

AS TO THE ADMISSIBILITY OF

Application No. 27683/95  
by M. H., M., M., M., S. and I. K.  
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 6 September 1995, the following members being present:

MM. H. DANELIUS, President  
S. TRECHSEL  
Mrs. G.H. THUNE  
MM. G. JÖRUNDSSON  
J.-C. SOYER  
H.G. SCHERMERS  
F. MARTINEZ  
L. LOUCAIDES  
J.-C. GEUS  
M.A. NOWICKI  
I. CABRAL BARRETO  
J. MUCHA  
D. SVÁBY  
P. LORENZEN

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

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

Having regard to the application introduced on 20 April 1995 by M. H., M., M., M., S. and I. K. against Switzerland and registered on 22 June 1995 under file No. 27683/95;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The first and second applicants, born in 1950 and 1952, respectively, are a married couple. The third, fourth, fifth and sixth applicants, born in 1976, 1977, 1979 and 1986, respectively, are their children. All applicants are Iranian citizens and are currently residing in Switzerland. Before the Commission they are represented by Mr G. A. Danuser, a lawyer practising in Zurich.

I.

The first and fifth applicants left Iran on 12 January 1990 and travelled via Turkey and Switzerland to Sweden. When the Swedish authorities dismissed their request for asylum, they travelled to Switzerland where they requested asylum. When questioned by the Swiss authorities, the first applicant maintained that he had opposed the regime of Khomeini. He had taken his daughter with him as she suffered from stomach troubles.

On 23 March 1991 the remaining applicants also travelled to Switzerland and requested asylum. When questioned by the Swiss authorities, the second applicant submitted that, after her husband's

departure, revolution guards had frequently asked her about the whereabouts of her husband.

When questioned on 18 April 1991 by the Swiss authorities, the first applicant maintained that while in the army he had secretly spoken with friends about the regime. Some persons were then arrested, and his best friend had been executed. Frequently he had been sent to the front on account of his political views. When on one occasion he refused to go, he was suspended from service and brought before a military court which apparently has not yet given a decision in the case. In 1990 he had left the army and travelled to Sweden with a false passport. After his departure his house had been seized.

On 15 November 1991 the Federal Office for Refugees (Bundesamt für Flüchtlinge) dismissed the applicants' request for asylum.

The applicants' appeal against this decision was dismissed by the Swiss Asylum Appeals Commission (Schweizerische Asylrekurskommission) on 29 January 1993. The Commission found inter alia that the applicants had not sufficiently substantiated their allegations about the circumstances leading to their departure from Iran. The Commission referred in particular to various documents from which it transpired that the first applicant had left the army by requesting early retirement for family reasons; that his superior had not objected to his departure; and that he, the first applicant, had been released from service by decision of 16 March 1989. The Commission further considered that when entering the army as a professional soldier the first applicant would have been aware that he would have to do service at the front. On the other hand, it did not appear credible that he would have been sent to the front two or three months before he resigned.

In its decision the Swiss Asylum Appeals Commission also referred to a report of the Swiss Embassy in Teheran which had undertaken inquiries in respect of the applicants. The Embassy considered it unlikely that the applicants could have passed through the various strict controls at Teheran airport merely, as they claimed, by bribing one high ranking official.

The applicants were ordered to leave Switzerland before 15 April 1993.

## II.

The applicants applied to the United Nations High Commissioner for Refugees. When no reply arrived, the applicants and other persons occupied the High Commissioner's Office in Geneva. Towards the end of October 1993 various Swiss newspapers referred to this incident, one newspaper mentioning the first applicant's name.

The Federal Office for Refugees took up the applicants' case again and on 12 November 1993 asked them to submit any relevant further documents. The applicants did not reply.

## III.

On 18 August 1994 the applicants filed a request with the Swiss Asylum Appeals Commission for the reopening of the proceedings (Revisionsgesuch). They submitted various photos from which it transpired that the first applicant had participated in demonstrations against the Iranian government. They further submitted a letter dated 29 July 1994 of the National Council of Resistance of Iran, located in France, which stated:

(Translation)

"To whom it may concern.

It is hereby certified that (the first applicant) had political activities against the Khomeini regime and in favour of the Iranian resistance. Thus, in the case of his return to Iran, (the first applicant) would be in danger. Therefore, you are requested not at all to return (the first applicant) to Iran and to grant his request for political asylum. You are assured that the return of (the first applicant) to Iran would be a danger for him and his family and that they would be threatened by the Khomeini regime."

By letter of 20 September 1994 the Swiss Asylum Appeals Commission requested an advance payment of 700 SFr from the applicants as their request for reopening of the proceedings lacked prospects of success. The Commission also refused the applicants' request to waive the costs.

The Swiss Asylum Appeals Commission found in particular that the letter of the National Council of Resistance of Iran was general and unsubstantiated and therefore irrelevant. Furthermore, it did not transpire from the photos which demonstrations were concerned. However, according to the applicants' own submissions, most demonstrations had taken place before the Swiss Asylum Appeals Commission had given its decision on 29 January 1993 and they could therefore no longer serve as grounds for reopening of the previous proceedings. Insofar as one such demonstration of 6 February 1993 had taken place after that decision, the applicants should have filed a request for reconsideration of the decision (Wiedererwägungsgesuch) rather than a request for reopening of the previous proceedings. Indeed, they had failed to submit this information upon the request of the Federal Office for Refugees of 12 November 1993.

The applicants did not pay the advance costs whereupon on 14 October 1994 the Swiss Asylum Appeals Commission declared their request for reopening of the proceedings inadmissible. The decision was served on the applicants on 20 October 1994.

#### IV.

On 20 January 1995 the applicants filed a request for reconsideration of the decision to leave Switzerland. They referred in particular to their psychological condition.

On 22 February 1995 the Aliens' Police of the Canton of Zurich informed the applicants' lawyer that they would expel the applicants by force.

On 24 February 1995 the Swiss Asylum Appeals Commission requested an advance payment of 1,200 SFr as the request lacked prospects of success. The Commission noted in particular that the applicants' psychological problems could also be treated in Iran. It further considered that the authorities would duly have to consider the applicants' psychological situation when deciding on the modalities of their departure from Switzerland.

It does not transpire from the documents whether the applicants paid the advance costs and whether the Swiss Asylum Appeals Commission eventually gave its final decision.

#### COMPLAINTS

1. The applicants complain under Article 2 para. 1 of the Convention that the first applicant would risk his life if he returned to Iran.
2. Under Article 3 of the Convention the applicants submit that in view of the factual circumstances of their case they would risk inhuman

and degrading treatment upon their return to Iran.

The applicants also submit that the uncertainty of the past two years as to whether they will be obliged to return to Iran amounts to inhuman and degrading treatment contrary to Article 3 of the Convention. Indeed, they have suffered severe psychological distress.

3. The applicants further submit that upon their return to Iran their freedom and security within the meaning of Article 5 para. 1 of the Convention would be at risk.

4. Under Article 6 of the Convention the applicants complain that their status in Switzerland was not examined during two years. They also complain that they were not granted free legal aid in the proceedings leading to the decision of 18 August 1994.

5. In support of their allegations the applicants submit photos depicting the first applicant and other persons participating in one or more demonstrations in Switzerland against the Iranian government. They further list five demonstrations against the Iranian government in Zurich and Bern between 20 June 1991 and 23 July 1994 in which the first applicant participated. They also submit the letter of 29 July 1994 of the National Council of Resistance of Iran (see above, III.). Finally, they submit a list of various attacks, apparently undertaken by the Iranian government, on persons outside Iran.

#### PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 April 1995.

On 27 April 1995 the President decided not to apply Rule 36 of the Commission's Rules of Procedure.

The application was registered on 22 June 1995.

#### THE LAW

1. The applicants complain that they have been ordered to return to Iran where they will risk death or inhuman and degrading treatment. The applicants invoke Article 2 para. 1 and Article 3 (Art. 2-1, 3) of the Convention which state, insofar as relevant:

Article 2 (Art. 2)

"1. Everyone's right to life shall be protected by law. ..."

Article 3 (Art. 3)

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

a) According to the Convention organs' case-law, the right of an alien to reside in a particular country is not as such guaranteed by the Convention. Nevertheless, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious and well-founded fear of treatment contrary to Article 2 or 3 (Art. 2, 3) of the Convention in the country to which the person is to be expelled (see No. 10564/83, Dec. 10.12.84, D.R. 40 p. 262, and *mutatis mutandis* Eur. Court H.R., *Soering* judgment of 7 July 1989, Series A no. 161, p. 32 et seq., paras. 81 et seq.).

However, the mere possibility of ill-treatment on account of the unsettled general situation in a country is in itself insufficient to give rise to a breach of Article 3 (Art. 3) of the Convention (see Eur. Court H.R., *Vilvarajah and others* judgment of 30 October 1991, Series A no 215, p. 37, para. 111).

b) In the present case, the Commission notes that the Swiss Asylum Appeals Commission dismissed the applicants' request for asylum on 29 January 1993. Their subsequent request for reopening of the proceedings was declared inadmissible on 14 October 1994 as they had failed to pay advance costs. However, it transpires from the letter of 20 September 1994 that their request would in any event have been inadmissible, partly as it was belated, partly as the applicants should have filed a request for reconsideration of the previous decision. Moreover, the applicants' subsequent request for reconsideration of 20 January 1995 no longer concerned the situation upon their return to Iran.

An issue arises therefore whether the applicants have filed their complaints with the Commission "within a period of six months from the date on which the final decision was taken" within the meaning of Article 26 (Art. 26) of the Convention.

The Commission need nevertheless not resolve this issue since this part of the application is in any event inadmissible for the following reasons.

c) The Commission notes that in the proceedings before the Swiss authorities the applicants mentioned two reasons militating against their return to Iran, namely the circumstances of their departure from Iran; and their subsequent participation in Switzerland in demonstrations against the Iranian government.

The Commission has first examined the grounds leading to the applicants' departure from Iran. It notes at the outset that the applicants have not provided any documents indicating that they were obliged to leave Iran for fear of persecution. The Commission furthermore notes that the Swiss authorities, in particular the Swiss Asylum Appeals Commission in its decision of 29 January 1993, carefully considered the applicants' claims that the first applicant was persecuted for his political activities in the army. However, the Swiss Asylum Appeals Commission found that the first applicant had in fact left the army for family reasons, and that his superior had not objected to his departure.

The Commission has next considered the applicants' claims that they cannot be expected to return to Iran in view of their subsequent participation in demonstrations in Switzerland against the Iranian government. The applicants refer to photos depicting the first applicant and other persons at demonstrations, as well as to a letter dated 29 July 1994 of the National Council of Resistance of Iran.

As regards the letter of 29 July 1994, the Commission finds that it contains no concrete information as to the applicants' alleged persecution by the Iranian government. As regards the photos, the Commission considers that the applicants have not provided any documents or other evidence which would indicate that they are currently being looked for by the Iranian authorities on account of the demonstrations in which they participated between 20 June 1991 and 23 July 1994 and which have been depicted on the photos.

Thus, the applicants have failed to show that upon their return to Iran they would face a real risk of being subjected to treatment contrary to Article 2 para. 1 or Article 3 (Art. 2-1, 3) of the Convention.

The applicants further complain that the uncertainty of the past two years as to whether they will be obliged to return to Iran amounts to inhuman and degrading treatment contrary to Article 3 (Art. 3) of the Convention. However, the Commission finds that these circumstances do not attain the minimum level of severity so as to fall within the scope of Article 3 (Art. 3) of the Convention (see Eur. Court H.R., Ireland v. United Kingdom judgment of 18 January 1978, Series A no. 25,

p. 65, para. 162).

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Insofar as the applicants complain that upon their return to Iran their freedom and security within the meaning of Article 5 para. 1 (Art. 5-1) of the Convention would be at risk, the Commission finds no issue under this provision. This part of the application is therefore also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Insofar as the applicants complain under Article 6 (Art. 6) of the Convention about the asylum proceedings, in particular of their duration and that they were not granted legal aid, the Commission recalls that the decision whether an alien should be allowed to stay in a country or be expelled does not involve the determination either of the alien's civil rights or obligations, or of a criminal charge, within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see No. 8118/77, Dec. 19.3.81, D.R. 25 p. 105). The remainder of the application is therefore incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber

(M.-T. SCHOEPPER)

President of the Second Chamber

(H. DANELIUS)