AS TO THE ADMISSIBILITY OF

Application No. 28268/95
by Delbar BOLOURI
against Sweden

The European Commission of Human Rights sitting in private on 19 October 1995, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

Mr. M. de SALVIA, Deputy Secretary to the Commission

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

Having regard to the application introduced on 30 June 1995 by Delbar Bolouri against Sweden and registered on 21 August 1995 under file No. 28268/95;

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 is a woman of Iranian citizenship. She is a Sunni Muslim of Kurdish origin and was born in 1955. She is represented by Mr. Manólis Nymark, a lawyer in Stockholm.

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

The applicant arrived in Sweden on 28 October 1992 together with

her father, both holding a tourist visa. On 19 November 1992 she requested asylum in Sweden. In the asylum interview she stated, inter alia, that she had taken leave from her post at the University of Medicine and Health in Tehran until 20 February 1993. She and her father had had no problems with the authorities controlling departures from the airport of Tehran. She had later reported her passport as having been stolen in Sweden. After his arrival in Sweden, her father had requested a residence permit in the country "which would permit him to travel" between Iran and Sweden "without always having to obtain an entry visa".

The applicant furthermore stated that she feared being executed, tortured or otherwise persecuted, if she were to be returned to Iran. She referred to her Kurdish origin, her sex and her membership of the banned Democratic Party of Iranian Kurdistan ("DPIK"). She had joined this party in 1979 and had mainly been distributing propaganda and collecting money and clothes. As from 1982 she had been less active in the party. Her husband, who had been shot on 24 November 1990, had also been active in the DPIK.

The applicant alleged that up to her departure from Iran she had been harassed almost daily by members of the Revolutionary Guard wishing to know whether she was still politically active and showing an interest in her relatives in Sweden. Moreover, in September 1992 she had illegally visited relatives in "Kurdistan", where she had joined others in attempting to voice a public protest against the Iranian regime. When leaving for Sweden, the applicant had intended to spend holidays there, but after her departure from Iran she had allegedly been informed that the authorities had been searching for her at her work place. She had therefore decided to request asylum, fearing that her activities as a dissident had been unveiled as a result of her attempt to start the protest in September 1992.

In support of her asylum request the applicant later referred, inter alia, to a certificate issued on 17 December 1992 by the Representative of the DPIK in Europe, stating that the applicant was a "sympathiser" of the party. In a further letter of 3 February 1993 the Representative stated that the applicant had been an "underground militant" of the party in Kurdistan.

The applicant's father returned to Iran on 22 April 1993. On his return he was allegedly immediately questioned about his daughter by members of the Revolutionary Guard. He later travelled to Sweden once more.

On 14 February 1994 the National Immigration Board (Statens invandrarverk) rejected the applicant's asylum request. The Board noted that she had entered Sweden holding a valid passport and entry visa and observed inconsistencies in the account of her background. It furthermore found that she had been able to remain active in the DPIK for a very long time without being unveiled, this having allegedly happened only after her arrival in Sweden. It appeared therefore that the Iranian authorities had not shown much interest in her.

In her appeal to the Aliens Appeals Board (Utlänningsnämnden) the applicant added that she had been informed that her employment contract had been terminated and that her salary had been seized. She was also expecting a court judgment concerning an accusation that she had committed an offence in office. She referred to a copy of a public notice issued in February 1995 by the Board for Offences in Office Committed by Staff of the University of Medicine and Health in Tehran. Her name had appeared on the list. Those appearing on the list had been ordered to report at the office of the Board within ten days; otherwise a judgment by default would be rendered.

In a letter of 4 May 1994 the Scandinavian Representative of the DPIK confirmed that the applicant had had clandestine contacts with the

party.

On 13 March 1995 the Aliens Appeals Board rejected the applicant's appeal, considering in essence that her account of her dissident activities was not credible. It noted her statement that prior to her departure from Iran she had almost daily been contacted by members of the Revolutionary Guard. It therefore found it very unlikely that she could have remained politically active to the extent alleged without such activites having been unveiled before she left for Sweden. Moreover, she had left Iran holding a valid passport of that country. Finally, the accusation that she had committed an offence in office was to be seen in the light of the fact that she had been granted leave from her work place only until February 1993.

In a certificate of 20 April 1995 another representative of the DPIK in Europe stated that the applicant was a "sympathiser" of the party and that her life would therefore be in danger, if she were returned to Iran.

In June 1995 the applicant lodged a further request for a residence permit, referring, inter alia, to a certificate of 28 June 1995 by another representative of the DPIK in Europe, stating that the applicant was a "militant" of the party.

On 30 June 1995 the Aliens Appeals Board rejected the applicant's further request.

On 5 July 1995 the applicant lodged a further request for a residence permit, referring to her mental state. She invoked a report by Dr. Michael Brune, a physician specialising in neurology. According to Dr. Brune, the applicant was suffering from a long-lasting reactive depression and the risk that she might commit suicide was therefore to be taken into account during the enforcement of the expulsion order. Dr. Brune also noted that the applicant had been severely injured by grenade splinter. She had deep scars on her right arm and splinter remained in her right chest. She was therefore still experiencing pain and neurological injuries.

On 5 July 1995 the Aliens Appeals Board decided not to stay enforcement of the expulsion order. Subsequently it appears to have rejected the applicant's further request.

On 6 July 1995 the applicant was interviewed in a television programme apparently in regard to her background in Iran and her fears of being ill-treated on her return there.

On 7 July 1995 the applicant was expelled to Iran. She is now living at a secret address in Tehran.

The applicant has a brother and sister, who live in "Kurdistan". She has a further brother and two sisters, who all hold permanent resident permits in Sweden, where they lived already at the time of her arrival there in 1992.

The applicant visited Sweden already in 1986, also then holding a tourist visa.

According to the 1989 Aliens Act (utlänningslag 1989:529), the authorities must, when considering whether to refuse an alien entry or to expel him or her, examine whether he or she can be returned to a particular country or whether there are other special obstacles to the enforcement of such a decision. If the enforcement meets no obstacles under chapter 8, an alien is to be expelled or returned to his or her country of origin or, if possible, to the country from which he or she came to Sweden. If the decision cannot be put into effect in the manner indicated above or if special reasons exist, the alien may be sent to another country (chapter 8, sections 1-5).

COMPLAINTS

The applicant initially complained that, if returned to Iran, she risked being tortured or subjected to other treatment contrary to Article 3 of the Convention. She referred to her political background in that country.

The above complaint has been maintained after the applicant's expulsion. In her final application of 10 August 1995 she also refers to the TV interview aired on 6 July 1995 which she fears has come to the attention of the Iranian Embassy in Sweden. She also states that she lacks the necessary means to obtain, in Iran, adequate care and medical treatment for her arm injuries.

In her final application of 10 August 1995 the applicant also considers that the excessive length of the proceedings in Sweden subjected her to inhuman and degrading treatment and, at any rate, resulted in ties being created between her and notably her siblings in Sweden. Her expulsion therefore also constituted inhuman and degrading treatment on these grounds, having regard to her fragile state of health.

In her final application of 10 August 1995 the applicant also considers that the weighing of the evidence presented by her to the Aliens Appeals Board and the reasoning of that Board were contrary to the recommendations issued by the United Nations High Commissioner for Refugees and therefore subjected her to degrading treatment.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 30 June 1995 and registered on 21 August 1995.

On 5 July 1995 the Commission found no basis, under Rule 36 of the Commission's Rules of Procedure, for an indication to the respondent Government that it would be desirable in the interest of the parties and the proper conduct of the proceedings before the Commission not to expel the applicant to Iran until it had examined the application further.

THE LAW

The applicant complains about her expulsion to Iran. She invokes Article 3 (Art. 3) of the Convention which reads as follows:

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

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens. The right to political asylum is not protected in either the Convention or its Protocols (Eur. Court H.R., Vilvarajah and Others judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3 (Art. 3) of the Convention, and hence engage the responsibility of that State under the Convention, 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 is to be expelled (ibid., para. 103). A mere possibility of ill-treatment is not in itself sufficient (ibid., p. 37, para. 111).

(a) The Commission has first examined whether the applicant's return to Iran violated Article 3 (Art. 3) of the Convention, having regard to her alleged political background in that country and the surrounding circumstances. It notes the Swedish authorities' doubts as regards the

applicant's account of her background in this respect and observes, in particular, that she was able to leave Iran holding a valid passport. Also the discrepancies between the various written statements by the DPIK concerning her alleged activities within that party call the credibility of her account into question. The Commission therefore shares the view of the Swedish authorities that she had not prior to her expulsion shown that she would, on account of her alleged political background, run a real risk of being subjected to treatment contrary to Article 3 (Art. 3), if returned to Iran.

The Commission also attaches a certain importance to the fact that the Swedish authorities appear to have gained considerable experience in evaluating claims of the present nature by virtue of the large number of Iranian asylum seekers in Sweden. It notes that residence permits have in fact been granted in numerous cases and that pursuant to chapter 8, section 1 of the Aliens Act the authorities are obliged to consider essentially the same factors as are relevant to the Convention organs' assessment under Article 3 (Art. 3) of the Convention. The decision to expel the applicant appears to have been made after careful examination of her case (cf. Eur. Court H.R., Cruz Varas and Others judgment of 20 March 1991, Series A no. 201, p. 31, para. 81, and, as regards expulsion to Iran, No. 20981/93, P. v. Sweden, Dec. 8.4.93, unpublished).

(b) The Commission has next considered the applicant's assertion that her state of health is "fragile" and that she lacks the necessary means to obtain, in Iran, adequate medical treatment for her arm injuries. The Commission does not exclude that a lack of proper care in a case where someone is suffering from a serious illness could in certain circumstances amount to treatment contrary to Article 3 (Art. 3) (No. 23634/94, Dec. 19.5.94, D.R. 77-A, p. 137). In the present case it does not find it established, however, that the applicant could not obtain the necessary medical treatment in her own country. Thus there are no substantial grounds for believing that she was exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) on account of being expelled to Iran in her particular state of health.

(c) As regards the allegedly excessive length of the proceedings before the Swedish authorities and the effects thereof on the applicant's private and family life, the Commission finds no appearance of any violation of Article 3 (Art. 3) of the Convention. The same is true as regards the allegedly incorrect assessment by the Aliens Appeals Board of the evidence adduced in support of the applicant's claims.

It follows that the application must as a whole be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(M. de SALVIA) — (S. TRECHSEL)