AS TO THE ADMISSIBILITY OF

Application No. 39683/98
by Eshrat ASADI
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 10 September 1998, the following members being present:

MM	M.P. PELLONPÄÄ, President
	N. BRATZA
	E. BUSUTTIL
	A. WEITZEL
	C.L. ROZAKIS
Mrs	J. LIDDY
MM	L. LOUCAIDES
	B. MARXER
	B. CONFORTI
	I. BÉKÉS
	G. RESS
	A. PERENIČ
	C. BÎRSAN
	K. HERNDL
	M. VILA AMIGÓ
Mrs	M. HION
Mr	R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 9 January 1998 by Eshrat ASADI against Germany and registered on 5 February 1998 under file No. 39683/98;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1961, is an Iranian citizen. When lodging her application, she stayed in Regensburg. Before the Commission, she is represented by Mr. F. Auer, a lawyer practising in Regensburg.

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

In November 1994 the applicant left Iran together with her child, born in wedlock in 1988.

She arrived in Germany on 17 November 1994 and applied for asylum. She submitted that her home had been searched by the authorities in their absence in October 1994. She also stated that she feared prosecution on account of her marriage with a Zoroastrian and for having kept a copy of Salman Rushdie's 'Satanic Verses' in her house. She presumed that her husband had been arrested.

On 5 December 1995 the Federal Office for Refugees (Bundesamt für die Anerkennung ausländischer Flüchtlinge) dismissed the applicant's request for asylum. The applicant was requested to leave Germany and, in case she should not leave voluntarily, her expulsion to Iran, or possibly another State, was ordered.

On 20 November 1995 the Regensburg Administrative Court (Verwaltungsgericht) dismissed the applicant's court action against Federal Office's decision.

On 7 May 1997 the Bavarian Administrative Court of Appeal (Bayrischer Verwaltungsgerichtshof) dismissed the applicant's request for leave to appeal. The Federal Office's decision became enforceable and final.

On 11 August 1997 the Federal Office for Refugees dismissed the applicant's request for conduct of further asylum proceedings (Asylfolgeverfahren). As regards the applicant's claim that she risked persecution upon return to Iran on account of her anti-Iran activities in Germany, the Office considered that she had involved herself in these activities for the sole reason of obtaining asylum. Moreover, her activities were not of such a nature and intensity that she had to fear any relevant persecution.

On 30 December 1997 the Regensburg Administrative Court dismissed the applicant's request for interim measures against the expulsion. The Court found that the applicant's court action to enforce further asylum proceedings had no prospect of success. The Court considered that, having regard to her minor involvement in political activities, in particular her anonymous participation in anti-Iran demonstrations, she would not risk any considerable persecution upon her return to Iran. Her own attitude in continuing such activities after the final dismissal of her first request for asylum confirmed that she herself did not fear persecution upon her return to Iran.

On 9 January 1998 the Regensburg Administrative Court dismissed the applicant's request to change the decision of 30 December 1997. The Court found that the applicant, who had left Iran without hindrance, could not be considered as an active dissident and that she had pursued all political activities in Germany with the aim of being granted asylum.

On 9 January 1998 the Federal Constitutional Court refused to admit the applicant's constitutional complaint and rejected her request for interim measures.

On 12 January 1998 the applicant, according to information by her representative, Mr. Auer, was expelled to Iran. She left together with her child.

COMPLAINTS

The applicant complains about the refusal of asylum and about her expulsion to Iran. She alleges a risk of inhuman treatment and torture contrary to Article 3 of the Convention on account of having participated in anti-Iran demonstrations.

THE LAW

The applicant complains that her expulsion to Iran is contrary to Article 3 of the Convention. This provision states:

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

According to the Convention organs' case-law, the right of an alien to reside in a particular country is not as such guaranteed by the Convention. Nevertheless, expulsion may in exceptional circumstances involve a violation of the Convention, for example where there is a serious and well-founded fear of treatment contrary to Article 3 of the Convention in the country to which the person is to be expelled (see Eur. Court HR, Chahal v. the United Kingdom judgment of 15 November 1996, Reports of Judgments and Decisions 1996, p. 1831, paras. 72 ff). Nevertheless, the mere possibility of ill-treatment on account of the unsettled general situation in a country is in itself insufficient to give rise to a breach of Article 3 of the Convention (see Eur. Court HR, Vilvarajah and others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 37, para. 111).

The Commission has examined the circumstances of the present case as they have been submitted by the applicant.

However, the Commission notes that the applicant has not provided any substantiation of her fears concerning ill-treatment upon her return to Iran. In particular, the Commission notes that her allegations of persecution before leaving Iran are not corroborated by any evidence. As regards her main argument in her application with the Commission, i. e. her activities in Germany, the Commission notes the domestic

authorities' reasons when refusing to conduct further asylum proceedings: the applicant was found to have pursued political activities, namely anonymous participation in anti-Iran demonstrations, only for the purpose of being granted asylum. The German authorities further considered that the evidence submitted about the general situation in Iran did not allow the conclusion that such minor political activities would lead to persecution.

As a result, the applicant has failed to show that her expulsion to Iran exposed her to a real risk of being subjected to treatment contrary to Article 3 of the Convention.

The application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber