

AS TO THE ADMISSIBILITY OF

Application No. 26969/95
by D. B.
against Sweden

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

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTIL
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
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BİRSAN
P. LORENZEN

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 23 November 1994
by D. B. against Sweden and registered on 4 April 1995 under file
No. 26969/95;

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

Having regard to the observations submitted by the respondent
Government on 24 May 1995 and the observations in reply submitted by
the applicant on 21 and 26 June 1995;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a student. Before the Commission he is
represented by Mr. Christer Mellberg, a lawyer practising at Hedemora.

The applicant arrived in Sweden on 11 February 1991 after having travelled via Guinea, Tripoli and Moscow. He applied for asylum a few days later. In subsequent police interrogations in February and March 1991 he stated that his name was D. B., that he was born in 1966 and that he was a Liberian citizen. He maintained that he had been studying business administration at the University of Monrovia for three and a half years and that his parents had been killed in Liberia in October 1990. Allegedly, his father had been a high-ranking adviser to the minister of finance in the overthrown Government of President Samuel Doe. Accused of having embezzled public funds and sent money overseas, the father had been executed by the troops of Prince Johnson. These troops were also searching for the applicant, as he supposedly knew about the money. The applicant further asserted that he had been a very active member of the students' union before the death of his relatives. He claimed that his life would be in great danger if he was returned to Liberia.

Despite doubts concerning the applicant's true identity, the National Immigration Board (Statens invandrarverk), on 15 January 1992, granted him a permanent residence permit, apparently on the basis of the above information. The Board applied Chapter 3, Section 1, subsection 3 of the Aliens Act (Utlänningslagen, 1989:529), which provides that a residence permit shall be granted to a person who is not considered a refugee but nevertheless, because of the political situation in his or her native country, has weighty reasons for not wanting to return.

In November 1993 the Immigration Board was informed that the British police had confiscated a letter in the applicant's name addressed to a person in Nigeria. It contained, inter alia, two letters which seemed to be addressed to the applicant's parents. A year later, the Board decided to discontinue its investigation of this matter.

On 8 July 1994 the District Court (Tingsrätten) of Huddinge found the applicant guilty of a drug offence and sentenced him to two years' imprisonment. Noting that the applicant did not have any close links with Sweden and having regard to the seriousness of the offence and the possibility that he would reoffend, the Court further ordered his expulsion from Sweden in accordance with Chapter 4, Sections 7 and 10 of the Aliens Act.

The Immigration Board had been requested by the Court to state whether there were any impediments to the applicant's expulsion to Liberia. In its statement, the Board referred to Chapter 8, Sections 1-4 of the Aliens Act, which, in so far as relevant to the present case, states that a person cannot be sent to a country where he faces the risk of capital or corporal punishment, torture or persecution. Furthermore, a person referred to in Chapter 3, Section 1, subsection 3 of the Act cannot be sent to his native country, if he can invoke extraordinary reasons against this. The Board, however, concluded that these provisions did not prevent the applicant's expulsion.

On 9 September 1994 the Svea Court of Appeal (Svea hovrätt) upheld the District Court's judgment. On 4 November 1994 the Supreme Court (Högsta domstolen) refused the applicant leave to appeal.

The applicant later requested the Government to exercise its power under Chapter 7, Section 16 of the Aliens Act to annul the expulsion order. In addition to the information given at the initial police interrogations, he maintained that his sister, whose whereabouts he previously had claimed were unknown, had been killed in Liberia together with other relatives of his. He further claimed that he had not committed the crime of which he had been convicted and referred to his marriage, on 24 August 1994, to a Swedish woman. His request was, however, refused by the Government on 24 May 1995.

The applicant was released from prison on 1 June 1995. By a decision taken the same day by the Police Authority of Norrtälje, he was detained as his identity was unclear. After a subsequent investigation, during which the applicant's dialect was analysed, the Police Authority concluded that he was Ghanaian and decided, on 18 July 1995, that he should be expelled to Ghana. On 27 July 1995 the decision was upheld by the Government.

Thereafter, the applicant stated to the police that his real name was P. E., that he was born in 1972 and that he was a citizen of Nigeria. In support of this information he presented a Nigerian passport, valid until May 2000. In view of this, the Police Authority decided to expel the applicant to Nigeria. The expulsion was carried out on 2 August 1995.

COMPLAINTS

Invoking Article 3 of the Convention, the applicant maintains that, because he is supposed to have knowledge of the money his father allegedly embezzled, and because of his activities within the students' union, he will either be executed or imprisoned for life if returned to Liberia. He further states that he is innocent of the crime of which he has been convicted. He also refers to his marriage with a Swedish woman.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 November 1994 and registered on 4 April 1995.

On 12 April 1995 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 Liberia 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 25 May and 6 July 1995, the Commission prolonged its indication under Rule 36, ultimately until the end of the Commission's session between 4 and 15 September 1995.

On 24 July 1995 the applicant requested the Commission to recommend the Government of Sweden not to deport him to Ghana. On 25 July 1995 the President of the Commission decided not to indicate to the Government, pursuant to Rule 36, the measure suggested by the applicant.

The Government's observations were submitted on 24 May 1995. The applicant replied on 21 and 26 June 1995. Further observations were submitted by the Government on 21 July and 15 August 1995 and by the applicant on 30 July and 31 August 1995.

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 petition should be declared inadmissible either because, in view of the allegedly false information submitted by the applicant, it is an abuse of the right of petition or because, in any event, it is manifestly ill-founded. In the alternative, the Government submit that the petition should be struck

off the Commission's list of cases, as, in view of the circumstances, it is no longer justified to continue the examination of it.

The Government argue that the applicant has submitted false information about his background and his identity to the Swedish immigration authorities and the Commission. He was therefore granted a residence permit on false premises. Moreover, the applicant has allegedly not shown that he would be ill-treated by the Liberian authorities. The Government thus contend that the applicant has not substantiated his claim that he would risk treatment contrary to Article 3 (Art. 3) upon return to Liberia. With respect to the expulsion to Nigeria, the Government claim that the enforcement did not meet with any difficulties.

As regards the applicant's marriage to a Swedish woman, the Government contend that the couple must have realised that it was highly unlikely that they would be able to settle and live together in Sweden, as, at the time of the marriage, the applicant's expulsion had already been ordered. Moreover, the applicant has not claimed that the couple would not be able to settle in Liberia or a third country. The Government therefore submit that the expulsion of the applicant did not interfere with the applicant's right to respect for his family life under Article 8 (Art. 8) of the Convention. If, however, the Commission finds that there has been such an interference, the Government claim that it was justified under para. 2 of Article 8 (Art. 8-2).

The applicant submits that he has given correct information to the Swedish immigration authorities and the Commission. He maintains that his name is D. B. and that he is a Liberian citizen. The letter sent to parents in Nigeria in his name was not written by him but by a friend who has the same first name. The Nigerian passport handed over to the police after the decision to expel him to Ghana was false. It was presented in an attempt to avoid an expulsion to Liberia. As he had met Nigerians in Sweden who had later moved back to Nigeria, he hoped that he would receive some protection in Nigeria. However, upon arrival at the airport in Lagos, he was arrested. He fears that he will be punished again for the drug offence of which he was convicted in Sweden, as the Nigerian authorities do not seem to take into account that he has already served a prison sentence in Sweden.

As concerns his marriage, the applicant submits that he has been together with his wife for four years and that they did not get married to improve his chances of being allowed to stay in Sweden. He claims that his wife has suffered a lot because of the situation.

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 the applicant claims that he will receive treatment contrary to Article 3 (Art. 3) of the Convention upon return to Liberia. In the end, he was, however, not expelled to Liberia but to Nigeria. There is nothing in the file to show that he risks being sent on from Nigeria to Liberia. In these circumstances, the Commission has to assess whether the expulsion to Nigeria raises an issue under Article 3 (Art. 3). In this respect, the Commission notes that the applicant, faced with the risk of being expelled to Ghana, presented a Nigerian passport, as he knew

some people in that country and hoped that he would receive some protection there. He claims, nevertheless, that he was arrested upon arrival at the airport in Lagos and that he fears punishment for the drug offences of which he has already been convicted in Sweden. The Commission, however, considers that, irrespective of whether he is a citizen of Liberia or Nigeria, the applicant has not shown substantial grounds for believing that he will face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention in Nigeria.

Without invoking any further Articles of the Convention, the applicant refers to his marriage to a Swedish woman as an impediment to his expulsion. In this respect, the Commission recalls that the expulsion of a person from a country where close members of his or her family live may amount to an infringement of the right to respect for family life guaranteed in Article 8 (Art. 8) of the Convention (cf., e.g., Eur. Court H.R., Moustaqim judgment of 18 February 1991, Series A no. 193, pp. 19 et seq., paras. 43 et seq.). Article 8 (Art. 8) 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 or morals, or for the protection of the rights and freedoms of others."

In this respect, the Commission notes that the applicant and his wife married on 24 August 1994, i.e. after the District Court, in its judgment of 8 July 1994, had ordered his expulsion from Sweden. The applicant, however, claims that he has been together with his wife for four years. The expulsion of the applicant may thus be considered as an interference with his right to respect for his family life.

With regard to the question whether the interference was justified under para. 2 of Article 8 (Art. 8-2), the Commission recalls that the applicant's expulsion was ordered in accordance with the applicable provisions of the Aliens Act and as a consequence of the applicant's conviction for a drug offence. The Commission therefore finds that the interference was in accordance with the law and pursued the legitimate aims of preventing crime and protecting health. As concerns the necessity of the interference, the Commission notes that the applicant and his wife married at a time when his expulsion had already been ordered. Having regard to this and the seriousness of the crime of which the applicant has been convicted, the Commission concludes that the interference with the applicant's right to respect for his family life was justified under para. 2 of Article 8 (Art. 8-2).

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.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(S. TRECHSEL)