CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

Application no. 18854/07
by Samane Hajizade BERFEJANI and Puriah HAJARAN
against Turkey

The European Court of Human Rights (Second Section), sitting on 12 February 2008 as a Chamber composed of:

Françoise Tulkens, *President,*
Antonella Mularoni,
Ireneu Cabral Barreto,
Rıza Türmen,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović, *judges,*

and Sally Dollé, *Section Registrar*,

Having regard to the above application lodged on 2 May 2007,

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 decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Samane Hajizade Berfejani and Mr Puriah Hajaran, are Iranian nationals who were born in 1985 and 1984 respectively. The first applicant lives in Turkey and the second applicant lives in Israel. They were represented before the Court by Mr Salih Efe, Mr Levent Korkut and Mr Taner Kılıç, lawyers practising in Ankara.

The circumstances of the case

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

The applicants are husband and wife. Ms Berfejani is Muslim and Mr Hajaran is Jewish. Until April 2007 they lived in Iran.

In April 2007 the couple left Iran and entered Turkey illegally. The reason for leaving Iran was Mr Hajaran's fear that he might be conscripted and forced to perform his military service in Iran.

Once in Turkey, the applicants went to the Israeli Consulate in Ankara where Mr Hajaran was issued with a visa to enter Israel where he has relatives. Ms Berfejani's visa application was rejected by the Israeli Ministry of the Interior on "security grounds".

Mr Hajaran left Turkey for Israel, leaving Ms Berfejani behind to await the necessary permissions to follow him to Israel. However, Ms Berfejani did not have a passport and was arrested by police and placed in the Aliens' Detention Centre in Antalya.

Mr Hajaran contacted an NGO in Israel and sought their advice. With the help of that NGO, he instituted court proceedings in Israel to challenge the Israeli Ministry's decision to reject his wife's visa application.

The press in Israel gave coverage to the incident and reported that Ms Berfejani had the intention to convert to Judaism. According to the applicants, the Iranian authorities are aware of the press coverage and believe that Ms Berfejani is planning to change her religion as soon as she is able to do so. They submitted that apostasy or conversion from Islam can be punishable by death in Iran. As such, Ms Berfejani's deportation to Iran would endanger her right to life or might result in her having to face inhuman, cruel or degrading treatment. They requested the Court to indicate an interim measure to the Government under Rule 39 of the Rules of Court to stop her deportation to Iran.

On 3 May 2007 the President of the Chamber decided to indicate to the respondent Government, under Rule 39, that the Ms Berfejani should not be deported to Iran until further notice.

The applicants subsequently informed the Court's Registry that Ms Berfejani had been released from the Aliens' Detention Centre following the indication of the interim measure.

COMPLAINTS

The applicants complained under Articles 2 and 3 of the Convention that Ms Berfejani's expulsion to Iran would expose her to a real risk of death or inhuman treatment.

THE LAW

Following the indication of the above mentioned interim measure under Rule 39 of the Rules of Court, the President of the Chamber requested the parties to submit their replies to a number of questions and to provide certain information and clarification. The Government complied with that request.

The applicants' legal representatives, on the other hand, responded to some of the requests only after they had been reminded to do so by the Registry and they had been alerted to their failure to submit the information within the time limit fixed for that purpose. They failed, however, to respond to the Registry's numerous subsequent requests for important information and documents, including a signed power of attorney from Ms Berfejani. The lawyers were warned that their failure to submit the requested documents and information could be interpreted as the applicants' lack of intention to pursue the application, which could therefore be struck out of the Court's list of cases.

The lawyers finally informed the Court on 18 December 2007 that they had been unable to contact the applicants despite all their efforts. They submitted that they were no longer sure whether the applicants were willing to pursue the application.

Having regard to the lawyers' inability to comply with the requests for information and documents owing to the applicants' failure to stay in contact with them, and having further regard to the fact that no information has been received from the applicants themselves, the Court considers that the applicants may be regarded as no longer wishing to pursue their application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

In reaching this conclusion, the Court has taken into account its competence under Article 37 § 2 of the Convention to restore the case to its list if it considers that the circumstances justify such a course.

In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court and to strike the case out of the list.

For these reasons, the Court unanimously

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

Sally Dollé
Registrar

Françoise Tulkens
President