



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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31260/04
by Vasilina MATSIUKHINA and Aliaksandr MATSIUKHIN
against Sweden

The European Court of Human Rights (Fourth Section), sitting on
14 September 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO,

Mrs E. FURA-SANDSTRÖM,

Ms L. MIJOVIĆ,

Mr D. SPIELMANN, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 25 August 2004,

Having regard to the interim measure indicated to the respondent
Government under Rule 39 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mrs Vasilina Matsiukhina and Mr Aliaksandr Matsiukhin, are nationals of Belarus, who were born in 1973 and 1964 respectively. They are represented before the Court by Mr H. Bredberg, a lawyer practising in Stockholm.

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

The applicants, a married couple, applied for asylum in Sweden on 28 May 2002. They claimed to have arrived in Sweden the same day.

Individual interviews with the applicants were conducted by the Migration Board (*Migrationsverket*) on 3 June 2002 and 14 April 2003.

The first applicant stated, *inter alia*, the following. In June 2001, after obtaining her law degree, she joined the Belarus Patriotic Youth Union (BPSN), an organisation closely connected to President Lukashenko. At the same time, she was employed by the regional branch of BPSN in Vitebsk, dealing with the documentation of the organisation of local branches. As from September 2001 she was also in charge of the economic activities of the regional organisation, which involved the examination of various contracts. She was employed on a probationary basis for two months and both she and her relatives were checked by the security services. She soon discovered that BPSN engaged in illegal economic activities, including money laundering. Many Government officials were involved and large amounts of money were transferred to the accounts of President Lukashenko. Furthermore, medicine, food and clothes received by BPSN from abroad as humanitarian aid were sold in ordinary shops rather than being distributed among those in need of the aid. After having been told by her superior that the matters were of no concern to her, she brought them to the attention of GUV D, the highest police authority in Belarus, on 19 November 2001. She also submitted copies of documents as evidence of the illegal activities. In December she started to receive threats, including death threats, by telephone. On 8 January 2002 she was informed by GUV D that the investigation had been discontinued, as there was no indication of illegal activities. Convinced that no proper investigation had been made, she appealed against this decision to the public prosecutor's office in Minsk on 13 January.

On 14 January 2002 the first applicant gave a speech before a large crowd at a public meeting organised by BNF, an opposition party. She revealed details about BPSN and its activities. She was thereafter summoned to appear before the first-instance court in Minsk on 21 January. On that day she was given a decision by a court official that she was asked to sign. The decision stated that she had been admonished and ordered to pay a fine for having spread anti-Government propaganda. She paid the fine

but appealed against the decision. On 11 February 2002 the first-instance court rejected her appeal.

On 4 February 2002 the first applicant was dismissed from her job. She then had a nervous breakdown and was hospitalised. While she was in hospital, her husband received telephone calls from people who threatened to kill both of them. On 20 February she was summoned to the first-instance court where she was questioned by an interrogator. She was told that the illegal activities of BPSN were investigated and that she was an important witness in the case. Later she came to understand that the reason for the questioning was just to find out whether she had more information about BPSN than she had already submitted. A further meeting was fixed for 25 February. She remained in Minsk, staying at a hotel, as she was afraid of returning to Vitebsk due to the threatening phone calls. During the night between 20 and 21 February unknown men broke into her hotel room. They assaulted her, searched the room and then disappeared. Her injuries were examined at the department for forensic medicine the following day. Finding that she could not return to Vitebsk, she and her husband rented a flat in Minsk. At the meeting with the interrogator on 25 February, she had to sign documents to the effect that she was under an obligation to appear before any judicial instance in the case concerning BPSN and that she was not allowed to leave the country. She also handed over her passport and was told that it would be returned to her after a copy of it had been made. The passport was not returned to her, however, and on 1 March 2002, she complained to the first-instance court that it had been illegally confiscated. The court replied on 8 April 2002 that it had been retained on legal grounds.

On 13 April 2002 two unknown men came to the flat in Minsk. They assaulted and threatened the first applicant, asked for documentation about BPSN and questioned her whether she had more information about the union. She started to scream that, if they killed her, documents about BPSN would be sent to Russian and foreign media. The men then left, stating that they would come back. She was again examined at the department for forensic medicine the following day. Believing that she would be killed, she and her husband first moved to some friends' summer house in the Vitebsk area and then left the country. Her mother-in-law had been questioned about their whereabouts after their escape.

The first applicant claimed that, if returned to Belarus, she would be killed by the authorities. In support of her application she submitted copies of a certificate of membership in BPSN, employment records, the report to GUV D, the reply from GUV D, the appeal to the public prosecutor, the speech given by her at the BNF meeting, summonses to appear before the first-instance court, the court's admonition, the court's rejection of her appeal, a document on the prohibition against her leaving the country, the court's reply concerning the confiscation of her passport and two forensic medical certificates. The first medical certificate, dated 21 February 2002,

stated that the first applicant had sustained “light injuries” on her back and arms from being hit by a blunt object. The second certificate, dated 14 April 2002, stated that she had sustained internal bleeding, categorised as a “light injury”, due to a rape attempt the previous day.

The second applicant stated essentially the same as his wife and added, *inter alia*, that his company, which sold shoes, had encountered problems when his wife had reported the illegal activities of BPSN to the police. The tax authorities frequently appeared unannounced to check his bookkeeping and a whole consignment of shoes was confiscated. He had to close down his business and lost the licence to sell shoes. The telephone threats were directed at both him and his wife. He had a 17-year-old son with whom he had not been in contact since leaving Belarus.

On 12 September 2003 the Migration Board rejected the applicants' applications and ordered that they be expelled from Sweden. While acknowledging that the political situation in Belarus was authoritarian and that political dissidents had been arrested at meetings and demonstrations, it considered that the general conditions in Belarus did not constitute a ground for asylum.

As regards the applicants' personal situation, the Board noted that the first applicant had continued to work at BPSN despite the fact that she had discovered and reported illegal activities. She had not kept any copies of the documents which showed these activities. Further, there was no evidence that the authorities had failed to investigate the allegations made by the first applicant and they had given her an opportunity to appeal against the decisions. The forensic medical evidence did not show that she had sustained any serious injuries. Moreover, the second certificate stated that she had been subjected to a rape attempt, a fact that she had not mentioned to the Board.

The Board further stated that, whether the applicants' story was credible or not, they could not be considered as refugees on the basis of the information they had given. In this connection, the Board found that, notwithstanding the first applicant's speech at the BNF meeting, they had not been politically active, that the discovery of evidence of corruption did not constitute a ground for asylum as such and that the first applicant had not exhausted domestic remedies in seeking protection from the domestic judicial authorities. Further considering that it had not been shown that the applicants, upon return, would be of such interest to the Belarusian authorities that they would risk the death penalty or torture or other inhuman or degrading treatment or punishment, the Board found that they were not entitled to a residence permit on any other ground either.

The applicants appealed to the Aliens Appeals Board (*Utlänningsnämnden*), essentially maintaining what they had stated before the Migration Board.

On 9 August 2004 the Aliens Appeals Board rejected the appeal, stating that it agreed with the assessment made by the Migration Board.

COMPLAINTS

1. The applicants complain under Article 3 of the Convention that they will risk being subjected to inhuman or degrading treatment upon return to Belarus on account of having revealed corruption and illegal activities within organs of the State.

2. They further maintain, under Article 6 of the Convention, that they did not have a fair hearing of their asylum applications as certain documents were neither translated nor taken into account by the Swedish authorities and as they were not given an oral hearing.

THE LAW

1. The applicants complain that they will risk treatment contrary to Article 3 of the Convention upon return to Belarus. Article 3 provides the following:

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicants also complain that they did not have a fair hearing in accordance with Article 6 of the Convention. Article 6 § 1 reads, in relevant parts, as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ...”

The Court is prevented from examining this complaint since Article 6 is not applicable to proceedings concerning the entry, stay and deportation of aliens (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X).

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected, in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaint that their expulsion to Belarus would expose them to the risk of treatment contrary to Article 3 of the Convention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President