

AS TO THE ADMISSIBILITY OF

Application No. 28419/95  
by Amal KHARSA  
against Sweden

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

MM. S. TRECHSEL, President  
H. DANELIUS  
C.L. ROZAKIS  
E. BUSUTTIL  
G. JÖRUNDSSON  
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  
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. BÍRSAN  
P. LORENZEN  
K. HERNDL

Mr. M. de SALVIA, Deputy 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 1 September 1995  
by Amal Kharsa against Sweden and registered on 1 September 1995 under  
file No. 28419/95;

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 6 October 1995 and the observations in reply submitted  
by the applicant on 21 October 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Syrian citizen born in 1967. Before the  
Commission she is represented by her lawyer, Mr. Per-Erik Nilsson,  
Djursholm.

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

The applicant arrived in Sweden on 1 August 1992 and applied for asylum. She stated that her name was Amal Haydar, that she was a citizen of Iraq, that she had left Iraq for political reasons and that she and members of her family had been interrogated by the Iraqi police about her brother's activities in the Communist Party. On the basis of this information the National Immigration Board (Statens invandrarverk), on 26 February 1993, granted her a permanent residence permit.

In August 1993 a man claiming to be the applicant's husband reported to the Swedish police that the applicant's name was Amal Kharsa and that she was a Syrian citizen. He further stated that the applicant had also applied for asylum in Denmark. Investigations carried out by the Swedish police, Interpol and the Swedish Embassy in Damascus revealed that this new information was true. Moreover, the applicant's Syrian passport was obtained from the Danish immigration authorities. The investigations proved its authenticity. However, on several occasions between November 1993 and January 1995, in letters to the Swedish immigration authorities and in police interrogations, the applicant maintained that the information she had given about her background was correct. In an attempt to prove that she was not married, she submitted a medical certificate indicating that she was a virgin. Not until 24 January 1995 did she concede during a police interrogation that she was married and that the information supplied by her husband was true. At the same time, she stated that she had married him only to escape from her father who had allegedly assaulted and raped her since she was six years old. She also alleged that her husband had assaulted her because of her refusal to prostitute herself. The husband's brother had told her to supply the original false information to the immigration authorities. The applicant further stated that, as a student, she had been a member of the illegal Syrian Communist Party, that her husband had informed the Syrian authorities of her application for asylum in Sweden and that, for these reasons, the authorities would consider her a spy.

By decision of 24 February 1995, the National Immigration Board, basing itself on Chapter 2, Section 9 of the Aliens Act (Utlänningslagen, 1989:529), revoked the applicant's residence permit due to the false information originally submitted by her. It further ordered her expulsion. The Board called into question the new information supplied by the applicant and found her allegations of rape remarkable in view of the medical certificate indicating that she was a virgin. The Board further took into account that she had left Syria legally with a valid passport. The Board thus considered that the applicant would not be considered a spy by the Syrian authorities. It concluded that the facts invoked by the applicant did not constitute a ground for granting her a residence permit.

The applicant appealed to the Aliens Appeals Board (Utlänningsnämnden). She stated, inter alia, that her father had sexually assaulted her without, as a result, their having had sexual intercourse. Thus, the medical certificate concerning her virginity did not exclude that she had been raped. She further claimed that her husband had sent a letter to the Syrian Government, declaring that she was married to an Iraqi citizen, that she had claimed to be Iraqi when she applied for asylum and that she collaborated with the Government of Iraq. For this reason, she could allegedly not return to Syria. If returned, she would, furthermore, risk persecution due to the fact that she was a Sunni-Muslim.

The applicant further submitted two medical certificates, one issued on 24 February 1995 by Dr. Dag Jansson at the Psychiatric Clinic at Farsta and the other one issued on 11 April 1995 by Dr. Bengt Malmgren, chief physician at the same clinic. According to Dr. Jansson, the applicant would suffer mentally and physically if expelled from

Sweden. According to Dr. Malmgren, she was in a desperate situation and was suffering from anxiety, depression, suicide thoughts and insomnia. She had been admitted to a psychiatric ward on 27 March 1995 partly due to the suicide risk. According to Dr. Malmgren, she had seen him regularly thereafter. Dr. Malmgren further stated that the applicant sometimes had difficulties in controlling her suicide thoughts and considered that she would probably try to commit suicide if she was not granted a residence permit.

On 9 May 1995 the Aliens Appeals Board rejected the appeal. Concurring with the National Immigration Board, it considered that the applicant was not entitled to asylum in Sweden. It further found that the circumstances invoked by the applicant did not justify granting her a residence permit on humanitarian grounds.

The applicant later lodged new applications for a residence permit with the Aliens Appeals Board. She stated, inter alia, that she had informed the Swedish police that her husband and his brother were involved in the smuggling of asylum-seekers to Sweden and that she had thus put her life at risk. She also submitted a statement of 4 June 1995 by Lars Billing, a psychologist, who considered the very detailed information given by the applicant to the immigration authorities to be credible and to constitute sufficient humanitarian grounds for granting her a residence permit.

The applicant further submitted a medical certificate issued on 25 August 1995 by Dr. Michael Brune, a specialist in psychiatry and neurology, who made the following conclusions:

(translation)

"[The applicant] is in a deep crisis and is absolutely desperate and probably on the verge of a complete nervous breakdown, which, if it happens, could involve a psychotic reaction and/or an absolute loss of control.

One should assume that there is a great risk that she will commit self-destructive acts when she is told that the enforcement of the expulsion is inevitable or when the expulsion is actually enforced. Her expressed plans to take her own life if she is returned to Syria should be taken very seriously. There is thus a considerable suicide risk also after the expulsion has been enforced.

Moreover, [the applicant] has obviously been traumatised by her life in Syria. A closer and deeper psychiatric assessment of this trauma is, however, possible only when the conditions under which she lives have become more stable. The seriously critical state she is in at the moment could probably to some extent be explained by this trauma."

On 8 and 30 August 1995 the new applications were rejected by the Aliens Appeals Board. On 23 August 1995 the applicant was placed in detention pending enforcement of the expulsion order. This decision was upheld by the County Administrative Court (Länsrätten) of Stockholm on 12 September 1995 and by the Administrative Court of Appeal (Kammarrätten) of Stockholm on 3 October 1995.

On 30 August 1995 the applicant was due to give testimony in a trial in Stockholm concerning the murder of an Iraqi citizen which was allegedly connected with the smuggling trade in which the applicant's husband and brother-in-law were involved. This was, however, cancelled as the applicant, fearing for her life, did not dare to testify.

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, by decisions of 3 and 6 September 1995, stayed the enforcement of the expulsion order pending the Commission's decision on the admissibility of the application. The Board further decided that the applicant should remain in detention.

#### COMPLAINT

The applicant complains that her expulsion to Syria would violate Articles 3 and 5 of the Convention, as she would risk degrading treatment by her family, other individuals and the Syrian authorities and as, due to her present mental state, it would constitute inhuman treatment and infringe upon her right to personal freedom and security to expel her.

#### PROCEEDINGS BEFORE THE COMMISSION

The application was introduced and registered on 1 September 1995.

On the same day the President of 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 Syria until the Commission had had an opportunity to examine the application. The President further decided, in accordance with Rule 48 para. 2 (b), to communicate the application to the respondent Government.

By decision of 14 September 1995, the Commission prolonged its indication under Rule 36 until the end of the Commission's session between 16 and 27 October 1995.

The Government's observations were submitted on 6 October 1995 after an extension of the time-limit fixed for that purpose. The applicant replied on 21 October 1995.

#### THE LAW

The applicant claims that she would risk degrading treatment upon return to Syria and that, due to her present mental state, it would constitute inhuman treatment and infringe upon her right to personal freedom and security to expel her. She invokes Articles 3 and 5 (Art. 3, 5) of the Convention.

The Commission considers that the applicant's complaint, as submitted, falls to be examined exclusively under Article 3 (Art. 3) of the Convention. This Article (Art. 3) reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government submit that the application should be declared inadmissible for being manifestly ill-founded. The Government argue that the applicant initially submitted false information about her identity and country of origin to the Swedish immigration authorities and later maintained this information for a considerable period of time. Allegedly, it is very likely that she would not have been granted a residence permit had she submitted the correct information from the beginning. In this connection, the Government assert that it was a well-known fact at the time of the applicant's initial application for asylum that Iraqi asylum-seekers were allowed to stay in Sweden. The Government contend that Swedish authorities should not have to accept that persons coming to Sweden under false premises are allowed to remain in the country. The Government further submit that, against this background, also the trustworthiness of the new information presented

by the applicant must be called into question. Moreover, considering that the applicant left Syria legally and that the Syrian authorities in December 1994 allegedly informed the Swedish Embassy in Damascus that the applicant is welcome back to Syria, the Government find it unlikely that she would suffer any harassment from the Syrian authorities. The Government further contend that Swedish authorities cannot be held responsible for the measures which, according to the applicant, might be taken against her by her family or other private subjects and which most certainly constitute criminal offences in Syria.

As regards the applicant's mental state, the Government submit that her present situation, to a very large extent, has been created by herself due to the false information submitted to the Swedish immigration authorities. Moreover, a reason for her mental problems is allegedly her fear of what will happen to her in Syria. Having regard to the above statements, the Government contend that this fear is highly exaggerated and, in any event, unsubstantiated. Finally, the Government maintain that, when enforcing the expulsion, the police authority in charge will take into account the applicant's state of health and find the most appropriate manner for such an enforcement. Should the applicant's health be such that expulsion cannot take place, the police is obliged to notify the National Immigration Board which may decide to stay the enforcement until further notice.

The Government conclude that no substantial grounds have been shown for believing that the applicant would face a real risk of treatment contrary to Article 3 (Art. 3) of the Convention if the expulsion order were to be enforced and that she has not substantiated her allegation that the enforcement would amount to inhuman treatment in view of her present mental and personal conditions.

The applicant submits that, being an Arabic woman and thus used to obey the husband and other men, she followed her brother-in-law's instructions when submitting the initial information to the immigration authorities in support of her application for asylum. She was afraid of what could happen to her if she did not follow those instructions. She was not aware that Iraqi citizens at that time were allowed to stay in Sweden. She contends that, if expelled to Syria, she runs a substantial risk of being exposed to degrading treatment by her family, in particular her father, and, due to her knowledge of certain circumstances regarding the murder of the Iraqi citizen, by the people involved in the trade of smuggling asylum-seekers. She contends that it is irrelevant that this threat comes from private subjects. Furthermore, the applicant claims that there are very good reasons to believe that she is of interest to the Syrian authorities because of her involvement in the Communist Party and the information submitted by her husband to the Syrian Government. On account of that information she might be considered an enemy of the Syrian State or might not be protected from being ill-treated or murdered by the above smugglers.

With regard to her present state of health, the applicant states that it is a result of her fear of the treatment awaiting her in Syria. Allegedly, as indicated in the medical certificates, she is likely to commit serious self-destructive acts if returned to Syria. There are thus strong humanitarian reasons for letting her stay in Sweden.

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, 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).

With respect to the risk allegedly facing the applicant upon return to Syria, the Commission considers that she has not submitted any evidence in support of her claim that she would suffer harassment from the Syrian authorities and private persons and organisations. In this connection, the Commission also notes that the applicant presented this claim to the Swedish immigration authorities on 24 January 1995, i.e. about two and a half years after her arrival in Sweden, and that she had previously submitted false information about her identity, country of origin and grounds for seeking asylum in Sweden. For these reasons, the Commission does not find it established that there are substantial grounds for believing that she would be exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) in Syria.

The Commission next has to examine whether, in view of the applicant's state of health, an enforcement at present of the expulsion order would in itself involve such a trauma for her that Article 3 (Art. 3) would be violated.

The Commission recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (cf. Eur. Court H.R., Cruz Varas and Others judgment of 20 March 1991, Series A no. 201, p. 31, paras. 83-84).

In the present case several medical certificates have been adduced by the applicant. The Commission has paid particular attention to the opinion of Dr. Brune of 25 August 1995, according to which the applicant is on the verge of a nervous breakdown and might very well try to commit suicide when informed about an imminent expulsion, during the actual enforcement and after her return to Syria.

In so far as the applicant's mental problems relate to her fear of what will happen to her in Syria, the Commission recalls its above finding that no substantial basis has been shown for this fear. The Commission is, moreover, satisfied that the police authority in charge of the enforcement of the expulsion will take into account the applicant's state of health when deciding how the expulsion should be carried out. In this connection, the Commission notes that, should the applicant be taken into compulsory psychiatric care due to her mental problems, the expulsion order could under no circumstances take place without the permission of the chief physician responsible for her care (cf. No. 27249/95, Lwanga and Sempungo v. Sweden, Dec. 14.9.95, unpublished).

In the above circumstances, the Commission does not find it established that the applicant's return to Syria would amount to a violation of Article 3 (Art. 3) on account of her present state of health.

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

For these reasons, the Commission, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE.**

Deputy Secretary to the Commission

(M. de SALVIA)

President of the Commission

(S. TRECHSEL)