

AS TO THE ADMISSIBILITY OF

Application No. 28285/95  
by Ahmed NIKOVIC  
against Sweden

The European Commission of Human Rights sitting in private on  
7 December 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. BÎRSAN  
P. LORENZEN  
K. HERNDL

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 August 1995 by  
Ahmed Nikovic against Sweden and registered on 22 August 1995 under  
file No. 28285/95;

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 11 October 1995 and the observations in reply submitted  
by the applicant on 12 November 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a student born in 1970, is a citizen of  
Yugoslavia. Before the Commission he is represented by his 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 25 November 1991 and applied for asylum. He stated that he was an ethnic Albanian resident in Montenegro. He had served in the Yugoslavian army for almost thirteen months when, on 16 November, he had deserted and left for Sweden via Denmark. During his military service, he had allegedly been harassed due to his ethnic origin by members of his military unit. He had once been held for a few days as a prisoner of war by Slovenian troops. After his escape from Yugoslavia, members of his family had allegedly received threats of punishment if they did not state his whereabouts. The applicant claimed that, if returned, he would be severely punished for desertion.

On 9 June 1993 the National Immigration Board (Statens invandrarverk) rejected the application. It further ordered the applicant's expulsion. The Board stated that deserters were punished only in exceptional cases and that, in any case, the severity of a possible sanction would not be such as to constitute a ground for granting the applicant asylum. It further found that the applicant would not risk being sent to a seat of war.

The applicant appealed to the Aliens Appeals Board (Utlänningsnämnden). In addition to the information previously submitted, he claimed that, upon return, he could be forced to join Serbian paramilitary groups, in which he risked harassment due to his ethnic origin. He further stated that he was living with a Swedish woman since June 1992.

On 12 October 1993 the Appeals Board rejected the appeal. It agreed with the reasoning of the National Immigration Board and further considered that the applicant's relationship with the Swedish woman was not sufficient to grant the applicant a residence permit.

Thereafter, the applicant went into hiding. He later lodged a new application with the Appeals Board. He submitted a medical certificate issued on 15 February 1995 by Dr. Kim Skoglund, a specialist in psychiatry, who had met the applicant on four occasions between October 1994 and February 1995. Dr. Skoglund gave the following opinion:

"He shows all the symptoms of a post-traumatic stress syndrome. A further expulsion decision could involve considerable risks to his mental and physical health. The suicide risk is not only great but also realistic and imminent if he is expelled. He is under mental stress which he can no longer stand and which could be compared to torture. It may leave a permanent mark on his mental health and may develop into mental illness."

The Appeals Board requested the opinion of Dr. Peter Nordström, a specialist in psychiatry regularly consulted by the immigration authorities (förtroendeläkare). After having examined the applicant himself, Dr. Nordström, in a statement of 16 March 1995, agreed with Dr. Skoglund that the applicant's symptoms indicated that he was suffering from a post-traumatic stress syndrome. Dr. Nordström, however, found it questionable whether there was a great and imminent suicide risk in view of the fact that the applicant had not made any suicide attempts so far. Dr. Nordström further considered that the applicant had a certain need of psychiatric care, although, allegedly, the prognosis for the applicant's mental state was not considerably worse in Yugoslavia. Dr. Nordström made the following further conclusions:

"The documentation shows that certain medical impediments to enforcement [of the expulsion] may exist and that, in

any case, the medical circumstances require special considerations. Due to the psychiatric symptoms, especially [the applicant's] aggressions in combination with his feeling of being misunderstood and unfairly treated and the existence of detailed and violent, though conditional, suicide plans, there is a risk of suicidal acts in connection with an expulsion decision, particularly in an enforcement situation. An attempt at enforcing a possible further expulsion decision requires the participation of competent and experienced personnel so as to reduce the risk of desperate and aggressive suicidal or other impulsive acts."

In reply to Dr. Nordström's statement, the applicant submitted a further medical certificate issued by Dr. Skoglund on 29 March 1995 and a statement of 21 March 1995 by Mr. Marcello Ferrada-Noli, a licentiate in medical science. Dr. Skoglund stated that the applicant was in need of psychiatric care which was not available in Yugoslavia. Mr. Ferrada-Noli considered that the applicant was suffering from a post-traumatic stress syndrome and that there was a severe suicide risk, more due to the applicant's traumatic experiences than the expulsion threat. For this reason, there was allegedly a great risk of suicide attempts also after the return of the applicant to Yugoslavia.

On 20 April 1995 the new application was rejected by the Appeals Board. It considered that the applicant's state of health was mainly due to the stressful situation of living in hiding and the uncertainty as regards the question whether he would be allowed to stay in Sweden. The Board concluded that the applicant's mental health did not constitute sufficient humanitarian grounds for granting him a residence permit, but noted that the precautions recommended by Dr. Nordström should be followed during the enforcement of the expulsion.

A further application by the applicant was rejected by the Appeals Board on 30 June 1995.

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 decision of 6 September 1995, stayed the enforcement of the expulsion order pending the Commission's decision on the admissibility of the application.

No preparations for the applicant's expulsion have yet been made, as he is still in hiding and as, at present, the Yugoslavian authorities do not allow the return of persons holding passports issued by the former Federal Republic of Yugoslavia.

## COMPLAINT

The applicant complains that his expulsion to Yugoslavia would violate Article 3 of the Convention. He claims that he is in danger in Yugoslavia due to his ethnic origin and to the fact that he has witnessed how the laws of war have been ignored by the Serbian armed forces and para-military groups. Furthermore, he risks severe punishment for desertion. There is also a significant risk that he will be involved in direct military actions. Finally, his mental health has, as confirmed by the medical certificates, deteriorated substantially and the risk of self-destructive acts should not be neglected.

## PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 16 August and registered on 22 August 1995.

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

By decisions of 14 September and 26 October 1995, the Commission prolonged its indication under Rule 36, ultimately until 8 December 1995.

The Government's observations were submitted on 11 October 1995 after an extension of the time-limit fixed for that purpose. The applicant replied on 12 November 1995.

## THE LAW

The applicant complains that his expulsion to Yugoslavia would violate 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 application should be declared inadmissible for being manifestly ill-founded. The Government argue that the applicant will not be involved in any direct military actions against his own will, as the Yugoslavian Army, at present, is not involved in a war. There are no obstacles to deporting the applicant even if he would be enrolled in the army. There is no indication that persons in the applicant's position have received treatment contrary to Article 3 (Art. 3) by the military authorities. Furthermore, if the applicant is brought to trial for desertion or for evading military service, a risk which itself is quite limited, the penalty he would receive would not amount to a violation of Article 3 (Art. 3). The Government maintain that the Yugoslavian authorities, at present, lack financial and practical resources to deal with the many deserters that have left the country in recent years. If deserters are brought to trial, there is, allegedly, a tendency to apply mild penalties like shorter prison sentences, suspended sentences or even fines.

As regards the applicant's mental state, the Government submit that the expulsion of the applicant will not exceed the threshold under Article 3 (Art. 3), although the medical certificates clearly indicate that the applicant suffers from serious mental disturbances. The Government recall the decision of the Aliens Appeals Board of 20 April 1995, in which the Board has given special directives for the enforcement of the expulsion order. The Government also note that, when enforcing the expulsion, the authority in charge must notify the National Immigration Board if it finds that enforcement cannot take place without risking the applicant's life or health or if further information is needed. In such a case, the Immigration Board may decide to stay the enforcement or take other necessary measures.

The applicant submits that, before leaving Yugoslavia, he was serving in a military unit together with several Serbian right-wing extremists. The extremists harassed the other unit members, especially the Albanians, with the silent approval of the officers. The extremists further committed several crimes against the civilians, including rape, burglary and murder. The applicant would be able to give testimony before a court which would be damaging to the Yugoslavian army and Government. There is thus reason to believe that he will be prevented from giving testimony or will lack protection from those who would not hesitate to silence him for good. The applicant further claims that he might have to take part in direct military actions upon return, as the Yugoslavian Government, at present, is mobilising its armed forces. Moreover, he may very well face punishment contrary to Article 3

(Art. 3) due to his desertion from the army. With regard to his present state of health, the applicant, referring to the medical certificates in the case, states that there is a serious and imminent suicide risk should the expulsion order be enforced.

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 Yugoslavia, the Commission considers that there is no indication that he will have to take part in direct military actions or that a possible sanction for desertion would be so severe as to raise an issue under Article 3 (Art. 3). Moreover, he has not submitted any evidence in support of his claim that he would suffer harassment from members of the Yugoslavian army or from the Yugoslavian authorities. For these reasons, the Commission does not find it established that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) in Yugoslavia.

Moreover, the Commission recalls that Chapter 8, Section 1 of the Aliens Act imposes an absolute obligation on the enforcement authority in Sweden to refrain from expelling an alien should the human rights situation in the receiving country constitute a firm reason to believe that he or she would be in danger of being subjected to capital or corporal punishment, or torture, in that country (cf. No. 25387/94, *Kas Ibrahim and Parsom v. Sweden*, Dec. 4.7.95, unpublished).

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 him 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 opinions of Dr. Skoglund of 15 February 1995 and of Dr. Nordström of 16 March 1995, according to which the applicant shows symptoms of suffering from a post-traumatic stress syndrome, is in need of psychiatric care and might try to commit suicide in connection with the enforcement of the expulsion order.

The Commission is satisfied that the police authority in charge of the enforcement of the expulsion order will take into account the applicant's state of health when deciding how the expulsion should be carried out. In this connection, the Commission recalls that the Aliens Appeals Board, in its decision of 20 April 1995, noted that the expulsion should be enforced in accordance with Dr. Nordström's recommendations, i.e. with the participation of competent and

experienced personnel so as to reduce the risk of suicidal acts by the applicant. The Commission further notes that, should the applicant, who, apparently, is not undergoing psychiatric care at present, later be taken into compulsory psychiatric care due to his mental problems, the expulsion order could under no circumstances take place without the permission of the chief physician responsible for his care (cf. No. 27249/95, *Lwanga and Sempungo v. Sweden*, Dec. 14.9.95, D.R. 83-A).

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

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(S. TRECHSEL)