CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 62045/00
by Mohamed Reza HEMAT KAR
against Sweden

The European Court of Human Rights, sitting on 5 March 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 13 October 2000 and registered on 20 October 2000,

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 observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mohamed Reza Hemat Kar, is an Iranian passport-holder but he also claim to be an Iraqi citizen. He is presently detained in Sweden for deportation to Iran. He was represented before the Court by Ms Nyblom, a lawyer practising in Stockholm. The respondent Government were represented by Mr L. Magnusson, Ministry for Foreign Affairs.

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

The applicant came to Sweden on 22 December 1997 and the next day he lodged an asylum application in the name of Mohamed Reza Mirza. He claimed that he was an Iraqi citizen and that he had no passport or other travel documents. The only identification document he was able to produce was an Iraqi military book.

In the initial inquiry the applicant stated that he was born in Najaf, Iraq, but before travelling to Sweden he had lived in Baghdad. He had left Iraq when the intelligence service was looking for him. He had been accused of collaboration with the Daawa party and imprisoned in Najaf in 1987. He had fled from Iraq because he did not feel safe due to the unstable political situation. He further stated that he did not know where his wife and children were.

On 21 January 1998 the Swedish Embassy in Tehran informed the Swedish Migration Board that some visitors had submitted 3-4 pages of the applicant's Iranian passport and had stated that the applicant had been an Iranian national for 30 years and that his family lived in Iran. When confronted with this information on 25 March 1998 the applicant gave other reasons for his request for a residence permit.

At the outset he answered that he had visited Iran and that if his wife was there she must have moved there recently. He further stated that in addition to Iraqi citizenship he also held Iranian citizenship because his father had been an Iranian national. The applicant claimed that he had lived in Iraq his whole life and that he possessed an Iraqi passport, which would be sent to him. However, he never produced any such document to the Swedish authorities.

The applicant subsequently maintained that he could not go to Iran. He also claimed that he had not been politically active or committed any crime in Iran. Then he alleged that he had lived in Iraq until 1981 when he moved to Kuwait with his wife and family. They lived in Kuwait until 1992 when the war between Kuwait and Iraq broke out. His wife and children arrived in Tehran at the end of 1992 or the beginning of 1993 and they are still living there. The applicant, however, "commuted" between Chaklawa in Iraq and Tehran before he left for Sweden. He finally stated that he could not return to Iran because he had committed adultery with his sister-in-law and his

brothers-in-law had initiated legal proceedings against him on the grounds of adultery. He claimed that he had left Iran when he was summoned to the court because he feared that he would be sentenced to inhuman punishment. In this respect he asserted that the penalty for adultery in Iran was stoning to death.

On 12 June 1998 the Migration Board rejected his request for a residence permit and a working permit because of his lack of general credibility. At the same time the Migration Board ordered his refusal of entry and that the applicant would be sent to Iran unless he showed that he would be received in another country. According to the applicant's own statements the Migration Board drew attention to the fact that the applicant had departed from Tehran airport holding a valid Iranian passport and that he had not been politically active in Iran. He had thus been allowed to leave the country which indicated that he was not of special interest to the Iranian authorities. Finally, the Migration Board noted that Iranian law placed exacting demands on the testimony of witnesses in order to convict a person of adultery. The applicant had, however, stated that there were no witnesses of the act. In the Migration Board's opinion, the applicant's assertion only to the effect that he had committed adultery was not a sufficient ground for granting him residence permit. It found no reasons to trust his assertion that he would be persecuted if returned to Iran.

The applicant appealed to the Aliens Appeals Board (hereinafter "the Appeals Board"). In his appeal he stated that the reason why he had first denied being an Iranian national was his fear of being expelled to Iran as he had committed adultery in that country. The applicant further claimed that the eight brothers of the woman in question had reported him and had also declared themselves as witnesses. In support of his claims he invoked a document in Farsi, which he alleged was a summons to appear before a court on 13 July 1998. He further submitted two warrants for his arrest dated 18 July 1998, which he alleged that he had received from a friend in Iran who had visited the applicant's closest neighbour in Iran. He finally asserted that a friend would send a judgment to him.

In observations dated 9 September 1998 the applicant claimed that there had been a misunderstanding regarding the above-mentioned judgment. The document he had now received from his friend, who had bribed an official at the police, was a court request to apprehend him immediately and make him answer to the charges of adultery. Four named persons had reported him for the crime and declared themselves as witnesses. According to the applicant the document proved that a judgment concerning adultery would be rendered.

The Appeals Board had the above mentioned documents translated into Swedish and the translations were sent to the applicant on 1 October 1998.

On 29 October 1998 the applicant submitted, *inter alia*, that it was clear that he was wanted by the police in Iran for adultery, that he was accused of immoral behaviour and an improper relationship with his sister-in-law and that it appeared from one of the documents that a judgment existed. The sentence for adultery was, claimed the applicant, stoning to death.

By decision of 27 April 2000 the Appeals Board rejected his appeal. The Appeals Board shared the opinion of the Migration Board that the applicant had given contradictory information and found that the explanations provided for this were unconvincing. It also noted that Iranian law placed very exacting demands on testimony of witnesses in order to convict a person of adultery.

As regards the documents, which according to the applicant proved that he was summoned to court and would be apprehended and arrested for adultery, the Appeals Board observed the following. The applicant had stated that the summons had been delivered to his neighbours and that a friend of his received it from them. Moreover, he had affirmed that a court had rendered a judgment and that it would be sent to him. Later the applicant had indicated that this was a misunderstanding and that the document he had received was a request from the court to apprehend him and that he had obtained the document from a friend who had bribed the police. He had then claimed that a judgment existed because it was stated in one of the documents that "in order to enforce this judgment according to Islamic criminal laws the accused is to be transported urgently to this court house". The Appeals Board also found that the applicant had submitted contradictory information regarding the documents and that he had not given an acceptable explanation for this. It appeared from the translation that one of the documents, named "Warrant of arrest" and dated 18 July 1998, was issued by the Imam Khomeini Court and addressed to the Commander of the police within Great-Tehran. It was further observed in the warrant: "in accordance with a report made by the plaintiffs, Mr Adel Karim Salin and Mr Tofegh Khademol-Hossein, against Mohammed Reza Hematkar, accused of immoral behaviour and an improper relationship with his sister-in-law, who are both married and have children. The court finds this proved." Another document, the Appeals Board noted, also named "Warrant of arrest" and issued on 18 July 1998, was signed by the interrogator/assisting prosecutor at the office of the public prosecutor. The Appeals Board found it remarkable that the applicant had been able to get access to these documents as they seemed to be part of a correspondence between authorities. It further questioned the wording and the contents of the documents and especially noted that in one of the documents, the summons application, the office of the public prosecutor was mentioned, an office that was abolished in Iran in connection with a reform of the court

system in 1995. For these reasons the Appeals Board gave no credence to the documents in question.

Making an assessment in the light of all the circumstances of the case, the Appeals Board concluded that the applicant had not shown it to be probable that he was wanted by the Iranian authorities for the reasons invoked. He was not a refugee or otherwise in need of protection for the purposes of Chapter 3, Section 3 of the Aliens Act. The Appeals Board finally found that the humanitarian reasons invoked by the applicant were not of such a nature as to warrant a residence permit being granted to him.

In October 2000, in the course of the proceedings before the Court, the applicant submitted to it two additional documents. The first was a letter from the Association of Iranian Political Prisoners (in exile), according to which an investigation conducted by the association showed that proceedings eventually had been initiated against the applicant on account of adultery, but that no judgment had been delivered. The other document submitted by the applicant was an e-mail from a Swedish law professor of Iranian origin, stating that he had no reason to put in question the authenticity of the arrest warrants, noting that they were issued by an investigating judge carrying out tasks previously done by public prosecutors. However, he could not express any view on the possibility of getting access to such documents. He also assumed that the assessment of the Appeals Board had been based on a non-professional translation of these documents.

Following the Court's indication under Rule 39 of the Rule of Court, the Migration Board decided on 24 October 2000 to stay the enforcement of its decision of 12 June 1998 refusing the applicant entry into Sweden and ordering his expulsion to Iran.

The three documents (the alleged summons application and the two warrants of arrest) the applicant has invoked in support of his claim have been examined by legal experts at the request of the Embassy of Sweden in Tehran. They concluded that the documents were not authentic and that the alleged case regarding adultery does not exist. An inquiry to the Iranian court designated in one of the documents revealed that the case in question concerned cheque fraud and not immoral behaviour or adultery. According to the Embassy, the kind of court mentioned did not even handle cases of adultery.

COMPLAINT

The applicant complains that, if effected, his expulsion to Iran would be contrary to Article 3 of the Convention. He argues that there is a real risk that he will be executed by stoning or sentenced to another form of inhuman punishment.

THE LAW

The applicant claims that his expulsion would violate Article 3 of the Convention, which provides:

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

The applicant maintains that he risks capital punishment in Iran on ground of adultery. The reason why he had first stated that he was an Iraqi citizen was his belief that Iraqi nationals were normally granted asylum in Sweden and that it was unlikely that he would be granted asylum on the ground of adultery committed in Iran. The relationship with his sister-in-law had been going on for almost five years. The eight brothers-in-law were very angry with him and considered that he had offended the family honour. They had tried to damage him financially and to harm him in other ways. In the end they had initiated legal proceeding against him on account of adultery and had him summoned before a court. The offence of adultery (*zina*) is sanctioned by capital punishment, normally executed by stoning when the adulterer is married and where there are four righteous men certifying that the adultery has been committed or where there is a confession from either party.

The applicant states that the documents from the Iranian authorities that he has submitted are authentic and that he had received them from a friend who had obtained them by bribes. He questions the translation of the documents and alleges that the translator had wrongly mentioned the former prosecutor office. Finally, he submits that it is possible that there also is a case concerning cheque fraud pending against him.

The Government, while aware of the general human rights situation in Iran and that under the Islamic Penal Code adultery is punishable by stoning, maintain that the applicant's complaint is manifestly ill-founded. He has failed to show substantial grounds for believing that the applicant runs a real risk of treatment contrary to Article 3 of the Convention were he to be returned to Iran.

The Government note that, whenever the authorities confronted him with the inconsistencies in his submissions the applicant changed them. At the

time when he applied for asylum, it was widely known that, because of the situation in Iraq, no rejected asylum seeker from that country would be sent back but would be granted permanent residence in Sweden.

There is no reason to believe that the Swedish translations of the documents invoked by the applicant were inaccurate. They had been prepared by a translator who was used on a regular basis by both the Aliens Appeals Board and the Migration Board and the applicant expressed no objection to them during the national proceedings.

Nor was there, in the Government's view, any proof for the applicant's claim that his brothers-in-law had declared themselves as witnesses or that his sister-in-law had confessed to adultery. The 1998 documents invoked by the applicant concerned the lesser offences of "immoral behaviour" and "improper relationship". According to the findings made by the Swedish Embassy in Tehran, such offences could be sanctioned with corporal punishment but not with capital punishment or stoning. Accordingly, in the view of the Government, the documents constitute no proof of the applicant's claim that proceedings concerning adultery have been initiated against him in Iran.

The Government also recall that, according to the UNHCR Handbook on Procedure and Criteria for Determining Refugee Status, a person who requests asylum is obliged to furnish the immigration authorities with correct information in support of the request.

The Court recalls that Contracting States have the right to control the entry, residence and expulsion of aliens (cf. Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p 34, § 102). However, an expulsion decision may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of the State, where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he or she is to be expelled (ibid., p. 34, § 103). A mere possibility of ill-treatment is not in itself sufficient (ibid., p.37 § 111).

Turning to the circumstances of the present case, the Court observes that, during their investigation, whenever the Swedish authorities confronted the applicant with the inconsistencies in his submissions, he changed his statements. He did not inform them that he was an Iranian national when he applied for asylum in December 1997 and concealed this fact until 25 March 1998. He also denied that he knew the whereabouts of his wife and children. It was only on the latter date, when the Migration Board confronted him with information it had received from another source, that he conceded that he was an Iranian national and that his wife and children were living in Iran. After having first stated that he had lived his entire life in Iraq, the applicant submitted that he lived for nearly 10 years in Kuwait

until 1992 and thereafter he "commuted" between Chaklawa in Iraq and Tehran before leaving for Sweden in 1997.

When faced with the information that he had lived in Iran the applicant apparently abandoned the thesis that he left Iraq for political reasons and instead pursued the argument that he had committed adultery in Iran and risked being sentenced to death by stoning if returned to that country. However, his accounts in this regard have not been submitted in a generally coherent and credible manner.

Moreover, the Court notes that documents invoked by the applicant included two "warrants of arrest" dated 1998, which were part of an internal correspondence between the authorities. According to the Embassy's investigation, one of these documents apparently concerned cheque fraud and not adultery. In addition it seems clear that cases concerning adultery and immoral behaviour were not even handled by the Iranian court mentioned in that document. Contrary to what is suggested by the applicant, it does not follow from these documents that he was charged with adultery.

In the light of the above, the Court does not deem it necessary to determine the dispute between the applicant and the Government as to whether the third document refer to a certain public prosecutors office. Nor does the Court find any reason to question the Swedish Embassy's investigation calling into doubt the authenticity of the documents. The applicant has furnished no other legal documents that could substantiate his allegation that, if expelled to Iran, he would face a real risk of ill-treatment contrary to Article 3 of the Convention (cf. the *Jabari v. Turkey* judgment of 11 July 2000, no. 40035/98, ECHR 2000-II).

Against this background, it appears that, throughout the proceedings before the Swedish authorities, the applicant kept altering his statements with respect to such essential facts as his own nationality and past countries of residence, his family's whereabouts, the reasons leading to his departure for Sweden and the nature of the risks that would follow were he to be expelled from Sweden. There were major discrepancies between the information given in the initial inquiry and that given subsequently before the Swedish immigration authorities. Moreover, in support of his claims, he relied on documents from Iran which turned out to be irrelevant, non-authentic or both, and were accompanied by contradictory and inconsistent explanations.

Thus, the Court considers, notwithstanding the submissions made by the applicant, that there are strong reasons to call into question the veracity of his statements. He has offered no reliable evidence in support of his claim. For these reasons, the Court finds that it has not been established that there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to Article 3 of the Convention in Iran.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President