

THIRD SECTION
DECISION
AS TO THE ADMISSIBILITY OF

Application no. 50068/08
by
against Sweden

The European Court of Human Rights (Third Section), sitting on 22 June 2010 as a Chamber composed of:

and , *Section Registrar*,

Having regard to the above application lodged on 14 October 2008,

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

1. The applicant, Mr , is a stateless Palestinian who was born in 1973. He currently lives in in Sweden. He was represented before the Court by Ms , a lawyer

practising in . The Swedish Government (“the Government”) were represented by their Agent, Mrs , of the Ministry for Foreign Affairs.

A. The circumstances of the case

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

1. The background and the proceedings before the national authorities

3. On 9 December 2002 the applicant applied for asylum in Sweden. He was not in possession of any identity papers. He claimed that he came from Nablus on the West Bank and that his mother and sister still lived there. He invoked the general situation on the West Bank as his motive for seeking asylum.

4. Following a leading decision by the Director-General for Legal Affairs of the Migration Board (*Migrationsverket*) in which he considered that stateless Palestinians should be granted residence permits in Sweden on humanitarian grounds due to the serious situation in the region, on 30 October 2003 the Migration Board granted the applicant a temporary residence permit until 30 October 2004 to give him an opportunity to prove his identity.

5. Upon expiry of his temporary residence permit, the applicant applied for a permanent residence permit or, in the alternative, a prolongation of his temporary permit. Without submitting any kind of documentation, he maintained that he was from the West Bank, where he risked persecution by the authorities because, between 1994 and 1997, he had written some critical articles about corruption among high-ranking persons on the West Bank. On 8 November 2004 the Migration Board rejected the application. It noted that the applicant had failed to establish his identity and his place of residence before entering Sweden. A language analysis had shown that the applicant spoke an Arabic dialect spoken by persons originally from the West Bank but living in Jordan. Thus, although the applicant could originate from the West Bank, it was quite possible that he had lived in Jordan before leaving for Sweden. Accordingly, the Board found that the applicant could be deported to Jordan, Syria or the Lebanon.

6. The applicant appealed to the Aliens Appeals Board (*Utlänningsnämnden*) which, on 13 September 2005, upheld the Migration Board's decision not to grant the applicant a residence permit. It found, however, that the applicant should be deported to Jordan, and not alternatively to Syria or the Lebanon. This decision was final and the applicant was ordered to leave Sweden within two weeks.

7. Subsequently, on two occasions, the applicant requested the Migration Board to stay his deportation. On 14 February 2006 and again on

16 May 2006, the Board rejected these requests as it found that there were no impediments to the enforcement of the deportation order.

8. In September 2006 the applicant was apprehended in Germany and transferred back to Sweden in accordance with the Dublin Regulation. Upon his return to Sweden, in October 2006, he renewed his application for asylum and a residence permit in Sweden. He maintained that he was from the West Bank and invoked the situation there as his motive for seeking asylum. Moreover, he stated that he had a serious relationship with a Swedish woman with whom he had been living since June 2003 and that he had strong ties to Sweden.

9. On 15 May 2007 the Migration Board rejected the application. It first noted that the applicant had still not proved his identity but that it was probable that he was from the West Bank or Jordan. It then observed that he had invoked no grounds on which he could be considered as a refugee and that the general situation in the region was not so serious that he could be granted leave to remain in Sweden solely on that basis. Moreover, as concerned his relationship, the Board noted that the applicant could apply for a residence permit on that basis from his home country as prescribed by the Aliens Act. Lastly, it considered that the applicant had not been in Sweden legally for such a long time that he could be deemed to have a closer connection to Sweden than to his home country. The Board also noted that he had not invoked any health reasons. Thus, in conclusion, he could not be granted leave to remain in Sweden and he was to be deported to the West Bank.

10. The applicant appealed to the Migration Court (*Migrationsdomstolen*), maintaining his claims and repeating that he risked persecution by the authorities on the West Bank because, between 1994 and 1997, he had written some critical articles about corruption among high-ranking persons on the West Bank. These articles had been published in various newspapers on the West Bank and therefore the authorities in his home country were searching for him. He further stressed that he had a very good relationship with his girlfriend and that they were planning to get married. He also submitted that he felt depressed and had been in contact with a doctor for more than three years, and that accordingly it would be unreasonable to demand that he apply for a residence permit based on his relationship from his home country. Lastly, he alleged that he had no connections whatsoever to Jordan and that, therefore, any plans to deport him to that country should be ruled out.

11. On 9 November 2007, after having held an oral hearing, the Migration Court rejected the appeal. It first noted that the applicant had still not established his identity but that it was probable that he came from the West Bank. However, it could not be ruled out that he had lived in Jordan and the examination should therefore include both countries. The Migration Court then observed that the applicant had not been politically active in any

way. Moreover, although he may have had written some critical articles in the period from 1994 to 1997 about corruption among high-ranking persons on the West Bank, he had been able to remain in the area for more than five years after the alleged articles were published without having encountered any problems. Thus, the Migration Court found it highly unlikely that he would risk persecution for having written those articles upon return. With regard to his relationship, the court considered that he could return to the West Bank to apply for a residence permit on this basis from there. The court further found that the applicant's health problems were not so serious that he could be granted leave to remain in Sweden on this ground. Even having regard to all the circumstances of the case taken together, the court concluded that these were not strong enough to grant him a residence permit in Sweden.

12. The applicant appealed to the Migration Court of Appeal (*Migrationsöverdomstolen*), maintaining his claims and adding that he and his girlfriend had married on 15 November 2007. His wife had two grown-up children from a previous relationship.

13. On 10 January 2008, the Migration Court of Appeal refused leave to appeal.

14. On 4 March 2008 the Migration Board transferred the case to the Police Authority for enforcement of the deportation order to the West Bank, or alternatively to Jordan, should the former option not be possible for some reason.

15. Furthermore, on 31 March 2008, the Migration Board rejected a request from the applicant to re-open the proceedings on the basis of a medical certificate stating that the applicant suffered from depression and that there was a risk of suicide. The Board found that he had invoked no new circumstances of importance as all his claims had, in essence, already been examined.

16. In May 2008 the applicant lodged yet another request that the proceedings be re-opened. He claimed that he was in very poor mental health and had made several suicide attempts. He was receiving treatment for his mental problems which was beneficial for him. However, if the treatment was interrupted, there was a substantial risk that he would again try to commit suicide. Moreover, his wife, who was a nurse, gave him much care and support and it was unreasonable to demand that he apply for a residence permit on the basis of their relationship from his home country. He submitted a medical certificate confirming his very poor and unstable mental health. He also invoked a judgment, delivered on 7 May 2008, by the District Court (*tingsrätten*) in _____ according to which the applicant had been convicted of illegal driving and aggravated drunken driving and sentenced to probation. It appeared from the judgment that he had tried to commit suicide by getting drunk and driving his wife's car into a road railing.

17. On 19 May 2008 the Migration Board decided to stay the enforcement of the applicant's deportation since it was uncertain whether it was medically possible for him to travel to his home country.

18. On 6 August 2008, the Board decided not to grant the applicant a residence permit in Sweden and lifted the stay of enforcement. It first noted that it had a very limited margin to take into account factors such as an asylum seeker's failed expectations, anxiety about returning to his or her home country and social and financial problems. Moreover, it was not the degree of severity of an illness that was decisive but whether the medical condition rendered the enforcement of a deportation order practically impossible. The Board then considered, on the basis of several medical certificates (see below), that the applicant's state of health was serious but that he remained at home and had declined to be committed to hospital for treatment as he considered that he could cope at home. Moreover, his problems emanated from his insecure situation and wish to remain in Sweden and not from a life-threatening illness. Thus, there were no practical impediments to the enforcement of the deportation order. No appeal lay against this decision.

2. Particulars on the applicant's state of health

19. According to medical certificates dated 5 July 2007, 13 March 2008, 29 April 2008 and 28 October 2008, written by _____, psychiatrist in _____, the applicant had been a patient of hers since February 2004 due to depression and had been prescribed antidepressants (*Remeron*). During their meetings, the applicant had kept stating that he felt disappointed and badly treated by the various Swedish authorities as he had failed to find a job or get a residence permit. He had stated that he had been a successful businessman in the "Arab world" and wanted to get back into business. During his periods of depression, he had lost his appetite, had been unable to sleep and had been apathetic. He had become very depressed and suicidal because he considered his situation hopeless and himself worthless. Following a suicide attempt in August 2007 (when he had driven his wife's car into a road railing), the psychiatrist had prescribed stronger antidepressants (*Efexor*). His wife had been a great support to him, taking care of him and watching over him.

20. In another medical certificate, dated 25 June 2008, by Mr _____, physician at the Psychiatric Clinic in Kristianstad, it was stated that the applicant had made an emergency visit that day to the clinic because of his depression. He had been apathetic and had suicidal thoughts due to his situation and his fear of being deported.

21. In two other medical certificates, dated 17 July 2008 and 23 October 2008, by Mr _____, chief physician at the Psychiatric Clinic in _____, it was stated that the applicant had visited him in July 2008 and again in October 2008. On both occasions, the applicant had been

depressed, apathetic, very anxious and with constant suicidal thoughts. On the second occasion, he had also showed signs of paranoia. However, on both occasions, he had rejected an offer to be committed to a clinic for treatment as he had considered that he could cope at home even though, according to the chief physician, he had been close to being psychotic and almost eligible for being committed to compulsory psychiatric care. The chief physician concluded that, at that time, the applicant was not in a fit state to be deported.

3. Subsequent events

22. On 10 February 2009 the Court decided to indicate to the Swedish Government under Rule 39 of the Rules of Court a suspension of his deportation to the West Bank or Jordan.

23. Consequently, on 11 February 2009 the Migration Court decided to stay until further notice the enforcement of its decision to expel the applicant.

B. Relevant domestic law and practice

Asylum and the granting of a residence permit due to particularly distressing circumstances

24. The basic provisions mainly applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the 2005 Aliens Act (*Utlänningslagen*, 2005:716 – hereafter referred to as “the 2005 Act”) which replaced, on 31 March 2006, the old Aliens Act (*Utlänningslagen*, 1989:529). Both the old Aliens Act and the 2005 Act define the conditions under which an alien can be deported or expelled from the country, as well as the procedures relating to the enforcement of such decisions.

25. Chapter 5, section 1, of the 2005 Act stipulates that an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. According to Chapter 4, Section 1, of the 2005 Act, the term “refugee” refers to an alien who is 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 is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By “an alien otherwise in need of protection” is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being

sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, Section 2, of the 2005 Act).

26. Moreover, if a residence permit cannot be granted on the above grounds, such a permit may be issued to an alien if, after an overall assessment of his or her situation, there are such particularly distressing circumstances (*synnerligen ömmande omständigheter*) to allow him or her to remain in Sweden (Chapter 5, section 6, of the 2005 Act). During this assessment, special consideration should be given to, *inter alia*, the alien's health status. In the preparatory works to this provision (Government Bill 2004/05:170, pp. 190-191), life-threatening physical or mental illness for which no treatment can be given in the alien's home country could constitute a reason for the grant of a residence permit.

27. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This applies, under Chapter 12, Section 18, of the 2005 Act, where new circumstances have emerged that mean there are reasonable grounds for believing, *inter alia*, that enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced. If a residence permit cannot be granted under this provision, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, Sections 1 and 2, of the 2005 Act, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not doing so. Should the applicable conditions not be met, the Migration Board shall decide not to grant a re-examination (Chapter 12, Section 19, of the 2005 Act).

28. Under the 2005 Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances; the Migration Board, the Migration Court and the Migration Court of Appeal (Chapter 14, Section 3, and Chapter 16, Section 9, of the 2005 Act). Hence, upon entry into force on 31 March 2006 of the 2005 Act, the Aliens Appeals Board ceased to exist.

29. Where a rejected asylum seeker suffers from ill-health the enforcement of the deportation will occur only if the authority responsible for the deportation deems that the medical condition of the individual so permits. In executing the deportation, the authority in question is also able to ensure that the measures taken will be appropriate with regard to the circumstances of the particular case. For instance, if considered necessary, a special aeroplane can be chartered for the journey and arrangements can be made for medical staff and any necessary equipment to be available on

board during the flight. On condition that the individual concerned consents to such measures being taken, arrangements can also be made for his or her assistance in the country of origin upon return. For example, medical records and other medical documentation can be sent in advance so that proper care can be prepared and arrangements be made for the individual to be met and taken care of by medical staff upon arrival.

30. Should an enforcement of an expulsion order lead to serious psychological health problems necessitating treatment in compulsory psychiatric care, the expulsion cannot, under any circumstances, take place without the approval of the chief physician responsible for the care (see, Section 29 of the Act on Compulsory Mental Care (*lagen om psykiatrisk tvångsvård*, 1991:1128).

Family reunification

31. The provisions on family reunification relating to a spouse, registered partner or cohabiting partner etc. of a person who is resident in Sweden are set out in Chapter 5, Section 3, of the Aliens Act and were given their present wording on 30 April 2006 in connection with the implementation of the E C Directive on the right to family reunification (Directive 2003/86/EC of 22 September 2003, hereinafter "the Family Reunification Directive").

32. Under Chapter 5, Section 3, first paragraph of the Act, unless otherwise provided in Sections 17-17b, a residence permit shall be granted to an alien who is a spouse or cohabiting partner of someone who is resident in Sweden or who has been granted a residence permit to settle in Sweden. The provisions hence provide for a right to obtain a residence permit unless there are special grounds against granting a residence permit. An alien who wants a residence permit in Sweden on account of family ties must have applied for and been granted such a permit before entering the country (Chapter 5, Section 18, of the Act. This rule was also stipulated in the 1989 Aliens Act). An application for a residence permit may not, as a general rule, be approved after entry. However, exemptions from this rule can be made for example if the alien has strong ties to a person who is resident in Sweden and it cannot reasonably be required that he or she travel to another country to submit an application there (Chapter 5, Section 18, second paragraph, point 5). An exemption may also be made if there are some other exceptional grounds (Chapter 5, Section 18, second paragraph, point 6). The requirement that, in principle, residence permits for family members have to be granted before entry into Sweden was introduced as one of a number of measures aimed at reducing the possibilities of obtaining a residence permit by means of marriages or relationships of convenience. Subsequently, the Swedish Government and Parliament have underlined on several occasions that the requirement that residence permits be obtained before entry into Sweden is an important part of measures to maintain regulated immigration.

Moreover, the preparatory works to the Aliens Act state that it is important that aliens staying in Sweden illegally do not enjoy a better position than those who comply with decisions by the authorities to return to their country of origin in order to apply for a permit from there (Government Bill 1999/2000:43). The same requirement is found in Chapter III, Article 5, point 3 of the Family Reunification Directive, by which most European Union countries are bound. Many European countries hence require that a residence permit on account of family ties be granted before entry into the country. The Directive has been incorporated into Swedish law (Government Bill 2005/06:72).

33. As regards the exemptions that can be made according to Chapter 5, Section 18, second paragraph, point 5 of the Aliens Act, the preparatory works to the provision (Government Bill 1999/2000:43, p. 55 et seq.) state that the main emphasis should be placed on the question of whether it is reasonable to require that the alien return to another country in order to submit an application there. Relevant elements, which may be favourable for the alien, may be whether he or she can be expected, after returning home, to encounter difficulties in obtaining a passport or exit permit and this is due to some form of harassment on the part of the authorities in the country of origin. It may also be whether the alien will be required to complete a long period of national service or service under unusually severe conditions. It may also be relevant whether the alien has to return to a country where there is no Swedish foreign representation and where major practical difficulties and considerable costs are associated with travelling to a neighbouring country to submit the application there. Relevant elements, which may count against the alien, may be that he or she is staying in the country illegally, that their identity is unclear or if there are strong ties to the country of origin.

Practical issues of relevance in the present case on an application for a family reunification.

34. According to information from the Swedish Consulate-General in Jerusalem, its average processing time for investigating cases concerning ties to Sweden is from one week to two months depending on where the applicant is living. In the event that the applicant is not able to come to Jerusalem, staff from the Consulate-General can go to the West Bank and conduct the interview at the Representative Office of Denmark in Ramallah. According to information from the Consulate-General, people living in Nablus and other towns on the West Bank are generally able to go to Ramallah for an interview. If instead the applicant is deported to Jordan, he can apply for family reunification at the Swedish Embassy in Amman, where processing time for investigating a case concerning ties to Sweden is less than one month. Furthermore, the Swedish Migration Board has stated that the total average processing time in such cases from the filing of an

application at a Swedish representation abroad to the Migration Board's decision is a little more than five months. A decision from the Migration Board may be appealed against to the Migration Court and the Migration Appeal Court.

The security situation in the West Bank

35. The UK Border Agency, Country of Origin Information Report on the Occupied Palestinian Territories from 6 August 2009 stated in so far as relevant:

8.01 The situation in Gaza remained tense with continuing strain on the Israeli/Hamas cease fire ...

8.03 In its Weekly Report: On Israeli Human Rights Violations in the Occupied Palestinian Territory dated 27 May 2009; the Palestinian Centre for Human Rights (PCHR) stated that:

“...Israeli Occupation Forces (IOF) have continued to impose severe restrictions on the movement of Palestinian civilians throughout the West Bank, including occupied East Jerusalem. Thousands of Palestinian civilians from the West Bank and the Gaza Strip continue to be denied access to Jerusalem.”

Health care in the West Bank

36. According to a report from the UK Home Office (Operational Guidance Note, Israel, Gaza and the West Bank, February 2009; hereinafter "OGN Feb 09"), the Israeli Health Ministry reported in May 2008 that Israel is providing ambulatory, outpatient and inpatient services to Palestinian patients who access care in the Palestinian Authority (PA) hospitals, at the request of the Palestinian Ministry of Health. At times these services are provided in conjunction with Israeli and international NGOs. Israel also provides public health laboratory services, as well as providing training programmes to Palestinian physicians, nurses and other health professionals. Furthermore, in 2007 over 15,000 permits were granted to Palestinian patients and their companions to receive treatment in Israel. In addition to the public health services available and those provided by charitable and voluntary organisations, the Palestinian population is provided with health care by the Palestinian Red Crescent Society and other Palestinian non-governmental organisations and by UNWRA. As regards the availability of mental health care, the following may be noted. There is one psychiatric hospital on the West Bank with 320 beds as well as two general hospitals with psychiatric units in Nablus and Tulkarm with 4 inpatient beds.

Health care in Jordan

37. The health care system in Jordan is considered to be good. According to United Nations Development Programme, 98.5% of the

inhabitants have access to public health care, although principally primary health care (see for example the Swedish Ministry for Foreign Affairs report on the Situation of Human Rights in Jordan, 2007, p, 11). About half of the inhabitants of Jordan are originally Palestinians, the great majority of whom now have Jordanian citizenship, which means that they have the same rights and obligations as the “Transjordanians” (ibid. pp. 16-17). The International Medical Corps (IMC) confirms that Jordan has one of the best health care systems in the region. However the IMC further notes that Jordan's resources are strained by a massive refugee population (about 60% of its 5.7 million citizens are Palestinian or of Palestinian descent) and that the needs of destitute Iraqis put a large burden on the country's resources. The IMC further states that Iraqis and their Jordanian host population suffer from limited access to medical care, especially secondary and mental health care services. However, to address the needs of the Iraqi refugees and other vulnerable populations in Jordan, the IMC is implementing assistance programmes that aim to improve the quality of primary health care, including mental health services (see information at the IMC web site; <http://www.imcworldwide.org.uk/wherewework.asp?pageid=69>). As regards the availability of mental health care in Jordan, it should be noted that there are 3 to 5 clinical psychologists, 24 psychiatrists (plus 12 working for the army) and a few counsellors available in Jordan. Psychosocial services offer a total of 450 beds and 30 outpatient clinics (see IOM, “Assessment on Psychosocial Needs of Iraqis Displaced in Jordan and Lebanon”, 2008-04-23, p, 12). Jordan's public health care system is state-subsidised, but the public health care system is overburdened and provides only basic care. Many Jordanian citizens are enrolled in a national health insurance programme not open to foreigners, who must rely on private insurance to cover health care costs. Private insurance is expensive and frequently excludes costly treatment and surgical operations. According to the Jordanian authorities, Iraqi refugees can benefit from emergency health care regardless of their legal status. However, to receive further treatment in public hospitals they need to be residents. For this reason the majority of Iraqis rely on private hospitals whenever they can afford to pay. The IOM report primarily concerns the possibilities for Iraqi refugees in Jordan to obtain mental health care. It may be assumed that the information it contains has a bearing also on the availability of mental health care for Palestinians living in Jordan who are not Jordanian citizens.

COMPLAINTS

38. The applicant complained that due to his poor mental health an implementation of the deportation order to the West Bank or Jordan would be in breach of Article 3 of the Convention.

39. He also complained that due to his marriage to a Swedish woman on 15 November 2007 implementation of the deportation order would be in breach of Article 8 of the Convention.

THE LAW

40. The applicant invoked Article 3 of the Convention which reads as follows:

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

41. The Government submitted from the outset that although the applicant no longer invoked the general situation in the countries of destination or his personal situation due to the alleged articles written before 1997, there was nothing to suggest that upon return the applicant would face a real personal risk of treatment in violation of Article 3 due to the security situation on the West Bank or in Jordan or due to any alleged political activity there.

42. Moreover, as regards the applicant's mental health, having regard to the consistent case-law of the Court and in the present case a) to the medical certificates submitted, of which the most recent dated from October 2008; b) to the development of the applicant's mental poor health, which was primarily linked to his disappointment with the Swedish immigration authorities, his uncertain situation and his fear of being deported; c) to the public care available for serious psychological health problems in Sweden, including the possibility of compulsory psychiatric care; d) to the fact that the applicant has availed himself of such care in the form of outpatient treatment but declined the offers of inpatient treatment e) to the enforcement procedure relating to deportation, which take into account the person's state of health; f) to the health care existing on the West Bank and in Jordan; g) to the contention that the risk of deterioration of the applicant's mental health upon return amounted to speculation; h) to the fact that the applicant's mother and sister both lived in Nablus; i) to the fact that the applicant has not shown that his wife would be unable or unwilling to accompany and assist the applicant to either the West Bank or Jordan; and j) to the various circumstances of the case; the Government contended that there were no substantial grounds for believing that an implementation of the decision to

remove the applicant to the West Bank or Jordan would be contrary to the standards of Article 3 of the Convention.

43. The applicant maintained that due to his poor mental health an implementation of the deportation order to the West Bank or Jordan would be in breach of Article 3 of the Convention, notably because he would be deprived of the help and support of his wife and the medical doctors in Sweden. This could lead to an inevitable and unwanted risk that he would harm himself if forced to leave Sweden. Moreover, that his wife, being a Swedish citizen, could not be expected to leave her job, housing and other family members for an uncertain and expensive stay in another country with a completely different culture, religion and situation for women.

44. 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, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008-...).

45. It is also established case-law of the Court that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, and so on (see, among other authorities, *Saadi v. Italy* [GC], cited above, § 134).

46. Before the Court the applicant has not invoked the general situation on the West Bank or in Jordan, or any personal and concrete risk which he may encounter upon return to the West Bank due to the critical articles which allegedly he had written in the period between 1994 and 1997. However, for the sake of completeness, the Court considers there are no indications that the situation on the West Bank or in Jordan is so serious that the return of the applicant thereto would constitute, in itself, a violation of Article 3 of the Convention. The Court reiterates in this respect that it has never ruled out the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that a removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return

(see, for example, *NA. v. the United Kingdom*, no. 25904/07, § 115, 17 July 2008).

47. It also agrees with the Migration Court's finding on 9 November 2007 that although the applicant may have written some critical articles in the period from 1994 to 1997 about corruption among high-ranking persons on the West Bank, he had been able to remain in the area for more than five years after the alleged articles were published without having encountered any problems. Thus, it is highly unlikely that the applicant would risk persecution for having written those articles upon return.

48. 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 context, however, the Court is obliged to subject all the circumstances surrounding the case to rigorous scrutiny, especially the applicant's personal situation in the deporting State (see the *D. v United Kingdom* judgment of 2 May 1997, *Reports* 1997-III, § 49).

49. Consequently, having regard to all the material before it and notably to the available information on the applicant's state of health, the Court will proceed to examine whether, due to the applicant's poor mental health, the deportation to the West Bank or Jordan would be contrary to Article 3.

50. The Court reiterates in this respect its consistently applied principles that 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 and services provided by the expelling State. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of Article 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. In the *D. v. the United Kingdom* case (cited above) the very exceptional circumstances were that the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support (see, *N. v. the United Kingdom* [GC], no. 26565/05, § 42, 27 May 2008).

51. The question is thus whether the present case is so exceptional that humanitarian grounds against the removal are compelling.

52. The Court notes that before the domestic authorities the applicant did not invoke his poor mental health as a motive for being granted a residence permit in Sweden until after he had appealed against the Migration Board's decision of 15 May 2007, thus more than four years and five months after he entered Sweden on 9 December 2002. At that time, in the first set of proceedings the applicant had been granted a one year temporary residence permit until 30 October 2004 to prove his identity, which he had failed to do, and in the second set of proceedings his request for a residence permit had been refused by the Aliens Appeals Board's final decision of 13 September 2005, which was implemented implicitly when the applicant voluntarily moved to Germany, and finally in the third set of proceedings the applicant's request for a residence permit had anew been refused by the Migration Board's decision of 15 May 2007.

53. It was only later that the applicant submitted documentation stating that he suffered from depression, that he had attempted suicide in August 2007 and that there was a continuing risk of suicide attempts. Consequently, on 19 May 2008 the Migration Board decided to stay the enforcement of the applicant's deportation in order to examine whether it was medically possible for the applicant to travel to his home country. Three subsequent certificates, dated respectively 25 June, 17 July and 23 October 2008, stated that the applicant was depressed, apathetic, very anxious and had constant suicidal thoughts. In the latter two certificates it was stated that the applicant had nevertheless rejected an offer to be committed to the clinic for treatment as he had considered that he could cope at home. The chief physician concluded that, at that time, the applicant was not in a fit state to be deported.

54. In the meantime, on 6 August 2008, the Migration Board noted, *inter alia*, that the applicant's state of health was serious but that he himself considered that he could cope at home and that he did not need treatment at a hospital. Moreover, since his problems emanated from his insecure situation and wish to remain in Sweden and not from a life-threatening illness, it lifted the stay of enforcement.

55. The Court notes that since 23 October 2008 the applicant has not submitted any further medical certificates, which could give an indication as to whether his situation has improved or deteriorated. In these circumstances the Court must assume that the applicant is still in poor mental health; that he has not attempted suicide again; and that he has never been hospitalised or committed to compulsory psychiatric care.

56. The Court also notes that the applicant's depression, his suicide attempt in August 2007 and his suicidal thoughts were primarily linked to his disappointment with the Swedish immigration authorities, his uncertain situation and his fear of being deported.

57. The Court reiterates its case-law in this respect, namely that the fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised (see, for example, *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004 and *Karim v. Sweden* (dec.), no. 24171/05, 4 July 2006). The Court has reached the same conclusion also regarding applicants who had a record of previous suicide attempts (see *Goncharova and Alekseytsev v. Sweden* (dec), no 31246/06, 3 May 2007 and *A.A. v. Sweden* (dec.), no. 8594/04, § 71; 2 September 2008, and, *mutatis mutandis*, *Ovdienko v. Finland*, (dec.), no. 1383/04, 31 May 2005).

58. In the present case there are no elements indicating that the State and the doctors previously involved will not react to a concrete threat as far as possible. Moreover, there are no elements indicating that the State will enforce the deportation order if it is medically impossible for the applicant to travel to his home country. This finding is supported both by the Migration Board's decision of 19 May 2008 in the present case and by the enforcement procedure in Sweden, according to which implementation of a deportation order will occur only if the authority responsible for the deportation deems that the medical condition of the alien so permits and according to which the responsible authority will ensure that appropriate measures are taken with regard to the alien's particular needs (see, for example, *Karim v. Sweden*, (dec.), no. 24171/05, 4 July 2006; and *Ayegh v. Sweden*, (dec.), no. 4701/05, 7 November 2005).

59. Moreover, in the worst scenario, where an alien's health problems necessitate compulsory psychiatric care, it is the chief physician responsible who decides whether an implementation of the deportation order can take place (see paragraph 28).

60. The Court also notes that medical treatment is available in the West Bank, for example in Nablus from where the applicant apparently originates, and in Jordan. In any event, the fact that the applicant's circumstances in either of those two places would be less favourable than those he enjoys in Sweden cannot be regarded as decisive from the point of view of Article 3 (see *Bensaid v. the United Kingdom*, no. 44599/98, § 38, ECHR 2001-I; and *Salkic and others v. Sweden* (dec.), no. 7702/04, 29 June 2004).

61. The Court also notes that the applicant's mother and sister both live in Nablus and that the applicant has not shown that his wife will be unable or unwilling to accompany and assist him to either the West Bank or Jordan. Although the specific criteria as to the seriousness of the difficulties which a spouse is likely to encounter in the country to which an applicant is to be expelled notably relates to complaints under Article 8 of the Convention in the assessment of whether an expulsion measure is necessary in a democratic society and proportionate to the legitimate aim pursued (see, for

example, *Boultif v. Switzerland*, no. 54273/00, § 48, ECHR 2001-IX), in the present case it does add to the understanding that the applicant is not excluded from receiving care and support from his family in the country of destination.

62. Thus, 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 possible harm, the Court does not find that the applicant's deportation to Jordan or the West Bank would be contrary to the Article. In the Court's view, the present case does not disclose the very exceptional circumstances established by its case-law (see, among others, *D v. United Kingdom*, cited above, § 54; and *N. v. the United Kingdom* [GC], cited above, §§ 43 and 51).

63. Consequently, this part of the application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

64. The applicant has also claimed that it would be inhuman to separate him from his Swedish wife who has provided him with essential care and support. The Court considers that this complaint should be considered under Article 8 of the Convention which, insofar as relevant, reads:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country,”

65. The Government submitted that this part of the application should be declared inadmissible for non-exhaustion because no decisions exist as to whether the applicant may settle in Sweden in order to enjoy his right to family life there.

66. The applicant disagreed.

67. The Court reiterates that the purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity to prevent or put right the violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II, and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). This is an important aspect of the principle of the Court's subsidiary character in relation to the national systems (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* 1996-IV).

68. The provisions on family reunification are set out in Chapter 5, Section 3 of the Aliens Act and the Court notes that although an alien must apply for and have been granted a residence permit on account of family ties in Sweden before entering the country pursuant to Chapter 5, Section 18, of the Act, an exemption may be made if there are exceptional grounds. The crucial question in this respect is whether it is reasonable to require that the

alien return to another country in order to submit an application there (see paragraphs 29-31).

69. It is not in dispute that the applicant has never applied for family reunification or requested an exemption from the main rule that he must return to his home country and apply from there.

70. In these circumstances the Court finds that this complaint must be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and rejected pursuant to Article 35 § 4.

71. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court by a majority

Declares the application inadmissible.

Registrar

President