk to be sent from Croatia to Bosnia-Hercegovina. Further, he did not risk harassment or persecution in Croatia and he would not be forced to take part in any armed conflict.

The applicant appealed to the Aliens Appeals Board (*Utlänningsnämnden*). On 11 September 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 7 November 1995 the applicant submitted a new application for a residence permit. He referred to his previous statements and added the following. He is wanted for desertion by the Bosnian-Croatian army and might be forced to rejoin his military unit and take part in the conflict in Bosnia-Hercegovina. In this respect, he invoked a Bosnian arrest warrant and a Croatian draft order. He claimed further that he feared reprisals for comments he had made to Swedish newspapers about people profiting from the war and for having participated in demonstrations and other actions against Croatia in Sweden. Moreover, having had special assignments within the Bosnian-Croatian army, he was in possession of sensitive

information and could thus be in great danger if caught by "the wrong people". He stated also that his mental health was failing due to his experiences from the war and that he regularly saw a psychologist. His medical journals showed that he was in great need of psychiatric help on account of those experiences. According to two district nurses whom the applicant had been seeing, the applicant had suicidal thoughts. Moreover, the applicant invoked family ties in Sweden: one of his brothers lived there and his mother and another brother had applied for asylum in the country. His parents were divorced and his father had returned from Sweden to Jajce in October 1995. The applicant claimed also that he had integrated well into Swedish society and that he should be given a residence permit on humanitarian grounds.

In a decision of 23 July 1997 the Immigration Board rejected the applicant's new application and ordered that he be deported to either Bosnia-Hercegovina or Croatia. The Board referred to a guiding decision taken by the Swedish Government on 28 November 1996 according to which the possibility of returning to one's home district in Bosnia-Hercegovina was dependent on the prevailing ethnic composition of the population in the district. In the Government's view, it was possible to return to the home district where one's own ethnic group was in the majority. The Board noted that the majority of the population in Jajce were Croats. Consequently, the applicant could return to Jajce without having to fear any harassment or outrage. As regards the possible deportation of the applicant to Croatia, the Board considered that there was no reason to assume that Croatia would not afford him protection. In this respect, the Board referred to information available from the Swedish Government and the United Nations High Commissioner for Refugees (UNHCR). This view had been confirmed also by the Croatian Government. With respect to the applicant's alleged actions against Croatia, the Board noted that the applicant had not been politically active in his home country and that there was no indication that his activities in Sweden had attracted the attention of Croatian authorities. The Board further called into question the veracity of the applicant's statements as to his being in possession of sensitive information since he had not made this allegation until 17 July 1997. Moreover, having regard to the amnesty laws enacted in Bosnia-Hercegovina and Croatia, it was not likely that the applicant would be punished for desertion. Finally, the Board considered that the applicant's mental problems, his alleged integration into Swedish society and his family ties did not constitute sufficient reasons to grant him a residence permit on humanitarian grounds.

The applicant appealed to the Aliens Appeals Board. He invoked a statement by psychologist L.S. who claimed that the applicant showed signs of suffering from a post-traumatic stress syndrome and that it had been considered whether to admit the applicant for institutional care due to the risk of suicide attempts.

On 18 May 1998 the Appeals Board upheld the Immigration Board's decision.

By a decision of 30 July 1998 the Appeals Board granted the applicant's mother a permanent residence permit in Sweden on account of her family ties. The Board recalled that, under Swedish law, a residence permit could be given to a foreigner who used to share a home with a relative living in Sweden, if it could be shown that the persons in question were in a state of dependence vis-à-vis each other. As regards the circumstances of the particular case, the Board noted that the applicant's mother had been living with her three sons – including the applicant – in Jajce until the autumn of 1992. Her son B had left for Sweden in December 1992 and had been granted a permanent residence permit on 20 October 1993. Another son, S, had arrived in Sweden in February 1994. On 3 July 1997 he had been granted a residence permit based on his ties with his Swedish wife with whom he had a child. The

Board noted further that the applicant had been refused a residence permit. The applicant's mother had arrived in Sweden in March 1994 and had been living with S until, in November 1995, he moved in with his wife. The Board concluded that there was such a state of dependence between the applicant's mother and her sons living in Sweden that she was entitled to a residence permit.

Following the decision concerning his mother, the applicant submitted another application for a residence permit. He claimed that he had been living with his mother in Croatia and that they had continued to live together after her arrival in Sweden in March 1994. On 4 September 1998 the Aliens Appeals Board rejected the application, finding that no new circumstances had been invoked in the case.

On 27 October 1998 the applicant submitted yet another application. Again, he referred to his ties with his mother and claimed that these circumstances had not properly been taken into account by the Appeals Board. By a decision of 3 November 1998 the Board suspended the enforcement of the applicant's deportation order. The examination of the merits of the latest application is still pending before the Board.

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

1. 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.

2. The applicant complains further that his right to respect for his family life under Article 8 of the Convention has been violated. He refers to the fact that his two brothers have been granted residence permits in Sweden and that his mother has also been granted a permit based on her family ties to her three sons. Although the brothers – including the applicant – have all attained their majority, their applications for residence permits have been determined differently.

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 notes that the Swedish Government issued guidelines for the assessment of asylum applications submitted by persons holding both Bosnian and Croatian citizenship. 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 the applicant's background in Bosnia-Hercegovina and 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 the respective countries. The authorities took into account not only the general situation in the countries 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.

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 Bosnia-Hercegovina or Croatia. Apparently, the applicant is an ethnic Croat from Bosnia-Hercegovina. Between May 1993 and January 1994 he lived in Croatia. Furthermore, the applicant holds double citizenship. Having regard to the applicant's statements and the conclusions drawn by the Swedish Government and the UNHCR, the Court cannot find that he will be subjected to ill-treatment if returned to his home district in Bosnia-Hercegovina or to Croatia. 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 if returned to either of the countries in question.

However, without making a special reference in his complaints to the Court, the applicant has invoked – before the Swedish immigration authorities – statements by medical personnel to the effect that he has shown signs of a post-traumatic stress syndrome and that there is a risk of his attempting to commit suicide. 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 upon return to Bosnia-Hercegovina or 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 manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant complains further that his right to respect for his family life has been violated. He invokes Article 8 of the Convention, which provides the following:

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

The Court recalls that 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 (see, among other authorities, the Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, pp. 19-20, §§ 43-46).

In the present case, the Court notes, however, that the Aliens Appeals Board has suspended the applicant's deportation following the submission by the applicant of a new application in which he refers to his family ties to Sweden. Thus, at present, the applicant does not risk to be deported from Sweden and cannot claim to be a victim of a violation of Article 8 within the meaning of Article 34 of the Convention.

It follows that this part of the application is 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