CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38865/02
by Amir NASIMI
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 16 March 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 31 October 2002,

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

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Amir Nasimi, is an Iranian national of Kurdish origin who was born in 1960. He was represented before the Court by Ms E. Haddadi, a lawyer practising in Sundbyberg. The respondent Government were represented by Ms E. Jagander, Ministry for Foreign Affairs.

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

Between 1994 and 1997 the applicant applied five times for a visa to visit his sister in Sweden. In connection with these applications his sister stated on two occasions that the applicant was "non-political" and had no political problems. The applicant was finally granted a visa in 1997 and stayed with his sister in Sweden for a couple of months.

In 2000 the applicant was once again granted a visa and came to visit his sister. He arrived in Sweden on 16 September 2000, holding a valid Iranian passport. He applied for asylum on 11 October.

In interviews held on 11 and 18 October 2000 the applicant stated that, on 2 October, the Iranian authorities had discovered copies of *Peshraw* – a monthly political journal written in the Kurdish language which was forbidden in Iran – in his home and were searching for him. He had forgotten about the copies as a relative had fallen seriously ill at the time when he was about to leave for Sweden. As a consequence, the applicant's wife and children – a daughter born in 1985 and a son born in 1993 – had been interrogated. His wife had been detained but later released on bail. The applicant further claimed that he had been, and still was, active in *Komala*, a political organisation, distributing journals and other documents. Allegedly, his family were well-known supporters of *Komala* and his brother and brother-in-law had been executed by the Iranian authorities due to their political activities. The applicant had been imprisoned in 1990-92. He had also been dismissed from his job as a teacher. He had thereafter continued with his political activities – being officially active for the organisation as from 1995 – and had been beaten up on some occasions when he reported to the authorities in compliance with a reporting duty. On several occasions he had also been interrogated and his house had been searched. He claimed to be a communist and knowledgeable about the ideas of Marx and Lenin, although he had not read anything by them and was not familiar with their views on religion.

In a letter to the Migration Board of 16 December 2001 counsel for the applicant added that the applicant had been tortured and assaulted while he was imprisoned.

On 4 April 2001 the applicant's wife and children left Iran. Upon arrival in Sweden, apparently on 2 May, they applied for asylum. The wife first stated that her identification papers had been confiscated when the Iranian authorities searched the family's home. Later she admitted that she had first

travelled to Norway with a valid visa to visit her sister and that she had destroyed her passport herself. The applicant's daughter claimed that she had been relegated from school due to the authorities' allegations against her father.

On 25 January 2002 the Migration Board (*Migrationsverket*) rejected the asylum applications and ordered that the family be expelled to Iran. The Board noted that the applicant had received a passport in 1996 and had been allowed to leave Iran legally on at least two occasions. It found it improbable that this would have happened if the authorities had suspected him of being politically active against the Iranian Government. The Board also found it unlikely that the applicant had left subversive journals in his home and had not remembered them and told relatives to get rid of them while he was in Sweden. Further, the Board considered that the applicant's wife and children would not have been allowed to leave Iran legally if the wife, as claimed, had been interrogated and detained and eventually released on bail. In conclusion, the Board called into question substantial parts of the information given in the cases and considered that the applicant and his wife had not shown that they were of a particular interest to the Iranian authorities or that the family members would be subjected to persecution or discrimination.

On 20 February 2002 the applicant and his wife appealed to the Aliens Appeals Board (*Utlänningsnämnden*). The applicant submitted that he had obtained a passport by bribing officials with a colour television.

On 29 April 2002 the Aliens Appeals Board dismissed the appeal, as their lawyer had failed to show that she was authorised to lodge the appeal on behalf of the family.

Later the family lodged a new application with the Aliens Appeals Board. They claimed that also the wife's uncle had been executed by the Iranian regime. Furthermore, the Iranian authorities allegedly suspected that the applicant had joined the armed struggle in the Iranian part of Kurdistan. He submitted a certificate from "*Komala* abroad" in which it was stated that he had been an active supporter of *Komala* and that he had been imprisoned for two years in 1990-92 because of his activities. The applicant also claimed that the torture to which he had been subjected had injured him physically and mentally for life. He submitted, *inter alia*, a certificate of 22 March 2002 issued by Dr Mona Lindqvist, a qualified psychologist and psychotherapist, who stated that the applicant was suicidal, seriously depressed and showed clear signs of suffering from a post-traumatic stress disorder (PTSD). It was therefore important that he undergo long-term psychotherapy and medical treatment. According to medical records invoked by the applicant before the Migration Board and the Aliens Appeals Board, the applicant had visited the health care centre in Bandhagen eight times between October 2000 and February 2001 and the health care centre in Säffle 21 times between May 2001 and March 2002 for various

afflictions. On three occasions he had mentioned that he had problems due to previous torture.

On 28 May 2002 the Aliens Appeals Board rejected the new application. It did not find that the new submissions indicated that the applicants were in need of protection in Sweden. As regards the applicant's health, the Board did not find that the medical information showed that he suffered from such a serious physical or mental injury that a residence permit should be granted on humanitarian grounds.

In June 2002 a third application for residence permits was made. In a new certificate, dated 4 June 2002 and submitted to the Appeals Board, Dr Lindqvist stated that the applicant's health had deteriorated, that he and his daughter were seriously suicidal and that also the other family members had mental problems. In support of the application, the applicant also submitted an Iranian document, purportedly a summons to appear before the revolutionary court in Merivan, his hometown, issued on 1 October 2000. Allegedly, it had not been submitted earlier as mail was very often opened in Iran.

On 15 July 2002 the Aliens Appeals Board rejected the third application. It found that the explanation why the court notice had not been handed in earlier was unsatisfactory. As the applicant's wife and children had not left Iran until 4 April 2001 they should have been able to bring it with them. It was further unlikely that they had been allowed to leave the country if the authorities' had had such an interest in the applicant. As regards the statements made by Dr Lindqvist, the Board, questioning their objectivity, found it remarkable that she had drawn far-reaching medical conclusions about the family members' health and had assessed the availability of medical treatment in Iran and the family's need of protection in Sweden. In any event, the Board considered that it had not been shown that any member of the family suffered from such a serious mental disturbance or similar state of health that they could not be considered responsible for their own actions. It was therefore not inhuman to enforce the expulsion decision.

On 21 October 2002 the family lodged yet another application for residence permits. In support thereof, they invoked two further statements concerning their health, one issued on 23 September 2002 by Dr Leena Maria Johansson, a qualified physician and psychotherapist and specialist in psychiatry, and one issued on 22 October 2002 by Dr Mostafa Farahani, a qualified physician. Dr Johansson stated that the applicant and his wife showed clear symptoms of PTSD, that the applicant was seriously suicidal and that the children suffered from depression. Dr Farahani, who had only examined the applicant, stated that he met almost all the criteria for a post-traumatic stress syndrome and that there was a serious risk that he would commit suicide in the event of his being expelled to Iran. The applicant further claimed that he had taken part in two demonstrations in Sweden for an Iranian communist party. The second one, which had taken place eight

months before the lodging of the latest application, had been shown on Swedish television and had attracted the attention of the Iranian security police which had interrogated the applicant's mother in Iran about the applicant and his involvement in the demonstration.

On 21 October 2002 the Aliens Appeals Board decided not to suspend the enforcement of the expulsion order.

By a decision of 1 November 2002, following the Court's indication under Rule 39 of the Rules of Court, the Migration Board stayed the enforcement of the expulsion order.

The latest application for residence permits is still pending before the Aliens Appeals Board.

The applicant has submitted that his mental health has deteriorated since 2002. It appears, however, that he has not undergone the treatment prescribed by Dr Lindqvist in March 2002. According to a medical certificate of 8 February 2004 by Dr Bahram Aflaki, specialist in general psychiatry, the applicant, while not having suicidal thoughts, had expressed that he would rather die than return to Iran and had shown symptoms of suffering from PTSD and depression. Also his children were suffering from mental problems. Dr Aflaki stated that the applicant was in need of long-term psychiatric care and started a treatment with antidepressants.

COMPLAINTS

The applicant complained under Articles 3, 5, 6, 10 and 14 of the Convention that, upon return to Iran, he risked being arrested, tortured and convicted for anti-Iranian activities due to the Iranian authorities' discovery of subversive journals at his home. He also claimed that his state of health constituted an impediment to his expulsion.

THE LAW

The applicant complained about his expulsion to Iran, claiming that he risked being arrested, tortured and convicted for political activities and that his state of health constituted a further impediment to his expulsion. The Court finds that his complaints fall to be considered under Article 3 of the Convention, which provides as follows:

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

The respondent Government submitted that the application should be declared inadmissible as being manifestly ill-founded. They acknowledged that, despite recent improvements, serious violations of human rights occured in Iran. However, it had to be established whether the applicant personally faced a real risk of treatment contrary to Article 3 of the Convention. In this connection, the Government, pointing out that the national immigration authorities are in a very good position to assess an asylum seeker's credibility, generally referred to their assessment, arrived at after having held two interviews with the applicant, that his allegations were not credible. In addition, the Government stated, *inter alia*, the following. The torture to which the applicant was allegedly subjected occurred ten years ago and, although he now claims to have been mentally traumatised by those events, he did not mention them in the two asylum interviews with the Migration Board. Moreover, in none of his communications to the Swedish authorities or in any of the certificates from the psychologists and psychotherapists that he met are there any closer details on dates, frequency or methods of the torture. Furthermore, the applicant claimed to be a working member of *Komala*, a communist party which had been forbidden in Iran in 1981 and could no longer function in the country and whose members had been severely persecuted. The Government found it unlikely that a member of that organisation would have been imprisoned for only two years and would have been given permission to leave the country to visit Sweden, let alone to have recived such authorisation twice. They also pointed to the fact that in 1996 and 1997, when the applicant applied for a visa to Sweden, his sister claimed that he was non-political and had no political problems. The Government also noted that the applicant had made no mention of the summons from the revolutionary court until June 2002, although he must have known about it before as it was issued on 1 October 2000 and his wife and children did not leave Iran until the spring of 2001. In conclusion, the Government maintained that there were reasons to seriously doubt the applicant's general credibility and that there was no evidence to support his claim that he would be personally at risk of being subjected to treatment contrary to Article 3 of the Convention if he were to return to Iran.

In regard to the applicant's state of health, the Government submitted that his condition appeared to have deteriorated as a result of the decisions to expel him to Iran. However, no substantial basis for his fear of returning had been shown. Thus, his health status also did not constitute an impediment to removing him to Iran.

The applicant maintained that there was a real risk of his being subjected to torture if he were to be sent back to Iran. He stated, *inter alia*, that he had not been a very political person, but he had helped the *Komala* organisation and all of his family were well-known activists. He had been persecuted not only because of his Kurdish origin but even more so because he was a

Kurdish communist belonging to a family who were considered as enemies by the Iranian Government. Although there had been suspicions against him, the Iranian authorities had not had any evidence of his activities until they found the copies of *Peshraw* in his home. The applicant also refuted the Government's contention that he had not mentioned the events of torture at the asylum interviews; he had just not used the word "torture" but had talked about how it had been in the prison. He submitted that for most people it is very difficult to talk about experiences of torture as it brings back bad memories. He also claimed that he had been traumatised by the torture already in Iran; his mental problems had just not been diagnosed until he visited doctors in Sweden. In regard to the summons from the revolutionary court, the applicant stated that it was very difficult to obtain such a document and bring it out of Iran. He and his counsel had been aware of the summons and had thought about how they could get a copy of it. He did not want to put his wife in danger by asking her to obtain a copy and had instead considered the possibility of having a family member bribe someone. It took a long time before he was able to get a copy of the summons.

The applicant further claimed that his state of health had nothing to do with the fact that he had been denied permission to stay in Sweden. In fact, he had visited a doctor for his health problems for the first time already a few weeks after he had applied for asylum.

The Court observes at the outset that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, *H.L.R. v. France*, judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 757, §§ 33-34).

While aware of the occurence of reports of serious human rights violations in Iran, including the persecution of people advocating rights for the Kurdish minority, the Court has to establish whether the applicant's personal situation is such that his return to Iran would contravene Article 3 of the Convention. In this respect, it is of importance to assess the general credibility of the statements made by him before the Swedish authorities and during the present proceedings.

The Court reiterates that the Swedish Migration Board conducted two interviews with the applicant and that both the Migration Board and the Aliens Appels Board, on the basis of all the evidence before them, concluded that the applicant was not credible. They gave detailed reasons as to why they reached that conclusion. Under chapter 8, section 1 of the Aliens Act (*Utlänningslagen*, 1989:529), the authorities are obliged to consider essentially the same factors as are relevant to the Court's assessment under Article 3 of the Convention.

In the present case, the Court, like the Swedish immigration authorities, finds it remarkable that that the applicant was issued with a passport in 1996 and was allowed to leave Iran on at least two occasions, given his allegations that he was working for the *Komala* organisation and belonged to a family of well-known political activists. The applicant claimed that the Iranian authorities did not have any evidence against him until they found the subversive journals in his home in October 2000. However, he also claimed that he had been imprisoned for two years in the early 1990's and had been tortured while imprisoned. Furthermore, he had been dismissed from his teaching job and had, after his release, been beaten up and interrogated by the authorities on several occasions. Also, his home had been searched. If these allegations were true, it appears evident that the Iranian authorities were well aware of his activities and it is not credible that they would have authorised his leaving the country.

Moreover, although it recognises that it may be an ordeal to talk about experiences of torture, the Court is struck by the fact that the applicant did not make any specific allegations of torture until December 2001, more than a year after he applied for asylum, although he must have been aware that such information would be of importance to the immigration authorities. Similarly, a copy of the purported revolutionary court summons was submitted to the Aliens Appeals Board in June 2002, one year and eight months after its date of issuance. Notwithstanding the difficulties of obtaining a copy of such a document in Iran, the applicant has acknowledged, in his submissions to the Court, that he was aware of the existence of the summons long before he received a copy of it. In these circumstances, the Court finds it remarkable that he apparently failed to even mention the document to the immigration authorities before June 2002. It notes, moreover, that he submitted the summons at a time when he had already had two asylum applications rejected.

Having regard to the above, the Court considers that there are strong reasons to call into question the veracity of his statements. He has offered no reliable evidence in support of his claims. For these reasons, the Court finds that it has not been established that there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to Article 3 of the Convention in Iran.

The question then arises whether, because of his health condition, the removal of the applicant from Sweden would of itself entail a breach of Article 3.

Turning to the facts of the present case, the Court notes that, although the applicant claimed to have been mentally traumatised by experiences in Iran, this allegation has not been substantiated. He did not adduce any mental problems in his submissions to the immigration authorities until he lodged his second application for asylum in the spring of 2002. His frequent visits to the health care centres in Bandhagen and Säffle seem to have been prompted by other afflictions than mental problems. Moreover, the earliest medical certificate concerning his mental state was issued on 22 March 2002, soon after the Migration Board had rejected his first asylum application and ordered his expulsion to Iran. The symptoms documented in the various medical certificates thus appear to relate to the prospect of being expelled from Sweden and the applicant's fears of returning to Iran. The Court reiterates that it has found above that those fears are not reasonably substantiated. Moreover, the Court notes that the applicant has not been admitted to compulsory psychiatric care or otherwise been hospitalised due to his mental problems. Although the certificate issued by Ms Lindqvist on 22 March 2002 stated that the applicant was suicidal, suffering from PTSD and in need of long-term psychotherapy and medical treatment, it appears that the applicant has not undergone such treatment. The Court further observes that, should the actual deportation of the applicant lead to serious mental health problems which would necessitate treatment in compulsory psychiatric care, section 29 of the Act on Compulsory Mental Care (*Lagen om psykiatrisk tvångsvård*, 1991:1128) provides that expulsion can only take place with the approval of the chief physician responsible for the care (see further *Lwanga and Sempungo v. Sweden*, no. 27249/95, Commission decision of 14 September 1995, Decisions and Reports 83, p. 91; and *Ammari v. Sweden* (dec.), no. 60959/00, 22 October 2002, unreported).

The Court acknowledges that the expulsion decision has caused the applicant considerable mental stress. However, in the above circumstances and taking into account the high threshold set by Article 3 of the Convention, particularly where the infliction of harm does not emanate from intentional acts of the public authorities in the receiving country (see *D v. the United Kingdom*, judgment of 2 May 1997, Reports 1997-III, p. 792, § 49, and *Bensaid v. the United Kingdom*, judgment of 6 February 2001, *Reports* 2001-I, p. 319, § 40), the Court does not find that the applicant's removal from Sweden would involve a violation of Article 3 on account of his health condition either.

The Court further considers that the application does not reveal any indication of a violation of the other Articles of the Convention relied on by the applicant.

It follows that the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President