



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46636/99
by Richard Lee GOLDSTEIN
against Sweden

The European Court of Human Rights (First Section), sitting on 12 September 2000
as a Chamber composed of

Mrs W. Thomassen, *President*,
Mrs E. Palm,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr B. Zupančič,
Mr T. Panțîru, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application introduced with the European Commission of
Human Rights on 19 December 1997 and registered on 8 March 1999,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the
competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant is a national of the United States of America, born in 1951 and living in Sweden. He is represented before the Court by Mr Sten De Geer, a lawyer practising in Stockholm.

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

The applicant arrived in Sweden on 4 July 1997 and requested asylum. During lengthy interviews by the Swedish authorities, he stated that since 1990 he had worked actively to reveal police brutality and other misconduct by the police in the United States. In 1990 he had founded an association called "The Commission on Police Ethics" and in 1995 he had started another organisation called "The Standing Committee on Law Enforcement Development". As a consequence of his activities, he had allegedly been subjected to systematic police persecution since 1993. By 1997 the persecution had reached serious proportions. Allegedly, there had been serious attempts to injure him, he had been subjected to surveillance, his property had been destroyed and he had been attacked with chemical substances. His reports to the police authorities had been to no avail.

On 19 August 1997 the National Immigration Board (*Statens invandrarverk*) refused the applicant public legal counsel in the proceedings before the Board. The applicant appealed against this decision to the Legal Aid Board (*Rättshjälpsnämnden*).

The applicant's asylum application was rejected by the National Immigration Board on 24 September 1997. The Board found that there was no evidence to show that the United States police authorities had been persecuting the applicant. Thus, he was not in need of protection in Sweden. The applicant appealed against this decision to the Aliens Appeals Board (*Utlänningsnämnden*).

On 20 October 1997 the Legal Aid Board upheld the National Immigration Board's decision not to award the applicant public legal counsel.

On 24 October 1997 the Aliens Appeals Board refused the applicant public legal counsel in the proceedings before the Board. It appears that this decision was not appealed against by the applicant to the Legal Aid Board.

The National Immigration Board's decision not to grant the applicant asylum in Sweden was upheld by the Aliens Appeals Board on 30 January 1998. The Board found that if the applicant had been subjected to the alleged maltreatment in the United States, it was the result of criminal acts committed by individuals and was not attributable to the State. No appeal lay against this decision.

Subsequently, against the same background as initially, the applicant submitted a new request for asylum to the Aliens Appeals Board and also applied for legal aid. On 4 September 1998 the Board refused the applicant public legal counsel and also rejected his new application for asylum. No appeal lay against either of these decisions.

COMPLAINTS

1. The applicant claims that he would be subjected to torture or to inhuman or degrading treatment or punishment if returned to the United States and invokes in this respect Article 3 of the Convention.

2. He also claims that he was denied the right to an effective remedy in respect of the alleged violation of Article 3 of the Convention because he was not granted public legal counsel and because the examination of the asylum issue was not conducted in a proper manner. The applicant invokes in this respect Article 13 of the Convention.

THE LAW

1. The applicant claims that, if returned to the United States of America, he would be subjected to torture or to inhuman or degrading treatment or punishment. He invokes in this respect Article 3 of the Convention, which reads as follows:

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

The Court recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to asylum is not protected in either the Convention or its Protocols (cf., e.g., the *Vilvarajah and Others* judgment of 30 October 1991, Series A no. 215, p. 34, § 102). However, expulsion by a Contracting State of an alien may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be expelled (*ibid.*, p. 34, § 103).

It is true, owing to the absolute character of the right guaranteed by Article 3 of the Convention, that this Article may apply also where the danger emanates not from public authorities but from persons or groups of persons who are not, or who are not acting as, public officials. However, it must then 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 (cf., e.g., the *H.L.R. v. France* judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 758, § 40).

The Court does not find it established that the risks alleged by the applicant of his being ill-treated in the United States stem from any public authority or other organ of the State. Furthermore, if the applicant upon his return to the United States were to be subjected to illegal acts, the Court does not find it substantiated that the remedies at his disposal within the domestic legal system of that country could not provide appropriate protection.

Accordingly, the Court finds that no substantial grounds have been shown for believing that the applicant would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the United States, if he were to be returned there. Thus the case does not disclose any appearance of a violation of Article 3 of the Convention.

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

2. The applicant claims that he was denied the right to an effective remedy in respect of the alleged violation of Article 3 of the Convention because he was not granted public legal counsel and because the examination of the asylum issue was not conducted in a proper manner. He invokes in this respect Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

The Court recalls at the outset that, according to Article 35 § 1 of the Convention, it may only deal with a complaint after all domestic remedies have been exhausted. It appears that the applicant did not appeal against the Aliens Appeals Board’s decision of 24 October 1997 to refuse him legal aid. However, the Court finds that it is not necessary to examine this issue further, because the complaint is in any event inadmissible for the following reasons.

Leaving aside the question whether the applicant has at all an arguable claim for the purposes of Article 13 of the Convention, the Court recalls that the effectiveness of a remedy under this provision does not depend on the certainty of a favourable outcome (cf., e.g., the *Pine Valley Developments Ltd. and Others v. Ireland* judgment of 29 November 1991, Series A no. 222, p. 27, § 66).

The Court finds that the applicant had access to, and indeed also availed himself of, an effective remedy within the meaning of Article 13 of the Convention in respect of the alleged violation of Article 3 of the Convention, namely the right to appeal to the Aliens Appeals Board against the decision made by the National Immigration Board. No factual circumstances indicating the opposite have been established in the instant case as regards the manner in which the issues at hand were examined by the Board.

Furthermore, it is true that it is not enough under Article 13 of the Convention that an effective remedy is available in the national legal system; the applicant must also be able to take effective advantage of it. However, the said Article does not guarantee a right to legal counsel paid by the State when availing oneself of such a remedy. The Court finds no indication of any special reason calling for the granting of free legal aid in order for the applicant to take effective advantage of the available remedy.

Consequently, the case does not disclose any appearance of a violation of Article 13 of the Convention.

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

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Wilhelmina Thomassen
President