



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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 7702/04  
by SALKIC and Others  
against Sweden

The European Court of Human Rights (Fourth Section), sitting on  
29 June 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mrs E. FURA-SANDSTRÖM,

Ms L. MIJOVIC, *judges*,

and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 3 February 2004,

Having regard to the interim measure indicated to the respondent  
Government under Rule 39 of the Rules of Court,

Having deliberated, decides as follows:

## THE FACTS

The applicants, Mr Senad Salkic, Mrs Nermina Salkic and their two children, Emir and Selma, are nationals of Bosnia and Herzegovina and were born in 1964, 1968, 1990 and 1996 respectively. They are currently residing in Tuzla in Bosnia and Herzegovina. They are represented before the Court by Mr P. Berkhuizen, a lawyer practising in Landskrona.

### A. The circumstances of the case

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

#### *1. Background and proceedings before the national authorities*

The applicants are a Muslim family who originate from Ugljevik in Republika Srpska. They fled to Germany in 1992, allegedly after the family had been subjected to harassment and discrimination, such as the dismissal of Mr Salkic from his job. They remained in Germany until August 1998 when they were expelled to Bosnia and Herzegovina, where they were given temporary residence in Tuzla by the Refugee Authority of that city. According to the applicants, they were subsequently the victims of harassment and assaults, including rape committed against Mrs Salkic. Due to the difficult situation and marital problems between Mr and Mrs Salkic, the latter travelled with the children to Sweden, where they arrived on 14 August 2000, and applied for asylum on the grounds that they were living as refugees in Tuzla without the means to support themselves.

On 29 November 2000 the Migration Authority (*Migrationsverket*) rejected the request for asylum on the ground that Mrs Salkic and her children were able to return to Bosnia and Herzegovina without risking persecution due to their ethnicity or other reasons. It further observed that a clear process of “normalisation” was on-going in Tuzla.

The applicants appealed to the Aliens Appeals Board (*Utlänningsnämnden* -hereinafter “the Board”), claiming that the situation in Tuzla was not such that they could return. On 19 March 2001 the Board upheld the Migration Authority’s decision in full and, on 9 May 2001, it rejected a new application lodged by the applicants as no new circumstances had been presented.

On 21 May 2001 Mrs Salkic was taken into emergency psychiatric care because her mental health had deteriorated after the Board’s rejections and she was found to be suicidal. A new application was lodged with the Board based on Mrs Salkic’s state of health. However, on 12 June 2001, the Board rejected the application as it found that the circumstances were not so grave that the expulsion of the applicants would constitute a violation of

humanitarian standards as laid down in the Aliens Act (*Utlänningslagen*, 1989:529).

Subsequently, Mrs Salkic and her children lodged, one after another, three new applications with the Board in which they submitted medical certificates indicating that the mental health of all three family members was deteriorating gradually. On 11 September and 22 October 2001, respectively, the Board, on the same grounds as above, refused the first two applications. The third application was refused on 25 February 2002 with, *inter alia*, the following reasoning:

“No circumstances have emerged which give reasons to assume that [Mrs] Salkic and her children are in need of protection. As concerns [Mrs Salkic’s] state of health, it is possible only in exceptional circumstances to grant a residence permit on this ground. It must then concern a life threatening illness for which care cannot be given in the home country or a handicap of a particularly serious kind. The investigation [in the present case] does not show that her state of health is such that it meets these strict requirements. Neither is a generally difficult situation in the home country such a circumstance which can lead to a residence permit [being granted].

Since the case concerns children under the age of 18, special regard must be had to their health and development and to the children’s best interest in general. When it concerns children who remain in Sweden, after a decision to expel them has gained legal force, the requirements for the grant of a residence permit based on a new application are that the risk of self-destructive actions of an extraordinarily serious nature by the child is considered particularly high, or that the children would be seriously harmed in their psycho-social development if they were to be expelled by force to their home country. However, all the circumstances of the particular case must be taken into account and a balance must be struck between the different interests (...). According to the Board’s assessment, nothing has emerged which shows that it would seriously harm the children in their psycho-social development if they return with their mother to their home country.”

On 17 February 2002 Mr Salkic joined his family in Sweden and applied for asylum and a residence permit, claiming that on two occasions he had been severely beaten by unknown persons due to his father’s political activities and that the police had refused to file his complaints because he was a Muslim. He further stated that he could not return to his home town, Ugljevik, since currently only Serbs lived there. Furthermore, in Tuzla he would not be able to find a job to support his family.

On 8 November 2002 the Migration Authority refused his request for asylum and a residence permit as it considered that he did not risk persecution if returned to Bosnia and Herzegovina. It further noted that he suffered from Post-Traumatic Stress Disorder (PTSD), for which he received medication, but that it was not so severe as to motivate granting a residence permit on humanitarian grounds. Mr Salkic appealed to the Board which, on 22 May 2003, upheld the Migration Authority’s decision, concurring with its reasoning.

On 23 June 2003 the family was placed by the social authorities, in co-operation with the Migration Authority, in a family home to undergo

family- and individual treatment and be under constant surveillance due to their very weak and volatile mental health which, among other things, had rendered the parents incapable of caring for their children. Furthermore, it was considered that there was a risk that Mrs Salkic and Emir would attempt to commit suicide. The aim of the treatment was to support the parents in assuming their parental roles, keep the family united, improve their mental health and help prepare the family mentally for their return to Bosnia and Herzegovina. The treatment appears to have ended on 27 November 2003 because the family went into hiding following yet another rejection by the Board (see below).

During the autumn of 2003, the family as a whole lodged two more applications with the Board, invoking the continued deterioration of the mental health of all members of the family and the fact that they were undergoing treatment at the family home. The requests were rejected on 30 October and 26 November 2003, respectively, on the grounds that the documentary evidence submitted did not show that the state of health of any of the four family members was so serious that it could be described as a life-threatening illness or a particularly serious handicap, which was the requirement according to the Board's established case-law. Having regard to the fact that the case involved two children, the Board nonetheless considered that there was nothing which, convincingly, showed that the children would be seriously damaged in their psycho-social development if they were returned to their home country together with their parents.

As mentioned above, following the Board's rejection on 27 November 2003, Mr and Mrs Salkic and Selma went into hiding to avoid expulsion. They left Emir with an uncle who resided in Sweden. The family was, however, apprehended by the police on 23 February 2004 and Mrs Salkic was taken into custody while Mr Salkic and Selma were placed in an apartment where Emir joined them.

Also, on 23 February 2004, the Board refused yet another application by the family, basing its decision on the same grounds as its previous decisions.

On 2 March 2004 the Board refused to suspend the expulsion pending the decision on yet another application lodged by the applicants. On the same date the applicants' representative requested the Court to indicate to the Swedish Government under Rule 39 of the Rules of Court to suspend the applicants' expulsion.

## *2. The proceedings before the Court and further developments in the case*

On 2 March 2004, the same date that the request was received by the Court, the President of the Section to which the case had been assigned decided to apply Rule 39 until the next Chamber meeting on 9 March 2004. He considered that it was necessary to obtain information from the

Government as to whether someone would meet the family in Sarajevo to provide them with the necessary support there. On the same date the Migration Authority accordingly suspended the expulsion of the applicants until further notice.

In reply to the Court's query, the Government stated that no arrangements had been made for assistance to the applicants upon their arrival in Sarajevo. However, the Migration Authority had scheduled a meeting with them on 12 March 2004 where the issues would be discussed and similar meetings had taken place on earlier occasions. On a general note, the Government informed the Court that Sweden did not have any particular agreement with the Bosnian authorities, aid organisations or other concerning assistance to returning Bosnians.

On 9 March 2004 the Chamber reconsidered the application in the light of the information provided by the Swedish Government and decided not to prolong the interim measure previously indicated under Rule 39.

On 12 March 2003 the applicants informed the Court that the meeting with the Migration Authority had been cancelled, and disputed that any such meetings had been held on earlier occasions.

On 19 March 2004 the Board rejected the family's new application and lifted the suspension of the expulsion. The Board noted, *inter alia*, that the family, like many of their countrymen, had been through traumatic experiences and felt stress and despair at having to return to their home country. However, it maintained its reasoning from its earlier decisions.

On 25 March 2004 the applicants were expelled to Bosnia and Herzegovina.

### *3. The applicants' state of health*

The following description of the applicants' health is based on medical and psychiatric certificates issued, between June 2001 and February 2004, by doctors, psychologists, child psychologists and a specialist in psychiatry, all of whom examined the applicants, once or over a longer period of time, while they were in Sweden.

#### **The parents**

When Mr Salkic arrived in Sweden in February 2002, he was diagnosed as suffering from PTSD. According to a certificate by a specialist in psychiatry who met him for consultation on five occasions between October 2002 and February 2003, he was in need of continued psychiatric treatment. The specialist further noted that the applicant's illness prevented him from assuming his parental responsibilities. In a certificate, dated 26 August 2003, another psychologist who had treated the family since June 2003 stated that Mr Salkic was depressed and unable to care for himself or his family. After having been apprehended by the police in February 2004, he was diagnosed at the psychiatric emergency unit at the

hospital in Malmö as having a serious crisis reaction and profound anxiety and feelings of illness.

Mrs Salkic was taken into emergency psychiatric care in May 2001 following a rejection by the Board which caused her to become depressed and express suicidal thoughts. After this, her mental status slowly deteriorated over time even though she was treated by various psychologists and doctors. She was given anti-depressant medication which, apparently, was not of much help. Several of the doctors she was in contact with seemed to agree that her very fragile mental health was due to the uncertainty of her and her family's life situation during the last 10 years and anxiety about the future. In June 2003 a psychologist diagnosed her as suffering from PTSD. After having been apprehended by police in February 2004, she was diagnosed at the emergency psychiatric unit as having neither a clear depression nor suicidal thoughts, but as being very anxious and showing a severe stress reaction to the situation.

On 12 April 2004 Mr and Mrs Salkic were examined at a health care centre, at the unit for mental rehabilitation, in Tuzla. The doctor found that they were both easily irritated, had a lot of headaches, dizziness, difficulties sleeping and that they were depressive. Moreover, Mrs Salkic was very anxious and tense while Mr Salkic was emotionally unstable. However, both were considered to be lucid and communicative and they were told to return for a psychiatric control within three weeks.

#### **The children**

Emir is almost 14 years old and, it appears, the one who has been suffering the most. He has traumas from earlier experiences in life and already in early 2001 the doctors noted that he was very quiet, anxious and withdrawn. He showed a deep mistrust of and fear towards both adults and other children. While in Sweden he was in continuous contact with a Child and Youth Psychiatric Clinic and a child psychologist. During 2002 he developed depression, largely it seems due to his parent's incapacity to provide him with security, attention and care. In June 2003 he was taken into an emergency unit for child psychiatric care as he was in a deep depression and had expressed clear suicidal thoughts, a state which appears to have remained more or less unchanged since. In a medical certificate, dated 24 February 2004, the psychologist who had had the longest contact with Emir stated that he was in need of serious and long term treatment and that, if he were to be expelled to Bosnia and Herzegovina, he would be at grave risk of permanent psychiatric damage "if he survives at all".

The girl is now eight years old. According to the child psychologist, who was in continuous contact with the family while they were in Sweden, she has developed an aggressive, troublemaking, conduct to attract attention and appears to have used this as a "survival strategy". She has shown signs of depression, *inter alia*, by refusing to eat. The same child psychologist stated

that Selma was in need of continuous treatment over a long period to deal with her traumas.

On 6 May 2004 a child psychologist in Tuzla examined Emir and Selma and noted that they showed antipathy towards their surroundings. Emir was found to be in a deep depression which could be interpreted as PTSD. Selma was found to be afraid of forming attachments as she did not want to live there. It was noted that this was typical “Bosnian syndrome” among children who had, previously, only lived briefly in Bosnia and Herzegovina. The doctor further stated, on a more general note, that there were no possibilities to give the children the treatment and help that they were in need of in Bosnia and Herzegovina and requested that the Swedish authorities assist, or else it might lead to fatal consequences for the children.

#### *4. Mental Health Centres and Services in Bosnia and Herzegovina*

Already in August 1996, the World Bank, together with the Project of Rehabilitation of War Victims (PIU), stressed the importance of the need for physical and psychosocial rehabilitation. One of the components of this project was the establishment of 38 Community Mental Health Centres in Bosnia and Herzegovina. In addition to the purchase of equipment and necessary medication, training and technical aid for physical and occupational therapy, one of the objectives of the Centres was to provide clinical services for persons with mental health problems, and psychosocial rehabilitation of war traumatised persons. Most Centres were established either within or as extensions of existing health-care centres, each planned to cover an area with a population of up to 60 000 inhabitants. In Tuzla canton there were two Centres and in Sarajevo canton there were three. Both cities also had day hospitals and university psychiatric hospitals.

Simultaneously with the establishment of the Centres, several other post-war initiatives were started, creating room for global development of community-based mental health-care. Many of these initiatives were supported by the International Community. Given the huge costs caused by the war devastation (e.g. refugees/displaced persons, wounded, handicapped and killed persons) additional support was provided for mental and psychosocial rehabilitation with a special emphasis on trauma. An increasing number of clients visit the Centres which function although there are problems with lack of funding, lack of professionals and the non-existence of an integrated health insurance funding system [See, [www.cmhr-bosnia.org](http://www.cmhr-bosnia.org) The information appearing on the site is from March 2000].

In 2002 a Stability Pact for South-Eastern Europe was created which established a mental health project with immediate support of, *inter alia*, WHO, the Council of Europe and the Government of Sweden. The Ministry of Health of Bosnia and Herzegovina agreed to coordinate the initiative which focused on developing new and reinforcing existing community

mental health services. The object was to provide more affordable and efficient paths to mental health care and rehabilitation.

The European Union and the International Red Cross have also been involved in projects to build up and improve the health care system in Bosnia-Herzegovina.

## COMPLAINTS

The applicants complained under Articles 2, 3 and 13 of the Convention that if they were to be expelled from Sweden to Bosnia and Herzegovina it would cause irreparable damage to all members of the family due to their very poor mental health and in particular to the children who might never recover from another trauma of being forced to move yet again. In the case of Emir there would be a high probability of suicide. They claimed that there was no-one to help them in their home country.

## THE LAW

1. The applicants alleged that their expulsion to Bosnia and Herzegovina would constitute a violation of Articles 2 and 3 of the Convention, which provides:

### 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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

### Article 3

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



The Court considers that the complaint raised by the applicants under Article 2 is indissociable from the substance of their complaint under Article 3 in respect of the consequences of an expulsion for their life, health and welfare (see the *D. v. United Kingdom* judgment of 2 May 1997, *Reports of Judgments and Decisions* 1997-III, § 59). It finds it more appropriate to examine the applicants' complaint under Article 3 and will proceed accordingly.

The Court recalls at the outset that the 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, in exercising their right to expel such aliens Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies (see, among others, *Bensaid v. the United Kingdom*, no. 44599/98, § 32, ECHR 2001-I).

Furthermore, due to the fundamental importance of Article 3, the Court has reserved to itself the possibility of scrutinising an applicant's claim under Article 3 where the source of the risk of the proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, do not in themselves infringe the standards of that Article. In any such contexts, however, the Court is obliged to subject all the circumstances surrounding the case to rigorous scrutiny, especially the applicant's personal situation in the expelling State (see the *D. v United Kingdom* judgment, cited above, § 49).

Consequently, the Court will examine whether the applicants' expulsion to Bosnia and Herzegovina was contrary to Article 3 having regard to all the material before it at the time of its consideration of the case, including the most recent available information on their state of health. However, the focus must be on the foreseeable consequences of the removal of the applicants to Bosnia and Herzegovina in light of the general situation there in March 2004 as well as the applicants personal circumstances at that time (see the *Vilvarajah and Others v. the United Kingdom* judgment of 30 October 1991, Series A no.215, p. 36, § 108).

The Court does not question that the applicants 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 that each member of the family is suffering from rather severe mental health problems. However, the Court also observes that several of the doctors and psychiatrists with whom the applicants were in contact while in Sweden seemed to agree that the vulnerable health status of the family was primarily due to their unstable living situation and anxiety about their future. Moreover, the children's problems appeared to emanate from the fact that their parents were incapable of providing them with security, support and care.

In this respect, the Court observes that the family has been in contact with the Swedish health care system since May 2001 and that the family, as a whole as well as each member individually, received treatment at a family home during the summer and autumn of 2003 in order to strengthen the family unit and help to prepare themselves mentally for the return to their home country. This treatment was ended by the applicants themselves as they chose to go into hiding following a rejection by the Board of one of their applications for a residence permit.

Here 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 an implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a violation of Article 3 (see, for example, the *D. v. United Kingdom* judgment, cited above, § 54).

The Court observes that Mr and Mrs Salkic, when examined at the psychiatric emergency unit at the hospital in Malmö on 28 February 2004, were both found to be very anxious and suffering from severe stress. However, neither of them was found to have a clear depression or be suicidal. As concerns the children, the Court notes that they, according to medical certificates in February 2004, were suffering greatly from the family situation and were in need of long term treatment to deal with their traumatic experiences.

The Court is aware that, even though mental health care in Bosnia and Herzegovina clearly is not of the same standard as in Sweden, there are health care centres which include mental health units and there are apparently several on-going projects to improve the situation. In any event, the fact that the applicants' circumstances in Bosnia and Herzegovina are less favourable than those enjoyed by them while they were in Sweden cannot be regarded as decisive from the point of view of Article 3 (see, the *Bensaid v. United Kingdom* judgment, cited above, § 38).

In this context the Court draws attention to the fact that all family members were examined by psychologists in Tuzla after their return and that the parents were given new appointments. Thus, the family has managed to establish contact with the health care system in Bosnia and Herzegovina. Also, although the family will need continuous support from the health care services to improve their problematic psychological status, it appears from the medical certificates issued for each family member that their health has not worsened since the expulsion was carried out. This would seem to confirm the correctness of the assessment made by the Swedish authorities in March 2004.

In conclusion, the Court accepts the seriousness of the applicants mental health status, in particular that of the two children. 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' expulsion to Bosnia and Herzegovina was contrary to the standards of Article 3 of the Convention. In the Court's view, the present case does not disclose the exceptional circumstances established by its case-law (see, among other, *D v. United Kingdom*, cited above, § 54). This part of the application is therefore manifestly ill-founded.

2. The Court observes that the applicants have also complained under Article 13 of the Convention without, however, specifying this complaint. The Court considers that the application does not reveal any indication of a violation of this provision.

It follows that the application as a whole must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Françoise ELEN-PASSOS  
Deputy Registrar

Nicolas BRATZA  
President