



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39349/03  
by M.H. MAWAJEDI SHIKPOHKT and A. MAHKAMAT SHOLE  
against the Netherlands

The European Court of Human Rights (Third Section), sitting on  
27 January 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,  
Mr J. HEDIGAN,  
Mr C. BÎRSAN,  
Mrs M. TSATSA-NIKOLOVSKA,  
Ms R. JAEGER,  
Mr E. MYJER,  
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 12 December 2003,

Having regard to the interim measure indicated to the respondent  
Government under Rule 39 of the Rules of Court and the fact that this  
interim measure has, as far as the Court is aware, been complied with,

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

Having deliberated, decides as follows:

## THE FACTS

The applicants, Mr Mohamed Hashem Mawajedi Shikpokht and Mrs Atefeh Mahkamat Sholeh, are Iranian nationals who were born in 1971 and 1980 respectively and currently live in Culemborg (Netherlands). They are husband and wife. They were represented before the Court by Mr P.P.M. Mol, a lawyer practising in Amersfoort. The respondent Government were represented by Mr R.A.A. Böcker and Ms J. Schukking, both of the Ministry for Foreign Affairs.

### A. The circumstances of the case

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

#### *1. Ms Mahkamat Sholeh*

##### **a. Background**

The facts regarding Ms Mahkamat Sholeh are stated by the applicants as follows:

Ms Mahkamat Sholeh was born into a family that opposed the Islamic revolution in Iran from the outset. Her father was put to death when she was about one year old. Her mother then married an activist of the Marxist political organisation Rah-e-Kargar (“Path of the Worker”), a Mr Asghar Firouzi (or Firoozi), referred to hereinafter as Ms Mahkamat Sholeh's stepfather.

In the early 1980s Ms Mahkamat Sholeh's stepfather received a twenty-year prison sentence. Her mother too was imprisoned; she and her mother were forced to spend a year in prison.

Ms Mahkamat Sholeh's stepfather was granted conditional release in 1989. He resumed his covert political activities.

In 1999 Ms Mahkamat Sholeh's stepfather went into hiding after learning that his name appeared on a hit list. She then took over his political activities. These included distributing written materials (books and pamphlets) and organising political meetings. She also wrote such materials herself.

At this time Ms Mahkamat Sholeh was living in her parents' house, her husband Mr Mawajedi Shikpokht having been conscripted for military service.

A few months before she eventually left Iran she was beaten unconscious by a group of students.

Ms Mahkamat Sholeh started receiving threats by telephone. On 19 November 1999 she received an anonymous threat, written on a yellow

sticky note left on the front door, warning her to cease her activities. She went into hiding.

On 22 November 1999 Ms Mahkamat Sholeh's parents' house was searched. Ms Mahkamat Sholeh, who had been out of the house at the time, was informed of this by her mother who by then had also gone into hiding and who had been informed by a neighbour.

A few weeks later Ms Mahkamat Sholeh left Iran with a "travel agent".

#### **b. Proceedings in the Netherlands**

Ms Mahkamat Sholeh entered the Netherlands on 18 January 2000. On 23 January 2000 she lodged a request for asylum.

On 17 July 2000 the Deputy Minister of Justice (*Staatssecretaris van Justitie*) rejected this request.

On 24 August 2000 Ms Mahkamat Sholeh lodged an objection (*bezwaarschrift*) against this decision to the Deputy Minister.

A hearing before a board of officials took place on 6 May 2002. On 18 June 2002 the Deputy Minister dismissed the objection. It is stated in the decision that Ms Mahkamat Sholeh had not been able to provide consistent information on the written threat which she had received or the raid on her parents' house. It was also considered inconsistent that students had themselves set a date for an illegal meeting and asked Ms Mahkamat Sholeh whether it was convenient for them to visit her; that she was unable to provide details on most of the books and other written materials which she had kept hidden; and that she was trusted to undertake covert activities for Rah-e-Kargar despite not actually being a member of that movement; and the fact, as stated, that she had had access to the hit list with her stepfather's name on it.

## *2. Mr Mawajedi Shikpokht*

#### **a. Background**

The facts regarding Mr Mawajedi Shikpokht are stated by the applicants as follows:

During his military service Mr Mawajedi Shikpokht worked as a prison officer.

One of the prisoners, one G., was an important member of the Azadibakhshe Baluchistan party, a movement seeking territorial independence for the Iranian province of Baluchistan. G. persuaded Mr Mawajedi Shikpokht to smuggle letters out of prison for him. This Mr Mawajedi Shikpokht did until 19 November 1999, when he learned from another prisoner that G. had been placed in solitary confinement.

On 21 November 1999 Mr Mawajedi Shikpokht learned that G. had revealed certain names under torture. Mr Mawajedi Shikpokht then deserted.

**b. Proceedings in the Netherlands**

Mr Mawajedi Shikpokht entered the Netherlands on 18 January 2000. On 23 January 2000 he lodged a request for asylum.

On 17 July 2000 the Deputy Minister of Justice rejected this request.

On 24 August 2000 Mr Mawajedi Shikpokht lodged an objection against this decision to the Deputy Minister.

A hearing before a board of officials took place on 6 May 2002. On 18 June 2002 the Deputy Minister dismissed the objection. It is stated in the decision that Mr Mawajedi Shikpokht's story was not worthy of credence, the less so since he apparently knew very little of G. or his activities for the Azadibakhshe Baluchistan party, could not even be certain that G. had divulged his name to the authorities and knew very little of his wife's covert activities. Moreover, he had apparently left Iran by air from Teheran airport, where checks on departing passengers were particularly stringent.

*3. Proceedings in the Regional Court*

The applicants both lodged appeals with the Regional Court of The Hague on 15 July 2002, at the same time lodging an application for a provisional order restraining the respondent State from deporting them to Iran.

A hearing was held on 26 June 2003.

On 11 September 2003 the Provisional Measures Judge (*Voorzieningenrechter*) of the Regional Court of The Hague, sitting in Maastricht, dismissed both the application for a provisional measure and the appeals in a single decision. Its reasoning echoed that of the Deputy Minister in each of the two cases, which was found not to be arbitrary or unreasonable.

**B. Documents submitted by the applicants**

In the domestic proceedings Ms Mahkamat Sholeh submitted the following documents, copies of which are contained in the Court's file:

- a) "List of the 182 people who became the subject of 'investigation'" (stated to be a hit list). The name of Ms Mahkamat Sholeh's stepfather appears on this list as number 174.
- b) "Statement concerning Atefeh Mahkamat Sholeh" by Zoorchang Pirooz, dated 3 June 2003. This document describes Ms Mahkamat Sholeh's stepfather as a Rah-e-Kargar activist and

- Ms Mahkamat Sholeh herself as a sympathiser. It asks the Netherlands authorities to take her asylum request seriously.
- c) “Letter of Zoorchang Pirooz” dated 6 June 2003. This is a very short letter in French, on commercial notepaper bearing an address in Brussels, stating that the signatory knew Ms Mahkamat Sholeh's stepfather and was aware of his political activities.
  - d) “About Atefeh Firoozi” by Dariush Arjmandi and Anoushirvan Sarhaddi, dated 15 June 2003. The signatories of this document state that they are members resident in Sweden of Rah-e-Kargar and Iranian Peoples's Fedai Guerillas (Minority), respectively. They express support for Ms Mahkamat Sholeh's asylum request based on her relationship with her stepfather and her own, unspecified, political activities “both at home and abroad”.
  - e) “Statement concerning Atefeh Mahkamat Shole (sic)” by Mr M. Hosseini Abdolabadi, dated 10 June 2003. Mr Hosseini is a Netherlands national of Iranian origin and himself a former member of the Iranian left-wing opposition who knew Ms Mahkamat Sholeh and her family in prison in the 1980s. The statement, in Dutch, expresses fears for Ms Mahkamat Sholeh's life based on her belonging to that particular family.
  - f) Letter “regarding the asylum case of Atefeh Firouzi” from Ms Nastaran Negari, representative of Workers Left Unity – Iran, dated 16 June 2003. The letter was sent by fax apparently from the mechanical engineering department of Glasgow University (the sender's imprint reads “Mech Eng Glasgow Uni”). The letterhead of the organisation gives an address in “Gutenberg” (presumably Gothenburg), Sweden. It is stated that the applicant's stepfather was a Rah-e-Kargar activist and was imprisoned both by the former regime and by the Islamic regime. Ms Mahkamat Sholeh herself spent her early childhood in prison with her mother in the mid-1980s. She is stated to have been active against the Islamic regime, distributing leaflets and pamphlets, and to have been under surveillance and forced to flee Iran on account of her family connections. The letter expresses concern about Ms Mahkamat Sholeh's possible fate if she returns to Iran and supports her asylum request.
  - g) Copies of correspondence between Ms Mahkamat Sholeh and her stepfather exchanged when the latter was still in prison.
  - h) A letter from University Assistance Fund (UAF) – a private organisation that funds political refugees who wish to pursue higher education – agreeing to give Ms Mahkamat Sholeh financial support for study purposes.

## COMPLAINT

The applicants complained under Article 3 of the Convention that they would be in danger of treatment contrary to that Article if forced to return to Iran.

## THE LAW

### I. ARTICLE 3 OF THE CONVENTION

Article 3 of the Convention provides as follows:

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

The applicants' allegation is that, on grounds that for each of them are different, they appear to be known as opponents of the current rulers of Iran and have reason to fear inhuman or degrading treatment or punishment for that reason if deported.

#### A. Argument before the Court

##### 1. *The Government*

Referring to the country reports (*ambtsberichten*) published by the Netherlands Ministry for Foreign Affairs, the Government accepted that the human rights situation in Iran still gave rise to concern. However, this did not dispense a person liable to be returned to Iran from demonstrating to the satisfaction of the authorities that the personal facts and circumstances of his or her case – viewed objectively – justified fears of persecution, and hence the grant of asylum, or constituted reason for issuing a residence permit on compelling humanitarian grounds.

In the submission of the respondent Government neither applicant had made out a credible case.

The facts on which Ms Mahkamat Shole's asylum request was based could not be established. The Government submitted that it was hardly likely that she, who was not even a member of Rah-e-Kargar, would have been given the task of maintaining a large quantity of written material emanating from the organisation even while the family was under surveillance by the authorities because of the alleged activities of, in particular, her stepfather. She had not shown convincingly that the written threat which she allegedly received on 19 November 1999 came from the

authorities. She had no direct information that the Iranian authorities had raided the home which she shared with her mother and stepfather: this had come from other sources, namely a neighbour who was supposed to have told her mother. Although Ms Mahkamat Sholeh had submitted documents in support of her story, these did not come from any objective source.

Mr Mawajedi Shikpokht's account was, in the submission of the Government, not credible either. Mr Mawajedi Shikpokht had been unable, when questioned, to give details of the Azerbakhsh Baluchistan Party's political programme or to provide any other information about this party. Nor had he been able to say what G.'s position had been within that party, or why he was being detained. This was information which Mr Mawajedi Shikpokht could reasonably have been expected to possess, especially in the light of the dangers involved in running errands for G. It was also strange that Mr Mawajedi Shikpokht had been unable to name the prisoner who told him that G. was in solitary confinement or to explain how the prisoner came to be so informed and knew to inform him. Moreover, it seemed strange that Mr Mawajedi Shikpokht had deserted without even bothering to ascertain whether G. had indeed been put in solitary confinement. Finally, there was no direct evidence of any description from which it appeared that Mr Mawajedi Shikpokht was in fact wanted by the Iranian authorities.

## *2. The applicants*

In response to the arguments of the Government, the applicants gave their version of the facts which is summarised above. They submitted that they had each given justification for their fears backed up with clear, consistent and detailed statements of fact.

Ms Mahkamat Sholeh submitted documentary evidence. This included a copy of the hit list naming her stepfather as one of 182 intended victims, copies of correspondence carried on with her stepfather while he was in prison, various written statements emanating from Iranian nationals and former Iranian nationals bearing witness to the fact that her stepfather had been detained as a political prisoner and a letter from UAF containing an undertaking to fund her further education.

Mr Mawajedi Shikpokht had performed his activities for G. "out of sympathy for him". That being so it did not follow that his statements should be dismissed as lacking credibility solely because he had no specific knowledge of the political party involved.

Both applicants relied in addition on public information emanating from various governmental, intergovernmental and non-governmental sources giving a critical description of the human rights situation in Iran.

## B. The Court's assessment

### 1. *Applicable principles*

The following principles have been established in the Court's case-law:

a) 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. Moreover, the right to political asylum is not contained in either the Convention or its Protocols (see *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, p. 34, § 102, and *Jabari v. Turkey*, no. 40035/98, § 38, ECHR 2000-VIII)

b) However, in exercising their right to expel aliens, Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies. The expulsion of an alien may give rise to an issue under this provision where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In such circumstances, Article 3 implies an obligation not to expel the individual to that country (see, among many other authorities, *Hilal v. the United Kingdom*, no. 45276/99, § 59, ECHR 2001-II, and *Jabari, ibid.*).

c) In determining whether it has been shown that the applicants run a real risk, if deported to their country of origin, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it, or, if necessary, material obtained *proprio motu* (*Vilvarajah and Others*, cited above, p. 36, § 107; *Hilal*, cited above, § 60).

d) Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which are known or ought to be known to the Contracting State at the time of the expulsion (compare *Vilvarajah and Others, loc. cit.*, § 107).

e) Ill-treatment must also attain a minimum level of severity if it is to fall within the scope of Article 3, which assessment is relative, depending on all the circumstances of the case (*Vilvarajah and Others, loc. cit.*, § 107; *Hilal*, § 60).

### 2. *Application of the above principles*

The Court takes the view, as regards both applicants, that the case hinges on whether there is a real risk that the applicants will suffer treatment contrary to Article 3 if forced to return to Iran.



Neither applicant has submitted any direct documentary evidence proving that they themselves are wanted for any reason by the Iranian authorities. That, however, cannot be decisive *per se*: the Court has recognised that in cases of this nature such evidence may well be difficult to obtain (*Bahaddar v. the Netherlands*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 263, § 45). To demand proof to such a high standard may well present even an applicant whose fears are well-founded with a *probatio diabolica*.

Even so, as regards Ms Mahkamat Sholeh, it would have been helpful had the Court been provided with, for example, the written threat that caused her to go into hiding – or at least, plausible information which would enable the Court to assess *prima facie* the nature and seriousness of the threat which it represented to Ms Mahkamat Sholeh herself – or if she had been able to provide more detailed information on the written materials which she states she held for Rah-e-Kargar and some of which she states she wrote.

It is true that documents have been submitted in support of Ms Mahkamat Sholeh's allegations. These, in the Court's view, would at most tend to bear out that Ms Mahkamat Sholeh's stepfather and mother were at one time during the 1980s detained on grounds related to political activities. They contain little of any direct relevance to Ms Mahkamat Sholeh herself. In so far as they express any fears on her behalf, they are, in the Court's view, vague and speculative.

As to Mr Mawajedi Shikpokht, even information as inconclusive as that presented in respect of Ms Mahkamat Sholeh is lacking.

The Court takes note of the general information from public sources describing the human rights situation in Iran, and indeed of the respondent Government's own assessment that there is cause for concern in this regard. However, it is not apparent that any of this information has any bearing on the personal situation of the applicants.

In the light of the above considerations the Court finds that substantial grounds have not been established for believing that either applicant would be exposed to a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 3 if compelled to return to Iran.

The application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## II. RULE 39 OF THE RULES OF COURT

On 12 December 2003 the President of the Chamber to which the case had been allocated indicated to the respondent Government, under Rule 39 of the Rules of Court, that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to deport the applicants to Iran until further notice.

It follows from the Court's above conclusion that such a measure is indicated no longer.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Vincent BERGER  
Registrar

Boštjan M. ZUPANČIČ  
President