



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

CASE OF HATAMI v. SWEDEN

(59/1998/962/1177)

JUDGMENT

STRASBOURG

9 October 1998

In the case of Hatami v. Sweden¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mrs E. PALM,

Mr I. FOIGHEL,

Mr J.M. MORENILLA,

Sir John FREELAND,

Mr M.A. LOPES ROCHA,

Mr L. WILDHABER,

Mr P. JAMBREK,

Mr V. BUTKEVYCH,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 27 August and 24 September 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 27 May 1998, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 32448/96) against the Kingdom of Sweden lodged with the Commission under Article 25 by an Iranian national, Mr Korosh Hatami, on 22 July 1996.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 3.

Notes by the Registrar

1. The case is numbered 59/1998/962/1177. The first number is the case’s position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case’s position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant designated the lawyer who would represent him (Rule 31).

3. The Chamber to be constituted included *ex officio* Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention), and Mr R. Bernhardt, the President of the Court (Rule 21 § 4 (b)). On 9 June 1998, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr I. Foighel, Mr J.M. Morenilla, Sir John Freeland, Mr M.A. Lopes Rocha, Mr L. Wildhaber, Mr P. Jambrek and Mr V. Butkevych (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. In a letter to the Government of 29 May 1998 the Registrar reiterated that the Commission had previously, under Rule 36 of its Rules of Procedure, indicated to the Government not to enforce the expulsion order and that under Rule 38 § 2 of Rules of Court B such a measure remained recommended once a case has been referred to the Court unless and until the President or the Chamber had decided otherwise. No such decision had been taken in this case.

5. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted Mr L. Magnuson, the Agent of the Swedish Government ("the Government"), Mrs E. Lilliesköld, the applicant's lawyer, and Mr C.L. Rozakis, the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the orders made in consequence, the Registrar received the Government's and the applicant's memorials on 30 July and 3 August 1998 and their respective supplementary memorials on 11 and 12 August 1998. In a letter of 25 August 1998 the Secretary to the Commission informed the Registrar that the Delegate did not intend to submit any comments in writing.

On 30 July 1998 the Registrar received from the Government a letter concerning the possibility of a friendly settlement. On 13 August 1998 the applicant submitted additional observations on the case.

On 31 July and 25 August 1998 the Commission supplied a number of documents from its case file, which the Registrar had requested on the instructions of the President of the Court.

6. On 27 July 1998 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 27 and 40).

7. On 26 August 1998 the Government submitted further observations and a settlement agreement signed by the Agent of the Government and the applicant's lawyer. On various dates between 4 and 30 September 1998 the Registrar received from those taking part in the proceedings supplementary observations regarding the said agreement and a request to strike the case out of the Court's list.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant arrived in Sweden (Arlanda Airport) on 13 June 1993. It is in dispute between the parties whether the applicant arrived via Amsterdam or via Rome. He asked for asylum upon arrival and was questioned shortly thereafter. A preliminary report (*grundutredning*) concerning his first interview was drawn up in Swedish by a police officer on 14 June 1993, which stated:

“The applicant has two brothers and two sisters in Sweden. He submits that he has belonged to the Mujahedin since 1985. He states that he was convicted, following a trial, and sentenced to two years’ imprisonment for having distributed leaflets and for being responsible for their printing and distribution but not the actual contents. The sentence was served from 6 February 1990 to 11 February 1992 in a prison in Borojerd in Iran.

Following his release he continued with his activities. But since this caused problems with the authorities he decided to go to Sweden.

No health problems according to his own submissions except for a handicap since childhood, his right leg being partly paralysed.”

The front page of the report bore the applicant’s signature and indicated, *inter alia*, that he had arrived on an Alitalia flight from Rome.

The preliminary interview took five to ten minutes. There was no interpreter present but as the applicant could not read, write or understand Swedish, arrangements were made for interpretation to be relayed over the telephone. The contents of the report were not explained to the applicant but he signed it nevertheless.

The same police officer also completed, in English, a “Notification of Non-Admitted Passenger” form to be sent to Alitalia. The document bore the applicant’s signature but not the stamp of the competent police authority and was apparently never acknowledged by Alitalia.

9. The applicant’s asylum request was transmitted to the National Immigration Board (*Statens invandrarverk*) for examination. In this connection he was requested to submit a full report about his situation, which he did on 1 July 1993.

The report stated, *inter alia*, that the applicant had joined the Mujahedin Khalgh organisation as a sympathiser around 1985. After two years he had become responsible for a group of four members who distributed leaflets and wrote slogans. On 6 February 1990 he was arrested in the street in his home town while being in possession of a leaflet relating to the Mujahedin.

He was taken to prison and interrogated. He remained in prison for two years and was tortured on several occasions. After his release he continued his activities but since another member of his group had been arrested and had revealed that the applicant was in charge of the group he fled to Kurdistan and subsequently to Bandar Abbas. With the assistance of a smuggler he continued to Dubai, where he left at 12.35 a.m. on flight KLM 539 to Amsterdam, arriving at 7.40 a.m. At 3.45 p.m. on the same day he left Amsterdam for Stockholm on flight KLM 197 arriving in Stockholm on 13 June 1993 at 7.45 p.m.

10. The National Immigration Board interviewed the applicant on 30 December 1993 and drew up a report. He subsequently submitted certain corrections to the report and a medical certificate dated 14 January 1994 drawn up by the Assistant Chief Surgeon of the Refugee-Medical Centre at the University Hospital in Linköping.

11. On 13 July 1994 the National Immigration Board rejected the applicant's asylum request on the grounds that it doubted the credibility of the information which he provided about his political activities and disbelieved his assertion that, for political reasons, he risked being persecuted if returned to his home country.

12. The applicant appealed against the National Immigration Board's decision to the Aliens Appeals Board (*Utlänningsnämnden*) maintaining his request for asylum.

13. On several occasions during the period from November 1994 to April 1995 the applicant was examined by the Centre for Torture and Trauma Victims at the Karolinska Hospital ("the Karolinska Centre"). It was observed that he had a number of scars on his face, throat, arms, back, right leg, hip and genitals. According to a final medical report of 3 April 1995, the various medical assessments refuted the hypothesis that the wounds had been caused by accident or had been self-inflicted. While these assessments left open the question whether the wounds had been caused by assault or torture, the psychiatric and psychological assessment indicated that the applicant had experienced torture and had, as a result, suffered from severe psychological and psychiatric problems. The Karolinska Centre was of the opinion that it would be wrong, from a medical point of view, to expel the applicant to Iran since he could not be expected to receive the necessary care there.

14. Having interviewed the applicant on 8 May 1996 the Aliens Appeals Board rejected the applicant's appeal on 1 July 1996 and ordered his expulsion. Its decision stated:

"The Board notes that [the applicant] did not have a passport, nor any other travel document, when he arrived in Sweden. If an asylum-seeker destroys or in any other way leaves behind the passport which has been used for the journey here, the normal conclusion is that the applicant is withholding information that would be of the utmost importance for the evaluation of the asylum application. The trustworthiness of other

information that the applicant provides can then be reduced. The Board is of the opinion that if the applicant has provided a coherent story that is in itself acceptable and which may be supported further by other information in the case, the fact that the applicant has lost the passport cannot result in a conclusion that the story lacks truth. There is also reason to note that even if what is stated regarding the passport can raise certain doubts, these doubts should not, in view of the principles for evaluation of information applicable in asylum matters, form the verdict if the applicant in all other respects appears to be credible and his story probable.

From the documents in the case of [the applicant], it can be noted that he applied for a visa for Sweden at the Embassy of Sweden in Teheran on 13 January 1993. From the visa application appears that he has a passport, dated 11 November 1992 and valid until 11 November 1995. [The applicant] states that he received the passport through his contact person and that it was not legally authorised. He has also stated that he did not know that he was not allowed to travel when he applied for a visa. [The applicant] has stated that after being released from prison he was ordered to report to the police and subject to surveillance by the authorities, and it is therefore the opinion of the Board that it is not credible that he should have applied for a visa with a false passport; because of the rigorous checks when leaving Iran it is unlikely that [the applicant] would take such a risk, trying to leave Iran with a false passport. According to the evaluation by the Board, [the applicant] has applied for a visa with a legal passport, which indicates that he was not subjected to any special interest by the authorities. The Board also questions that [the applicant] should have visited a foreign embassy in Teheran, which is guarded by Iranian police, if he had been wanted.

The Board finds that [the applicant's] information about the reason why he was arrested and then imprisoned for two years and subjected to torture, is vague and less probable.

The Board also finds, as stated by the National Immigration Board, that there is reason to question [the applicant's] information about his political activity and that after the stated imprisonment he should have been able to continue his political activities despite the fact that he was under surveillance by the authorities.

The statements, etc. from the Karolinska Centre that have been provided in the case show that [the applicant] has healed scars on his face, throat, arms, body, right hip and outer genitalia. According to the Board, this does not support the conclusion that [the applicant's] scars and wounds are a result of actions based on his stated anti-government activities in Iran.

In a total evaluation of what [the applicant] has stated and other facts that have been produced in the case, the Board considers that he cannot be regarded as a refugee according to chapter 3 section 2 of the Aliens Act (1989:529).

There is no other reason of a humanitarian or other nature, to grant [the applicant] a residence permit."

15. On 30 July 1996 the National Immigration Board decided to stay enforcement of the expulsion order until further notice, in view of an indication of the same date by the Commission under Rule 36 of its Rules of Procedure (see paragraph 4 above).

16. On 17 December 1997, the applicant lodged a new application with the Aliens Appeals Board, invoking *inter alia* the fact that the Commission had declared his present application admissible.

On 4 March 1998 the Aliens Appeals Board rejected the application. In its view, his activities in Sweden and his application pending before the Commission did not give reason to believe that he was in need of protection within the meaning of the Aliens Act. Nor would it be contrary to humanitarian considerations to enforce the expulsion order and, if necessary, to deport him to Iran.

17. On 15 September 1998 the Aliens Appeals Board, deciding on a further application by the applicant, granted him permanent residence in Sweden and repealed the expulsion order under Chapter 2, section 5(b) and Chapter 3, section 3, of the Aliens Act (see paragraphs 19 and 22 below). In reaching this conclusion, the Board had regard to the Commission's opinion that the applicant's expulsion to Iran would, if executed, amount to a violation of Article 3 of the Convention and to the Government's decision of 7 November 1996 in another case. On the other hand the Board dismissed, *inter alia*, the applicant's application for asylum.

II. RELEVANT DOMESTIC LAW

18. With two exceptions, all the national decisions in the present case were taken under the Aliens Act 1989 (*utlänningslag* 1989:529) in the version in force until 1 January 1997 when certain amendments (1996:1379) to the Act entered into force. The exceptions are the decision of 4 March 1998 rejecting the applicant's renewed application of 17 December 1997 and the decision of 15 September 1998 granting his further application (see paragraphs 16 and 17 above).

19. According to the 1989 Act the National Immigration Board and the Aliens Appeals Board are empowered to determine issues regarding the right of aliens under the Act to enter and remain in Sweden. Under the provisions in force before 1 January 1997, in exceptional cases the government could determine whether or not an alien should be allowed to remain in the country, provided that either the National Immigration Board or the Aliens Appeals Board had referred the matter for consideration. Such a referral could take place, *inter alia*, if the matter was deemed to be of

special importance for the purpose of obtaining guidance as to the application of the Aliens Act (Chapter 7, section 11). Since 1 January 1997, such referrals may not be made with respect to applications for residence permits resubmitted on grounds of change of circumstances (Chapter 2, section 5(b)).

20. Chapter 3, section 1(1), provides that asylum may be granted to an alien if he or she is a refugee. The term “refugee” is defined in section 2 as an alien who is outside his or her country of origin because of a well-founded fear of persecution on grounds of race, nationality, links to a certain social group or religious beliefs or political opinion and who cannot or will not, because of such fear, avail himself or herself of the protection of that country.

21. According to the former section 1(3), which was repealed on 1 January 1997, asylum could also be granted to a person who, because of the political situation in his or her country of origin, was unwilling to return there and who was able to present convincing grounds for his or her wish to remain in Sweden. A person who had been granted asylum on the latter ground was regarded as a “*de facto* refugee”.

Pursuant to section 4 an alien referred to in section 1 was entitled to asylum. However, under that provision asylum could be refused, *inter alia*, in special circumstances.

22. Since 1 January 1997, a well-founded fear of subjection to the death penalty, corporal punishment, torture or other inhuman or degrading treatment or punishment constitutes a separate ground under Chapter 3, section 3, for granting a residence permit.

23. In considering the refusal of entry of an alien or his or her expulsion, the relevant authority should, according to Chapter 4, section 12, have regard to whether there are any obstacles of the kind referred to in Chapter 8, sections 1–4, to returning him or her to a particular country or whether there are any other specific obstacles to implementing the decision. For instance, under Chapter 8, section 1, an alien may not be expelled to a country where there are substantial grounds for believing (*grundad anledning att tro*) that he or she would risk the death penalty, corporal punishment or torture.

According to the amended version of the latter provision an alien may not be expelled to a country where there is reasonable cause to believe (*skälig anledning att tro*) that he or she would risk being subjected to the death penalty, corporal punishment, torture or other inhuman or degrading treatment or punishment.

PROCEEDINGS BEFORE THE COMMISSION

24. In his application (no. 32448/96) to the Commission introduced on 22 July 1996, Mr Hatami complained that his expulsion from Sweden and deportation to Iran would expose him to ill-treatment and thus give rise to a violation of Article 3 of the Convention.

25. The Commission declared the application admissible on 23 January 1997. At a meeting held on 12 May 1997 in Stockholm, the applicant was interviewed by delegates of the Commission on certain aspects of the case in the presence of his own representatives and representatives of the respondent Government, who were able to put questions to him. In the light of the evidence, the delegates found that the applicant's statements were on the whole consistent and credible and that his demeanour and comportment were convincing and sincere.

In its report of 23 April 1998 (Article 31), the Commission expressed the unanimous opinion that the applicant's deportation to Iran would, if executed, amount to a violation of Article 3 of the Convention. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

AS TO THE LAW

26. On 26 August 1998 the Court received from the Agent of the Government a copy of the following text, signed respectively on 20 and 24 August 1998 by himself and the applicant's lawyer:

"The Swedish Government and Korosh Hatami have now reached the following friendly settlement, on the basis of respect for human rights as defined in the Convention, in order to terminate the proceedings before the European Court of Human Rights.

(a) Korosh Hatami will lodge a new application for a residence permit with the Aliens Appeals Board.

(b) Subject to the fulfilment of what is stated under (a) above and provided that the Aliens Appeals Board grants Korosh Hatami a residence permit and quashes the expulsion order, the Government will pay, *ex gratia*, the sum of SEK 100 000 to Korosh Hatami which corresponds to his legal costs before the Commission and the Court and for the application referred to under (a) above.

(c) Korosh Hatami declares that, subject to the fulfilment of what is stated under (b), he has no further claims against the Swedish State based on the facts of the [relevant] application.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

This settlement is dependent upon the formal approval of the Swedish Government at a Cabinet meeting.”

27. On 4 September 1998 the Agent of the Government submitted to the Registrar the minutes of a Government Cabinet meeting held on 3 September, according to which the Government had decided to approve the friendly-settlement agreement which the Agent had concluded with the applicant and that the agreed sum – 100,000 Swedish kronors – was to be disbursed by the Ministry of Foreign Affairs. In his accompanying letter of 4 September 1998 the Agent further informed the Registrar that the applicant had submitted a new application for a residence permit, which was currently being examined by the Aliens Appeals Board.

28. On 22 September 1998 the Agent of the Government informed the Registrar that the Aliens Appeals Board had granted the applicant a permit to reside permanently in Sweden and had repealed the expulsion order and that the reimbursement of his legal costs would be effected as soon as possible. In view of this the Government requested the Court to strike the case out of its list. By letter of 24 September 1998 the lawyer for the applicant confirmed that a friendly settlement had been reached and that he had no further claims against the Swedish State based on the facts of the present application.

29. The Delegate of the Commission was consulted in accordance with Rule 51 § 2 of Rules of Court B and expressed the view that it would be appropriate to strike the case out of the Court’s list of cases.

30. The Court takes formal note of the friendly settlement reached between the Government and Mr Hatami. It discerns no reason of *ordre public* (public policy) militating against striking the case out of the list (Rule 51 §§ 2 and 4).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing on 9 October 1998 under Rule 57 § 2, second sub-paragraph, of Rules of Court B.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar