



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

THIRD SECTION

DECISION

Application no. 45279/99
by A.E. and Others
against Turkey

The European Court of Human Rights (Third Section), sitting on 30 May 2002 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEŒ,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Court of Human Rights on 7 January 1999,

Having regard to the Court's decision of 3 February 1999 to indicate the application of Rule 39 and that of 23 February 1999 to indicate that the application of Rule 39 be prolonged until further notice;

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants are A.E., born in 1952, in Sanandaj in the Kurdistan province of Iran, N.G. (his wife), born in 1961, and their four children, F.E., F.E., K.E. and P.E. born respectively in 1982, 1987, 1987 and 1990. The applicants are all Iranian citizens.

The applicants are represented before the Court by the Iranian Refugees' Alliance Inc., a non-governmental organisation based in the United States of America.

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

The first applicant, A.E., is from a politically active family which includes members of the Central Committee of the Kurdistan Democratic Party of Iran ("KDPI"). He has been an active member of the KDPI since 1980. He was arrested and imprisoned in 1985 by the Iranian authorities on account of his political activities in his village of Gazaneh in the Sanandaj district, an area of anti-government protest.

In the years 1985 to 1995, A.E. worked underground. However he was regularly questioned and harassed by the authorities, *inter alia*, about the political activities of his brother. He was again arrested on 16 November 1995 for distributing KDPI leaflets. He was held in solitary confinement for 22 days only being allowed to leave the cell every two or three days for ten minutes at a time. He was repeatedly interrogated and tortured in order to compel him to disclose his KDPI contacts. He was slapped, punched and kicked, his head was banged against the wall, fracturing his skull. On one occasion, his interrogators burned his belly, thigh and the area above his right knee with a hot metal object. He was lashed seventy times on his back. His right foot was pierced with a metal object.

Two of the applicant's brothers were arrested shortly after 16 November 1995 and held in detention for periods of five and six months respectively.

The first applicant was subsequently tried before the Sanandaj Revolutionary Court and sentenced to a one-year term of imprisonment and fifty lashes.

The first applicant alleged that his wife was constantly harassed when he was in prison and that on one occasion the head of the Iranian Intelligence Department attempted to rape her.

On 22 June 1996 the first applicant was conditionally released. After his release he was summoned to the Intelligence Department on at least five occasions and interrogated for one to two hours. He was also informed by decision dated 21 July 1996 that his employment as a mechanic had been terminated. The first applicant's family suffered economic hardship as a result.

In the spring of 1997, five or six revolutionary guards came to the first applicant's house and forcibly evicted him and his family.

In December 1997, the first applicant's brother-in-law, a Passport Office employee, helped him to obtain a renewal of his and his family's passports. The passport was issued on 24 December 1997. The first applicant and his family left Iran on 31 December 1997.

The family stayed in the border town of Van for two days. On 5 January 1998 the applicants contacted the Ankara branch of the Office of the United

Nations High Commissioner for Refugees (“UNHCR”). The first applicant was interviewed by an UNHCR official on the same day. Sensing that the interviewing officer did not believe his account, he exaggerated the length of his brothers’ prison terms.

The UNHCR notified the first applicant two weeks later that his request for refugee status had been rejected. No reasons were given for the decision.

The applicant was interviewed again about one month later. The applicant maintains that, as with the first interview which took place on 5 January 1998, the UNHCR official refused to look at the marks of torture on his body. The applicant concedes that he falsely told the official that his wife had been raped by the head of the Iranian Intelligence Department and that his nephew had been arrested and murdered by the Iranian authorities.

On 20 March 1998 the UNHCR closed the first applicant’s case-file without providing any reasons for rejecting his asylum application. On 22 June 1998 the applicant submitted a request to have his case re-opened. He supplied photographs of the torture marks on his knee, belly and foot and a copy of his KDPI membership card. On this occasion, he falsely stated that KDPI radio had reported that his nephew had been executed.

Prior to his request to have his case re-opened, namely on 6 January 1998, the first applicant had contacted the police in the town of Kayseri. The police refused to register his asylum application because by that stage he had been in Turkey for seven days and had thus failed to comply with the five-day-limit for registration as an asylum seeker. The first applicant left Turkey and re-entered on 18 January 1998. He applied to be registered as an asylum seeker on 20 January 1998. He was interviewed by the police on the same day without the assistance of a competent interpreter.

The Ministry of the Interior granted the applicants a temporary residence permit until a decision was reached on their asylum application.

On 3 July 1998 the UNHCR notified the Ministry of the Interior that the first applicant’s request for asylum had been rejected. Following negative opinions on the applicants’ asylum request supplied by other ministries, the Ministry of the Interior refused their application. This decision was communicated to the applicants through the intermediary of the Kayseri Governor.

On 14 August 1998 the Turkish police served a deportation order on the first applicant. He was not informed of his rights to appeal against the implementation of the order. On advice from other asylum seekers, the first applicant appealed against the decision to the Ministry of the Interior on 19 August 1998. The Ministry of the Interior issued the applicants a further temporary residence permit pending the outcome of their objection.

Around this time the first applicant managed to convince the UNHCR to conduct a third interview. On 1 September 1998 he voluntarily informed the interviewing official that he had exaggerated the length of his brother’s

imprisonment, had misinformed the UNHCR about his nephew's arrest and execution and had exaggerated his account of the rape of his wife.

On 6 October 1998 the UNHCR again rejected the applicants' request to be recognised as refugees.

On 11 November 1998 the Turkish police served a second deportation order on the first applicant. He was informed that his appeal had been rejected and that he had fifteen days in which to leave Turkey.

The first applicant was subsequently refused permission to speak to the UNHCR official in charge of his asylum application.

On 14 November 1998 the first applicant travelled to the Turkish-Azerbaijan border in order to renew his tourist visa. He was arrested by Turkish border police and told that because of the two deportation orders made against him, his visa could not be renewed. Following the intervention of Azerbaijan border officials, the Turkish border officials decided to impose a fine on the first applicant and issued him with a three-months visa, valid until 14 February 1999. According to the Government there is no substance to the first applicant's allegation that he was arrested by border officials.

In a letter dated 24 May 2000 the applicants' representative informed the Court that the UNHCR had finally decided to recognise them as refugees and that their resettlement in a third country was now being processed. They maintained their complaints.

The applicants subsequently informed the Court that they had been resettled in Norway in June 2001. They wished to maintain their complaints.

COMPLAINTS

The applicants complained that their deportation to Iran would be in violation of Article 3 of the Convention. They maintained that, having regard to the first applicant's political activities in the banned KDPI and the treatment which he suffered in Iran, they would be arrested by the Iranian authorities and would run the risk of being subjected to torture or inhuman or degrading treatment or even execution.

With reference to Article 8 of the Convention, the applicants maintained that their deportation to Iran would also result in the break-up of their family having regard to the risk faced by the first applicant in particular.

The applicants further maintained that the respondent Government failed to provide them with reasons for their deportation as well as with legal assistance and adequate translation facilities to challenge the deportation order and to ensure that they knew of the domestic avenues of redress against the implementation of the order. They invoked Article 13 of the Convention. The applicants also contended that the extremely short period

of fifteen days during which the deportation order was suspended to allow them to appeal or seek judicial review amounted to a denial of an effective remedy, in breach of Article 13.

The applicants invoked Article 14 of the Convention in conjunction with Articles 3 and 8 thereof. They stated in this connection that the Turkish Government's policy of deporting non-European refugees who, like themselves, fail to secure resettlement in a third country, violated their rights not to be discriminated against on the grounds of their race and national origin.

THE LAW

The applicants, who were resettled in Norway, maintained their complaints and claimed that although they are no longer at risk of being returned to Iran they have had arguable claims under Articles 3, 8, 13 and 14 of the Convention at the time of their intended removal to Iran which should be examined on their merits by the Court.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified in paragraph 1 of that Article.

Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the application.”

Article 37 § 1 *in fine* states:

“However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.”

The Court notes that the applicants are now living in Norway. Given that the fears which they harboured about their forced return to Iran have been removed, the Court considers that the applicants can no longer claim to be victims within the meaning of Article 34 of the Convention (see *G.H.H. v. Turkey*, no. 43258/98, § 28, ECHR 2000-VIII). The Court considers, therefore, that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, the Court is satisfied that respect for human rights as defined in the Convention and the protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

In this connection, the Court points out that in several previous cases the Court has had occasion to rule on the responsibility under the Convention of a Contracting State where the complaint was that there were substantial

grounds for believing that the person concerned, if expelled or extradited, would face a real risk of being subjected to inhuman or degrading treatment in the country of destination (see the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, pp. 35-36, §§ 90-91; the *Cruz Varas and Others v. Sweden* judgment of 20 March 1991, Series A no. 201, p. 28, § 69; the *Vilvarajah and Others v. the United Kingdom* judgment of 30 October 1991, Series A no. 215, p. 36, §§ 107-08; the *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1859, §§ 95-97, and, finally, *Jabari v. Turkey*, no. 40035/98, ECHR 2000-VIII). In doing so, the Court specified the nature and extent of the Contracting States' obligations under the Convention in that regard.

Accordingly, the case should be struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Vincent BERGER
Registrar

Georg RESS
President