CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4701/05
by Mahin AYEGH
against Sweden

The European Court of Human Rights (Second Section), sitting on 7 November 2006 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Mr D. POPOVIĆ, *judges*,
and MrS. NAISMITH, *Deputy Section Registrar*.

Having regard to the above application lodged on 4 February 2005,

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 been complied with,

Having regard to the decision to grant priority to the above application under Rule 41 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, Ms Mahin Ayegh, is an Iranian national, who was born in Iran in 1956, and is currently in Sweden. She is represented before the Court by Mr B. Johansson, a lawyer practising in Stockholm.

The respondent Government are represented by their Agent Mr C. H. Ehrenkrona 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. The background and proceedings before the national authorities

On 8 February 2003 the applicant and her son A. (born in March 1986) arrived in Sweden. On 20 February 2003 they applied to the Migration Board (*Migrationsverket*) for asylum and residence permits and, on the same day, an initial interview was held with them. The applicant stated that her husband and an adult daughter remained in Tehran where the family had always lived. She and A. had fled from Iran because A. would be called to do his military service when he reached 18 years of age. There was a risk that he could be stationed at the border with Iraq which would expose him to great danger. They further claimed that they had left Iran with the help of smugglers to whom the applicant had given her passport, in which A. was also registered. Thus, she could only show the Swedish migration authorities a copy of her Iranian identification certificate (*shenasnameh*). However, neither the applicant nor A., nor any other member of their family, had ever been arrested or otherwise persecuted by the Iranian authorities.

At a second interview, held on 3 April 2003, the applicant and A. added to their earlier statements that A. and a friend had once, in the school yard, glanced at *The Satanic Verses* by Salman Rushdie which another student had brought with him to school. The incident had been reported to the headmaster of the school who had beaten A. and then continued to harass him. Because of this, the applicant and her husband had tried in vain to get A. transferred to another school. Moreover, the applicant pointed out that, since A. was a minor, the fact that she had helped and accompanied him would cause her problems if she returned to Iran.

On 25 April 2003 the Migration Board rejected the application for asylum and residence permits. It first found that the applicant and A. had not been persecuted by the Iranian authorities and thus could not be considered as refugees or granted asylum. It then noted that the son was obliged to do his military service once he reached 18 years of age, but that this was not a reason for granting him a residence permit on humanitarian

grounds. Moreover, the claim that he had had a conflict with his headmaster did not alter this conclusion. Thus, the Migration Board found no reason for A. and the applicant to be allowed to stay in Sweden on humanitarian grounds.

The applicant and A. appealed against the decision to the Aliens Appeals Board (*Utlänningsnämnden*), maintaining their claims and adding that the applicant and her husband were in the process of divorcing. Moreover, they alleged that A. had, on several occasions, been raped and abused by his headmaster in Iran, who had also threatened him. A. had only told his mother about this in August 2003 after repeated attempts by the health care personnel to persuade him to tell her. Since homosexual acts were strictly forbidden in Iran, he strongly feared that he would be severely punished if he were forced to return to his home country. As a result of his traumas, A. suffered from a serious depression and there was a real risk that he would try to commit suicide if he was deported. Lastly, the applicant was also suffering from the uncertain situation.

On 29 September 2004 the Aliens Appeals Board rejected the appeal, sharing the Migration Board's reasoning and conclusion. As concerned the new information provided by A. and the applicant, it noted that, if a minor were forced to perform sexual acts with a grown man, he would not be punished for it. However, the adult man could be sentenced to death. The Aliens Appeals Board therefore considered that A. could get help from the Iranian authorities if he were threatened by the headmaster, as there were no indications that the authorities would not assist the family in such a situation. It further considered that the mental health problems of the applicant and A. were not of such a serious nature that they could be granted residence permits on humanitarian grounds.

On 28 October 2004 the Migration Board decided that the applicant and A. should be kept under supervision due to the risk that they would go into hiding to avoid deportation. Thus, they were ordered to report to the Migration Board three times a week.

However, on 6 December 2004, the Migration Board decided that the applicant and A. should be taken into custody pending the enforcement of the deportation to Iran, and the decision was enforced in respect of the applicant the same day. The decision was due to the fact that A. had gone into hiding and could not be found, and there was a real risk that the applicant would do the same. Moreover, on 10 December 2004, the Migration Board handed over the responsibility for the enforcement of the deportation of the applicant to the police authority as she had declared that she would not leave Sweden voluntarily.

On 27 January 2005 the applicant and A. lodged a new application for asylum and residence permits with the Aliens Appeals Board. They invoked medical certificates stating that A. was in poor mental health, suffering from post-traumatic stress disorder and depression, and that the applicant was

also depressed and very afraid. Moreover, the applicant stated that her husband in Iran had repeatedly called and threatened to kill her if she returned to Iran and that the Iranian authorities neither could nor would protect her. She claimed that her husband had divorced her and had threatened to kill her if she returned because he accused her of having committed adultery in Sweden, having abandoned her home in Iran and having unlawfully kept his son from him. Her brother-in-law, with whom she and A. had stayed after their arrival in Sweden, had also turned against her after her husband's accusations, and she had been forced to find another place to stay. The applicant explained the late submission of the new circumstances and evidence by the fact that she had been in despair over her son's situation and that she herself had suffered from serious mental problems. Furthermore, she had not realised the importance of telling the Swedish authorities about her husband's threats until she had been detained.

The applicant and A. also requested that the Aliens Appeals Board stay the enforcement of their deportation, but this request was rejected on 28 January 2005.

On 3 February 2005 the applicant and A. renewed their request for a stay of the enforcement of the deportation. They submitted new evidence in the form of copies of documents in Persian which the applicant had received from her sister in Iran. Apparently, the applicant's husband had given the copies to her father but, due to her father's advanced age, she had not been able to find out when or how her husband had transmitted the copies. Moreover, since her husband had the originals, she would not be able to get hold of them. According to the applicant the documents were copies of:

1. A report to a first instant court by the applicant's husband accusing her of adultery, abandoning her home and family, of unlawfully withholding her son from his father and of illegally leaving the country. This "summons application" is dated 10 May 2003.
2. A "formal notice" whereby the applicant's husband warns her for the last time to come home and repent for what she has done or the court proceedings will go ahead (dated 7 April 2004).
3. Three summons to appear before the court to defend herself against the above charges (dated 8 September 2003, 6 April 2004 and 29 June 2004, respectively). The last of these three warnings states that if the applicant does not present herself before the court, it will take an appropriate decision and the case might be examined on the material before it.
4. A private letter from her husband (undated) stating that he has reported her for adultery and other offences to the authorities and that he will demand the harshest punishment possible for her.

Before the Aliens Appeals Board, the applicant claimed that, due to the above charges, she would face a real risk of being either sentenced to death or punished in an inhuman manner. Moreover, there was a real risk that she

would be tortured during interrogation in order to force her to confess to the alleged crimes.

On the same day, 3 February 2005, the Aliens Appeals Board rejected the renewed request to stay the deportation.

On 4 February 2005 the applicant was taken by the police to Stockholm Airport, *Arlanda*, to be deported. However, once there, the police decided not to go through with the measure as they considered that the applicant was not in a state to be transported as she was acting in a very violent manner, refusing to get on the plane. The police also decided that the applicant should no longer be kept in custody, but that she should be placed under an obligation to report to the Migration Board three times a week.

Also on 4 February 2005, following the Court's indication under Rule 39 of the Rules of Court, the Migration Board decided to stay the deportation of the applicant until further notice. The Migration Board's decision is still in force.

On 19 May 2005 the Aliens Appeals Board rejected the new application. It noted that the applicant had stated that her husband had started to threaten her about 7 to 8 months after her arrival in Sweden, but that she had not mentioned it previously. The Aliens Appeals Board found this strange. Moreover, as the applicant had failed to give any reasonable explanation for this delay, it considered the statements questionable. It further observed that the applicant had only handed in fax copies of the documents invoked, not the originals, and this the day before the planned enforcement of the deportation. Thus, the Aliens Appeals Board considered that the copies had little value as evidence. Already against this background, it found it highly doubtful that the applicant had demonstrated that she was in need of protection in Sweden.

In any event, it noted that the applicant had not claimed that her husband had any proof that she had been unfaithful but that, on the contrary, his suspicions were unfounded. Having regard to what was known about the evidence required in Iran to convict someone of adultery, the Aliens Appeals Board considered that the applicant had not shown that it was likely that her husband could prove his accusations of adultery, which were groundless, in a court hearing. Moreover, to the best of the Aliens Appeals Board's knowledge, it was not a criminal offence for a married woman to leave Iran without her husband's permission although, normally, it was not possible. However, it could constitute a ground for divorce. In view of the above, the Aliens Appeals Board found that even if the applicant had left the country illegally and without her husband's permission, she had not shown that it was probable that she would risk being subjected to such serious difficulties from the Iranian authorities, if returned, that she was in need of protection in Sweden. The fax documents which had been invoked by the applicant did not change this assessment.

As concerned the applicant's claim that she would face problems because of the accusations of the unlawful removal of a child, the Aliens Appeals Board noted that the son had been almost 17 years old when they entered Sweden and that he was now 19. It further observed that, to its knowledge, a married woman who takes her child with her out of the country without the permission of the husband/father could not be convicted of abduction or kidnapping. In the event that someone were considered guilty of having wrongfully removed a child, no disproportionate sentence was known to have been imposed. Therefore, the applicant was not in need of protection on this ground either.

Next, the Aliens Appeals Board considered that, in so far as the applicant alleged that her husband and his family would pose a threat to her upon return to Iran, it was for the Iranian authorities to deal with the matter. It noted that so-called honour killings were not accepted by Islam and that the authorities should be able to help her and offer protection. It followed that she was not in need of protection in Sweden on this ground either. The Aliens Appeals Board also rejected A.'s request for asylum and a residence permit and concluded that, making an overall assessment, the circumstances were not such that it would be contrary to humanitarian standards to deport them to their home country.

On 5 January 2006 the Court adjourned the case at the request of the Swedish Government following the enactment of an interim amendment to the Swedish Aliens Act, on the basis of which the applicant's case would be reviewed.

On 10 April 2006 the Government informed the Court that, on 3 March 2006, the Migration Board had decided not to grant the applicant a residence permit in Sweden on the basis of the interim amendment to the Aliens Act. The Migration Board had concluded that the applicant could not be granted leave to stay on either medical or humanitarian grounds.

It appears that A., in a separate decision by the Migration Board, was granted a permanent residence permit in Sweden.

In a letter of 22 June 2006, the applicant informed the Court that she had requested the Migration Board to reconsider its decision of 3 March 2006 because of her continuously deteriorating mental health. However, the request had been rejected on 13 June 2006 as the Migration Board considered that it had already examined her health status and that the new information invoked did not alter its previous conclusions. The applicant then stated in her letter that, due to her very poor mental condition, deportation would cause her personal suffering beyond her ability to endure, for which reason it would be a violation of Article 3 of the Convention to deport her.

2. Particulars on the applicant's state of health

The applicant has submitted two medical certificates to the Court dated 13 February 2006 and 2 June 2006, respectively.

The first certificate was written by Dr B. Hännestrand, specialist in psychiatry at the Medical Clinic for Refugees in Uppsala, and based on one consultation lasting two hours. She first noted that the applicant had previously had contact with psychologists and doctors because of depression and that, during the examination, she was distraught and anxious and expressed suicidal thoughts and an extreme fear of returning to Iran. She was taking sleeping pills and antidepressants. Dr Hännerstrand concluded that the applicant suffered from a serious depression with anxiety symptoms, and that there was a real risk that she would try to commit suicide if she were to be deported.

The second certificate was written by Dr A.-H. Hanson, chief physician at the psychiatric clinic at Nyköping Hospital, who had examined the applicant on one occasion in May 2006, but had known her for more than a year since she had treated A. at the clinic. According to this certificate, the applicant was very worried and afraid about her own situation but even more about how A. would recover and manage if she was deported from Sweden and he was left alone. It was noted that she was traumatised by her experiences and the threats and abuses of which she had been, and continued to be, the victim. She was diagnosed as suffering from a serious mental illness in the form of a depression and an enduring crisis reaction with suicide plans. Dr Hanson further stated that A. still had a great need for his mother and that, if she were deported, there was a real risk that A. might try to commit suicide. She concluded that the applicant was showing signs of pre-psychotic thinking and that she was very close to the limit of what she could bear.

B. Relevant domestic law and practice

The basic provisions, applied in the present case, concerning the right of aliens to enter and to remain in Sweden were laid down in the 1989 Aliens Act (*utlänningslagen*, 1989:529 – hereinafter referred to as "the 1989 Act"). However, the 1989 Act was replaced, on 31 March 2006, by a new Aliens Act (*Utlänningslag*, 2005:716 – hereinafter referred to as "the 2005 Act"). Both the 1989 and 2005 Acts define the conditions under which an alien can be expelled from the country, as well as the procedures relating to the enforcement of such decisions.

Chapter 1, Section 4 of the 1989 Act provided that an alien staying in Sweden for more than three months should have a residence permit. Such a permit could be issued, *inter alia*, to an alien who, for humanitarian reasons, should be allowed to settle in Sweden (Chapter 2, Section 4). For example,

serious physical or mental illness could, in exceptional cases, constitute humanitarian reasons for the grant of a residence permit if it was a life-threatening illness for which no treatment could be provided in the alien's home country.

Further, according to the 1989 Act, an alien who was considered to be a refugee or otherwise in need of protection was, with certain exceptions, entitled to residence in Sweden (Chapter 3, Section 4). The term "refugee" referred to an alien who was outside the country of his nationality owing to a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who was unable or, owing to such fear, unwilling to avail himself or herself of the protection of that country. This applied irrespective of whether the persecution was at the hands of the authorities of the country or if those authorities could not be expected to offer protection against persecution by private individuals (Chapter 3, Section 2). By "an alien otherwise in need of protection" was meant, *inter alia*, a person who had left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 3, Section 3).

An alien who was to be refused entry or expelled, in accordance with a decision that had gained legal force, could be granted a residence permit if he or she filed a new application based on circumstances which had not previously been examined, and if the alien was entitled to a residence permit under Chapter 3, Section 4, or it would be contrary to the requirements of humanity to enforce such a decision (Chapter 2, Section 5 b). Regard could also be had to serious illness under this provision. Such new applications were filed with and examined by the Aliens Appeals Board (Chapter 7, Section 7).

As regards the enforcement of a refusal of entry or expulsion, account had to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien could not be sent to a country where there were reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 8, Section 1).

In essence, the 2005 Act did not substantially amend the above provisions, except for the following:

By the 2005 Act, the Aliens Appeals Board has been replaced by the Migration Court and the Migration Court of Appeal (Chapter 14, Section 3). Moreover, it is no longer possible to renew applications but, instead, the Migration Board shall, on its own initiative, determine whether there is any impediment to the deportation or expulsion (Chapter 12, Section 18).

Furthermore, between 15 November 2005 and 30 March 2006, certain interim amendments to the 1989 Act were in force, according to which the Migration Board, upon application by an alien or on its own initiative, could re-determine final decisions already taken by the Aliens Appeals Board. The object of these temporary amendments was to grant residence permits to aliens who, *inter alia*, had been in Sweden for a very long time or where there existed "urgent humanitarian interests" (*humanitärt angeläget*). Special consideration was given to the situation of children.

COMPLAINTS

Invoking Articles 2 and 3 of the Convention, the applicant complained that, if deported from Sweden to Iran, she would face a real risk of being sentenced to death or subjected to inhuman or degrading punishment because of the charges against her in Iran and the threats from her husband. Moreover, due to her very poor mental health, deportation would cause her irreparable damage and entail a serious risk for her life and health.

THE LAW

1. The applicant claimed that deportation to Iran would subject her to a real risk of being killed or subjected to torture or inhuman and degrading punishment, in violation of her rights under Articles 2 and 3 of the Convention. These provisions read, in relevant parts, as follows:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

Article 3

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

The Government submitted that this complaint should be declared inadmissible as being manifestly ill-founded.

They observed that Article 2 of the Convention did not prohibit capital punishment but that the protection against the death penalty was guaranteed in all circumstances by Article 1 of Protocol No. 13 to the Convention, a Protocol by which Sweden was bound. Thus, the Government had no objection to the examination of the present case under both Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13, and they would proceed

on that assumption. Moreover, since the applicant's complaints shared the same factual basis, they would address the complaints under Articles 2 and 3 of the Convention as well as Article 1 of Protocol No. 13 together.

The Government acknowledged that, although Iranian society had undergone some changes which could bring about improvements in the field of human rights, the Iranian Government was still reported to be a major abuser of human rights. Moreover, women were restricted in their freedom and had an inferior position to that of men in Iran. However, while the Government did not wish to underestimate the concerns which could legitimately be expressed with respect to the current human rights situation in Iran, these could not, in themselves, suffice to establish that the forced return of the applicant to her home country would entail a violation of Articles 2 or 3 of the Convention or Article 1 of Protocol No. 13. It had to be shown that the applicant would be personally at risk of being subjected to treatment contrary to the said provisions.

They stressed that great weight had to be attached to the opinions of the Swedish migration authorities since they had met with the applicant in person and interviewed her. The Government therefore relied on the opinions of the Migration Board and the Aliens Appeals Board and the reasoning of their decisions. In addition, they submitted that, upon their request, the Swedish Embassy in Tehran had consulted Iranian legal expertise to obtain an opinion on the authenticity of the copies of documents relied on by the applicant. In a report from the Embassy, dated 17 May 2005, the results of the investigation were presented and they showed that all the examined documents, with great certainty, were false. The reasons for this conclusion were the following.

First, the Embassy noted that the documents submitted generally referred to an Iranian court that had ceased to exist several years ago. The court was referred to in the documents as a special court of civil law, division 407. No specific address or other information concerning the court's location was provided in any of the documents submitted by the applicant.

Secondly, the "formal notice" issued on 8 April 2004 was, according to the Embassy, written on a form that anyone could obtain in an Iranian court of civil law for a fee. Moreover, the form was intended solely for civil law matters and disputes and it was directed to the respondent.

Thirdly, the Embassy noted that the "summons application" of 10 May 2003 was, once again, written on a form intended solely for use in civil proceedings and not criminal proceedings. Moreover, the "warnings" to appear before that court on 8 September 2003, 6 April 2004 and 29 June 2004, were summons to appear before a court of civil law. In this respect the Government observed that, in a criminal case in Iran, a report would be submitted to the prosecutor and it would be the prosecutor who initiated the proceedings.

Thus, the Government emphasised that all the documents invoked by the applicant referred to a special court of civil law which no longer existed and which, in any event, did not deal with criminal cases but only with matters regarding private and family law issues. Criminal cases were dealt with by the Public Court for Criminal Proceedings.

The Government contended that, in these circumstances, the documents had little value as evidence as they had only been submitted in fax copies. On the summons, it appeared to have been noted that their service had taken place, for which reason the Government considered that it should have been possible for the applicant to obtain the original documents. In this respect, they also noted that the applicant had entered Sweden in February 2003 but had only invoked the documents in an additional submission to the Aliens Appeals Board on 3 February 2005. The Government did not consider her explanations for their very late submission to be satisfactory, taking into account the date of her husband's asserted first report to the Iranian court (10 May 2003), and the seriousness of the charges and their relevance to the asylum process before the Swedish migration authorities.

In light of the above, the Government were of the opinion that there was no evidence to verify that the applicant had been reported to, charged or convicted by the Iranian authorities of any of the alleged crimes. They added that it was a well-known fact that documents of this character, including summons to appear in court, could easily be obtained in Iran where they were for sale to *inter alios* asylum seekers.

The Government further observed that a married woman had to obtain the written consent of her husband before travelling outside the country but that it was not considered to be a serious criminal offence for her to leave the country without the husband's permission. The wife would, according to the Swedish Embassy in Tehran, only risk being fined for such an offence. Moreover, married couples had joint custody of their children, for which reason it was not in itself considered to be a criminal offence for a wife to take her minor children with her when travelling.

Turning to the threats allegedly posed by the applicant's husband, the Government questioned the applicant's general credibility with reference to the findings relating to the submitted documents. Furthermore, they noted that she had provided practically no substantial information about the alleged threats from her husband, and that her explanation for his suspicion concerning adultery was rather vague and odd. Also, according to the information obtained by Government, battering women was punishable as an assault under the Iranian Penal Code (§ 614), and could result in a maximum sentence of five years' imprisonment. Reports by women claiming to have been abused by their husbands were accepted by the police and the Prosecutor's Office. In this respect, they pointed out that so-called honour killings had been strongly condemned by the Iranian leadership, including the conservatives.

The Government stressed that, while they recognised that the situation for women in Iran was difficult in many respects and that many women were reportedly subjected to abuse by their husbands, it could not acknowledge that such abuse would, in itself, entitle a woman to protection in Sweden. As a rule, it had to be required of the woman that she reported such incidents of abuse to the relevant authorities in her home country. If no such report had been filed, it was difficult to substantiate a claim that the authorities were unable or unwilling to afford appropriate protection. In the present case, the Government contended, the applicant had failed to show both that there was a real risk that she would be subjected to treatment contrary to Article 3 of the Convention (either by the authorities or her husband) and that the authorities would be unable or unwilling to protect her if the threat emanated from her husband.

Thus, in conclusion, the Government maintained that the applicant's complaints should be declared inadmissible as being manifestly ill-founded, since there were no substantial grounds for believing that Articles 2 or 3 of the Convention or Article 1 of Protocol No. 13 would be violated if the applicant were returned to Iran.

The applicant maintained that her husband had accused her of being unfaithful during her stay in Sweden and therefore had initiated a legal process in Iran in order to have her convicted of adultery. Since adultery was considered a crime against God, it was punishable by death. Thus, there was a real risk that she could be sentenced to death by stoning or receive another inhuman form of punishment in contravention of Articles 2 and 3 of the Convention.

As concerned the documents which she had submitted, she stated that she had received them from her relatives in Iran who, in turn, had got them from her husband. Thus, she assumed that they were genuine and she had consulted a Swedish lawyer of Iranian background who did not exclude that the documents could be authentic. In any event, the fact that the documents had only been presented as fax copies did not, in the applicant's opinion, reduce their value as evidence as it was the only means to get them to Sweden without risking the security of other persons.

The applicant stressed that the reason for the late submission of the documents was that the original grounds for applying for asylum in Sweden were her son's problems and that she had been focused on helping him. The threat from her husband was a consequence of her prolonged absence from Iran and the fact that she had left him and their home. However, this threat had only become apparent to her gradually as time passed. She insisted that she had informed her legal representative before the national authorities about these new circumstances but that he, for some unknown reason, had abstained from presenting them to the authorities. The applicant's credibility therefore could not be called into question.

Having regard to the serious human rights situation in Iran and the very difficult situation for women, the applicant alleged that, if she were forced to return to Iran, it was likely that she would be detained upon arrival because of the accusations of adultery and forced, by the use of torture, to make a confession despite her innocence. She also observed that, even if she was not convicted according to the *Sharia*, she could be convicted according to other laws which impose corporal punishment (normally flogging) for adultery and where the level of proof required was less strict.

Thus, the applicant alleged that the main threat against her originated from the judiciary and the authorities in Iran. Moreover, the personal threat from her husband was real since he had an interest in upholding his honour and family authority. Therefore, there existed a real risk that he would act if the Iranian authorities failed to take action against her. In the applicant's opinion, the legislation in force to protect women against domestic violence was not effective as it was well known that violence against women was a major problem in Iran. Consequently, she would not be able to rely on the Iranian authorities to protect her against her husband.

In view of the above, she maintained that, if she were to be deported to Iran, she would face a very real risk of being sentenced to death or subjected to torture or other inhuman or degrading punishment or treatment, in violation of Articles 2 and 3 of the Convention.

The Court first observes 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).

Moreover, the Court does not exclude that analogous considerations might apply to Article 2 of the Convention and to Article 1 of Protocol No. 13 where the return of an alien puts his or her life in danger, as a result of the imposition of the death penalty or otherwise (see, e.g., *Bahaddar v. the Netherlands* judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, opinion of the Commission, p. 270-71, §§ 75-78, and *Sinnarajah v. Switzerland* (dec.), no. 45187/99, 11 May 1999, unpublished).

The Court finds that the issues under Articles 2 and 3 of the Convention and Article 1 of Protocol No. 13, by which Sweden is bound, are indissociable and will therefore examine them together.

While aware of the occurrence of reports of continuous serious human rights violations in Iran, the Court has to establish whether the applicant's personal situation is such that her return to Iran would contravene the relevant Articles of the Convention.

The Court notes that the applicant's main allegation is that she would face the prospect of being sentenced to death or to corporal punishment for having committed adultery. It first observes that the authenticity of the documents relied on by the applicant, in support of her claim that she has been charged with adultery before the Iranian courts, is in dispute between the parties. The Government have claimed that they are with great certainty false as the court referred to in the documents ceased to exist several years ago and that, in any event, that court was a special court of civil law. Moreover, they have alleged that the forms upon which both the summons and the formal notice are written can be obtained by anyone in an Iranian court for a fee. The applicant, for her part, has stated that she assumed that the documents were genuine since she had received them from relatives in Iran and a Swedish lawyer of Iranian origin, whom she had consulted, had not excluded that they could be authentic.

Here, the Court acknowledges that, due to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt in assessing the credibility of their statements and the supporting documents. However, when information is presented which gives strong reason to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, *V. Matsiukhina and A. Matsiukhin v. Sweden*, (dec.) no. 31260/04, 21 June 2005).

In the case before it, the Court notes that all the documents submitted are fax copies and that the applicant only presented them to the Swedish migration authorities in February 2005 when she lodged a new application for asylum and a residence permit with the Aliens Appeals Board. The applicant has stated that the summons, as well as the formal notice and the warnings, had been given by her husband to her father in Iran, and that she had only received them by fax from her sister in February 2005 when she submitted them to the Aliens Appeals Board. However, the Court observes that the first document, the summons application, was dated 10 May 2003, i.e. more than one year and eight months before she put it before the Swedish migration authorities and only three months after the applicant's arrival in Sweden which, moreover, does not correspond with the applicant's claim that her husband started threatening her about 7 or 8 months after her arrival in Sweden. Likewise, the other documents are dated between September 2003 and June 2004, quite some time before she presented them to the authorities. Moreover, the documents were submitted after the applicant's request for asylum had been rejected by both the Migration Board and the Aliens Appeals Board and at a time when the

deportation decision had gained legal force and an attempt to deport her had been interrupted. All these circumstances give rise to some concern as to the applicant's credibility and the authenticity of the documents.

In this respect, the Court reiterates that the Aliens Appeals Board, in its decision of 19 May 2005, found that the documents had little value as evidence and that the applicant's reasons for her late submissions were questionable. Since the national authorities are in a good position to assess an applicant's credibility, as well as the authenticity of any documents invoked, on the basis of the witness evidence before them and their general experience, the Court must give due weight to their findings (see, *F. v. the United Kingdom*, (dec.), no. 17341/03, 22 June 2004).

Furthermore, the Government, through their Embassy in Tehran, have stated that the forms used for the summons and the formal notice could be obtained in Iranian courts for a fee, and that the court referred to in the documents had ceased to exist several years ago. In any event, they pointed out that the court referred to had been a special court of civil law, not dealing with criminal cases. The applicant has not addressed these specific points made by the Government but only maintained her claims in general. The Court considers that this weakens the applicant's credibility further as she has failed to provide the Court with a satisfactory explanation for the inaccuracies presented by the Government and that, consequently, the veracity of the documents must be called seriously into question. In any event, it appears clear that the documents do not relate to any criminal proceedings against the applicant and that no charges of adultery have therefore been directed against her. This view is confirmed by the fact that criminal proceedings in Iran are initiated by the prosecutor before the Public Court for Criminal Proceedings.

Having regard to the above, the Court finds that the applicant has not established that there are substantial grounds for believing that she would be exposed to a real risk of being subjected either to the death penalty or to inhuman or degrading punishment or treatment, contrary to Articles 2 and 3 of the Convention or Article 1 of Protocol No. 1 to the Convention, if she were to be deported to her home country.

Turning to the applicant's claim that she would also risk being prosecuted and subjected to torture and inhuman or degrading treatment for having left Iran without the permission of her husband and for having taken A. with her, the Court observes that it is not a criminal offence for a married woman to travel with her minor children, as married couples have joint custody of their children. Moreover, during the first asylum interview in Sweden, the applicant had told the Swedish migration authorities that she had travelled using her own passport, in which A. was also registered. It should also be noted that A. was 17 years old when they left Iran and that he is now an adult. Furthermore, although a married woman has to obtain the written consent of her husband before travelling outside the country, she

would not risk any severe sentence for leaving Iran without her husband's permission. According to the Swedish Embassy in Tehran, a woman would only risk being fined for such an offence, a fact which the applicant has not disputed. In any event, the Court observes that, upon arrival in Sweden and for some time thereafter, the applicant and A. lived with her husband's brother, indicating that her husband had consented to their travelling to Sweden.

Thus, the Court does not find it substantiated that the applicant, on the basis of her above claims, would be in danger of being subjected to treatment contrary to Article 3 of the Convention if she returned to Iran.

The applicant also insisted that her husband would pose a real threat to her if she had to return to Iran since he would want to uphold his honour and family authority. The Government disputed this, alleging that the applicant had not substantiated her allegations in this respect.

The Court notes that the applicant has stated that her husband has repeatedly called and threatened to kill her, and she relied on a copy of an undated letter, which she claims is from her husband, and in which he allegedly states that he has reported her for adultery and will demand the harshest punishment for her. The Court does not find the applicant's statements in this respect convincing: it is odd that the applicant's husband would send a letter to the applicant's father in Iran and not directly to her in Sweden, although he knew where she was living and, allegedly, several times had called and threatened her over the phone.

In any event, the Court observes that so-called honour killings have been condemned by the Iranian leadership and do not normally occur in big cities such as Tehran where the applicant's husband has lived all his life. Moreover, although the Court recognises that the situation for women in Iran is difficult in many respects, nevertheless the battering of women is a criminal offence and the Iranian authorities examine such allegations. The applicant has not shown that the Iranian authorities would be unwilling or unable to protect her from her husband if he would try to harm her. Furthermore, the Court notes that the applicant has remained in contact with her sister and father in Iran and, thus, would have some support from them upon return. Her adult daughter is also living there. Therefore, the Court does not find the threats allegedly posed by the applicant's husband to constitute a real risk for the applicant of being exposed to treatment contrary to Article 3 of the Convention.

Having regard to the above considerations, the Court finds that, if she were to be returned to Iran, the applicant would not face a substantial risk of being executed, arrested or subjected to inhuman or degrading punishment or treatment contrary to Articles 2 or 3 of the Convention or Article 1 of Protocol No. 13 to the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant further claimed that her deportation from Sweden to Iran would cause her irreparable damage due to her poor mental health.

The Government submitted that this complaint should also be declared inadmissible as being manifestly ill-founded. They claimed that, having regard to the high threshold set by Article 3 of the Convention, particularly where the case does not concern the direct responsibility of the receiving State for the infliction of harm, it could not be considered that there was a sufficiently real risk that the applicant's deportation would be contrary to the standards of Article 3 of the Convention. The Government contended that the present case did not disclose the exceptional circumstances established by the Court's case-law. Moreover, the Government noted that medical obstacles of the kind invoked by the applicant would always be taken into account when deciding on whether a deportation should be enforced and they were confident that, if the deportation order were to be carried out, it would be arranged by the responsible authority in such a manner as to minimize the potential suffering of the applicant.

The applicant claimed that she was in an extremely poor mental condition and that she suffered immensely at present. Consequently, she would be unable to bear the mental stress that deportation would cause her. It would entail a suffering beyond her ability to endure. Therefore, deportation would constitute inhuman and degrading treatment in contravention of Article 3 of the Convention.

The Court reiterates that, due to the fundamental importance of Article 3, the Court is obliged to subject all the circumstances surrounding the case to rigorous scrutiny, including the applicant's personal situation in the deporting State (see *D. v United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III, § 49).

Accordingly, the Court will examine whether the deportation of the applicant to Iran would be contrary to Article 3 having regard to all the material before it, including the most recently available information on the applicant's state of health.

In this respect, the Court would highlight that, according to its established case-law, aliens who are subject to deportation cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the deporting State. However, in exceptional circumstances, the implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a violation of Article 3 (see, for example, the *D. v. United Kingdom* judgment, cited above, § 54).

In the present case, the applicant has been diagnosed as suffering from a serious mental illness - depression - and an enduring crisis reaction with suicide plans for which she has been taking sleeping pills and antidepressants.

The Court accepts that the applicant is in poor mental health and suffers from the uncertain situation in her life. However, it observes that she has not been in regular contact with the Swedish health care system. Nor has she undergone specific treatment or ever been hospitalised in Sweden. Moreover, she has not claimed before the Court that medical treatment as such would not be available in Iran, should she be in need of it.

In any event, the fact that the applicant's circumstances in Iran would be less favourable than those enjoyed by her in Sweden cannot be regarded as decisive from the point of view of Article 3 (see, *Bensaid v. United Kingdom*, no. 44599/98, § 38, ECHR 2001-I; *Salkic and others v. Sweden*, (dec.), no. 7702/04, 29 June 2004).

Furthermore, the Court notes that the two doctors with whom the applicant has been in contact seem to agree that her vulnerable health, including her suicidal thoughts, is primarily due to her unstable living situation, her fear of returning to Iran and the anxiety about her future and that of her son. In this respect, the Court reiterates that the fact that a person, whose deportation has been ordered, threatens to commit suicide does not require the Contracting State to refrain from enforcing the deportation, provided that concrete measures are taken to prevent the threat from being realised (see *Dragan and Others v. Germany*, (dec.), no. 33743/03, 7 October 2004, and, *mutatis mutandis*, *Ovdienko v. Finland*, (dec.), no. 1383/04, 31 May 2005). In the present case, the Court notes that the two physicians who have examined the applicant have found that there is a risk that she might try to commit suicide if the deportation order were carried out. However, the Court observes that the applicant has never been committed to psychiatric care (either on a voluntary or compulsory basis). In fact, she has had little and irregular contact with the Swedish health care system on her own behalf as most contacts seem to have concerned her son.

The Court further takes note of the respondent Government's submission that no enforcement of the deportation order will occur unless the authority responsible for the deportation deems that the medical condition of the applicant so permits.

Thus, having regard to the high threshold set by Article 3, particularly where the case does not concern the direct responsibility of the Contracting State for the possible harm, the Court does not find that the applicant's deportation to Iran would be contrary to the standards of Article 3 of the Convention. In the Court's view, the present case does not disclose the exceptional circumstances established by its case-law (cf., among others, *D v. United Kingdom*, cited above, § 54).

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that the application as a whole, therefore, must be rejected pursuant to Article 35 § 4 of the Convention. Accordingly, the application of Rule 39 of the Rules of Court to the present case should be discontinued.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President