



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34566/04  
by Francis GOMES  
against Sweden

The European Court of Human Rights (Second Section), sitting on 7 February 2006 as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 29 September 2004,

Having regard to the interim measure indicated on 5 October 2004 to the respondent Government under Rule 39 of the Rules of Court, and the fact that this interim measure has been complied with,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Francis Gomes, is a Bangladeshi national born in 1966 and currently living in Sweden. He was represented before the Court by Mr Gazi Ziauddin, Bromma. The respondent Government were represented by Ms Anita Linder, Ministry for Foreign Affairs.

## A. The circumstances of the case

### 1. *The period between 1986 and 2000*

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

The applicant left Bangladesh on 6 May 1993 and came to Sweden where he applied for political asylum. He claimed that he used to be a member of the Bangladesh Sharbahara party (hereinafter “the party”), an opposition left-wing party. He further claimed that, due to his political involvement, he had been arrested and jailed in 1986 and subjected to repeated torture. He had been released after 15 days. On 18 November 1992 the Dhaka Judge Court had sentenced him to life imprisonment with hard labour for illegal possession of arms. However, the verdict had allegedly been an attempt to put an end to his political activity.

His application was rejected by the then Immigration Board (*Invandrarverket*) on 17 June 1994 and by the Aliens Appeals Board (*Utlänningsnämnden*) on 7 February 1996, which concluded that the applicant would have the opportunity to receive a fair trial upon return to Bangladesh, and that political activity did not, as such, entail persecution by the authorities in Bangladesh. The applicant was sent back to Dhaka in April 1996.

The applicant returned to Sweden on 24 November 1999, again applying for asylum. He claimed that, upon arrival in Bangladesh in April 1996, he had been arrested by the military and brought to a police station where he had been questioned. Before the questioning, a member of the military had made the secret sign of the Sharbahara party. During the questioning, the soldiers had said that they had been looking for him and that they wanted to know whether he was Francis Gomes, member of the Sharbahara party. He was then tortured badly and transferred to a prison from which he had escaped in December 1996, with the help of a party friend. In spite of the torture he had not revealed his identity, which was, the applicant claimed, probably why the sentence of life imprisonment had not been executed. After having escaped, he had lived in hiding for a few months but had continued to work for the party.

The applicant further stated that he had been arrested at a party conference in Jehore in April 1997, after which he had been jailed and repeatedly tortured. After eight months’ imprisonment a party friend had helped him escape. Following his escape he had found out that he had been charged with the murder of another prisoner.

He had again lived in hiding, but had continued to work for the party. He had distributed leaflets and had been able to work quite freely. However, during a demonstration in May 1998, he had been arrested and tortured anew. Three party members had been killed during the demonstration and

he had been accused of the killings. Proceedings had been instituted against him in Jeshore. He believed that he had escaped sometime in November or December 1998. This time too, he had received help from a party member. He had subsequently found out that a court in Dhaka had sentenced him to death *in absentia* on 3 March 1998 for the murder of his cell-mate of which he had been accused in 1997.

In a letter to the Aliens Appeals Board in February 2000 the applicant submitted that after his escape in December 1996 his political party had helped him to contact 'Refti', a nursing home in Dhaka where he had been treated daily for his torture injuries. After his escape in November 1997, he had returned to Refti and had been treated there daily between 26 November 1997 and 18 January 1998. Following his escape in December 1998, he had received treatment in a nursing home in Bashabo.

The party had helped him leave Bangladesh. He submitted before the Immigration Board that he risked being killed by his own party, because members who had been jailed were regarded as a security risk since they could reveal secret information concerning the party. His life was also threatened by Muslim fundamentalists since he was a Christian. He had once been taken captive by such people and was to be killed. He had, however, managed to scare off his captors. Besides the death sentences against him, the Government had ordered the police to shoot members of the Sharbahara party.

On 22 December 1999 the Immigration Board rejected the applicant's request for asylum. It made the following observations: The applicant had travelled to Sweden with a false passport and had not applied for asylum until this had been discovered. He had also submitted unclear information regarding the details of his journey and had thus tried to hide information relevant to the investigation. Considering his submissions that he had on numerous occasions been arrested and tortured, that a life sentence had not been executed because the authorities had not been able to identify him, that he had in the meantime continued to work for the party, that he was persecuted by Muslim fundamentalists, and that he risked being executed by his party despite having been continuously helped by the party to escape and in the end to leave the country, the Immigration Board concluded that the applicant was not credible. It also remarked that he had not been able to submit any documentation regarding his allegations.

Upon appeal, the Aliens Appeals Board, by a decision of 20 June 2000, granted the applicant a permanent residence permit. It reiterated that the applicant had been committed under the Act on Compulsory Psychiatric Care between 16 February and 20 March 2000, having been suicidal and diagnosed with potential post-traumatic stress disorder (PTSD), which had however not been confirmed. The applicant had also submitted a medical certificate concluding that it was probable that he had been subjected to torture as alleged. The Appeals Board deferred to the conclusions of the

Immigration Board with regard to his credibility. However, due to his medical condition, the applicant was entitled to stay in Sweden.

## 2. *The criminal proceedings*

The applicant's wife joined him in Sweden in May 2003 together with their daughter Sara, born in 1997. Sara is physically handicapped and dumb. The applicant also has a 12-year-old son in Bangladesh with whom he has no contact. On 23 October 2003 the applicant was charged with aggravated assault against a woman (*grov kvinnofridskränkning*), it being alleged, *inter alia*, that on several occasions he had beaten his wife when she had refused to have sex with other men who had promised the applicant money, and had otherwise systematically abused her. The applicant had replied that, due to the torture he had become impotent and for this reason his wife had met another man. It was the applicant's understanding that they had conspired to put him in jail.

On 17 November 2003 the District Court (*tingsrätten*) of Stockholm convicted the applicant as charged. He was sentenced to one year's imprisonment and subsequent expulsion from Sweden, being forbidden to return before 17 November 2010, in accordance with Chapter 1, section 8 of the Penal Code, in conjunction with the relevant provisions of the Aliens Act.

Subsequent to the applicant's conviction, divorce proceedings between the applicant and his wife had been initiated at the Stockholm District Court. The same court had also awarded the applicant's former wife custody of their daughter. The applicant had appealed this latter decision.

Concerning the issue of the applicant's expulsion, the Migration Board (*Migrationsverket*) submitted to the District Court that there was no obstacle to expelling the applicant to Bangladesh. The court did not make any separate assessment in this respect, but deferred to the conclusion of the Migration Board. It further noted that, ever since the applicant had been granted a permanent residence permit in Sweden, he had received a social security allowance and had been on sick-leave due to psychiatric problems until May 2003. It therefore questioned to what extent he had acquired a real connection to Swedish society. Moreover, the violence of which he had been convicted had been aimed at one of his two family members, his only relatives in Sweden. The court held that, considering the nature of the violence and the applicant's ruthlessness, it could not be excluded that he would again commit a crime in Sweden. Having regard to his weak links with Sweden, as well as to the fact that he had had a residence permit for less than four years, the Court held that he could be expelled.

Both the prosecutor and the applicant appealed against the sentence, and the applicant also appealed against the expulsion order. On 5 March 2004 the Svea Court of Appeal (*Svea hovrätt*) raised the sentence to one year and

six months' imprisonment, but otherwise confirmed the verdict and agreed with the assessment of the District Court. On 11 May 2004 the Supreme Court (*Högsta Domstolen*) refused the applicant leave to appeal.

The applicant's expulsion was to be enforced on 5 October 2004. On 28 September 2004 the police authority decided that he should be taken into custody upon his release from prison on 30 September 2004, to await the execution of his expulsion order.

On 29 September 2004 the applicant submitted a petition to the Swedish Government, asking that the Government stay or quash the planned expulsion. No information has been submitted as to the outcome. In support of the petition, the application claimed that proceedings had been initiated against him in Bangladesh for the alleged killing of a Mr Anisur Rahman which had supposedly taken place in 1999. A group of investigators had found the applicant guilty of the killing. On 13 and 22 September 2004 a court had issued an arrest warrant for the applicant, referring to a provision in the Bangladeshi penal code under which the penalty, according to the applicant, was death or life imprisonment.

### 3. Evidence submitted

The applicant has submitted copies of Bangladeshi documents and translations thereof. One of the documents is a "charge sheet", dated 20 September 2003, according to which the injured party is the widow of the above-mentioned Mr Rahman. The applicant is mentioned as the "hidden guilty person", apparently registered in an area called Christian Para within the district of Pirjopur. It follows from the document, without further clarification, that a "preliminary report" had been issued on 31 May 1999. The charge sheet refers to the applicant as one of the two perpetrators of the alleged crime, the effect of which appears to have been the death of Mr Rahman. It states that a body was found covered in blood and that all the evidence was sent to the court. The second document is a Magistrate's "court order", dated 13 and 22 September 2004. It refers to a provision in the Bangladeshi Penal Code under which, according to the applicant, the penalty is death or life imprisonment. The document states that, on 21 December 2003, the investigation group found the applicant, who was in hiding, to be guilty as charged. Upon the request of the prosecutor, a warrant for his arrest was issued. The document states at the end "Accused has been accepted". The copies of the Bangladeshi documents are accompanied by a statement from a Mr Narayan Chandra Saha, senior advocate in the Dhaka and Gazipur Judge Court. The letter in English is dated 23 September 2004, addressed to the applicant and reads, *inter alia*, as follows:

"The punishment of the case might be either death sentence or life imprisonment and the facts of your absconding from the prosecution will contribute and confirm such depth of punishment. I understand quite well that a great unavoidable

circumstances like torture and persecution which has been used for you in jail and the possibility of killing by the members of your [Sharbahara party] compelled you to leave the country but the nature of the case is ignoring such facts of circumstances. By the fact in issue, you are the master mind and the authority of the event and the possibility of escaping is less as the procedural materials developed in the case.”

The applicant has also submitted transcripts from his medical journal and some medical certificates. In a transcript dated 17 August 1993 from the Centre for Torture Survivors (*Centrum för tortyrskadade*) at Karolinska Hospital (“the Centre”), the doctor concluded that the applicant had many scars and other marks on his body which could very well be the result of certain of the alleged acts of torture. A new transcript from his medical journal at the Centre is dated 11 January 2000 and states that, after his visit in 1993, the applicant submitted that he had been beaten, subjected to electric shocks, burned with cigarettes, drenched with hot water, suffocated, had needles put under his fingernails and his fingernails pulled out, and subjected to strong light and high volume noise. In a certificate dated 19 January 2000, also from the Centre, Dr Erik Edston, specialist in forensic medicine, noted that the applicant had acquired new injuries, many of which were consistent with scarring from cigarette burns. It could not be excluded that some of the marks had been contracted due to disease, but it was less probable that the scars would have arisen due to accidents or that they had been self-inflicted. He concluded that it was probable that the applicant had been tortured or beaten as alleged, and that many of the torture methods mentioned would only occasionally leave any lasting marks. The torture described was furthermore to a great extent compatible with the Centre’s previous experience of torture in Bangladesh.

In a certificate from the Centre dated 26 January 2000, Dr Hans Peter Søndergaard, chief physician and specialist in general psychiatry, noted that the applicant had urgent thoughts of suicide and was completely absorbed by the memories of traumatic experiences. He had severe sleeping problems and difficulties to eat. His speech was partly incoherent but he described electric torture in a manner indicating that he had experienced it.

## COMPLAINTS

1. The applicant complained under Articles 2 and 3 of the Convention that he faced a risk of being subjected to the death penalty or life imprisonment as well as torture in Bangladesh.

2. He further complained that, if expelled to Bangladesh, he would be separated from his daughter.

## THE LAW

1. The applicant complained that his deportation to Bangladesh would involve a violation of Articles 2 and 3 of the Convention. The Court finds that Article 1 of Protocol No. 13 to the Convention is also applicable to the applicants' complaints. In so far as relevant, these provisions provide as follows:

Article 2:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. ..."

Article 3:

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

Article 1 of Protocol No. 13:

"The death penalty shall be abolished. No one shall be condemned to such penalty or executed."

The respondent Government submitted that the application was inadmissible as being manifestly ill-founded on the basis of the following arguments.

During a study trip to Bangladesh in 2002, the Aliens Appeals Board found that no institutionalised persecution existed in that country. The Board also found that persecution for political reasons was a rare occurrence at grass-root level and was directed primarily towards leading politicians within the opposition. Individuals who were active in politics at grass-root level could avoid harassment by relocating within the country. However, Bangladeshi police did use torture, beatings and other forms of abuse while interrogating suspects, and there were occurrences of people being tried and sentenced *in absentia*, although it was rare.

In regard to the risks facing the applicant personally in the event of his return to Bangladesh the Government stated that the applicant had made several inconsistent statements in the course of the domestic proceedings. The Government pointed, *inter alia*, to the applicant's claim that he escaped from prison in December 1996. Considering that his daughter was born on 15 July 1997, he could not have been imprisoned in October 1996, during the time of conception.

The Government also pointed to the fact that, although the applicant claimed that he had never revealed his identity whilst under arrest or imprisoned, it had nevertheless been possible for the authorities to accuse, convict and sentence him to death for the murder of somebody who had died in his prison cell in Jeshore. The applicant had on several occasions changed his statement as to the time when he claimed to have been

sentenced to death. The Government found it remarkable that the applicant had not been able to remember such a vital date and, most importantly, he had never been able to submit a copy of the judgment in question.

As regards the alleged accusations against the applicant concerning the murder of a Mr Rahman, a local lawyer had, on behalf of the Government, visited the city of Pirjopur and examined the case file in question. Claiming that the investigation had shown that the documents, with great certainty, were forgeries, the Government noted, *inter alia*, the following as a result of the investigation: The name Francis Gomes was known neither to the police, nor to the local population. The site 'Christian Para' mentioned in the charge sheet did not exist. The reference numbers of the documents submitted by the applicant referred to cases with other persons involved and not the applicant. The Government concluded that there were no judgments against the applicant, let alone a death sentence, and that it was clear that he was not at risk of being executed or tortured on that account if he had to return to Bangladesh.

As concerns the applicant's claim that he risked torture upon return to Bangladesh, the Government stated that the applicant's fear thereof should have been most alarming just after his escapes from prison, where it had allegedly been inflicted on him for months. He had nevertheless immediately started to work for the political party again after having escaped. Less than four months after his escape in December 1996, he had participated in a meeting in Jeshore where the forbidden Sharbahara Party had held a conference. After having escaped a second time, in November 1997, the applicant had taken part in a demonstration in Dhaka already in May 1998. It also appeared contradictory to the Government that the applicant, on the one hand, claimed to have been hiding in the jungle for months after his escapes and that he did not dare to go outside in the daytime, and, on the other, that he had paid daily visits to a nursing home in Dhaka only some days after his escapes in December 1996 and November 1997. Moreover, the Government pointed to the fact that the applicant had not mentioned the treatment at the nursing home before the Immigration Board in 1999, although he should have realised that this information would have been vital to his application. Only in February 2000, before the Aliens Appeals Board, did he submit a certificate from the nursing home.

The applicant maintained his application.

The Court observes at the outset 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, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in



the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person to that country (see, among other authorities, *H.L.R. v. France*, judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 757, §§ 33-34).

Moreover, the Court does not exclude that analogous considerations might apply to Article 2 of the Convention and to Article 1 of Protocol No. 13 where the return of an alien puts his or her life in danger, as a result of the imposition of the death penalty or otherwise (see, e.g., *Bahaddar v. the Netherlands* judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, opinion of the Commission, p. 270-71, §§ 75-78, and *Sinnarajah v. Switzerland* (dec.), no. 45187/99, 11 May 1999, unpublished).

The Court finds that the issues under Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13 are indissociable. Sweden is bound by the said Protocol. The three articles will therefore be examined together.

The Court reiterates that the applicant's claim that his return to Bangladesh would violate his rights under the Convention is based on the allegation that he would risk being subjected to the death penalty, considering that one death sentence had already been pronounced against him and that he was currently the suspect in at least one other murder trial, the result of which could also be the death penalty. Furthermore, the applicant claimed that he had been a victim of torture several times before and that there was a risk that upon return he would be tortured again in detention.

The Court notes that the applicant has submitted no documents in proof of the alleged death sentence of 3 April 1998. Furthermore, the applicant has claimed that he was accused of the murder of certain party members during the demonstration in May 1998. This allegation has also not been substantiated and no documents have been submitted to support that the accusations exist.

With regard to the court documents in support of the claim that the applicant was charged with and wanted for the murder of another person, their authenticity is in dispute between the parties. The documents submitted by the applicant are copies. No sentence appears yet to have been pronounced against him in relation to those charges but, if he is sentenced, he claims to risk the death penalty. The Government's investigation in Bangladesh indicated that the Bangladeshi court documents submitted are most probably forgeries. The Government have pointed to the fact that the reference numbers of the documents are not connected to the proceedings invoked by the applicant nor indeed to the applicant at all. The cases to which the numbers refer concern other people. The applicant's name was not known to the police or to the local people in the town of Pirojpur, and no place called 'Christian Para', mentioned in the documents concerning the applicant as possibly his domicile or place of birth, existed in the area. All of the above compromises the applicant's credibility.

In assessing the applicants' statements, the Court has further regard to the following: The applicant returned to Bangladesh from Sweden in April 1996. He claims to have been imprisoned between his arrival and December 1996, between April and December 1997 and between May and November or December 1998. He has claimed that the police did not find out, during his arrests, interrogations and imprisonment, that he was once sentenced to life imprisonment and then to death, or that there were new charges pending against him. Neither the sentence of life imprisonment, nor the first alleged death sentence, were enforced. It appears unlikely that the said sentences would not have been discovered, and possibly enforced, during the considerable time the applicant claims to have spent in detention. Consequently, due to the contradictory character of the information given by the applicant, his credibility must be called into question.

Furthermore, the Court takes note of the fact that the applicant lived in Bangladesh for one year and eight months after the first death sentence was purportedly pronounced against him on 3 March 1998. He claimed to have become aware of the sentence after his release from prison in December 1998, without making clear exactly when. According to the documents submitted by the applicant, from May 1999 he was also suspected of another murder. He left Bangladesh to arrive in Sweden on 24 November 1999. Until this date, not only did he remain in the country, but he also worked politically and chose to take part in a demonstration and a conference, obviously not taking the previous sentences and the new charges seriously enough to actually leave Bangladesh. On the whole, therefore, the Court finds that the applicant's claims regarding the alleged sentences and charges cannot be taken seriously.

Moreover, the applicant claims that he has become a liability for the Sharbahara party due to his many imprisonments and that he therefore risks being killed by members of the party upon return to Bangladesh. He further alleges that the Bangladesh Government has ordered the police to shoot members of the Sharbahara party and that he faces a risk of becoming a victim of such an extra-judicial killing. In addition, he claims that, being a Christian, he risks being killed by Muslim fundamentalists. The Court observes, however, that the applicant has not substantiated these claims. He has not been able to show that he personally faces a risk of being killed by other party members, religious fundamentalists or by the Government.

Furthermore, the applicant claims that he was a victim of torture a number of times between 1986 and 1999, which is supported by the submitted medical certificates. The Court considers it odd, in the same way as regards the alleged death sentences, that the applicant not only remained in the country but continued his political work despite the torture to which he claimed to have been exposed and which was allegedly inflicted upon him as a result of that work.

Moreover, the applicant has not been able to show that the alleged convictions and accusations against him or warrants for his arrest are genuine. Hence, it must be considered that the applicant does not risk imprisonment for these reasons if returned, and that he consequently does not risk torture in connection with such imprisonment.

In view of the above and the applicant's demonstrably low credibility, the Court finds that it has not been established that there are substantial grounds for believing that, if deported to Bangladesh, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. For the reasons presented above, the same applies to the applicant's complaints under Article 2 of the Convention and Article 1 of Protocol No. 13. It follows that the application in this part is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant next complained that the expulsion to Bangladesh would violate his right to respect for his family life. He relied on Article 8 of the Convention, which provides as follows:

“1. Everyone has the right to respect for his private and family life ...

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 ... for the prevention of disorder or crime, or the protection of health or morals, or for the protection of the rights and freedoms of other.”

While acknowledging that the applicant's expulsion would amount to an interference with his right to respect for his family life, the Government maintained that the expulsion order had been decided in accordance with Swedish law and that it sought to achieve legitimate aims, namely “the prevention of disorder and crime” and “the protection of the rights and freedoms of others”.

As regards the necessity of the expulsion order, the Government made the following observations: When the order acquired legal force in May 2004, the applicant had been residing in Sweden for a continuous period of more than six years. The fact that the applicant had remained in the country for an additional time, in order to serve his prison sentence and then in detention awaiting expulsion, should not be afforded any weight in the assessment of whether the impugned measure could be considered proportionate to the legitimate aims pursued. The Government noted that the applicant during his time in the country had established no independent link to Swedish society as such. He had not established himself on the labour market, relying instead on social allowances as his main source of income. Moreover, the applicant had a 12-year old son who was still living in Bangladesh and with whom he must be considered to have just as strong links as with his daughter in Sweden. Although the applicant was granted a residence permit in June 2000, his wife and daughter did not arrive in Sweden until May 2003. On the whole, the Government maintained that the

applicant did not have any particularly close relationship with his family. The Government also noted that the applicant had committed the crime for which he was convicted against his own wife and that the assaults against her started almost immediately after her arrival in Sweden.

The Government did not dispute the existence of a family relationship between the applicant and his daughter, but considered it to be quite limited. In any event, they submitted that, upon return to Bangladesh, the applicant would not be prevented from maintaining the relationship with his daughter via letters, e-mail and other means. It would also be possible for the daughter to visit him in Bangladesh. Moreover, the prohibition on the applicant's visits to Sweden was only valid until 17 November 2010.

The Court finds that the expulsion of the applicant would constitute an interference with his right to respect for his family life, as guaranteed by Article 8 § 1 of the Convention. The Court also finds that the interference had a legal basis in Swedish law, in particular Chapter 1, section 8 of the Penal Code, in conjunction with the relevant provisions of the Aliens Act, and pursued a legitimate aim, namely the prevention of disorder or crime within the meaning of Article 8 § 2.

It remains to be determined whether the interference was "necessary in a democratic society".

The Court has stated that excluding someone from a country in which his close relatives live may raise a question under Article 8 inasmuch as it guarantees the right to respect for family life (see e.g. *Moustaquim v. Belgium*, judgment of 18 February 1991, Series A no. 193, § 36, p. 18, and §§ 43–46, pp. 19–20, and *Beldjoudi v. France*, judgment of 26 March 1992, Series A no. 234, § 74, p. 27).

It is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens. To that end they have the power to deport aliens convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Dalia v. France*, judgment of 19 February 1998, *Reports* 1998-I, p. 91, § 52; *Boultif v. Switzerland*, judgment of 2 November 2001, *Reports* 2001-IX, p. 130, § 46; *Jakupovic v. Austria*, no. 36757/97, § 25, 6 February 2003, unreported).

Accordingly, the Court's task consists in ascertaining whether in the circumstances the expulsion order struck a fair balance between the relevant interests, namely the applicant's right to respect for his family life, on the one hand, and the prevention of disorder or crime, on the other.

The Court notes that the applicant was residing in Sweden between his arrival in May 1993 and his deportation to Bangladesh in April 1996. He

then returned to Sweden on 22 November 1999 and is still residing there. However, between 11 May 2004 and 30 September 2004 he was serving a prison sentence and he has thereafter been detained awaiting expulsion. During his stay in Sweden, the applicant does not appear to have established any stable links with the country. For instance, he has been unemployed and living on social allowances.

The applicant's family connection to Sweden consists of his wife and his 8-year-old daughter. He has no other relatives in Sweden. Divorce proceedings between the applicant and his wife have been initiated and the District Court has appointed the wife as sole guardian for the daughter. The applicant has a 12-year-old son in Bangladesh with whom he has no contact. The daughter was born in Bangladesh and arrived in Sweden with her mother in May 2003. The Court observes that it is unlikely that the daughter would go to live with the applicant in Bangladesh or even to visit him there. However, the applicant can be in regular contact with his child through telephone conversations, letters and e-mail, and he can apply for a visa or a new residence permit to be allowed to re-enter Sweden as from 17 November 2010. Thus, although the first applicant's expulsion naturally would have implications for his family life, they are not so extensive as to make the continuation of the relationship between him and his daughter impossible. It should also be noted that the applicant lived in Sweden for almost three years before his wife and daughter joined him in May 2003 and that, since his arrest on 1 October 2003, he has remained detained or imprisoned. Consequently, he has only lived with his daughter for five months since November 1999.

Moreover, in order to decide whether the interference was justified, the interests of the applicant have to be balanced against the public order interests of Sweden to prevent disorder and crime. In this respect, it is reiterated that the applicant was charged with having beaten his wife when she had refused to have sex with other men who had promised the applicant money, and had otherwise systematically abused her. The one and a half year prison sentence imposed on the applicant, the length of which was decided with consideration being given to the detriment caused to him by the expulsion, shows the serious nature and gravity of the crime. The Court also recalls that the criminal acts committed by the applicant were directed towards his wife and that the applicant thereby showed little consideration for the importance of family life.

In these circumstances, the Court finds that it cannot be considered to be disproportionate to the legitimate aim of preventing disorder or crime to expel the applicant (see *Hussain and C. v. Norway*, (dec.) no. 36844/97, 4 May 2000, unreported, and *Najafi v. Sweden*, (dec.) no. 28570/03, 6 July 2004, unreported).

It follows that this part of the application is also manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President