

AS TO THE ADMISSIBILITY OF

Application No. 26485/95
by R.H. and M.E.
against Sweden

The European Commission of Human Rights sitting in private on
22 May 1995, the following members being present:

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

Mr. M. de SALVIA, Deputy 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 18 January 1995
by R.H. and M.E. against Sweden and registered on
10 February 1995 under file No. 26485/95;

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 applicants, mother and daughter, are both Iranian citizens
of Kurdish origin. They were born in 1960 and 1988, respectively. They
are currently staying in Sweden awaiting their impending expulsion to
Iran. Before the Commission they are represented by Mr. Leif Rydberg,
a lawyer at Bergshamra.

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

Particular circumstances of the case

The applicants entered Sweden on 8 January 1993 and immediately

applied for asylum and, alternatively, a residence permit on humanitarian grounds. The applicant mother stated that she feared being executed in Iran or being sentenced to imprisonment for having illegally left the country.

In the asylum request the applicant mother alleged, inter alia, that she had been a member of the People's Mojahedin Organisation of Iran ("PMOI") during her student years 1978-82. Her participation had consisted of distributing tracts and other publications. She had participated in demonstrations and had also collected medicine, food and money for the Kurds. In 1979 she had been arrested and detained for two days. During her detention she had been assaulted. Her father had also been tortured and subjected to a staged execution. In 1983 she had begun distancing herself from PMOI. The same year she had been temporarily barred from continuing her university studies. In 1987 she had married S. but they had divorced the same year. In 1988 a daughter (the second applicant) had been born to them. The applicant mother had been granted sole custody of the daughter, while S. had been granted access rights. In 1990 the applicant mother had been dismissed from a teaching post. In support of her last-mentioned allegation she invoked a copy of a letter from the Security Agency within the Iranian Department of Education dismissing her on account of her political activities within PMOI and her activities against the Iranian regime. She furthermore alleged that she had generally been discriminated against on account of her Kurdish origin. She also claimed to be an active Sunni Muslim.

In the asylum proceedings the applicant mother, moreover, alleged that, in March 1992, while the applicants had been staying with her parents in Teheran, she had noticed that their telephone was being tapped. On 4 September 1992 her father had been contacted by an infiltrator stating that the applicant mother was wanted by the Iranian Security Agency ("Savama"). In November 1992 her parents had been arrested and briefly detained, allegedly because of her. The applicants had stayed in Teheran until 21 November 1992, following which they had travelled to Bosheher and Bandar Abbas in southern Iran in order to prepare their departure from the country. On 5 January 1993 they had left Iran for Dubai, assisted by smugglers. From Dubai they had flown to Amsterdam, from where they continued to Copenhagen and Stockholm. The applicants had allegedly never had any valid Iranian passport and had therefore left the country with a forged passport valid for both of them. The smugglers had allegedly accompanied the applicants to Amsterdam, where they had taken their passport back.

In a letter to the National Immigration Board (Statens invandrarverk) of 21 February 1993 the Iranian Embassy in Sweden transmitted a letter from S. concerning the applicants. According to S., the applicant mother had threatened to leave Iran for Sweden together with their daughter. He had therefore not authorised the daughter's inclusion in the applicant mother's passport. Her previous passport had expired on 24 August 1992, following which she had received a new one. In support of his contentions S. submitted a copy of a certificate of 18 February 1993 issued by the Passport Office of the Karaj Disciplinary District indicating the dates and numbers of the passports. He also submitted a copy of an order by the Justice Administration of the East Azarbaijan Province Justice Office to the Head of the Iranian Passport Department, requesting it to prevent the exit of the applicant daughter from the country and not to issue any passport to the daughter, who was said to be "under the fostering of her mother ... without the permission of her father".

In a letter to the National Immigration Board of 21 May 1993 the Iranian Embassy in Sweden inquired into the applicant mother's address in Sweden. The Embassy stated that it needed "to come into contact with [her] on a matter of great urgency". The address was not divulged by the Board and on 7 July 1993 the National Immigration Board informed the applicant of the inquiry.

In response to S.'s intervention before the National Immigration Board the applicant mother claimed that S. was cooperating with the Iranian regime. She suspected that he had supplied the authorities with information about her previous political activities which to some extent was untruthful.

On 10 November 1993 the National Immigration Board rejected the applicants' request for asylum and a residence permit, finding that the applicant mother's account of her background was not sufficiently credible. It noted, among other things, her assertion that she had left Iran without a valid Iranian passport. It observed, however, that the applicant mother had not been politically active since 1983 and, although she had been dismissed from her post in 1990, she had nevertheless been granted a passport in 1992, as shown by S..

In her appeal to the Aliens Appeals Board (Utlänningsnämnden) the applicant stated, among other things and contrary to her previous submissions, that she had held an Iranian passport during the regime of the Shah up to 1979. She furthermore stated that she had distanced herself from PMOI in 1983 because she had been allowed to continue her studies on condition that she would no longer be politically active.

On 24 October 1994 the Aliens Appeals Board rejected the appeal. It noted that the applicant mother had, in 1990, not been allowed to teach. Given that her political past had been known to the authorities already in 1983, the Board considered it unlikely, however, that the Iranian authorities would show an interest in her on account of her political past as late as 1990. The Board furthermore found no reason to question the indication that she had held a valid passport until 1992, when it had been renewed.

The applicants subsequently requested a residence permit on humanitarian grounds, alleging that the applicant mother had been denounced to the Iranian authorities by S. and referring, inter alia, to the attempts by the Iranian Embassy to get in touch with her in Sweden.

On 21 November 1994 the Aliens Appeals Board rejected the request.

In March 1995 the applicants lodged a fresh request for a residence permit on humanitarian grounds, stating that the applicant mother had converted to Christianity and had been baptised on 20 March 1995.

On 6 April 1995 the Aliens Appeals Board rejected the request. The Board had been in contact with the applicant mother's priest, who had certified that her Christian faith was genuine. It noted, however, that the applicant mother had been introduced to the priest by her counsel. Before she had been baptised the applicant mother and the priest had met on one occasion only, on 14 March 1995. In her previous submissions to the Swedish authorities she had not stated that she had been concerned with her religious faith. The applicants' fresh request had been lodged with the Board three days after the applicant mother had been baptised. Having assessed all circumstances, the Board found serious reasons to question the genuine character of her conversion. It further found it unlikely that the baptism had become known to the Iranian authorities.

The applicant mother has a brother in Sweden who appears to be a Swedish citizen. He was previously politically active in Kurdish areas. She also has four uncles and two aunts in Sweden.

Relevant domestic law

According to the 1989 Aliens Act (utlänningslag 1989:529), a

residence permit may be granted to an alien for humanitarian reasons (chapter 2, section 4, subsection 1 (2)). 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 provided the applicant is either entitled to asylum or there are weighty humanitarian reasons for allowing him or her to stay in Sweden (chapter 2, section 5, subsection 3). As from 1 July 1994 a request pursuant to chapter 2, section 5, shall be lodged with the Aliens Appeals Board.

When considering whether to refuse an alien entry or to expel him or her, the authorities must examine, pursuant to chapter 8, sections 1-4, of the Aliens Act, whether he or she can be returned to a particular country or whether there are other special obstacles to the enforcement of such a decision. If the enforcement meets no obstacles under chapter 8, an alien is to be expelled or returned to his or her country of origin or, if possible, to the country from which he or she came to Sweden. If the decision cannot be put into effect in the manner indicated above or if special reasons exist, the alien may be sent to another country (chapter 8, section 5).

If the enforcing authority finds that the enforcement cannot be carried out or that further information is needed, it shall 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 applicants fear that their return to Iran would subject them to a risk of being ill-treated on account of both the applicant mother's political past and their allegedly illegal departure from the country which was, moreover, in violation of the access arrangements ordered in respect of the applicant child. The applicants refer, inter alia, to the interest shown by the Iranian Embassy in their whereabouts in Sweden. The applicant mother has allegedly also received correspondence from S. at her address in Sweden with an indication of her client number at the National Immigration Board on the envelope. The applicants therefore fear that they have been denounced to the Iranian Government by S. and infiltrators in Sweden. In the applicants' further submissions of 5 May 1995 reference is also made to the applicant mother's conversion from Islam to the Christian faith.

The applicants invoke Articles 1, 2, 3, 5, 8, 9, 10, 11 and 14 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 January 1995 and registered on 10 February 1995.

On 25 January 1995 the President of the Commission found no basis, under Rule 36 of the Commission's Rules of Procedure, for an indication to the respondent Government that it would be desirable in the interest of the parties and the proper conduct of the proceedings before the Commission not to expel the applicants to Iran until the Commission had examined the application further.

THE LAW

The applicants fear that their return to Iran would subject them to a risk of being ill-treated, both on account of the applicant mother's political past and their allegedly illegal departure from the country which was, moreover, in violation of the access arrangements ordered in respect of the applicant child. They invoke Articles 1, 2, 3, 5, 8, 9, 10, 11 and 14 (Art. 1, 2, 3, 5, 8, 9, 10, 11, 14) of the Convention.

1. The Commission has first examined the application under Article 3 (Art. 3) of the Convention which reads as follows:

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

The Commission recalls that 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.*, para. 103). A mere possibility of ill-treatment is not in itself sufficient (*ibid.*, p. 37, para. 111).

The Commission shares the Swedish authorities' doubts as to the credibility of the applicant mother's account of her background in Iran. Even assuming that she was active in PMOI up to the early 1980's, an activity which the Iranian authorities appear to have become aware of at the latest in 1983, there is no indication that she would now face a real risk of treatment contrary to Article 3 (Art. 3) of the Convention on that account.

The Commission furthermore finds that the circumstances surrounding the applicant mother's purported conversion are dubious. Even assuming that the conversion is genuine, the Commission cannot find that she would run a real risk of treatment contrary to Article 3 (Art. 3) on this account (cf. No. 21808/93, *Ismaili v. Sweden*, Dec. 8.9.93, unpublished).

As regards the risk of ill-treatment on account of the applicant mother's sex, the abduction of the applicant child or the applicants' Kurdish origin, the Commission reaches the same conclusion.

Furthermore, as regards the risk of ill-treatment on account of the interest in the applicants shown by the Iranian Embassy in Sweden, the Commission finds no indication that the Embassy's inquiries have served any purpose other than to assist S. in locating his daughter. The activity shown by the Embassy does not therefore raise any issue under Article 3 (Art. 3) of the Convention, should the applicants be returned to Iran.

The Commission also attaches a certain 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 decision to expel the applicants appear to have been made after careful examination of the applicants' case (cf. Eur. Court H.R., *Cruz Varas and Others* judgment of 20 March 1991, Series A no. 201, p. 31, para. 81, and, as regards expulsion to Iran, No. 20981/93, *P. v. Sweden*, Dec. 8.4.93, unpublished; the above-mentioned No. 21808/93).

The Commission also observes that chapter 8 of the Aliens Act 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 or she would be in danger of being subjected to capital or corporal

punishment, or torture, in that country.

Finally, bearing in mind all the above-mentioned elements, the Commission has carried out an overall assessment of the risk of ill-treatment contrary to Article 3 (Art. 3) of the Convention which the applicants might be facing on their return to Iran. It concludes, however, on the evidence before it concerning their individual background and the general situation in Iran, that it has not been established that there are substantial grounds for believing that they would be exposed to a "real risk" of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention, if returned to that country.

2. The Commission has further examined the applicant's allegations of violations of Articles 1, 2, 5, 8, 9, 10, 11 and 14 (Art. 1, 2, 5, 8, 9, 10, 11, 14) of the Convention. However, insofar as the matters complained of have been substantiated and are within its competence, the Commission finds that they do not disclose any appearance of a violation of those provisions.

3. It follows that the application as a whole 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission

(M. de SALVIA)

President of the Commission

(C. A. NØRGAARD)