CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 6576/05
by Mehmed LIMONI and Others
against Sweden

The European Court of Human Rights (Third Section), sitting on 4 October 2007 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mr L. LOUCAIDES,
Mrs E. FURA-SANDSTRÖM,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having regard to the above application lodged on 21 February 2005,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the indication of 20 February 2007 by the Serbian Government that they did not wish to exercise their rights to intervene pursuant to Article 36 § 1 of the Convention,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Mehmed Limoni, his wife Mrs Nizajete Limoni and their six children Senad, Samit, Sultijan, Sedat, Sultijana and Sunita Limoni, who were born in 1962, 1966, 1987, 1989, 1994, 1995, 1999 and 2003 respectively, are Serbian citizens of Roma ethnicity and live in Vänersborg.

They are represented before the Court by Mrs Ingrid Schiöler, living in Bohus-Björkö.

The Swedish Government ("the Government") were represented by their Agent, Mrs Charlotte Hellner, of the Ministry for Foreign Affairs.

A. The circumstances of the case

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

1. The background and proceedings before the national authorities

2. In 2000 the applicant family consisted of the parents, Mr Mehmed Limoni and his wife Mrs Nizajete Limoni, henceforth named ML and NL, and six children, including their eldest daughter Senada, who subsequently disappeared.

3. It is unclear where they lived at the relevant time.

4. ML's mother and one of his brothers lived in Sweden.

5. On 25 December 2000, NL and the three youngest children - at that time Sultijan, Sedat and Sultijana - entered Sweden and applied for asylum. They arrived in a car on a ferry from Germany. The driver of the car was ML's brother, who lived in Sweden.

6. An interview was held with NL during the night of 26 December 2000. Having been provided with an interpreter, whom NL said she understood, she stated essentially the following. She was illiterate. Neither she nor the children had ever had passports. For the past fourteen years she had lived with her husband and children in the village of Berivojce in the municipality of Kosovska Kamenica in Kosovo. ML was originally from that village.

7. She and the three youngest children had left Berivojce two years ago, i.e. in 1998/1999, when the war started. They went to Bujanovac in Serbia. ML and the rest of the children stayed in Berivojce with ML's brother. She had not seen them since she left because of the Albanians. She had sold the house in Kosovo in order to enable her to finance the trip to Sweden. She had paid 20,000 German marks (DEM) to be taken to Sassnitz in the north of Germany, where it was arranged that she would meet her brother-in-law. She met him on the ferry. She and the children had left Bujanovac about a week before and travelled to Germany hidden in a truck. She had problems with her heart and took medication for that. She had recently spent time in

hospitals in Serbia proper, namely in Vranje [north/east of Bujanovac] and in Novi Sad [north/west of Belgrade]. The children were said to be healthy and well.

8. NL submitted a number of documents to the Migration Board in connection with the interview, including a refugee card, a marriage certificate, birth certificates for the three children and a certificate of citizenship of Serbia. She stated that birth certificates for the rest of the family were available in Bujanovac. These documents had been issued on 18 December 2000.

9. Following a decision by the Migration Board of 26 December 2000, NL and the children were returned to Germany under the Dublin Convention.

10. Later, the German authorities informed the Migration Board that NL and the children had entered Germany on 27 December 2000 and applied for asylum two days later. They had all left Germany voluntarily on 31 January 2001. Attached to the German material was a fax copy of a document from the UNMIK Office in Kosovska Kamenica, according to which NL had contacted the office on 21 February 2001 and stated that she was a resident of the municipality and invoked several documents in support of this.

11. On 8 May 2001, the same four applicants returned to Sweden, again applying for asylum. An interview was held with NL the same day. Having been provided with an interpreter, whom NL said she understood, she stated *inter alia* the following. She had never been in possession of a passport. She had problems with her back and heart and with breathing. Sedat had trouble sleeping on account of what he had experienced during the war. She and the children had arrived in Belgrade four days ago. Through some distant relatives she had come into contact with a smuggler. She had paid him DEM 4,000 and given him some jewellery for taking them back to Sweden. They were taken by car from Belgrade directly to the Migration Board in Sweden. NL did not know where her husband was. She could not return to Kosovo because everything had been destroyed. The family had been subjected to violence from all sides because no one liked Roma people. Both she and her eldest daughter, Senada, had been raped.

12. On 6 March 2002, a second interview was held with NL. Having been provided with an interpreter, whom NL said she understood, she stated essentially the following. She was not well mentally and worried a lot about her husband and her three other children. The children were also in poor mental condition, especially Sedat. After the war had broken out in Kosovo, her family and other Roma people had suddenly been subjected to persecution by the Albanians. They had decided to leave Berivojce, where one of ML's brothers was also living. NL, ML and the children had fled through the woods to Bujanovac, where most Roma had gone. In Bujanovac they had stayed in something similar to a refugee camp but she did not

remember the name. They had stayed there for about a year. They had been provided with food and other necessities but there had always been a shortage, which had led to unrest. The family had stayed together throughout their time in Bujanovac.

13. ML suggested that NL should leave with three of the children and that he and the others should join them somewhere later. ML made the arrangements for the departure. She followed a smuggler who took her and the children to Germany, where they applied for asylum and waited for the others to arrive. After a couple of weeks they gave up and returned to Bujanovac via Belgrade. Neither ML nor the children were in the camp when she came back. No one knew where they had gone. At the time of this interview the family had been separated for about a year. NL denied having gone back to Kosovo after she was returned from Sweden to Germany. She had been provided with the UNMIK document in the Bujanovac camp. She could not return to Kosovo or any other place in former Yugoslavia. She had been harassed and subjected to sexual abuse there. Her eldest daughter might have been raped too, but she was not sure of that.

14. On 6 August 2002 ML, Senad and Samir applied for asylum in Sweden and stated that they had arrived on the same day.

15. On 20 November 2002 interviews were held with ML, NL and Senad. Having been provided with an interpreter, whom they said they understood, they stated essentially the following.

16. ML stated that he did not have a passport. He was nervous but had not seen doctors or taken medication. He had no physical problems. He was born and raised in Berivojce. The house used to belong to his father. His whole family used to live there, but in recent years they had all left Kosovo. ML, NL and the children were the last to leave the house and the last members of his family to leave the village. He had a sister in Serbia and four brothers who could be anywhere. His wife had distant relatives in Serbia. ML, NL and the children left Kosovo in 2000. He had been shot in the leg by the Kosovo Liberation Army (UCK) because he had refused to join them. He and his family had left because of the war and because they were often attacked. They went in two cars with three children in each. In Kuncul, near Bujanovac, his car was stopped by Albanians. He and the boys were held hostage for three weeks. The oldest girl Senada was taken away and the family had not heard from her since. He and the boys were released on condition that they burned down four houses. He was told that his daughter would be released if they cooperated. They burned the houses down and he was told to go to a certain place to collect his daughter but he did not dare to. Instead he and the boys went back to Kosovo to a former school house about three kilometres from their home. His own house was later burnt down like almost all the houses in the village. They stayed in a sort of warehouse that belonged to the school until they went to Sweden. Three or four other families were staying there as well. They got food from

an aid organisation, probably the Red Cross. The school was being run under the supervision of Russian soldiers. His boys did not attend classes. They were all left in peace as long as they did not leave the area. He and the boys went to Sweden by car. The cost for the trip was DM 4,000 plus some gold. He had raised money from doing business at markets around Kosovo. He used to earn money by buying merchandise in Bulgaria and selling it at home. After having left Berivojce and while staying under the protection of Russian forces, he and the boys lived on this money. He could not work during this period. As to the whereabouts of his wife and the three children that went with her, ML stated that after the family had been separated, NL and the children probably went to stay with an aunt who lived in a house near Belgrade for about 10 - 12 months. The family had made no plans before leaving Berivojce, they just wanted to get away. Smugglers took them in two cars. He thought the smugglers might have taken NL and the children to Bujanovac but was not sure. He went to look for her there and also went to other places where refugees had gathered. The boys were in Kamenica while he was away for a week and three days. There were no problems travelling in Serbia. It was tedious being in the camp but he saw no other safe place in Kosovo. Sweden was his only alternative. It was not until he called his mother about a year before that he learnt that NL and the children had arrived in Sweden.

17. NL stated that when the family left Berivojce, they left in two cars. The car in which ML and the three eldest children were travelling was stopped in Kuncul and they were captured. She and the others lost contact with them. They went straight to Sweden, where she applied for asylum. She was returned to Germany but did not want to stay there so she went to Belgrade and stayed with an old relative for a few days. In relation to her earlier statements about having spent time with the family in Bujanovac before coming to Sweden, the following is noted in the record from the interview:

> Interviewer (I): But then you have not been in Bujanovac?
>
> NL: No.
>
> I: Do you remember the last time we met? Then you told me about the camp in Bujanovac.
>
> NL: I was there when they sent me back from Sweden to Germany. That was when we were with my husband and when we were coming here. We were planning on coming together.
>
> I: But your husband was he not stopped in Kosovo during your flight?
>
> NL: It was in Kuncul that he was stopped. I do not know how long he was at the check point. I have not heard anything about that. We lost each other and had no contact. I came here. I looked for him but did not find him.
>
> I: Can you try once more to account for your and the family's escape route from Berivojce and onwards?

> NL: It was the first time we fled. We were on our way to Bujanovac. My husband was stopped in Kuncul but I made it. I went to Sweden.
>
> I: So when were you and your husband together in Bujanovac?
>
> NL: It was the last time we were together, when he found the man we should go with. When he found this man we started the journey and he was stopped. After that we have not been together. We came to Sweden. The second time we found the man and came here. The first time was when I was sent to Germany. Do not know why they sent me there, I have no asylum there. I made my first application in Sweden.

18. Senad, who at the relevant time had turned fifteen years old, stated that he attended school until the family left Berivojce. After that it was impossible. He did not feel safe at school and had the impression that the others saw him as a thief. After leaving home, he stayed with his brother and father at a school that was not in use. They were protected by the Russian soldiers. They were very kind and gave him money and sweets. Without them they would not have made it.

19. On 5 March 2003, the Migration Board (*Migrationsverket*) rejected the applicants' applications for asylum and ordered that they be expelled to their country of origin. The Migration Board found that the family's ethnic origin made it likely that their fear of being subjected to persecution in Kosovo was well-founded and that they would not be able to receive protection. Thus, they could not be expected to return there.

20. In relation to Serbia and Montenegro the Board considered that generally the situation was not such that Roma people coming from that country were in need of protection under the Aliens Act. However, the situation might be different in a particular case. In relation to the present case, the Board found that NL had changed her statements about the family's activities since 1998. She had also given varying and conflicting information about the family's attempts to flee. In two interviews, on 26 December 2000 and 6 March 2002, she had stated that she and the children had spent a longer period of time in Bujanovac in Serbia proper. However, after her husband had arrived in Sweden she changed her explanation. Her account, in the interview of 20 November 2002, of the family's flight and where they had been staying was very vague. Against this background, the Board considered that her initial statements should serve as the basis for the assessment. These showed that she and three of the children had spent a substantial amount of time outside Kosovo, as did documents issued in Bujanovac. Moreover, NL had stated that she had spent time in hospitals in various parts of the country outside Kosovo. Nothing had emerged to indicate that this had caused any difficulties. In addition, the Board found that what had emerged in general about the conditions for internally displaced persons in Serbia, and about NL's and the children's stay there, did not give reason to fear that the applicant family would risk persecution in parts of former Yugoslavia other than Kosovo. In an overall

assessment of the applicants' situation, the Board found that internal relocation was an option for them. Thus, they could not be considered in need of protection in Sweden and were therefore not to be regarded as refugees under the Aliens Act. Nor were they to be regarded as persons otherwise in need of protection. Finally, the information presented did not show that their health problems were serious enough to entitle them to a residence permit on that ground.

21. The applicants appealed against the decision on 18 March 2003 and submitted that it would be impossible for them to find a place to live in Serbia proper. The fact that they had been travelling and staying there had to be seen in the light of the fact that war was raging and they had been forced to seek refuge. The children's mental health had been badly affected by what they had experienced and their psycho-social development would be gravely impeded, should they be returned to Serbia. In particular, Sedat's condition was alarming. Moreover, the children had, through their long stay in Sweden, acquired strong links with the country.

22. On 12 September 2003, the youngest child, Sunita, was born and an application for asylum with respect to her was filed the same day. The Migration Board handed over the application to the Aliens Appeals Board (*Utlänningsnämnden*) so that it could be decided along with her parents' case.

23. On 17 November 2003 the Aliens Appeals Board turned down the appeal and rejected the application concerning Sunita. The Board shared the assessment of the Migration Board and found, on the basis of the reasons stated by that Board, that the applicants were not to be regarded as refugees or persons otherwise in need of protection. As regards the issue of humanitarian grounds, the Aliens Appeals Board noted that, according to the applicants, the family had been in contact with specialists in child psychiatry for Sedat since February 2002. He had become withdrawn and had problems sleeping, which were alarming symptoms. An investigation had shown that these problems were not constitutional in character but were the effect of his previous experiences and the insecurity of his present situation. He was considered to be in need of a secure and stable social situation in order to enable him to develop normally and to regain his mental health. The Board found, however, that in view of the restrictive case-law that was applicable, the information provided about Sedat's state of health did not show that his condition was serious enough to entitle him to a residence permit. Furthermore, it was not considered that the children in the family had formed sufficiently strong attachments to Swedish society so that there would be a risk that their psychosocial development would be seriously harmed if they had to return to their country of origin with their parents. Nor did an overall assessment of the family's situation warrant the conclusion that permanent residence permits should be granted. In its assessment the Board had regard to the fact that the case concerned

children. The decision to expel the applicants gained legal force immediately.

24. In January 2004 the Migration Board contacted the Serbian authorities in order to arrange for readmission and travel documents for the family (*laissez-passer*).

25. On 16 June 2004, a so-called new application for asylum was filed with the Aliens Appeals Board.

26. On 17 January 2005 the application was rejected by the Aliens Appeals Board, which upheld its previous decision stating that the applicants could not be sent back to Kosovo, but that it would be possible for them to relocate within Serbia and Montenegro. As concerned the humanitarian grounds invoked, the Board observed a report that stated that the family was in great need of assistance in their home. Moreover, medical reports had been submitted stating that Samir suffered from a cyst in the ear which had been operated on and a second operation was planned and that Sedat suffered from a chronic form of post traumatic stress syndrome with a suicide risk, although not acute. As to the latter he still attended school. The Board found that none of the family members was in such a bad condition that they should be granted a residence permit on humanitarian grounds. Nor did an overall assessment of the case entitle them to such a permit. In its assessment the Board had regard to the fact that the case concerned children. Their problems were, however, not serious enough to motivate asylum on humanitarian grounds.

27. In January 2005 the Swedish migration authorities received various travel documents (*laissez-passer*) from the Serbian authorities in respect of the applicant family.

28. On 31 January 2005, the applicants submitted a second new application to the Aliens Appeals Board.

29. According to the Migration Board's records, a booked flight to Serbia scheduled for 1 February 2005 had to be cancelled because the applicant family refused to leave Sweden voluntarily.

30. On 16 February 2005, the Aliens Appeals Board decided not to stay the enforcement of the expulsion orders.

31. According to the Migration Board's records, a booked flight to Serbia scheduled for 21 February 2005 had to be cancelled because the applicant family refused to leave Sweden voluntarily.

2. Subsequent events

32. On 2 March 2005 the Court rejected the applicant family's request for an application of Rule 39 of the Rules of Court.

33. According to the Migration Board's records, a booked flight to Serbia scheduled for 7 March 2005 had to be cancelled because the applicant family refused to leave Sweden voluntarily.

34. On 14 March 2005, the Migration Board handed over the enforcement of the deportation orders to the police.

35. On 18 March 2005, the Aliens Appeals Board rejected the second new application. The Board noted that the application did not contain any new circumstances on the basis of which the applicants could be considered in need of protection. Appended to the application were medical reports concerning NL, Senad, Samir and Sedat. The Board noted that the issue of the applicants' health had already been assessed by it and added that psychiatric care for both children and adults was available in Serbia, although not to the same extent as in Sweden. In view of the restrictive case-law applicable, the Board concluded that residence permits could not be granted on humanitarian grounds.

36. On 31 May 2005, the expulsion orders pertaining to ML, Samir, Sultijan, Sedat, Sultijana and Sunita were enforced. Senad was not at home when the police arrived and it was thus decided that NL should stay behind to take care of him when he turned up. According to the enforcement report, the police arrived at the family's flat at 6.20 a.m. NL was upset to begin with but calmed down. A close relative stayed with her. The rest of the family was taken by bus to the airport from where a chartered plane left at 9.30 a.m. On board the plane were also another family and three officials responsible *inter alia* for escorting aliens out of Sweden (*Kriminalvårdens transporttjänst*). On arrival in Belgrade, the group was met by Serbian police. They were informed that NL and Senad were still in Sweden.

37. On 5 July 2005 NL and Senad filed a third new application with the Aliens Appeals Board, which was rejected on 26 September 2005.

38. On 17 November 2005, under temporary legislation in force at that time, NL and Senad filed a request for residence permits in Sweden.

39. On 5 December 2005, somehow having returned from Serbia, two of the applicant children, namely Sedat and Sunita, applied for asylum in Sweden.

40. On 31 January 2006, the Migration Board held a meeting during which NL and the applicants' counsel stated that they did not know how the children had returned or who had arranged their journey. The children had arrived in Sweden at the end of October/beginning of November 2005. According to NL, Sunita was developing well, had begun to talk and played like other children. In the record of the interview it was noted that Sedat, who was present, had not spoken to anybody for three years, that he spent most of his days lying down but that he sat up sometimes and ate a little bit himself. It was further noted that he was to undergo observation for "pervasive refusal syndrome", a severe, pervasive and life-threatening disorder, characterised by a profound and pervasive refusal to eat, drink, talk, walk and engage in any form of self-care.

41. On 11 May 2006, the Migration Board granted the four said applicants a permanent residence permit in Sweden, NL and Senad pursuant

to chapter 3, section 2 of the 1989 Act, and Sedat and Sunita pursuant to chapter 4, section 1 of the 2005 Act. Consequently, the previous expulsion orders against them were repealed. The Migration Board noted that access to social protection in Serbia or Montenegro was very limited and that ethnic minorities, including Roma, without any special connections to Serbia or Montenegro were particularly vulnerable and at risk of ending up in a difficult situation.

42. On 1 June 2006, ML, Samir, Sultijan and Sultijana applied for residence permits at the Swedish Embassy in Belgrade. The application concerning ML stated that he had presented a passport issued by the Federal Republic of Yugoslavia on 19 April 2000. In the application concerning Samir it was noted that he had a passport. Finally, with regard to Sultijan and Sultijana it was noted in their applications that they were covered by a passport belonging to NL, also issued on 19 April 2000.

43. An interview was held with ML at the Embassy on the day of the application. He stated *inter alia* that his mother and brother with his wife and four children lived in Sweden. He had another brother with a wife and five children, who lived in the family home in Berivojce. Moreover, he had a half-sister in Gnjilane and a sister living in Bujanovac. Both had families. Pursuant to the records from that interview, counsel for the applicants wanted to add that the information provided by ML as to dates etc. might not be completely reliable due to the fact that he had been a chronic alcoholic for the last twenty-five years.

44. On 20 July 2006, pursuant to chapter 5, section 3 of the 2005 Act, on the basis of family ties, ML and the said three children were granted permanent residence permits in Sweden.

3. Disputed facts subsequently submitted by the applicants

45. The applicants submitted, among other things, that due to NL's illiteracy, she had been misunderstood or wrongly translated during the initial interviews with the Swedish authorities. Thus, for example, contrary to the information emanating from the records of those interviews, she had never been admitted to hospitals in Serbia proper.

46. Moreover, they submitted that upon arrival in Belgrade ML, Samit, Sultijan, Sedat, Sultijana and Sunita went to a camp for Roma, situated in Bujanovac. The camp did not accept new arrivals, so they had to live "underground" there. They did not possess any documents identifying them as internally displaced persons and therefore it was impossible for them to obtain basic social rights, including health care, social security, housing and retirement benefits. They survived with money sent to them from Sweden. Sedat, who continued to suffer from pervasive refusal syndrome, was paralysed, numb and had to be fed. ML suffered from alcoholism. In addition, in June 2005 he was assaulted, as a consequence of which he lost various cognitive abilities and required psychiatric treatment. As to the

children Sedat and Sunita, at some point they found their own way back to Sweden.

B. Relevant domestic law and practice

47. A new Aliens Act (SFS 2005:716), replacing the 1989 Aliens Act, entered into force on 31 March 2006. The Act established a new system for examining and determining applications for asylum and residence permits. While the Migration Board continued to carry out the initial examination, an appeal against the Board's decision was determined by one of the three new migration courts. The Migration Court of Appeal was the court of final instance. It examined appeals against the decisions of the migration courts, provided leave to appeal was granted. Upon the entry into force of the new Act, the Aliens Appeals Board ceased to exist. The Migration Board acted as the alien's opposing party in proceedings before the courts.

48. The provisions mainly applied in the present case were to be found in the 1989 Aliens Act, now repealed, and certain temporary amendments to the Act. In accordance with the Act, an alien staying in Sweden for more than three months had to, as a rule, have a residence permit (chapter 1, section 4). A residence permit could be issued, *inter alia*, to an alien who, for humanitarian reasons, was to be allowed to settle in Sweden (chapter 2, section 4). Serious physical or mental illness could, in exceptional cases, constitute humanitarian reasons for the granting of a residence permit.

49. An alien who was considered to be a refugee or otherwise in need of protection was, with certain exceptions, entitled to a residence permit in Sweden (chapter 3, section 4). The term "refugee" referred to an alien who was outside the country of his nationality owing to a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who was unable or, owing to such fear, unwilling to avail himself of the protection of that country. This applied irrespective of whether such persecution was at the hands of the authorities of the country or whether those authorities could not be expected to offer protection against persecution by private individuals (chapter 3, section 2). An "alien otherwise in need of protection" denoted, *inter alia*, a person who had left the country of his nationality because he had a well-founded fear of being sentenced to death or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (chapter 3, section 3, subsection 1). By making that a separate ground for granting a residence permit, the legislature had highlighted the importance of such considerations. The correspondence between national legislation and Article 3 of the Convention had been emphasised as a result.

50. In enforcing a decision on refusal of entry or expulsion, the risk of torture and other inhuman or degrading treatment or punishment was taken into account. In accordance with a special provision on impediments to

enforcement, an alien could not be sent to a country where there were reasonable grounds for believing that he would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (chapter 8, section 1). In addition, he could not, in principle, be sent to a country where he risked persecution (chapter 8, section 2).

51. Until 15 November 2005 an alien who was to be refused entry or expelled in accordance with a decision that had gained legal force could be granted a residence permit if he filed a so-called "new application" with the Aliens Appeals Board based on circumstances which had not previously been examined in the case concerning refusal of entry or expulsion. A residence permit could then be granted if the alien was entitled to a residence permit under chapter 3, section 4, of the Act or if it would be contrary to the requirements of humanity to enforce the refusal-of-entry or expulsion decision (chapter 2, section 5 b, in its wording before 15 November 2005). Under that provision, serious illness could also be taken into consideration.

52. Amendments to chapter 2, section 5 b, of the 1989 Aliens Act entered into force on 15 November 2005, whereby a new legal remedy of a temporary nature was introduced. The new procedure for obtaining a residence permit replaced the rules relating to new applications for a residence permit laid down in chapter 2, section 5 b, in its previous wording. Furthermore, the amendments to the 1989 Act introduced additional legal grounds for granting a residence permit to aliens against whom a final expulsion order had been made. The object of these temporary amendments was to grant residence permits to aliens who, *inter alia*, had been in Sweden for a very long time or where there existed "urgent humanitarian interests" (*humanitärt angeläget*). When assessing the humanitarian aspects, particular account should be taken of whether the alien had been in Sweden for a long time, and if, on account of the situation in the receiving country, it was considered impossible to employ coercive measures to enforce a deportation order. Special consideration should be given to a child's social situation, period of residence in and ties to Sweden, and the risk of causing harm to the child's health and development. It should further be taken into account whether the alien had committed any offences in which case a residence permit might be refused for security reasons. The temporary provisions remained in force until the new Aliens Act entered into force on 31 March 2006. The Migration Board continued, however, to examine applications which it had received before that date but had not yet determined.

53. Chapter 2, section 5 of the 2005 Act stipulated that an alien who had stayed in Sweden for more than three months should have a residence permit unless a visa had been granted for a longer period of time. An alien who was considered to be a refugee or otherwise in need of protection was,

with certain exceptions, entitled to a residence permit in Sweden (chapter 4, section 1). The term "refugee" referred to an alien who was outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group, and who was unable or, owing to such fear, was unwilling to avail himself or herself of the protection of that country. That applied irrespective of whether it was the authorities of the country that were responsible for the alien being subjected to persecution or if those authorities could not be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" was meant, inter alia, a person who was outside the country of his or her nationality because he or she had a well-founded fear of being sentenced to death or of being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment.

54. Pursuant to chapter 5, section 3 of the 2005 Act, a residence permit could be issued on grounds of the alien's ties to Sweden, *inter alia* to an alien who was the spouse of someone who had been granted a residence permit to settle in Sweden. The same went for a child who was an alien, unmarried, and had a parent who had been granted a residence permit to settle in Sweden.

C. Relevant background material

Serbia

55. Serbia became a member State of the Council of Europe on 3 April 2003, and ratified the Convention on 3 March 2004.

56. Beforehand, a Federal Law of 2002 on the Protection of the Rights and Freedoms of National Minorities had been passed containing a provision whereby the Roma national community was recognised as a national minority. The same provision recognised the particularly difficult economic, social and cultural position of Roma in the country and imposed an explicit obligation on the authorities to take concrete measures to improve their situation. Several measures were taken in accordance with this law. Thus, for instance, in May 2003 a Roma National Council was established. It was responsible for, *inter alia*, monitoring the situation of Roma people and for speaking for this group in the National Parliament. In addition, a coordination body for minority issues was established in 2004 at Government level with the Prime Minister as its chairman. A special national strategy aimed at integrating and empowering the Roma community was also developed at federal level with the assistance of the OSCE.

57. Moreover, Serbia took several concrete steps to deal with the problems faced by the many refugees and internally displaced persons in the country as a result of the Balkan Wars. For example, in May 2002, in cooperation with UNCHR and other international organisations, the Serbian Government elaborated and adopted a national strategy to this end. In November 2003, the Serbian Government signed a memorandum of understanding with the International Red Cross and the Red Cross of Serbia concerning the creation of a Cash Assistance Programme, which aimed to provide financial assistance to vulnerable internally displaced families.

58. The Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, Dr. Walter Kälin, concluded an official visit to Serbia and Montenegro, including Kosovo, from 16 to 24 June 2005 and issued a statement on the latter date which, in so far as relevant, read:

> "...Concerning the Republic of Serbia, the Representative pointed out that the overall situation of the IDPs [Internally Displaced Persons] is increasingly hard. He especially highlighted the difficult conditions for the 6,800 IDPs still living in collective centres. "No more money has been invested in their maintenance for the past three years", he said. Many buildings are ramshackle and no longer offer acceptable living conditions. Unrecognized settlements have sprung up where displaced Roma, Ashkali and Egyptians are living in abject misery.
>
> On the work of the Commissioner for Refugees, he praised his initiative to better assist the displaced persons. "The lack of clear mandate of the Commissioner for these people has left several gaps when it comes to protecting their human rights", he nevertheless noted. Of particular worry was the difficulty for many displaced persons to regularize their situation either due to a lack of proof of origin or of legal address. The Representative, although aware that the documentation and administrative requirements are complicated and burdensome for all citizens of Serbia, stressed that for people who were already at a disadvantage due to their displacement, these obstacles could become insurmountable and further prejudice their access to health care and other State services they had been receiving and are still entitled to. He encouraged the authorities to speed up their efforts to simplify their administrative processes and to do it in a way that would respond to the particular difficulties of non-documented persons, among them, many Roma and members of other marginalized communities...
>
> Concerning the Republic of Montenegro, the Representative was impressed with the work undertaken by the Montenegrin authorities to manage the refugee and IDP influx they had had. Nevertheless, he was worried by the fact that as non-citizens of Montenegro, internally displaced persons were disadvantaged if not by law so in fact in areas such as work or access to property and business licenses. He welcomed the new Refugee and IDP Strategy which foresees the return of the displaced persons, their integration in Montenegro or resettlement to third countries as the three options for durable solutions. He stressed that according to the Guiding Principles on Internal Displacement, internally displaced persons have the right to choose freely between these options. "If they opt for return, it must be voluntary, in safety and sustainable", he said.
>
> Problems common to all parts of the State Union of Serbia and Montenegro include the fact that the closure of collective centres, in practice, means that besides members

of marginalized communities the persons remaining there are the most vulnerable of all: elderly, ill, disabled, severely traumatized individuals, female-headed households and families of missing persons, although it may seem the only humane option. "The time has come to find a dignified solution for these extremely vulnerable populations who will neither return nor be able to live on their own, by setting up appropriate institutions. The authorities must be supported by the international community in this endeavour" ...

Finally, the Representative took note of the concerns expressed to him by many interlocutors that the massive return of former refugees or rejected asylum-seekers from certain Western European countries would add to the burden caused by internal displacement in the different parts of the Union of Serbia and Montenegro, particularly if they were not able to return to their homes. He appealed to the governments concerned to implement such returns cautiously. He further urged them to refrain from returning members of threatened communities and particularly vulnerable persons to situations where they would risk becoming internally displaced persons without the necessary assistance and protection of their rights."

59. In their Report of 2005, covering events in Serbia and Montenegro during the year 2004, Amnesty International stated among other things:

Discrimination against Roma

"Economic hardship and unemployment affected many sections of society, but many Roma continued to be especially deprived. Most lived in sub-standard unhygienic settlements and they faced discrimination in education, employment and health. Most Roma who fled Kosovo after July 1999 continued to face severe problems, exacerbated by difficulties in obtaining registration necessary for access to health and social welfare. In Montenegro they continued to be treated as refugees and not entitled to benefits of citizenship. Many Roma from both Serbia and Montenegro suffered similar deprivation because they were not officially registered at birth. In Serbia the authorities began to implement strategies to improve the Roma's plight but with little effect; in Montenegro there was no such strategy."

60. In their report of 2005 on Serbia and Montenegro, Human Right Watch, stated in so far as relevant:

"Ethnic and Religious Minorities

Compared to the previous year, in 2005 incidents of ethnically motivated attacks decreased in the Vojvodina region of northern Serbia, but intensified in other parts of Serbia, often taking the form of anti-Semitic and anti-Muslim graffiti, as well as physical assaults on Roma. Criminal and misdemeanor sentences against the perpetrators of ethnically motivated crimes were light. ... In a positive development, in areas of southern Serbia bordering Kosovo and mainly inhabited by ethnic Albanians, the authorities have made initial steps to include Albanians in the judiciary and to incorporate Albanian culture and history in the local school curriculum. There has also been some progress in providing pre-school education for Roma children in Serbia. However, thousands of Roma continue to face discrimination in most areas of life, and lack basic access to education, health services and housing."

The Province of Kosovo

61. The UNHCR Position on the Continued International Protection Needs of Individuals from Kosovo (March 2005) stated in so far as relevant:

D. Summary

13. Since the inter-ethnic violence in March 2004, the overall security situation has improved if measured by the declining trend in serious crimes against members of minority communities but the situation remains very complex and certain ethnic minorities are particularly vulnerable to physical assaults, harassment and intimidation, and property related crimes. Security concerns – real and perceived – have seriously limited their freedom of movement and thus their access to essential services and employment opportunities. In the current volatile context, a serious ethnically motivated crime against an ethnic community may spark, like in March 2004, a downward spiral towards inter-ethnic violence and civil unrest and lead to other serious ethnically motivated crimes. Kosovo Serbs, Roma, as well as Albanians in a minority situation would be the communities most likely to be affected. In addition Ashkaelia and Egyptians as well as Bosniak and Goranis may be targeted, even if on a more individual basis.

III. Policy Recommendations and Conclusions

1. Ethnic Minorities at Risk

14. Against the described developments and constraints for ethnic minorities UNHCR is concerned in particular for Kosovo Serb and Roma communities as well as for ethnic Albanians in a minority situation. Therefore, the Office maintains and reiterates its position that members of these groups should continue to benefit from international protection in countries of asylum under the 1951 Convention or complementary forms of protection depending on the circumstances of claims. For these groups and individuals return should only take place on a strictly voluntary basis in safety and dignity in a coordinated and gradual manner. Such return to be sustainable needs to be supported by reintegration assistance.

62. The UNHCR Position Paper of June 2006 stated *inter alia* the following:

"UNHCR maintains concerned about Kosovo Serbs, Roma and Albanians in a minority situation. Given their fragile security situation and the serious limitations to enjoying their fundamental human rights, UNHCR's position is that they should continue to be considered at risk of persecution, and should continue to benefit from international protection in countries of asylum. Return of these minorities should take place on a strictly voluntary basis, based on fully informed individual decisions. Their forced return to other parts of Serbia and Montenegro can not be considered as appropriate."

63. Sweden has offered support in various ways for the efforts to improve the situation of refugees and minority groups in Serbia. According to the Swedish Government, they are one of the major donors of financial assistance to the country. This development assistance is administered by the Swedish International Development Co-operation Agency (*Sida)* and has been channelled *inter alia* to provide assistance to Roma and refugees in the region. For example, in 2005, Sida contributed about (2 million Swedish Kronor (SEK), approximately 213,500 Euros (EUR) to a Roma education

fund established by the World Bank. Sweden also contributed to a project run by a Swedish non-governmental organisation called *Erikshjälpen*, in Kosovo, which focused on the building and rebuilding of houses intended for families belonging to minority groups, a majority of whom are of Roma origin. Through this project 90 houses were rebuilt in 2003.

64. An Agreement and a Protocol exist between Sweden and Serbia, which came into force on 15 March 2003, concerning readmission of persons who did not or no longer fulfil the conditions for entry into and stay in the territory of the other state.

COMPLAINTS

65. The applicants complained that the deportation of six of them on 31 May 2005 to Serbia proper was in breach of Article 3 of the Convention.

THE LAW

66. The applicants invoked Article 3 of the Convention which read:

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

67. Referring to the Migration Board's decisions of 11 May 2006 and 20 July 2006 according to which the applicants were granted a residence permit in Sweden, the Government maintained that they could not claim to be victims of a violation of the Convention within the meaning of Article 34 of the Convention.

68. The applicants disagreed and recalled that six of them were returned to Serbia on 31 May 2005 and allegedly had to spend more than a year in a camp there.

69. The Court considers it unnecessary to examine this issue further, since in any event it finds the application inadmissible for the reasons set out below.

70. As to the merits of the case, the Government did not wish to underestimate the concerns that might legitimately be expressed with regard to the difficult situation experienced by many internally displaced persons and refugees in Serbia and, in particular, by Roma people among them. At the relevant time, however, the general situation in Serbia did not in itself suffice to establish that the forced return of the applicants to Serbia entailed a violation of Article 3 of the Convention. Nor were the applicants

personally at risk of having to face a situation that, in view of the particular circumstances of the case, would amount to a breach of Article 3.

71. Moreover, there were several shortcomings and contradictions in the applicants' accounts, notably as to whether and for how long they had stayed in Serbia proper. Thus, it had been virtually impossible to form a clear picture of what happened when the family left their home in Berivojce in the Kosovo region.

72. In addition, throughout the proceedings, ML and NL had denied having had a passport. Only during ML's interview at the Swedish Embassy in Belgrade on 1 June 2006 did he reveal that passports had been issued by the Serbian authorities to both ML and NL in April 2000, and that the children were covered by those. The Swedish authorities were thus misled on a vital point in that subsequent to the Aliens Appeal Board's decision of 17 November 2003 the deportation orders could have been enforced and the acquisition of travel papers from the Serbian authorities, which prolonged the proceedings considerably, had accordingly been unnecessary.

73. Furthermore, as to the applicants' health, although some of the children might have been in need of psychiatric treatment in May 2005, such care was available in Serbia, albeit not of the same standard as in Sweden, but that could not be regarded as decisive from the point of view of Article 3 of the Convention.

74. The applicants maintained that the enforcement on 31 May 2005 of the expulsion orders pertaining to ML, Samir, Sultijan, Sedat, Sultijana and Sunita violated Article 3 of the Convention.

75. They submitted that the family suffered immensely as a consequence of the Swedish authorities' failure to recognise their need for protection and care. Moreover, as a result of their spending fourteen months in a camp in Serbia under severe conditions, by the time they returned to Sweden, most of them needed psychological and somatic treatment for a long time.

76. They pointed out that five of them were children and therefore in a particularly vulnerable situation.

77. Furthermore, during the proceedings in Sweden, the family had emphasised the risk of persecution due to their Roma ethnic minority status, a risk that was confirmed by ML being assaulted in June 2005.

78. Moreover, during the deportation period, Sedat received no professional treatment to the detriment of his progressively deteriorating condition.

79. Finally, Sunita, being only eighteen months old at the time of the event, had been separated from her mother.

80. The Court reiterates 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 in question 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).

81. Moreover, according to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case. Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (see, inter alia, *Salah Sheekh v. the Netherlands*, no. 1948/04, § 137, ECHR 2007-... (extracts)).

82. The Court notes that the Swedish authorities acknowledged that the applicants could not be returned to Kosovo. They found, however, in the special circumstances of the case, that the applicants could be returned to Serbia proper.

83. In this assessment, the Swedish authorities noted the general situation in Serbia combined with various statements, notably by NL, that the applicants had ties to Serbia proper and had lived there before without encountering problems. The Swedish authorities thus ignored the applicants' subsequent allegation that they had no connections to Serbia proper. In their observations before the Court, the applicants repeated that before the forced deportation they had never lived in Serbia proper. They suggested that NL must have been misunderstood or wrongly translated during her initial interviews with the migration authorities.

84. The Court acknowledges that, due to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged inaccuracies in those submissions (see, among others, *Collins and Akasiebie v. Sweden* (dec.), application no. 23944/05, 8 March 2007 and *Matsiukhina and Matsiukhin v. Sweden* (dec.), no. 31260/04, 21 June 2005).

85. In the present case, with hindsight, it is clear that ML and NL deliberately misled the Swedish authorities by repeatedly declaring that they were not in possession of a passport, although such had been issued to them by the Serbian authorities in April 2000.

86. Moreover, the Court agrees with the Government that during the domestic proceedings there were several shortcomings and contradictions in the applicants' accounts, notably as to what happened when the family left their home in Berivojce in Kosovo and whether and for how long they stayed in Serbia proper.

87. Thus, despite the applicants' latest allegation about never having lived in Serbia proper, the Court notes that on 26 December 2000 NL submitted that in 1998/1999 she and the three youngest children had left Berivojce and went to Bujanovac in Serbia proper, where they lived until the end of 2000. She also stated that she had recently spent time in hospitals in Vranje and Novi Sad in Serbia proper. Furthermore, she submitted various documents, which had been issued in Bujanovac on 18 December 2000. Subsequently, having returned to Sweden, on 6 March 2002 she stated that the whole family had fled through the woods from Berivojce to Bujanovac, where they had stayed in a camp for about a year. They had been provided with food and other necessities but there had always been a shortage, which had led to unrest. The family had stayed together throughout their time in Bujanovac.

88. The Court observes that during both interviews, an interpreter was present, whom NL declared that she understood, and that during the domestic proceedings, NL never invoked having been misunderstood or wrongly translated.

89. Against this background, the Court finds that the Migration authorities were justified in considering that NL's initial statements should serve as the basis for their assessment and that since the applicants had stayed in Serbia proper without encountering problems, internal relocation was an option for them.

90. The Court also attaches importance to the fact that the case concerns expulsion to another High Contracting Party to the Convention, which has undertaken to secure the fundamental rights guaranteed under its provisions (see *Tomic v. the United Kingdom*, (dec.), no. 17837/03, 14 October 2003; and *Hukić v. Sweden* (dec.), no. 17416/05, 27 September 2005), and although accepting that the general living conditions in Serbia of internally displaced persons may be far from ideal (see paragraph 58-60 above), the Court cannot find that these conditions must be regarded as being so harrowing that they must be considered as having attained the minimum level of severity required for treatment to fall within the scope of Article 3 of the Convention (see *Said v. the Netherlands*, no. 2345/02, § 47, ECHR 2005-...).

91. In addition, the Swedish authorities took the applicants' health into account. Thus, in its decision of 17 January 2005, the Aliens Appeals Board observed *inter alia* the medical reports stating that Samir suffered from a cyst in the ear, which had been operated on, but needed a second operation, and stating that Sedat suffered from a chronic form of post traumatic stress

syndrome with a suicidal risk, although not acute. At the relevant time, he still attended school. Against this background the Board found that none of the family members were in such bad condition that they should be granted a residence permit on humanitarian grounds. Subsequently, in their decision of 18 March 2005, the Aliens Appeals Board examined the medical reports submitted concerning NL, Senad, Samir and Sedat and stated that the issue of the applicants' health had already been assessed by it and that psychiatric care was available in Serbia, although not to the same extent as in Sweden.

92. The Court wishes to reiterate that, according to established case-law, aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State. However, in exceptional circumstances the implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a violation of Article 3 (see, for example, *D. v. United Kingdom* judgment of 2 May 1997, *Reports of Judgments and Decisions* 1997-III, § 54).

93. The Court does not question that the applicants may have been through traumatic experiences in the past and have suffered from the uncertain situation in their lives which they have endured. It further acknowledges the seriousness of Sedat's health status. However, having regard to the high threshold set by Article 3, particularly where the case does not concern the direct responsibility of the Contracting State for the infliction of harm, the Court does not find that the applicants' deportation to Serbia was contrary to the standards of Article 3 of the Convention (see, among others, *Salkic v. Sweden* (dec.), no. 7702/04, 29 June 2004).

94. Finally, the Court finds that the Swedish authorities in their decision to deport the applicants on 31 May 2005 had proper regard to the fact that six of them were children, and at the relevant time, respectively, 17, 16, 11, 10 and 6 years old, and 18 months old. More crucial, the Swedish authorities had no intentions of splitting the family or separating the children from their parents. In this connection, it will be recalled that according to the Migration authorities' records, three times the applicants failed to return to Serbia voluntarily. Moreover, on 31 May 2005, when the expulsion orders pertaining to ML, Samir, Sultijan, Sedat, Sultijana and Sunita were enforced, Sedat had disappeared. Consequently, it was decided that NL should stay behind to take care of him when he turned up. It was the intention all along, however, that NL and Sedat should follow the rest of the family, as soon as Sedat returned. In addition, according to the information previously provided by ML, he had for a longer period taken care of Senad and Samit in Kosovo. Thus, the Swedish authorities could reasonably assume that ML could take care of his children alone for a while, and at least until Sedat re-appeared, so that the expulsion order for him and NL could be enforced as well.

95. In conclusion the Court considers that the applicants have failed to show that the forced deportation of six of them by the Swedish authorities to Serbia proper on 31 May 2005 was in breach of Article 3 of the Convention.

96. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

97. In view of the above, it is appropriate to discontinue the application of Article 29 § 3 of the Convention and to reject the application pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President