

AS TO THE ADMISSIBILITY OF

Application No. 23511/94  
by H. G.  
against Sweden

The European Commission of Human Rights sitting in private on  
19 May 1994, the following members being present:

MM. C.A. NØRGAARD, President  
S. TRECHSEL  
A. WEITZEL  
F. ERMACORA  
G. JÖRUNDSSON  
A.S. GÖZÜBÜYÜK  
J.-C. SOYER  
H.G. SCHERMERS  
H. DANELIUS  
Mrs. G.H. THUNE  
MM. F. MARTINEZ  
C.L. ROZAKIS  
Mrs. J. LIDDY  
MM. L. LOUCAIDES  
J.-C. GEUS  
M.P. PELLONPÄÄ  
B. MARXER  
M.A. NOWICKI  
I. CABRAL BARRETO  
B. CONFORTI  
N. BRATZA  
I. BÉKÉS  
J. MUCHA  
E. KONSTANTINOV  
D. SVÁBY

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of  
Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 17 February 1994 by  
H. G against Sweden and registered on 18 February 1994 under file No.  
23511/94;

Having regard to the report provided for in Rule 47 of the Rules of  
Procedure of the Commission;

Having regard to the observations submitted by the respondent  
Government on 18 March 1994 and the observations in reply submitted by  
the applicant on 7 April 1994;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is an Iranian citizen, born in 1955 and currently  
residing in Sweden. Before the Commission he is represented by Mr. Per  
Stadig, a lawyer practising in Stockholm.

A. The particular circumstances of the case

According to the applicant's account of the events preceding his arrival in Sweden he grew up in Ghaemshahr, which is situated approximately 250 kilometres north-east of Tehran. He claims to have been sympathising with the Mujahedin movement since 1981. That year he participated in a demonstration during which he was arrested and subsequently imprisoned for four months. During this period he was subjected to interrogation and allegedly burned with a cigarette on one arm by the revolutionary guardsmen. He denied, however, having participated in the demonstration and claimed that he was on the spot out of curiosity. He was released due to lack of evidence.

In 1982 the applicant married. Together with his brother-in-law he allegedly continued to work for the Mujahedin movement by distributing newsletters to members of the movement. His brother-in-law had a high position within the Mujahedin. In March 1985 the applicant and his brother-in-law were arrested by revolutionary guardsmen while distributing newsletters. The brother-in-law escaped and went to Sweden where he was granted asylum in 1985. The applicant was detained in Iran for one month. During this period he claims to have been interrogated and tortured. The revolutionary guardsmen also searched his home and questioned and ill-treated his wife, who did not know anything about the applicant's political activities. The applicant was sentenced to one year's imprisonment. He was released on bail in April 1986. His mother had put up security and he himself submitted a guarantee that he would not continue with his political activities. He was to report to the authorities once a week.

When he was released the applicant was at first unemployed. After one year he opened a store where he sold parts for sewing machines. He maintains to have been harassed by the authorities during this period. In 1987 he was contacted by his brother-in-law from Sweden. He wanted him to copy and distribute newsletters which were to be sent to him from Sweden. The applicant agreed to these activities. In 1989 the applicant applied for business visas to Sweden but these were rejected on 26 May, 21 June and 25 August 1989.

In September or October 1989 the activities of the applicant were revealed as his mail from Sweden was opened. A friend warned him of this and he fled and kept in hiding. He was aided by a relative. The applicant subsequently fled with his family to Tehran. He managed to leave Tehran legally with the assistance of one of his relatives and a smuggler. He left the airport of Tehran on 25 January 1990 with a valid passport and a visa for Poland. A smuggler had, with the help of bribes, managed to get his name off the "black list". He flew to Warsaw via Moscow. He stayed in Warsaw for five days and then went by car to Swinoujcie. Another smuggler helped him on board the boat to Sweden and bribed the crew. The applicant chose to go to Sweden because his brother-in-law lives there.

The applicant applied to the National Immigration Board (Statens Invandrarverk), hereinafter "the SIV", for asylum with reference to the above facts. He subsequently submitted that he continued to sympathise with the Mujahedin in Sweden. He participated in demonstrations, collected money and sold books for the movement. He was active in a committee in Gothenburg which had criticised the Iranian regime in connection with an earthquake in Iran. His picture was in the papers in connection with the demonstrations. Therefore he maintained, inter alia, that he was risking execution or at least 20 years' imprisonment if he were deported to Iran.

On 24 July 1991 the SIV rejected the applicant's request for asylum. In its decision, the SIV recalled that the applicant had left the airport of Tehran legally with a valid passport. Considering what was known about the applicable rules and inspections when leaving the airport of Tehran the SIV concluded that credit could not be given to the applicant's information in this respect. For the same reason his information on how,

with the help of bribes, he was able to get his name off the "black list" when leaving the country, was not credible. The SIV also found that there were grounds for questioning the applicant's statement about his political activities. The assessment of the SIV was that the information submitted by the applicant and what was otherwise known, was not such that credit could be given to his allegation that he was in need of asylum as a refugee according to Chapter 3, Section 1, subsection 1 of the Aliens Act (utlänningslagen).

The applicant appealed against this decision to the Aliens Appeals Board (utlänningsnämnden). Before the Board the applicant stated that there had been no problems at the airport of Tehran thanks to a relative of his who had taken care of everything. The applicant submitted that he had never brought forward that his name was on the black list. A relative of his and a smuggler were with him at the airport and had helped him through the checkpoints there. The revolutionary committee in Iran had confiscated his shop in Tehran, as an Iranian who had been expelled from Sweden had reported him to the authorities. The applicant further stated that on 20 June 1991 he had participated in a demonstration in Sweden organised by the Mujahedin against the Iranian regime and he submitted photographs of this occasion showing that he took part in the demonstration. The applicant maintained that this demonstration was sure to have been noted by the Iranian Embassy. Finally, he maintained that there were humanitarian grounds for his application and stated that his wife and children were planning to leave Tehran in order to join him in Sweden and he submitted a photo showing injuries to his wife's legs caused by the revolutionary guardsmen.

On 9 June 1992 the Aliens Appeals Board rejected the applicant's appeal. The Board shared the opinion of the SIV, i.e. the Board did not find the information submitted trustworthy. The applicant could not be regarded as a refugee within the meaning of the Aliens Act, nor could he be regarded as a so-called de facto refugee. The Board furthermore referred to the fact that the applicant's wife and minor children were still in Iran.

In a new application lodged with the SIV on 22 April 1993, the applicant submitted that his wife and two children had now arrived in Sweden and requested asylum. The applicant also requested the SIV to stay the enforcement of the expulsion order until his family's applications had been dealt with. The SIV decided on 23 April 1993 not to grant his requests.

Another request for a residence permit and a decision to stay the enforcement of the deportation was lodged with the SIV on 7 June 1993. The applicant once again referred to his family's applications. The SIV rejected the applicant's new requests on 8 June 1993.

On 9 June 1993 the applicant filed another request with the SIV and stated that there was information exposed in the case of his wife's request for asylum which spoke strongly in favour of granting him asylum. On 11 June 1993 the SIV rejected both the request for staying the enforcement of the expulsion order and the application for asylum.

On 27 December 1993 the applicant was detained by the police of Växjö for enforcement of the expulsion order. The applicant filed a new request for asylum with the SIV and maintained once again that his wife and children were in Sweden with applications for asylum, now pending before the Aliens Appeals Board. He further recalled that he and his wife had been working for the Mujahedin movement in Sweden and that a refugee espionage network which operated out of the Iranian Embassy in Stockholm was sure to affect him and his wife. The SIV rejected the applicant's requests on 28 December 1993. Some of the information submitted was already known to the SIV and the new circumstances were not considered sufficient for granting him a residence permit or for staying the expulsion order.

Yet another request was filed on 31 December 1993. The applicant was still detained and had now refused to eat for several days. He was convinced that his activities for the Mujahedin had been revealed by two Iranians who had been convicted of or charged with espionage. He submitted a written statement from the Muslim Student Society indicating that he had participated in demonstrations against the Iranian regime and that he would be executed if he went back to Iran. The SIV decided on 4 January 1994 to stay the expulsion order until further investigations could be made.

The incidents of espionage to which the applicant referred were in short as follows. Officials of the Iranian Embassy with connections to the Iranian Intelligence Service had been active in Sweden to obtain information about Iranian refugees and members of the resistance movement. In December 1993 and January 1994 two persons were sentenced to one and a half years' imprisonment respectively for unlawful activities with the purpose of getting information about Iranian refugees in Sweden. One of these individuals, a man from Iran who had been granted a permanent residence permit in Sweden as a refugee had been collecting information inter alia by joining and getting a leading position in the Mujahedin movement in Stockholm. The other person, a woman from Iran who had become a Swedish citizen since the summer of 1993, contacted members and sympathisers of the Mujahedin movement and thus obtained information which she submitted to the embassy officials. The judgment concerning the latter person has been appealed against and this case was, in April 1994, still pending before the Svea Court of Appeal (Svea hovrätt).

After the decision to stay the enforcement of the expulsion order, the SIV, according to the Government, contacted the Swedish Security Police concerning the refugee espionage business with a view to investigating whether the applicant appeared as one of the targets for the unlawful intelligence activities which had been carried out. However, no reference to the applicant was found in the police investigation. On 16 February 1994 the SIV rejected the applicant's request for a residence permit. The investigation was now completed and the SIV concluded that the information submitted by the applicant did not constitute grounds for granting asylum and there were no other exceptional grounds of a humanitarian nature for granting a residence permit.

Following still another request lodged by the applicant in which he referred to the Commission's indication under Rule 36 of its Rules of Procedure, SIV decided, on 18 February 1994, to stop the enforcement of the expulsion order since further investigations were deemed necessary. The applicant was released from detention.

As regards the applicant's wife and children the SIV rejected their requests for residence permits on 17 July 1993. The Aliens Appeals Board rejected their appeal on 18 March 1994. They are to be expelled together with the applicant.

#### B. Relevant domestic law

Under Chapter 2, Section 5, subsection 3, of the Aliens Act a request for a residence permit lodged by an alien, who is to be refused entry or expelled by a decision which has acquired legal force, may only be granted if the request is based on new circumstances and the applicant is entitled to asylum and there are weighty humanitarian reasons for allowing him to stay in Sweden.

Under Chapter 3, Section 1, an alien may be granted asylum because he is a refugee (para. 2) or, without being a refugee, if he wishes not to return to his home country because of the political situation there and provided he can put forward weighty reasons in support of his wish (para. 3). The term "refugee" refers to an alien who is staying outside the country of which he is a citizen because he feels a well-founded fear of being persecuted in that country, having regard to his race, nationality, membership of a special social group or his religious or

political convictions, and who cannot or does not wish, on account of his fear, to avail himself of his home country's protection (Chapter 3, Section 2).

An alien, as referred to in Chapter 3, Section 1, is entitled to asylum. Asylum may, however, be refused inter alia if, in the case of an alien falling under Chapter 3, Section 1, para. 3, there are special grounds for not granting asylum (Chapter 3, Section 4). An alien may be refused entry into Sweden if he lacks a visa, residence permit or other permit required for entry, residence or employment in Sweden (Chapter 4, Section 1, para. 2). When considering whether to refuse an alien entry or to expel him, it must be examined whether he, pursuant to Chapter 8, Sections 1-4, can be returned to a particular country or whether there are other special obstacles to the enforcement of such a decision (Chapter 4, Section 12). A refusal of entry issued by the National Immigration Board may be combined with a prohibition on return for a specific period of time (Chapter 4, Section 14). In reviewing a question of refusal of entry or expulsion, the Aliens Appeals Board may also issue a prohibition on return for a specific period of time (Chapter 7, Section 5, subsection 2).

Under Chapter 7, Section 10, the National Immigration Board may review its decision if new circumstances have emerged or for any other reason, provided it would not affect the alien negatively or be irrelevant to him. A review may take place even if an appeal to the Aliens Appeals Board has been lodged against the decision. Once the National Immigration Board has transmitted the file to the Aliens Appeals Board it may only review its decision if its opinion is requested by the Aliens Appeals Board (Chapter 7, Section 10). The National Immigration Board or the Aliens Appeals Board may refer a case to the Government together with its opinion in the matter (Chapter 7, Section 11).

An alien who has been refused entry or who is to be expelled may never be conveyed to a country where there is firm reason to believe that he would be in danger of being subjected to capital or corporal punishment or torture, or to a country where he is not protected from being sent to a country where he would be in such danger (Chapter 8, Section 1).

When a refusal of entry or an expulsion order is put into effect, the alien may not be sent to a country where he would risk being persecuted, or to a country where he would not be protected from being sent on to a country where he would risk being persecuted (Chapter 8, Section 2, subsection 1). An alien may, however, be sent to such a country if he cannot be sent to any other and if he has shown, by committing a particularly serious offence, that public order and safety would be seriously endangered by his being allowed to remain in Sweden. However, this does not apply if the threatened persecution in the receiving State implies danger to his life or is otherwise of a particularly grave nature. Similarly, the alien may be sent to a country referred to in subsection 1 if he has engaged in activities endangering the national security of Sweden and if there is reason to suppose that he would continue to engage in such activities in Sweden and he cannot be sent to any other country (subsection 2).

If the enforcement is not subject to any obstacles under, inter alia, Chapter 8, Sections 1 and 2, an alien who has been refused entry or who is to be expelled is to be sent to his country of origin or, if possible, to the country from which he came to Sweden. If the decision cannot be put into effect in the manner indicated in subsection 1, or there are other special grounds for doing so, the alien may be sent to some other country instead (Chapter 8, Section 5).

When considering a request for a residence permit lodged by an alien to be expelled according to a decision which has acquired legal force, the National Immigration Board (and in certain cases the Government too) may stay execution of that decision. For particular reasons, the Board

may also otherwise stay execution (Chapter 8, Section 10).

If the enforcing authority finds that enforcement cannot be carried out or that further information is needed the authority is to notify the National Immigration Board accordingly. In such a case, the Board may decide on the question of enforcement or take such other measures as are necessary (Chapter 8, Section 13).

## COMPLAINTS

The applicant complains that his expulsion to Iran would violate Article 3 of the Convention. He claims that he risks persecution, imprisonment or even execution in that country on account of his political activities.

## PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 February 1994 and registered on 18 February 1994.

On 18 February 1994 the President of the Commission decided pursuant to Rule 36 of the Commission's Rules of Procedure, to indicate to the respondent Government that it was desirable in the interest of the parties and the proper conduct of the proceedings not to return the applicant to Iran until the Commission had had an opportunity to examine the application.

The President further decided, pursuant to Rule 34 para. 3 and Rule 48 para. 2 (b), to bring the application to the notice of the respondent Government and to invite them to submit written observations on the admissibility and merits.

On 10 March 1994 the Commission prolonged the President's indication under Rule 36 until 15 April 1994.

The Government's observations were submitted on 18 March 1994 and the applicant's observations in reply were submitted on 7 April 1994.

On 14 April 1994 the Commission prolonged its indication under Rule 36 until 20 May 1994.

## THE LAW

The applicant complains that, if returned to Iran, he risks persecution in view of his political activities. He invokes Article 3 (Art. 3) of the Convention which reads:

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

The Government do not raise any objections in respect of the six months' rule set out in Article 26 (Art. 26) of the Convention and leave it to the Commission to decide whether domestic remedies have been exhausted, having regard to the fact that it is always possible to lodge a new request for a residence permit with the National Immigration Board which must deal with it, provided there are new circumstances which could call for a different decision.

As regards the substance of the application the Government point out that an alien's right to enter and reside in a particular country is not as such guaranteed by the Convention, nor is the right to political asylum. However, the Government acknowledge that where substantial grounds have been shown for believing that the person could, if extradited or expelled, face a real risk of being subjected to treatment contrary to Article 3 (Art. 3) in the country of destination the responsibility therefor would lie with the country extraditing or expelling the alien concerned.

The Government submit that the provisions on enforcement in the Swedish Aliens Act reflect almost exactly the same principles as have been outlined by the European Court of Human Rights when applying Article 3 (Art. 3) to extradition cases or to cases concerning expulsion. Under Chapter 8, Section 1 of the Aliens Act an alien refused entry or expelled may never be sent to a country where there are substantial grounds to believe that he would be in danger of suffering capital or corporal punishment or of being subjected to torture, nor to a country where he is not protected from being sent to a country where he would be in such danger. Thus, the Swedish immigration authorities have applied almost the same test as the Commission is carrying out when applying Article 3 (Art. 3) to the present case.

In the circumstances of the present case the Government rely on and agree with the opinions of the Swedish immigration authorities and the reasons they have invoked. Thus, the Government maintain that no substantial grounds have been shown for believing that the applicant would face a real risk of treatment contrary to Article 3 (Art. 3) of the Convention if expelled to Iran.

The applicant maintains that the facts of the case disclose substantial grounds for believing that he would be subjected to treatment contrary to Article 3 (Art. 3) of the Convention if returned to Iran. He has been arrested, imprisoned and ill-treated on several occasions due to his political activities and it is undisputed that he and his family have been harassed by the Iranian authorities because of this.

The applicant furthermore maintains that the Swedish Government have totally misinterpreted the political situation in Iran. According to information from the United Nations, almost 20,000 persons are incarcerated today in Iran for political reasons. Accordingly, there is every reason to believe that the facts as submitted by the applicant disclose reason to fear treatment contrary to Article 3 (Art. 3) of the Convention.

As regards Article 26 (Art. 26) of the Convention the Commission finds that the applicant has, in the circumstances of the case, fulfilled the requirements of the exhaustion of domestic remedies.

As regards the applicant's complaint made under Article 3 (Art. 3) of the Convention the Commission recalls that the Contracting States have the right to control the entry, residence and expulsion of aliens. The right to political asylum is not protected in either the Convention or its Protocols (Eur. Court H.R., *Vilvarajah and Others* judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 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 is to be expelled (*ibid.*, p. 34, para. 103). A mere possibility of ill-treatment is not in itself sufficient (*ibid.*, p. 37, para. 111).

When considering this issue the Commission attaches importance to the fact that the Swedish authorities appear to have gained considerable experience in evaluating claims of the present nature by virtue of the large number of Iranian asylum seekers in Sweden. It notes that residence permits have in fact been granted in numerous cases and that the authorities are obliged to consider essentially the same factors as are relevant to the Convention organs' assessment under Article 3 (Art. 3) of the Convention. The Commission observes, in particular, that Chapter 8, Section 1, of the Aliens Act also imposes an absolute obligation on the enforcement authority in Sweden to refrain from expelling an alien should the human rights situation in the receiving country constitute a firm reason to believe that he would be in danger of being subjected to

capital or corporal punishment, or torture, in that country (cf. No. 20981/92, Dec. 8.4.93 and No. 21808/93, Dec. 8.9.93, to be published in D.R. 75).

The facts of the present case disclose that the decision to expel the applicant was made after careful examination of his case during which the applicant, assisted by counsel, had the opportunity to submit what in his opinion was of importance to the case. Having regard to the outcome thereof the Commission shares the Government's doubts as to the credibility of the applicant's story.

In these circumstances the Commission concludes, on the evidence before it concerning the applicant's personal situation and the general situation in Iran today, that he has failed to show that the Swedish authorities would expose him to a serious risk of treatment contrary to Article 3 (Art. 3) of the Convention should they expel him to Iran (cf. also No. 16381/90, Dec. 14.10.91 and No. 23406/94, Dec. 14.4.94, both unpublished).

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(C.A. NØRGAARD)