AS TO THE ADMISSIBILITY OF

Application No. 28239/95
by Jakob SHABO and Others
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. BÎRSAN
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 11 August 1995 by Jakob SHABO and Others against Sweden and registered on 18 August 1995 under file No. 28239/95;

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 18 September 1995 and the observations in reply submitted by the applicants on 18 October 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicants are Jakob Shabo, a departmental manager born in 1940, his wife Angel More, an office clerk born in 1948, and their three sons Raimon, Dani and Majed Shabo, all students born in 1974, 1976 and 1981 respectively. They are all Syrian citizens and reside at

present at Västerås, Sweden. Before the Commission they are represented by Mr. Mats Hogfeldt, a lawyer practising at Västerås.

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

The wife and the children arrived in Sweden on 28 November 1989 and applied for asylum. The wife stated that her name was Jacklin Al Keder, that they were stateless Lebanese and that they had travelled, with the help of smugglers, from Lebanon where they were born and had lived all their lives. She further alleged that they had left Lebanon because of the ongoing civil war. On the basis of this information, the National Immigration Board (Statens invandrarverk), on 30 January 1990, granted them permanent residence permits on humanitarian grounds.

The husband arrived in Sweden on 31 August 1990, claiming that his name was Jakob Al Keder and in addition submitting the same information as his wife. He was granted a permanent residence permit on 13 January 1991 due to the family connection.

Later, the Police Authority at Västerås was informed that the applicants had submitted false information in support of their asylum applications. The spouses were interrogated in October 1991 and in February, April and September 1992, but denied the allegations. However, during an interrogation on 4 August 1993, the husband admitted that they were all Syrian citizens. He also handed over their Syrian identity documents. At the same time, he applied for asylum claiming that he risked political persecution in Syria. He would allegedly be arrested upon return due to suspected involvement in Christian political groups. Later, the husband claimed that he had attracted the interest of the Syrian security police in connection with a conflict at his place of work. Being the chairman of the local trade union, he had refused to help an employee accused of thefts. This employee was allegedly an informant to the security police. After having received threats from the security police, which falsely accused the husband of belonging to certain anti-government organisations, the family fled to Lebanon in February 1989. The applicants further claimed that they had submitted false information to the Swedish immigration authorities due to their fear of being sent back to Syria if their asylum applications were rejected.

On 5 October 1993 the District Court (Tingsrätten) of Västerås convicted the spouses of falsification of documents and use of false documents. They received suspended sentences and were ordered to pay fines of 4500 and 2400 SEK respectively.

The applicants submitted medical certificates concerning the children to the Immigration Board. These certificates, issued on 5 April 1994 by Dr. Christer Heedh, chief physician at the Children's Psychiatric Centre at Västerås, stated that the children suffered from mental insufficiencies which would require treatment for a long period of time.

By decision of 26 October 1994, the Immigration Board, basing itself on Chapter 2, Section 9 of the Aliens Act (Utlänningslagen, 1989:529), revoked the applicants' residence permits due to the false information originally submitted by them. It further ordered their expulsion. With regard to the new information presented by the applicants, the Board did not question the allegation that the husband had been involved in a conflict at his place of work. It considered, however, that, as the incident had not been of a political nature and had taken place a long time ago, it would not be of any interest to the Syrian authorities. The Board thus concluded that the applicants were not entitled to asylum. It further considered that the family's prolonged stay in Sweden and the children's mental problems had been caused by the applicants themselves, as they had lived in uncertainty for several years due to the false information submitted to the

immigration authorities. The Board therefore concluded that the length of stay and the mental problems did not constitute grounds for letting the family stay in Sweden.

The applicants appealed to the Aliens Appeals Board (Utlännings-nämnden). They maintained that the family had lived in Sweden for more than five years and that the children were integrated into the Swedish society. The applicants further submitted new medical certificates concerning Dani and Majed issued on 8 February 1995 by Ms. Moa Thölin, a nurse at the above Psychiatric Clinic, and attested by Dr. Mildred Oudin, a chief physician at the Clinic. These persons mainly confirmed the conclusions made by Dr. Heedh.

On 11 April 1995 the Aliens Appeals Board, agreeing with the Immigration Board's findings, rejected the appeal.

The applicants later lodged a new application for residence permits with the Appeals Board. They claimed, inter alia, that, upon return, the eldest son would have to perform military service and would probably be punished for draft evasion. Moreover, the children would not, after their long stay in Sweden, be able to benefit from any school education in Syria and their development would therefore be seriously impaired.

The applicants further asserted that the children's mental health had seriously deteriorated after the Appeals Board's decision. In support of this allegation, they submitted new medical certificates issued on 4 May 1995 by Dr. Heedh, according to whom the children feared a return to a country which they had left six years ago and to which they no longer had any ties. They were suffering from depressions and their mental state had clearly deteriorated since April 1994, when they had last been examined by Dr. Heedh. Dr. Heedh concluded that there was a clear risk of suicide attempts should the expulsion order be enforced. The applicants claimed that the parents also had mental problems. The husband allegedly suffered from a depression. With respect to the wife, a medical certificate was submitted. Issued on 27 April 1995 by Dr. Peter Afram, assistant chief physician at the psychiatric ward at the Södertälje hospital, it stated that she suffered from a post-traumatic stress disorder, that she was depressed and had suicide thoughts, that she was in need of psychiatric care and that she had been under Dr. Afram's treatment since January 1995. Dr. Afram considered that the suicide risk might very well be serious.

On 26 June 1995 the new application was rejected by the Appeals Board, which stated that it found no reason to change its previous findings, despite the new medical evidence.

According to a new medical certificate concerning the wife, issued by Dr. Afram on 21 August 1995, she was in need of compulsory psychiatric care.

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 applicants until the Commission had had an opportunity to examine the present application, the National Immigration Board, by decision of 28 October 1995, stayed the enforcement of the deportation order.

COMPLAINT

The applicants complain, under Article 3 of the Convention, that an expulsion to Syria would constitute inhuman treatment, at least with respect to the children. They invoke the risk for the applicant husband upon return to Syria, the family's long stay in Sweden and their present mental state.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 August 1995 and registered on 18 August 1995.

On 17 August 1995 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 applicants 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 18 September 1995 after an extension of the time-limit fixed for that purpose. The applicant replied on 18 October 1995.

THE LAW

The applicants complain that an expulsion to Syria would constitute inhuman treatment. They invoke 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 applicants initially submitted false information about their identities and country of origin to the Swedish immigration authorities and later maintained this information for a considerable period of time. They were thus able to obtain residence permits and considerably prolong their stay in Sweden. Allegedly, it is very likely that they would not have been granted residence permits had they 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 applicants' initial application for asylum that stateless persons from Lebanon 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 applicants must be called into question. Furthermore, as concerns the interest of the Syrian security police in the husband, it is hardly likely that he now, many years after the alleged incident at his place of work, would suffer any harassment from the Syrian authorities. The Government further contend that the risk of the children not being able to benefit from any school education in Syria is of no relevance in the context of Article 3 (Art. 3) of the Convention.

As regards the applicants', and in particular the children's, mental state, the Government submit that their situation has been trying and stressful for a considerable period of time and that this has caused depressions. However, the situation has, to a very large extent, been created by the false information submitted to the Swedish immigration authorities by the applicant spouses. The applicants would not have been in their present situation had they submitted correct information from the beginning. Moreover, the applicants' state of health is allegedly a result of their fear of what will happen to them in Syria. Having regard to the above statements, the Government contend that this fear is highly exaggerated. Finally, the Government maintain that, when enforcing the deportation, the police authority in charge will take into account the applicants' state of health and find the

most appropriate manner for such an enforcement. Should the applicants' health be such that deportation 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 applicants 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, with respect to their present state of health, the threshold under Article 3 (Art. 3) would not be exceeded in case of enforcement.

The applicant submits that the application should be declared admissible. They claim that there is a risk that the Syrian security police will subject the applicant husband to treatment contrary to Article 3 (Art. 3) of the Convention. Furthermore, considering the present state of health of the applicants, in particular the children, a deportation to Syria would allegedly be inhuman and a violation of Article 3 (Art. 3). In this connection, the applicants assert that the children cannot be blamed for their parents' actions. Moreover, the children's integration into the Swedish society, their school education and their linguistic development are of great importance and should be taken into account. The applicants also submit that their present situation could have been avoided if the Swedish immigration authorities had acted more speedily.

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 for the applicant husband to return to Syria on account of the Syrian security police's alleged interest in him, the Commission notes that the incident at his place of work took place prior to the family's escape to Lebanon in February 1989, i.e. more than six and a half years ago. The Commission further considers that the applicants have not submitted any evidence in support of this claim. In this connection, the Commission also notes that the applicants presented this claim to the Swedish immigration authorities in August 1993, i.e. more than three and a half years after their arrival in Sweden, and that they had previously submitted false information about their 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 the husband 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 applicants' state of health, an enforcement at present of the expulsion order would in itself involve such a trauma for them 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 applicants. The Commission has paid particular attention to the opinions of Dr. Afram of 27 April 1995 and Dr. Heedh of 4 May 1995, according to which the wife and the children are suffering from depressions and might very well try to commit suicide should the expulsion order be enforced. Furthermore, according to Dr. Afram's statement of 21 August 1995, the wife was in need of compulsory psychiatric care.

In so far as the applicants' mental problems relate to their fear of what will happen to them in Syria, the Commission recalls its above finding that no substantial basis has been shown for this fear. It appears that the main reasons for the applicants' mental problems are that they have for many years lived in uncertainty as to whether they would be allowed to remain in Sweden and that they have, during this period, in various respects integrated into the Swedish society. Although the prolonged stay in Sweden, to a lesser extent, may be due to the conduct of the Swedish immigration authorities, it appears that it is mainly an effect of the applicants' failure to provide the authorities with correct information.

The Commission notes that the applicants' present state of health has not led to their being taken into psychiatric care. It is, moreover, satisfied that, whether or not they at the time are under psychiatric care, the police authority in charge of the enforcement of the expulsion will take into account their state of health when deciding how the expulsion should be carried out. In this connection, the Commission further notes that, should the applicants be placed in compulsory psychiatric care, the expulsion could under no circumstances take place without the permission of the chief physician responsible for their 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 applicants' return to Syria would amount to a violation of Article 3 (Art. 3) on account of their 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 — President of the Commission

(M. de SALVIA) — (S. TRECHSEL)