CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 60959/00
by Ramdane AMMARI
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 8 and 22 October 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 18 September 2000,

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

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Ramdane Ammari, is an Algerian national, who was born in 1974. He was represented before the Court by Ms L. Isaksson, a lawyer practising in Umeå. The respondent Government were represented by Ms I. Kalmerborn, Ministry for Foreign Affairs.

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

The applicant arrived in Sweden at the end of May 2000. Allegedly, he intended to apply for asylum immediately and, as he only speaks his mother tongue, he went to his brother in Stockholm to seek his assistance. The brother was ill and unable to help him, however, so he left for Umeå where, apparently, some friends of his live. He arrived in Umeå on 9 June and allegedly intended to file his asylum application on Tuesday 13 June, after the Whitsun weekend. However, during the weekend, on Monday 12 June, he assaulted a Moroccan national and was arrested and detained by the police. Initially, he presented a false French passport but, eventually, he disclosed his true identity and requested asylum.

On 16 June 2000 the District Court (*tingsrätten*) of Umeå decided to detain the applicant on suspicion of assault.

By a judgment of 6 July 2000 the District Court convicted the applicant for assault and use of a false document (*brukande av falsk urkund*) and sentenced him to two months' imprisonment.

Following his release from prison on 22 July 2000 the applicant was taken into custody in accordance with a decision of the National Migration Board (*Migrationsverket*) of 12 June 2000, as there was a risk that he would otherwise disappear. The applicant was moved to the Board's custody premises at Carlslund.

In his asylum application, the applicant stated that, following the completion of his military service in 1996, he had returned to his home town of Tizi Ouzou. After a few months he had been approached by members of the organisation GIA (*Groupe Islamique Armé*) who had threatened his life and told him that he had to work for the organisation. Between 1996 and 1999 he had regularly transported GIA members in his minibus and also delivered oil and gas to the GIA. On several occasions, GIA members had visited him in his home and threatened to kill him and his family should he not cooperate. Towards the end of 1999 the Algerian police had also been looking for him at his home. He had never sought the help of the police for fear of reprisals from the GIA and the police who, allegedly, would not have believed that he had been forced to help the GIA. Following the visit by the police, the applicant had got scared and left for Algiers where his sister lived. Someone had helped him out of the country; he had travelled to Frankfurt, Germany by plane and from there to Poland by truck. He had stayed in Poland for several months and eventually

travelled to Sweden by boat. Allegedly, he had not left Algeria earlier, as he had been unable to make up his mind and had not known where to go. Moreover, had it not been for the threats from the GIA, he would not have left the country. According to his parents in Algeria, the GIA and the police had come to look for him several times after his escape. However, he had never been politically active and had not had any difficulties with the Algerian police or other authorities.

On 9 August 2000 the National Migration Board rejected the asylum application and ordered the applicant's expulsion from Sweden. It also decided that the applicant should remain in custody. The Board noted that the general situation in Algeria was no longer such as to constitute a reason for granting asylum. As regards the applicant's personal situation, the Board did not find the applicant's allegations credible. It noted that he had not applied for asylum until he was arrested by the police, two weeks after his arrival in Sweden, although the alleged reason for his travelling to Sweden was to seek asylum. Even when arrested he first lied about his true identity. The Board therefore considered that the applicant could not have thought that his need for protection was particularly great. The Board also found it peculiar that he had worked for the GIA under threats to his life for as long a period as three years without having tried to escape. Allegedly, as he had a valid Algerian passport and had completed his military service he should have been able to leave Algeria without any difficulties at an earlier date. As an alternative, he could have left for Algiers to live with his sister. For these reasons, the Board concluded that it was not plausible that, upon return to Algeria, the applicant would be subjected to treatment contrary to Article 3 of the Convention.

On 14 September 2000 the Aliens Appeals Board (*Utlänningsnämnden*), agreeing with the reasons given by the Migration Board, upheld the above decision. It decided also that the applicant should remain in custody. The Appeals Board had at its disposal an "incident report", dated 12 September, from the Carlslund custody, according to which the applicant had tried to hurt himself in custody. He was given medication and put under constant surveillance.

According to another "incident report" of 14 September 2000 the applicant, on that date, after having been informed of the Appeals Board's decision, had collapsed in violent spasms and had again tried to hurt himself by banging his head against the floor. The responsible physician, Dr Meischner, a specialist in general medicine, concluded that the applicant was panic-stricken. As there was a great risk that the applicant would suffer from another similar attack and as the Carlslund custody did not have the necessary resources, Dr Meischner considered that further custody at Carlslund was inappropriate. As the applicant could not be considered mentally ill, he could not be admitted to a psychiatric ward. Instead, Dr Meischner recommended that the applicant be moved to the detention

centre at Kronoberg which had sufficient personnel and medical resources to take care of him. Accordingly, the applicant was moved to that detention centre in the evening of 14 September.

At Kronoberg the applicant was examined, at the request of his lawyer, by Dr Søndergaard, a specialist in psychiatry from the Centre for Torture and Trauma Survivors (*Centrum för tortyr- och traumaskadade*; "CTD") in Stockholm. According to the opinion of Dr Søndergaard, issued on 15 September 2000, the applicant feared that the GIA would kill him if he were returned to Algeria. His fear was based on previous threats to him and his family. On account of that fear, he was unable to communicate properly with other people and had reduced bodily functions. Dr Søndergaard concluded that the applicant was, most likely, seriously ill due to a lengthy state of fear, that he had reacted like a person facing execution and that the risk of a suicide attempt was very serious. Thus, he should be taken to a psychiatric ward for further examination.

On 19 September 2000 a new application for asylum, based on the new medical information, was lodged with the Aliens Appeals Board. The same day the Board decided not to suspend the enforcement of the expulsion order.

By a judgment of 20 September 2000 the County Administrative Court (*länsrätten*) in Stockholm rejected the applicant's appeal against the Aliens Appeals Board's decision not to release him from custody.

On 20 September 2000, following the Court's indication under Rule 39 of the Rules of Court, the National Migration Board stayed the execution of the expulsion order and released the applicant from custody.

On 21 September 2000 the applicant was taken to hospital and was then transferred to a psychiatric ward.

On 26 September 2000 Dr Søndergaard from the CTD again examined the applicant. According to his medical certificate, issued the same day, the applicant was feeling fairly well and safe and was able to give a detailed account of his situation. The applicant showed no signs of depression and did not meet all the criteria for a post-traumatic stress syndrome. According to Dr Søndergaard, the applicant's status at the time of the earlier examination, at Kronoberg, could only be seen as an expression of great fear reasonably based on his previous experiences. The detention at Kronoberg and the threat of expulsion from Sweden had involved a serious risk of a lasting impairment of the applicant's health and also a risk of a suicide attempt.

The new application for asylum is still pending before the Aliens Appeals Board.

COMPLAINTS

The applicant complained under Article 3 of the Convention that, if expelled to Algeria, he would risk to be subjected to torture or inhuman or degrading treatment by the Algerian authorities and the GIA. It appears that he also claimed that his expulsion would involve a violation of Article 3 on account of his mental health status. Finally, he contended that his transfer to the detention centre at Kronoberg had involved a violation of Article 3 as, allegedly, he had been placed in isolation and had not received medical treatment although he had been in a serious state of panic which involved the risk of a suicide attempt.

THE LAW

The applicant complained of violations of his rights under Article 3 of the Convention. This provision reads as follows:

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

A. Exhaustion of domestic remedies

The respondent Government contended that the applicant had not exhausted domestic remedies. The Government argued that a new application had been lodged with the Aliens Appeals Board on 19 September 2000 and that that application was still pending. According to information obtained by the Government, the Appeals Board would probably not decide on the matter as long as the present case was pending before the Court. In his new application, the applicant had referred, *inter alia*, to new medical information, including the certificate of 15 September 2000 issued by Dr Søndergaard. He had thus claimed that there were new circumstances in the case – i.e. circumstances that had not previously been examined – which constituted grounds for granting him a residence permit. The applicant's mental problems – accounted for in the new medical information – had not been examined by the National Migration Board or the Aliens Appeals Board. In fact, the problems had commenced only two days before the Appeals Board had rendered its decision of 14 September 2000. The Government therefore contended that the Appeals Board should be given the opportunity to assess the question of the applicant's mental health and its impact on his claims before this issue was assessed by the Court.

The applicant claimed that he had exhausted domestic remedies, as his original application before the Swedish authorities had been considered by both the National Migration Board and the Aliens Appeals Board and as he had requested the Appeals Board to stay the deportation order against him. He stated that, at the time of his lodging the new application, he had been in custody and the deportation order could have been implemented at any time despite the new application. He had therefore requested that the deportation order be stayed. On 19 September 2000 – when the Appeals Board had rejected that request – it had had at its disposal both the "incident reports" of 12 and 14 September and Dr Søndergaard's certificate of 15 September. According to the *travaux préparatoires* to the relevant provision of the Aliens Act (*Utlänningslagen*, 1989:529), a deportation shall be stayed following a new application if, due to new circumstances that had not previously been assessed, there is a reasonable plausibility that the new application will be granted. Although the new medical information had showed that the applicant was seriously ill, the Board had not found that there were any impediments to his expulsion. In view of this and the allegedly small prospects of success of a new application, the applicant contended that the fact that he had lodged a new application should not constitute an impediment to the Court's examination of the present case. He further pointed out that, before the Court, he also claimed that a violation of Article 3 of the Convention had already occured on account of his confinement in the detention centre at Kronoberg.

The Court notes that the applicant's original application for asylum has been determined by the National Migration Board and the Aliens Appeals Board and that, thus, in this respect the domestic remedies have been exhausted. It is true that, on 19 September 2000, the applicant lodged a new application with the Appeals Board in which he referred, *inter alia*, to new medical information concerning his mental health status. This application is still pending before the Appeals Board and it may thus be questioned whether the applicant has exhausted domestic remedies in regard to his assertion that, due his mental problems, his expulsion to Algeria would involve a violation of Article 3 of the Convention. However, the Court notes that, in deciding on the applicant's request for a stay of the deportation order, the Appeals Board has already made a preliminary assessment as to the well-foundedness of his new application. Also, although the application was lodged more than two years ago, the Appeals Board has not yet taken a final decision in the matter and apparently – according to information obtained by the respondent Government – it does not intend to do so as long as the present case is pending before the Court. Moreover, it should be noted that, before the Court, the applicant's main assertion is that his expulsion would involve a violation of Article 3 as he risks to be subjected to torture or inhuman or degrading treatment upon return to Algeria. This assertion has been examined by the Swedish authorities when they decided

on the original application for asylum. For these reasons, the Court considers that the present application should not be declared inadmissible for failure to exhaust domestic remedies.

B. Substance of the applicant's complaints

The Government submitted that the application should be declared inadmissible as being manifestly ill-founded. They acknowledged that serious violations of human rights occur in Algeria. However, it had to be established whether the applicant personally faced a real risk of treatment contrary to Article 3 of the Convention. In this connection, the Government referred to the assessment of the national immigration authorities that the applicant's allegations were not credible as he had arrived in Sweden at the end of May 2000 with the purported intention of applying for asylum but had not done so until his arrest on 12 June 2000 and as he had claimed to have worked for the GIA for three years under constant threats but still had not attempted to escape earlier although, being in possession of a valid passport and having done his military service, he should have been able to leave Algeria without difficulty. The Government also maintained that parts of the applicant's statements had been inconsistent and peculiar. For example, according to information from the Swedish Embassy in Algiers, the GIA had never been active in the applicant's home town and, in any event, did not recruit members by forcing people to join the organisation. Yet the applicant alleged that he had been continuously contacted by the GIA in his home town for a period of three years. Furthermore, during the Swedish proceedings, the applicant had given contradictory details regarding the alleged visits to his home by GIA members. In addition, the Government noted that the applicant had claimed that the GIA had threatened to kill not only him but also his family but that there was no indication that his parents or other close relatives had been maltreated by the GIA or had otherwise had any difficulties on account of his escape although members of the organisation had allegedly contacted his parents in Tizi Ouzou several times to find out where he was. In regard to the applicant's stated fear of the Algerian authorities, the Government found his submissions vague and lacking in substantiation. In their view, there was nothing to suggest that he was of any particular interest to the Algerian authorities. In any event, should those authorities have such an interest and suspect the applicant of having assisted the GIA in the manner described by him, he would benefit from immunity from prosecution under the Law on Civil Harmony which was still applied.

As regards the medical certificates submitted by the applicant, the Government noted that they had been issued in September 2000 and that there was no infomation indicating that the applicant was currently unwell.

Also, the physicians who had examined the applicant in September 2000 had arrived at different conclusions.

The applicant maintained that he would risk treatment contrary to Article 3 of the Convention upon return to Algeria and that he had a well-founded fear of such treatment at the hands of both the GIA and the Algerian authorities. He stated that serious violations of human rights continued in the country and that, in view of the fact that the GIA organisation had not laid down arms, it was not certain how individual members who had surrendered in accordance with the Law on Civil Harmony would be treated by the organisation. The applicant further disputed that there had not been any GIA activity in his home town; he referred to a statement of 12 October 2000 from the Swedish section of Amnesty International, according to which the area around Tizi Ouzou had been affected by serious armed conflicts during the period 1996-99 when he had been approached by the GIA. He also claimed that he had clearly explained why he had not applied for asylum immediately upon his arrival in Sweden. The reason why he had not left his home town earlier was that he was afraid that the GIA would carry out their threats and kill his family.

Relying on the medical evidence in the case, in particular the certificate issued by Dr Søndergaard, the applicant also maintained that his psychological ill-health was due to his experiences in Algeria and the threats he had received.

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 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). Noting that the applicant claimed that he was at risk of being subjected to treatment contrary to Article 3 not only by the Algerian authorities but also by the Islamic armed organisation GIA, the Court further reiterates that, owing to the absolute character of the right guaranteed, it cannot be ruled out that Article 3 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 (ibid., p. 758, § 40).

The Court takes into account the general situation in Algeria. In the violence between Government troops and Islamic insurgents, which started

in 1992, more than 100,000 people have reportedly lost their lives. In 1999 the Law on Civil Harmony was enacted. Providing immunity from prosecution for those members of armed groups who surrendered and who had not killed, raped, caused permanent disability or placed bombs in public places, the law was formally in force between 1 July 1999 and 13 January 2000. However, it apparently continues to be applied; Amnesty International stated, in its Report 2002, that members of armed groups who surrendered during 2001 appeared to be exempted from prosecution and were released without adequate inquiries being made by the authorities into what crimes they may have committed. Still, the violence continues; according to human rights organisations, 100-200 people are killed every month in the context of the armed conflict and the human rights situation remains generally poor. The use of torture is prohibited by the Algerian Constitution; however, according to the U.S Department of State Country Reports on Human Rights Practices 2001, the police at times resort to torture when interrogating persons, including those suspected of being involved with, or having sympathies for, armed insurgency groups.

However, it must be established whether the applicant's personal situation gives substantial grounds for believing that he would face a real risk of being subjected to treatment contrary to Article 3 of the Convention upon return to Algeria. In this respect, the Court notes that the applicant submitted no evidence – whether in the form of a warrant of arrest, letters from relatives remaining in the country or any other kind of documents – which would have substantiated his allegations. The Court further notes from the applicant's own submissions about his activities within the GIA that he had not held a prominent position within the organisation and had not taken part in violent acts committed by it. If he had been a member of the GIA, it thus appears that he could not be of particular interest to that organisation or to the Algerian authorities. Moreover, as the Law on Civil Harmony is apparently still applied, he would be eligible for immunity from prosecution. Furthermore, although the GIA had purportedly threatened to kill not only the applicant but also his family, there is no indication that his family members have had any difficulties following his escape.

In conclusion, the Court finds that the applicant has not substantiated that there are substantial grounds for believing that he would face a real risk of being subjected to treatment contrary to Article 3 upon return to Algeria.

As regards the applicant's health problems, the Court notes that, according to the "incident reports" of 12 and 14 September 2000 and Dr Søndergaard's medical certificate of 15 September 2000, the applicant had been panic-stricken and had tried to hurt himself. He had also been unable to communicate properly with other people and had had reduced bodily functions and had, according to Dr Søndergaard, been in need of psychiatric care. In the subsequent medical certificate issued on 26 September 2000 – after the applicant's expulsion had been stayed –

Dr Søndergaard stated that the applicant had showed no signs of depression and had not met all the criteria for a post-traumatic stress syndrome. Dr Søndergaard noted, however, that the applicant's status at the time of the earlier examination should be seen as a reaction of fear based on his previous experiences.

The Court notes that the applicant's mental problems occurred at a time when he was facing expulsion from Sweden. Although the applicant claims that he faces ill-treatment upon return to Algeria and his reaction appears to be based on those fears, the Court has found above that his fears are not reasonably substantiated. His health stabilised when the expulsion was stayed. Noting that the applicant was admitted to psychiatric care on 21 September 2000, the Court further observes that, should the actual deportation of the applicant lead to serious mental health problems which would necessitate treatment in compulsory psychiatric care, section 29 of the Act on Compulsory Mental Care (*Lagen om psykiatrisk tvångsvård*; 1991:1128) provides that expulsion can only take place with the approval of the chief physician responsible for the care (see further application no. 27249/95, decision of 14 September 1995, Decisions and Reports 83, p. 91). In the above circumstances, the Court considers that the applicant's expulsion to Algeria would not involve a violation of Article 3 on account of his mental health status.

The Court notes that the applicant also claimed that his detention at Kronoberg had involved a violation of Article 3 of the Convention on account of his mental health. The Court notes, however, that the applicant was transferred to Kronoberg on 14 September 2000 as, according to the evaluation of Dr Meichner, that detention centre had the necessary resources to take care of him. The next day the applicant was examined at Kronoberg by Dr Søndergaard, who considered that he should be taken to a psychiatric ward. On 20 September 2000, through the decision of the National Migration Board, the applicant was released from detention. He was thus detained at Kronoberg for six days. Given the fact that the applicant was transferred to Kronoberg on the advice of a qualified physician who found that the detention centre had the necessary resources to take care of him in his mental state and that, during the stay at the detention centre, he was examined by another qualified physician, the Court cannot find that the rather short duration of his detention at Kronoberg involved a violation of Article 3. In this connection, the Court notes also that the psychiatric care recommended by Dr Søndergaard on 15 September 2000 was provided for the applicant after he had been admitted to hospital on 21 September 2000.

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

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President