



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

FOURTH SECTION

CASE OF KALANTARI v. GERMANY

(Application no. 51342/99)

JUDGMENT
(Striking out)

STRASBOURG

11 October 2001

FINAL

11/01/2002

In the case of Kalantari v. Germany,

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

Mr A. PASTOR RIDRUEJO, *President*,

Mr G. RESS,

Mr L. CAFLISCH

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs N. VAJIĆ,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 28 September 2000 and 20 September 2001,

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

PROCEDURE

1. The case originated in an application (no. 51342/99) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Iranian national, Mr Ali Reza Kalantari (“the applicant”), on 2 August 1999.

2. The German Government (“the Government”) were represented by their Agent, Mr K. Stoltenberg, *Ministerialdirigent*, of the Federal Ministry of Justice. The applicant was represented by his sister, Mrs H. Yaghoubinia-Kalantari, who has political-refugee status and lives with her husband and two children in Geneva, and by ELISA, an association for the defence of asylum-seekers in Switzerland, represented by Ms C. Wenninger.

3. The applicant alleged, in particular, that he would face inhuman and degrading treatment contrary to Article 3 of the Convention if he were expelled to Iran.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. The Chamber decided to apply Rule 39, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings that the applicant should not be expelled pending the Court’s decision.

6. By a decision of 28 September 2000, the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. On 12 April 2001 the Section Registrar contacted the parties with a view to securing a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The proceedings in the domestic courts

9. The applicant is an Iranian national and was born in 1971. His present address is unknown.

10. He entered Germany in October 1997 after fleeing Iran and applied for political-refugee status.

11. At a hearing on 16 October 1997 at the Federal Office for Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*), the applicant gave evidence that one of his sisters had been executed in Iran in 1982 or 1983, while another had been imprisoned from 10 January 1983 to 13 September 1984 and had been missing since 1987 or 1988. He had raised funds in Iran and taken notes during radio programmes which he had subsequently added to and circulated. He had decided to leave Iran on learning from third parties that the family home had been searched on 6 September 1997.

The verbatim record taken by the Federal Office for Refugees indicates that the applicant had produced a list of the martyrs of the People's Mujahidin Organisation of Iran (an opposition movement in Iran), which included his first sister, and a certificate from the Sari Islamic Revolutionary Court of 31 December 1984 indicating that his second sister had been arrested and imprisoned from 10 January 1983 to 11 September 1984 on account of her activities for the Monafeghin.

12. In a decision of 31 August 1998 the Federal Office for Refugees dismissed his application on the ground that there was no bar to his expulsion under section 51 or 53 of the Aliens Act (*Ausländergesetz* – see “Relevant Domestic Law” below), since he had not succeeded in establishing that he risked persecution if he returned to Iran. The Federal

Office found his account vague and parts of it self-contradictory; it also considered it strange that it had not been until several years after the persecution of his sisters that he had become involved in activities against the regime.

13. On 5 November 1998 a group of Iranian political refugees sent a letter to the Federal Office for Refugees stating that the applicant was a supporter of the People's Mujahidin of Iran and a member of a family of "martyrs" in Iran that was under threat from the incumbent regime, one of his sisters having been arrested, tortured and executed in the 1980s.

14. At a hearing on 10 November 1998 in the Regensburg Administrative Court (*Verwaltungsgericht*) the applicant asked for Mr Yaghoubinia, his brother-in-law, who has political-refugee status in Switzerland, to be called as a witness. The court, however, turned his request down.

15. On 11 November 1998 the Regensburg Administrative Court upheld the decision of the Federal Office for Refugees. On 15 December 1998 the Bavarian Administrative Court of Appeal (*Bayerischer Verwaltungsgerichtshof*) dismissed a further appeal by the applicant.

16. On 2 March 1999 the applicant made a fresh application for asylum (*Asylfolgeantrag*), *inter alia*, on the ground that he had been interviewed by the Offener Kanal Dortmund television channel at a demonstration outside the Iranian embassy in Bonn on 9 January 1999 and had signed a resolution against the Iranian regime that had been published in an opposition newspaper in Iran on 2 February 1999.

17. On 28 April 1999 the Federal Office for Refugees dismissed that application, finding that the new evidence was insufficient to establish that the applicant would face political persecution if he returned to Iran.

18. On 25 May and 23 June 1999 the applicant appealed against that decision and applied for a stay of execution of the expulsion order, *inter alia*, on the ground that he had taken part in a demonstration against Iran on 20 June 1999 at the G8 summit in Cologne and had been filmed by Simaye Moghavemat, the Mujahidin people's television station based in London.

19. On 25 June 1999 Mrs Hajar Yaghoubinia-Kalantari, the applicant's sister, who has political-refugee status in Switzerland and represented the applicant in the proceedings in the Court, sent a letter to the German consulate in Geneva stating that she and her husband had been political prisoners in Iran, that her sister had been executed by the Iranian regime and that a law had been passed by the Iranian parliament making it an offence to engage in any political activity against the regime abroad. She sent a copy of that letter to various international organisations such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations High Commission for Human Rights, Amnesty International's Berne office and the European Court of Human Rights.

20. On the same day the Regensburg Administrative Court requested information from the German Ministry of Foreign Affairs about the risk the applicant would face as a signatory of the resolution against the Iranian regime in the event of his expulsion to Iran.

21. On 8 July 1999 the OMCT (World Organisation Against Torture) contacted the Permanent Mission of Germany to the United Nations in order to apprise Germany of the risks the applicant would face if expelled to Iran.

22. In a first judgment of 21 July 1999 the Regensburg Administrative Court ordered a stay of the expulsion order, holding that the Federal Office for Refugees should have taken the applicant's open criticism of the Iranian regime into account and that it would not be possible to decide the case until the information requested from the Ministry of Foreign Affairs had been received.

23. In a second judgment delivered on 23 July 1999 the Administrative Court reversed that decision when a sworn statement adduced by the applicant of the person who had interviewed him at the demonstration and had identified himself as the editor of the Offener Kanal Dortmund television channel turned out to be false, as the director of that television channel had said in evidence that the person concerned had never worked for the channel. As a result, the Administrative Court concluded that the grounds relied on by the applicant following his flight (*Nachfluchtgründe*) were a total fabrication.

24. However, on 27 July 1999 the director of Offener Kanal Dortmund sent a letter to the Administrative Court admitting that he had made a mistake and that, while the person who had interviewed the applicant was not the editor of the channel, he had reported for it on a regular basis.

25. Notwithstanding these developments and the fact that it had yet to receive information from the Ministry of Foreign Affairs, the Regensburg Administrative Court dismissed the applicant's application for a stay of execution of the expulsion order in judgments delivered on 27 July, and 5 and 10 August 1999, holding that he had not succeeded in establishing that he would face political persecution if he returned to his country. In particular, the resolution against the Iranian regime that had been signed by the applicant and published in an opposition newspaper in Iran on 2 February 1999 and in which he had declared himself to be a supporter of the People's Mujahidin of Iran, did not suffice to establish a risk of persecution, as it had been signed by 1,500 Iranians living in exile. Nor did the mere fact that the applicant's name had been mentioned in a television programme broadcast on a private channel on 12 January 1999, or that he had been filmed at a demonstration against the Iranian regime in Bonn suffice. The same was also true of the applicant's participation in a demonstration outside the Iranian embassy during the G8 summit in Cologne on 20 June 1999, as it had been attended by the majority of Iranian asylum-seekers living in Germany.

26. On 6 August 1999, on being informed by the applicant's family that the applicant's expulsion was imminent, the Special Rapporteur on Torture of the United Nations High Commission for Human Rights launched an urgent appeal to prevent the applicant's deportation to Iran.

27. On 9 August 1999 the applicant made a further application to the Regensburg Administrative Court for a stay of execution of the expulsion order. He enclosed the Swiss authorities' decision of 16 January 1989 granting Mrs Hajar Yaghoubinia-Kalantari, his sister, political asylum and an article from the 29 June 1999 edition of the *Modjahed* newspaper reporting the execution of his other sister, Ms Masoumeh Kalantari.

28. In a decision of 10 August 1999 the Federal Constitutional Court (*Bundesverfassungsgericht*), sitting as a bench of three members, declined to accept a constitutional appeal by the applicant for adjudication.

29. The substantive proceedings are still pending in the Regensburg Administrative Court, but have no suspensive effect.

30. Initially, the applicant attempted to flee to France and then on to Switzerland, where he was stopped at the border and sent back to France, where he is probably in hiding.

31. The applicant also made an application to the Swiss consulate in Lyons for political asylum in Switzerland, but the Federal Office for Refugees dismissed his application on 29 October 1999 and refused him permission to enter Swiss territory. The Swiss Asylum Appeals Board, before which the case is pending, issued a provisional opinion on 10 November 1999 opposing a grant of asylum.

B. The subsequent proceedings before the Court

32. On 24 September 1999 the applicant asked the European Court of Human Rights to intervene as a matter of urgency in order to prevent his expulsion to Iran, saying that he faced imprisonment and torture there.

33. On 27 September 1999 the President of the Fourth Section decided not to apply Rule 39 of the Rules of Court.

34. On 13 December 1999 the applicant made a further application to the Court under Rule 39 in which he relied on new evidence.

35. This consisted of two letters: a letter of 8 July 1999 from the OMCT to the German authorities and a letter of 22 October 1999 from the UNHCR Liaison Office for Switzerland and Liechtenstein to the Swiss authorities. Both letters said that the applicant was at risk of persecution if expelled to Iran. They added that one of the applicant's sisters had been executed, while another sister and her husband had been arrested and tortured in Iran before managing to escape and obtain political-refugee status in Switzerland.

36. In its letter of 8 July 1999 the OMCT said that, according to the information in its possession, the applicant "had been forced to flee his country of origin, as his life was in danger there. His sister and her husband

had already left the Islamic Republic of Iran some years earlier, after being arrested and tortured; his other sister had been executed by the incumbent regime”.

37. In its letter of 22 October 1999 the UNHCR Liaison Office for Switzerland and Liechtenstein expressed the opinion that “the applicant may be in danger if he is sent back to his country of origin, since it appears that his participation in a demonstration against the government was filmed and broadcast in a television programme that can also be received in Iran. Further, the petition signed by the applicant and the names of the signatories to it have been published in an opposition newspaper. These details could thus lead the Iranian government to identify the applicant as an opponent, especially in view of the active political role his two sisters have played in the past”.

38. In a letter of 20 December 1999 the Government was informed pursuant to Rule 40 of the Rules of Court that the applicant had made a request to the Court for the application of Rule 39.

39. On 6 January 2000 a Chamber composed of judges from the Fourth Section decided to apply Rule 39 and to request the Government not to expel the applicant before 6 April 2000. It invited the parties to provide further details on the persecution of the other members of the applicant’s family in Iran and the reasons for such persecution, together with copies of the Swiss authorities’ decisions relating to the grant of political asylum to the applicant’s sister and her husband in Switzerland.

40. On 25 January 2000 the Government informed the Court that they were not in a position to furnish the information requested.

41. On 29 January and 28 February 2000 the applicant’s sister provided, *inter alia*, the following information to the Court:

“My sister Mina (Massoumeh) Kalantari was arrested for her political activities and, after being subjected to torture over several months, executed (she died under torture) ... Both my husband and I were political prisoners and tortured in common with all other opponents of the Iranian regime who have been to prison ... I spent a long time in an isolated cell and from time to time heard the cries of other prisoners being tortured, even at night ... This is but the briefest of summaries of our prison ordeal ... It is for this reason that we fled Iran ...”

42. She also described the persecution of the other members of her family in Iran, her other sister Zara (Khadijeh) Kalantari, her brother Mohammad Raza Kalantari and her mother Effat Kalantari.

43. She enclosed copies of the following documents:

(i) a decision, in Persian and French, of the Sari Islamic Revolutionary Court dated 31 December 1984 accusing her of being a member of the “organisation of hypocrites” (the organisation of the Mujahidin) and of engaging in activities as part of that organisation, as a result of which she had been sentenced to a term of imprisonment from 10 January 1983 to 11 September 1984;

(ii) a decision dated 25 June 1987 of the person responsible for supervising the execution of that court's judgments certifying that her husband was also a member of that organisation and had served a 22-month prison sentence on that account;

(iii) an extract from the 29 June 1999 edition of the opposition newspaper *Modjahed* reporting the martyrdom of her sister Massoumeh Kalantari;

(iv) documents attesting to her and her husband's political activities in Switzerland (such as attending demonstrations against the Iranian regime);

(v) a letter of 16 January 1989 from the Swiss Commissioner for Refugees informing her and her husband of the Swiss decision to grant her asylum (without giving reasons);

(vi) a letter from the Head of the UNHCR Liaison Office for Switzerland and Liechtenstein dated 24 February 2000, attesting to the fact that by reason of their political activities as members of the PMOI (People's Mujahidin Organisation of Iran), Mr and Mrs Yaghoubinia (the applicant's brother-in-law and sister) had been "severely beaten and tortured and sentenced to respectively five years' and one year's imprisonment. Mr Yaghoubinia was released on 6 November 1984 on health grounds (heart problems), shortly after his wife's release on 13 September 1984". It added that Mr and Mrs Yaghoubinia had fled Iran and travelled to Turkey after the Iranian government had launched a vast operation for the interrogation of former political prisoners and they had been questioned by security forces. The letter said, in its conclusion:

"After examining their application for refugee status, the eligibility officer accorded them refugee status on 10 November 1987 under the HCR mandate under Article 6 paragraph A(ii) of the Statute of the Office of the United Nations High Commissioner for Refugees of 14 December 1950.

In view of the geographical reservation issued by Turkey when it ratified the Geneva Convention relating to the Status of Refugees of 28 July 1951, the HCR has attempted to find a country where Mr and Mrs Yaghoubinia will be able to resettle. By a letter of 17 June 1988, the Commissioner for Refugees of the Swiss Confederation informed the HCR that it would accept these refugees in Switzerland as part of its quota policy."

44. On 1 March 2000 the assistant to the Special Rapporteur on Torture at the United Nation's High Commission on Human Rights sent the Court the following extract from a report of the Special Rapporteur on Torture, which was made public at the beginning of April 2000:

"On 6 August 1999 the Special Rapporteur sent an urgent appeal on behalf of Ali Reza Kalantari, an Iranian national who was reportedly facing imminent and forcible repatriation to Iran on 10 August 1999 from Flughafen Frankfurt on Lufthansa, Iran where he may be at risk of torture. His applications for refugee status were reportedly rejected by the German authorities and he was forced to sign a document from the Iranian Consulate in Munich agreeing to return to Iran. He was reportedly arrested by

the police in Köln on 20 June 1999 while he was protesting against the Iranian Government.”

45. In a letter of 18 June 2001 the Government informed the Court that, by a decision of 15 June 2001, the Federal Office for Refugees had set aside its decision of 31 August 1998 (see paragraph 12 above) on the ground that a bar existed, within the meaning of section 53(4) of the Aliens Act (see “Relevant Domestic Law” – paragraph 48 below) to the applicant’s expulsion. Consequently, the applicant was not to be expelled to Iran (“*Herr Kalantari darf nicht in den Iran abgeschoben werden*”).

II. RELEVANT DOMESTIC LAW

46. Section 51(1) of the Aliens Act (*Ausländergesetz*) provides that aliens cannot be expelled to a State where their life or freedom would be at risk on account of their race, religion, nationality, membership of a particular social group or political convictions.

47. Section 53(1) of that Act provides, *inter alia*, that an alien may not be expelled to a State in which he faces a real risk of being subjected to torture.

48. Section 53(4) provides that an alien may not be expelled if such expulsion would not be authorised under the European Convention on Human Rights (“*soweit sich aus der Anwendung der Konvention zum Schutze der Menschenrechte und Grundfreiheiten ... ergibt, dass die Abschiebung unzulässig ist*”).

49. Section 42 of the Asylum Procedure Act (*Asylverfahrensgesetz*) lays down that the Aliens Office (*Ausländerbehörde*) is bound by a decision of the Federal Office for Refugees as to the existence of a bar to expulsion under Section 53 of the Aliens Act.

50. Section 73(3) of that Act provides that a decision as to the existence of a bar to expulsion within the meaning of section 53(1), (2), (4) or (6) of the Aliens Act must be set aside (*widerrufen*) if the conditions are no longer satisfied (“*wenn die Voraussetzungen nicht mehr vorliegen*”). An appeal to the administrative courts will lie against the new decision.

THE LAW

I. STRIKING OUT OF THE LIST

51. The applicant complained that his expulsion to Iran would expose him to a risk of inhuman and degrading treatment contrary to Article 3 of the Convention, which provides:

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

52. The Government said that since the Federal Office for Refugees had set aside its decision of 31 August 1998 and ruled that there were bars to the applicant’s expulsion under section 53(4) of the Aliens Act, the applicant was now fully protected against an expulsion to Iran in breach of Article 3 of the Convention. The new decision could only be set aside by the Federal Office for Refugees itself and, in such event, an appeal would lie to the administrative courts. Furthermore, the federal government as such could not give assurances concerning the grant of a residence permit (in this instance, an authority to remain – *Aufenthaltsbefugnis*), as the issue of such permits was the responsibility of the relevant *Länder* authorities.

53. The applicant referred to the Court’s decision on the admissibility of his application and replied that he had provided the German courts with documents showing that he faced persecution if expelled to Iran right from the start of the proceedings. Accordingly, he requested the authorities to grant him refugee status and a work permit. He also sought an award of 22,060 German marks (DEM) and DEM 600 monthly for the period from December 2000 until the Court’s judgment on the merits for pecuniary damage. His current immigration status was neither valid nor satisfactory. Referring to *Ahmed v. Austria* (judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI), he asked the Court to rule on the merits, as, in his submission, he remained a victim of a violation of Article 3 of the Convention. Lastly he alleged that, owing to his unstable situation, one that prevented him from getting married or starting a home, he was also a victim of a violation of Articles 8 and 12 of the Convention.

54. The Court observes at the outset that it only has jurisdiction to determine the present application in so far as it concerns the complaint of a violation of Article 3 of the Convention which it declared admissible on 28 September 2000.

55. It considers, furthermore, that the present case is distinguishable from that in *Ahmed*, cited above, which the Court refused to strike out of the list as the Austrian authorities had merely decided to stay execution of a deportation order which otherwise remained valid.

56. However, in the instant case, by a decision of 15 June 2001, the Federal Office for Refugees set aside its previous decision, holding that the applicant’s expulsion to Iran was barred by section 53(4) of the Aliens Act (see paragraph 48 above). That decision is binding on the Aliens Office and may only be set aside by the Federal Office for Refugees itself; an appeal will lie to the administrative courts against any new decision (see paragraphs 49-50 above).

57. In the light of the Federal Office for Refugees’ decision of 15 June 2001, the Court considers that the continued examination of the application is no longer justified (Article 37 § 1 (c) of the Convention). In addition,

there is no reason pertaining to respect for human rights as defined in the Convention or its Protocols that requires it to continue the examination of the application (Article 37 § 1 (c) *in fine* of the Convention).

58. Accordingly, the case must be struck out of the list.

II. APPLICATION OF RULE 44 § 3 OF THE RULES OF COURT

59. The applicant sought DEM 16,000 by way of reimbursement of the costs and expenses he had incurred in the proceedings in the German courts and the Court.

60. The Government argued that the applicant was not entitled to reimbursement of his costs and expenses in the domestic courts, as he should have produced all evidence in support of his allegation that he would face persecution if expelled to Iran when first making his application for asylum.

61. The Court reiterates that it has a discretion as to costs when striking an application out of the list (Rule 44 § 4).

62. It notes that in the present case costs and expenses in the sum of DEM 16,000 were genuinely and necessarily incurred by the applicant in the proceedings in the domestic courts and the Court in order to prevent his expulsion to Iran and that those costs were reasonable in amount.

63. Ruling on an equitable basis, the Court therefore decides to award the applicant the sum claimed, less 355 euros that have already been paid in legal aid by the Council of Europe.

64. According to the information available to the Court, the statutory rate of interest applicable in Germany at the date of adoption of the present judgment is 8.62% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;

2. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, for costs and expenses, DEM 16,000 (sixteen thousand German marks), less EUR 355 (three hundred and fifty-five euros);

(b) that simple interest at an annual rate of 8.62% shall be payable from the expiry of the above-mentioned three months until settlement.

Done in French, and notified in writing on 11 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Antonio PASTOR RIDRUEJO
President