

File no. 7870/2002

Bucharest Sector IV Court

Ruling in Civil Case no. 2784

Public session of 19.05. 2003

Court represented by:

PRESIDENT : GABRIELA SARBU

COURT CLERK: NICOLETA ANGHEL

The Public Ministry was represented by SORIN MARCIUC, prosecutor

The subject case deals with the complaint submitted by appellant V. A. from Iran, on her behalf and as legal representative of P. A. and M.A., minors, against decision no. 83 510/h/DN of 19.07.2002 given by the National Refugee Office, in contradiction with the Guardianship Authority of Sector 4, Bucharest.

Upon the nominal call in the public session, the appellant declared herself present, assisted by Rapolti Magdalena, Lawyer, and Azar Bahare, interpreter of Persian, the Guardianship Authority being absent.

The complete procedure.

The court clerk drafted the case report and the appellant, through the defendant, submitted to the case file a summary of two similar case studies solved by the Supreme Court of Australia and the USA Justice Department.

As no other requests are to be formulated and no other evidence to be presented, the court observes on the subject case and gives the floor for substantial evidence.

The appellant requests through the defendant for the complaint to be admitted, the challenged decision to be dismissed and for the appellant and her two minor children to be acknowledged the refugee status. In this respect, she asks the court to bear in mind that the appellant comes from an Islamic country where women rights are not acknowledged and respected. She is a victim of domestic violence being forced to bear the beatings of her husband, his immoral behaviour he manifested during their marriage, his extramarital relations. She decided to leave Iran together with her two minor children because in her country, owing to the customs and the lack of involvement from the part of the authorities in such problems, women in this situation do not benefit from any sort of protection and the law itself is discriminatory in the sense that, as it results from the information submitted to the file, the testimony of a woman, for example, values half of the testimony of a man.

Apart from the lack of protection from the part of the authorities, it also to be noticed that the family of the appellant did not offer her any support when she tried to leave her husband but, on the contrary, they forced her to go back to him. Moreover, in the case of a divorce, if the woman were the one to submit the request to the court, she would risk to lose the children unless she proves she undergone severe physical

aggression. Nevertheless this perspective is unacceptable to the appellant having regard to, among other things, the character of her husband and also the fact that she would have to bear the public contempt which would have hindered her from finding a job in order to provide for herself and her children. Moreover, a single woman in a country like Iran has no chance to survive unless she is under the protection of a man in the family. All these arguments represent reasons which give the appellant the right to request the protection of the Romanian state and to be acknowledged the refugee status for her being part of the category of women subject to domestic violence. As accessory demand she requests to be granted the conditioned humanitarian protection on the basis of Article 5(c) in the Government Ordinance no. 102/2000.

The representative of the Public Ministry requests the rejection of the complaint submitted by the appellant as unfounded, since she has not made the proof that she is in one of the situations provided for by law that could justify the granting of a form of protection in Romania.

THE COURT

Having deliberated on the current civil case, observes the following:

Through the complaint registered for the rule of this court under no. 7870/2002, the appellant V.A. from Iraq formulated on her behalf and as legal representative of P. A. and M. A., minors, a complaint against decision no. 83 510/h/DN of 19.07.2002 given by the National Refugee Office asking for the dismissal of the challenged decision and for being granted a form of protection in Romania.

In support of her complaint, the appellant indicated that she would submit her motivation in court.

De iure, the complaint was grounded on the provisions of Article 2,5,15 (1) in the Government Ordinance no. 102/2000 approved and amended through Law no. 323/2001, Law no. 46/1991 for the adoption of the 1951 Geneva Convention on the status of refugees, Article 2,3 in the European Convention of Human Rights, Article 16(1) and Article 24 in the Romanian Constitution.

The documents at the basis of the challenged decision and also checks regarding the criminal record of the appellant and information on the country of origin were attached to the case file.

The appellant, legally summoned, presented herself in court and was interviewed in the presence of the chosen lawyer and the interpreter of Persian with a view to motivating her complaint, her statement being written down and attached to the case file.

The analysis of the complaint will take into consideration the provisions in G.O. no. 102/2000 on the status and regime of refugees in Romania approved and amended through Law no. 323/2001 which, in Article 1(1) stipulates that asylum seekers may be granted one of the forms of protection in Romania, respectively the refugee status or conditioned humanitarian protection if they comply with the legal provisions.

In accordance with the provisions under Article 2 in the GO. No. 102/2000, the refugee status may be granted, upon request, to the alien who proves that, owing

to a well founded fear of persecution for reasons of race, religion, nationality, membership of a certain social group or political opinion, is outside the country of origin and who is unable or, owing to such fear, is unwilling to avail himself of the protection of the respective state.

As regards conditioned humanitarian protection, the same legal act stipulates under Article 5 that this form of protection may be granted to the alien who does not comply with the conditions stipulated under Article 2(1) and who proves that he/she committed certain deeds in the country of origin for which he/she risks the death penalty, under the condition that the legislation in the respective states provides for the death penalty for those deeds and the sentence is applicable to him/her or that she/he risks to be subjected to torture or inhuman or degrading treatment, or can be exposed to threats that could jeopardize physical integrity or freedom because of the affiliation to an underprivileged category of persons.

Moreover, taking into consideration the provisions in Article 18 and 20 in the Romanian Constitution, account was given also to Article 1(A) and Article 33 in the 1951 Geneva Convention on the status of refugees, Article 1(2) in the 1967 New York Protocol, as well as the provisions on the fundamental rights in the European Convention of Human Rights.

From the documents in the file, the court understands that, in accordance with the statements of the appellant given in the administrative stage of the asylum procedure and in the judicial phase, the appellant left her country of origin, Iran, together with her two minor children, legally, traveling to Turkey. From Turkey she illegally crossed Bulgaria and reached Romania. From here, she would have wanted to get to Hungary in order to reach Germany, where she hoped to be granted asylum and raise her children in better conditions. Yet, she was caught at the border in Arad and apprehended for three days after which she was transferred to Tudor Gociu Center. She was forced to leave her country because of her husband's violent behaviour and because of the legal system in her country which does not allow a woman to get a divorce and, in the case one would submit a request for a divorce to the court, one would almost automatically lose custody of the children who would remain under the custody of their father. This perspective is unacceptable to the appellant who loves her children very much and she would not leave them under any circumstances to her husband, who has never been interested in bringing them up and who manifested the same violent behaviour towards them as well. ... Moreover, in this situation, the woman would also lose the dowry received upon marriage. When she had requested the support and advice of the authorities, of the police and even of a judge, she was recommended not to ask for a divorce for her not to lose her children and to benefit from the material support of her husband. Under these circumstances, she decided to leave the country in order to save her children who are already traumatized by the violence they witnessed in their family.

She also mentioned that, in the Iranian society, a woman can hardly find a job and therefore she can support herself with great difficulty. Apart from this, if the woman is not accompanied by a man even in the street she risks being molested and turned back.

As regards her relation with her husband, the appellant claims that the husband used to scold her out of different reasons and would beat her in such a severe manner

that the marks would persist for several weeks, being, several times, even forced to go to hospital for medical care.

Approximately three months before leaving the country, the appellant had tried to leave her husband and fled together with her children to her parents, after a domestic fight. After this, she had countless discussions with her husband regarding the divorce, but the husband asked her to submit the request for the divorce to the court herself if she wanted this because he knew she would lose the children in this way and she wouldn't do such thing given these conditions.

Her family was also against the divorce and she preferred in this way to leave the country than to go back to her husband's house. As long as she lived with her parents, she tried to get a job in a kindergarten, but she was not accepted because she was a woman. In this respect, she declares that a woman can get a job in Iran only in certain places where she does not get into contact with the public or with a high number of persons and, therefore, she can never get into a management position. The appellant studied only 12 forms and she could not attend Faculty courses because in Teheran the number of places was limited and occupied mainly by men, and she could not go to another city unless accompanied by a man.

She also invokes the fact that, in Iran, a woman is bereft of social, cultural and economic rights. She therefore states that women have no possibility of promoting themselves in society or in their family either, they are forced to get dressed in traditional outfits and to be veiled, they cannot put on make-up and cannot go in the street unless accompanied by a man. If they breach these rules they can be killed even for the sole fact that their hair is partially unveiled, they can be arrested, beaten with the whip or the belt.

With a view to establishing the credibility of the appellant and the truthfulness of her statements, the court consulted different sources of information issued by international bodies and organizations which monitor the situation of respecting the human rights all around the world, focusing on gathering information mainly as regards aspects underlined by the appellant in her statements.

These reports reveal the fact that in Iran, the state imposes gender segregation in most public spaces...women are discriminated by law, especially as regards family and ownership issues. They do not have equal rights with men as regards testimony and inheritance. The testimony of a woman values half of the testimony of a man, which makes it difficult for a woman to probe a case against a man.

Hijab, the code of modest outfit is compulsory in all public spaces irrespective of the religion or citizenship of the woman. The hair of a woman must be entirely covered and their faces must not have make-up on. Nonobservance of the outfit code is sanctioned with a verbal reproach, with a fine or with 74 whip strikes or prison up to three months. Nonobservance of the outfit code at work by governmental employees can lead to their being put under trial in criminal cases, on the basis of a law adopted in 1993.

As regards the attitude of the society and family in relation to a divorced woman, the reports reflect the fact that mainly in the rural areas they can be found in a state of isolation and can face financial difficulties. In 1986 the government issued a standard contract for marriage and divorce containing 12 points, which limited the privileges traditionally granted to men on the basis of the Islamic law. The rights of

divorced women to a part of their matrimonial properties and to a higher alimony were acknowledged.

In case of divorce, the father gets, by tradition, the custody of the child, except the cases when the woman can prove that the husband is an unsuitable father. The civil code stipulates that the woman has custody of boys up to the age of two and of girls up to the age of five. The women that remarry are forced to give up the custody of their children from the previous marriage in the favour of the former husband.

The situation of a divorced woman and the subsequent relations after the divorce may be made difficult by accusations of immoral behaviour and possibly adultery. If a woman who is beaten by her husband calls the police to her house, it is unlikely that the police intervene, but the woman can choose to go to the police and file a complaint against the husband. If she chooses this means, she must present a medical certificate attesting that she suffered a severe physical aggression, a broken bone, a knife wound caused by her husband for the police to open a file in this case. If a married woman can prove in court that her life is endangered by her husband, the court may allow her to move to her father's house and in this case the husband can be legally kept at a distance. Under the same circumstances, the wife can choose to have a different residence from that of her husband and she can ask for alimony up to the divorce, but, despite these provisions, it is very difficult for a woman to convince the courts that they are in danger because of their husbands. The cases of previous abuse are considered a proof of danger only if the beatings led to severe injuries and this suggests that beatings are allowed as long as they do not cause permanent injuries or a handicap. It is up to the judge to decide on the severity of the situation and the decisions are extremely subjective. According to certain sources, a woman cannot ask for a divorce only based on the fact that her husband causes her pain and suffering unless there is severe aggression of her physical integrity.

Divorces obtained outside Iran are not acknowledged by the Iranian government unless the Iranian embassies and consulates support them or the procedures are repeated in Iran as well. Therefore, a former wife can be accused of adultery and arrested in Iran if she remarries after a divorce obtained outside Iran.

Analyzing the statements of the appellant, corroborated with the above mentioned information on the country of origin, the court considers that her request to being acknowledged the refugee status in Romania is founded, the latter having well founded reasons to fear persecution in the country of origin from non state agents of persecution as well as from her husband and the Iranian traditional society which benefits from the large support of the government through the fact that no effective measures are taken in order to ensure the protection of women against ill treatment to which they are subjected in their families and neither can it ensure real possibilities for the integration of women that obtain a divorce in the Iranian society.

Therefore it is to be noticed that although the law admits the possibility of women victims of domestic violence to ask for a divorce, the acceptance of such a request is difficult enough because of the conditions that the law imposes in the case such a request was submitted by a woman, in the sense that the latter is requested to make the proof that the beating applied by her husband led to a severe body injury to the extent of a fracture, or infirmity. Such a proof is difficult to be made in the Iranian society since a woman is traditionally bereft even of the possibility of walking alone on the street unaccompanied by a man from her family, usually the husband in the

case of a married woman. It is hard to believe that a man who maltreats his wife agrees to accompany her to a doctor for this to observe the injury caused and in this way to offer the wife proofs for the divorce.

Therefore, the practical impossibility of proving the trauma caused and the level of severity that this trauma must have, lead to the fact that, in reality, in Iran, under the appearance of several legal provisions, considered almost revolutionary for an Islamic society, women are forced to put up with the violence of their husbands, without having too many options, risking to lose the custody of their children, the respect of the community and facing the contempt of the society manifested through the fact that at any time such women can be subjected to street violence since they are not accompanied by a man, they can be accused of adultery and immoral behaviour.

The perpetuation of this almost utter dependence of the married woman on her husband can limit the possibility of the woman to choose between continuing the marriage in which her physical integrity and even life are endangered and a divorce which is equivalent with condemning the woman to the contempt of the family, society, losing her children and being impossible to restart her life, being at risk of falling victim of adultery and immoral behaviour accusations which are severely punished in Iran.

As the practice in the field of international protection has shown, although the one breaching human rights is the husband who, through his violent behavior endangered the physical integrity and even the life of the appellant, the latter stating that she was often so severely beaten that she would bear the marks weeks after the aggression and was even forced to go to the hospital for medical care, this can be classified as an agent of persecution having regard to the fact that his attitude is tolerated by the general policy of the Iranian government who does not consider necessary to take concrete and effective measures to offer protection to the appellant. The passive attitude of the government representatives in relation to solving the appellant's problems, corroborated with the attitude of the Islamic traditional community which tolerates such aggressive male behavior and even incriminates and marginalizes women who would try to protect themselves from such treatment, as well as the lack of efficiency in the measures adopted by law with a view to granting more freedom to women, as a result of inertia and miscorrelation of different institutions, the practice and the social and religious mentality creates the necessary and sufficient premises for the situation presented by the appellant to be considered persecution as long as in her country the latter could not find protection in any segment of the Iranian society. Protection was also refused to her both by the family and by the government and the entire community.

In this context, the appellant may be considered as claiming a founded fear of persecution in the country of origin owing to her being part of the social group of Iranian women and even more, of those who left their husbands without the latter's agreement. A possible return to the country of origin could lead to severe breaches of human rights up to affecting her physical and moral integrity and to endangering the life of the appellant.

Analyzing the request of the appellant as legal representative of her minor children, P. A., born 8.06.1998 and M. A. born 15.02.2000, having regard to their age, it is obvious that they could not invoke other individual reasons of persecution but, taking into consideration what the appellant presented in argumenting her request and

also the provisions in Article 3 and 9 in Law no. 18/1990 for the ratification of the Convention on the rights of the child, the court considers that it in the benefit of protecting the best interest of the children for them to remain in the care of their mother, away from the influence of the father. Therefore, on the basis of Article 3 in the GO no. 102/2000, they are to be acknowledged the refugee status in Romania.

In relation to the above mentioned, on the basis of Article 15 (6) correlated to Article 2(1) in the G.O. no. 102/2000, the court shall admit the complaint submitted by the appellant against the decision no. 83510/h/DN of 19.07.2002 given by NRO and shall acknowledge the refugee status of the latter in Romania, with all the legal consequences deriving from this, provided for under Article 23 and 24 in the G.O. no. 102/2000.

On the basis of Article 13(b) in the G.O. no. 102/2000, the trial expenses shall be borne by the Romanian state.

**ON THESE GROUNDS
IN THE NAME OF LAW
DECIDES**

It admits the complaint formulated by appellant V. A., born 24.10.1970 in Teheran, Iran, with residence in Bucharest, 24A Gociu Street, Sector 4, both on her behalf and as legal representative of the minors P. A. born 08.06.1998 in Iran and M. A. born 15.02.2000 in Iran against decision no. 83510/h/DN of 19.07.2002 given by the National Refugee Office.

It grants the appellant and her minor children the refugee status in Romania on the basis of Article 2(1) in the G.O. no. 102/2000 with all the legal consequences deriving from this status.

The trial expenses shall be borne by the Romanian state.

With possibility of appeal within 5 days from the ruling.

Ruled in public session of today, 19.05.2003.

President

Illegible signature

Court Clerk

Illegible signature