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. 45917/99
by Vedran ANDRIC
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 Vedran Andric against Sweden and registered on 3 February 1999 under file no. 45917/99;

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.

On 23 March 1994 the applicant arrived in Sweden and requested asylum. He stated that he was a Bosnian Catholic with Bosnian citizenship. Before leaving for Sweden, he had been living in Kraljeva Sutjeska. He held also a Croatian passport but this was to be considered as a travel document only. In 1992, while serving as a policeman in Utravnic, he refused to join the Muslim forces and, as a consequence, he was accused of having stolen 40 rifles from the police station. Later, he was placed in a special unit from which he could not resign. Resenting police attacks on Muslims and being unable to handle the mental and physical stress, he later deserted from that unit. Further, in June 1993 Kraljeva Sutjeska was occupied by Muslim troops. Along with other residents, the applicant participated in the defence of the village. Later, he was forced to leave the village and, on 15 March 1994, he arrived in Croatia with his parents and siblings. Allegedly, if returned to Croatia, he would risk being sent to Bosnia-Hercegovina where he could be sentenced to 20 years in prison for refusing to bear arms.

On 30 September 1994 the National Immigration Board (*Statens invandrarverk*) rejected the applicant's request and ordered his deportation to Croatia. The Board called into question the credibility of the applicant's statements concerning his military and police activities as he had changed the statements during the course of the investigation. 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 29 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 20 June 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 20 November 1995 the applicant submitted a new application for a residence permit. He referred to his previous statements. Further, in a final statement of 23 March 1997 he claimed that he should be granted a residence permit on humanitarian grounds on account of the time he had spent in Sweden.

On 27 March 1997 the Immigration Board rejected the applicant's new application and ordered his deportation to Croatia. The Board had regard to a guiding decision taken by the Swedish Government on 28 November 1996. In that decision the Government stated, *inter alia*, the following:

(Translation)

> "As regards the situation in Croatia and the region, the ongoing peace process, based on a general agreement on peace in Bosnia-Hercegovina, has lead to stabilisation. The relations between Croatia and the Federal Republic of Yugoslavia have improved. Croatia has been admitted into the Council of Europe. Acts of warfare have not occurred on Croatian territory since August 1995. The risk of further conflicts appears unlikely. The general situation in Croatia has improved in such a way since the Government's previous assessment in May 1995 that nowadays Croatian citizens can generally be afforded protection in Croatia."

The Immigration Board noted that the Swedish Government's view had been confirmed by the United Nations High Commissioner for Refugees (UNHCR) and the Croatian Government. As in the previous decisions taken concerning the applicant, the Board found that he could 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 shared the opinions expressed in its decision of 30 September 1994 and the decision taken by the Aliens Appeals Board on 29 March 1995. Furthermore, the Immigration Board found that there were no reasons of a humanitarian nature to grant the applicant a residence permit.

Following the applicant's appeal, the Appeals Board, on 2 June 1997, quashed the Immigration Board's decision and referred the case back for re-examination. The Appeals Board found that no oral hearing had been held by the Immigration Board, as required by law.

The Immigration Board held an oral hearing in the case on 11 June 1997 during which the applicant stated that, despite the fact that he held a Croatian passport, he did not possess the full rights of a Croatian citizen. Moreover, his parents and one of his brothers lived in Croatia where they had difficulties to support themselves. In Croatia nothing in particular would happen to the applicant but it would be hard for him to find work and a place to live.

In a decision of 30 June 1997 the Immigration Board rejected the applicant's new application on the same grounds as those expressed in the quashed decision. On 17 April 1998 the Appeals Board rejected the applicant's appeal. The Appeals Board noted that the applicant is an ethnic Croat and, as such, would be at risk in his Bosnian home district, dominated by Muslims. However, the applicant's statements did not indicate that he would face ill-treatment in Croatia.

In medical certificates issued by the psychiatric clinic at the hospital in Karlskrona on 30 November 1998 and 19 January 1999 chief physician G.S. and therapist I.S. stated that the applicant had undergone treatment for some time at the clinic for a post-traumatic stress syndrome. Allegedly, the enforcement of the deportation order would seriously impair his mental state and could lead to a suicide attempt. The clinic submitted the first certificate to the Aliens Appeals Board and requested that the enforcement be suspended.

By a decision of 9 December 1998 the Appeals Board suspended the enforcement of the deportation order for an unspecified period of time.

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 notes that the Swedish Government, in their decisions of 26 May 1994 and 28 November 1996, 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. Moreover, by the decision of 9 December 1998 the Aliens Appeals Board suspended the enforcement of the applicant's deportation on account of his mental health.

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. Apparently, the applicant is an ethnic Croat and his parents and a brother live in that country. Furthermore, the applicant holds 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). Nevertheless, the Court does not find it necessary to decide whether, in the circumstances, the deportation of the applicant would involve such hardship for him that it would fall within the scope of Article 3, as the Aliens Appeals Board, on 9 December 1998, suspended the deportation, obviously due to the information given in the medical certificate submitted to the Board. It thus appears that the applicant, in his present state of health, will not be deported.

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