

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

FOURTH SECTION

DECISION

Application no. 68050/11
E.J.
against Finland

The European Court of Human Rights (Fourth Section), sitting on 6 November 2012 as a Chamber composed of:

Ineta Ziemele, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 4 November 2011,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr E.J., is an Iranian national who was born in 1969. He is represented before the Court by Ms Liisamari Herala, a lawyer practising in Helsinki.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

## A. The circumstances of the case

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

*Account of the events provided by the applicant*

4. The applicant is a 43-year old man and a Kurd of ethnic origin. His family is active in the Komala party. Two of his brothers received international protection and residence permits in Finland in 1994 and 1998 respectively. A third brother was killed because of his political activities.

5. The applicant allegedly joined the Komala party in 2007 while visiting his brother in Iraqi Kurdistan. Two weeks after he joined the party, he was arrested and held in custody for three weeks. During this time he was ill-treated both physically and mentally. The Iranian secret service Ettelaat agreed upon his release on the condition that he provide them with information about the Komala party's activities. The applicant travelled back to Iraqi Kurdistan and agreed with the leaders of the Komala party that he would provide Ettelaat with incorrect information about the Komala party, and this took place. The applicant continued his activities in the Komala party, which included mostly delivering different materials relating to the party, such as posters and information sheets, to different cities in Iran until December 2008.

6. In December 2008 the applicant travelled to Finland at his brother's invitation. Ettelaat had forbidden him to leave the city without their permission but they did not know that he had a passport. The applicant managed to travel to Finland without Ettelaat knowing. His original plan was to visit the Komala's members in Sweden and then to return to Iran in January 2009. However, having heard from his father in Iran that his wife and brother had been arrested because the Iranian authorities had found out about his departure from Iran, he became afraid that he would again be ill-treated or even killed on returning to Iran. Therefore he sought asylum in Finland. His wife was soon released but she still has to report to the authorities every week in order to show that she has not left the country. The applicant has continued his activities in the Komala party in Finland, including taking part in meetings and demonstrations.

*Asylum proceedings*

7. The applicant arrived in Finland on 21 December 2008 and sought asylum on 5 January 2009.

8. On 17 May 2010 the Finnish Immigration Service (*Maahanmuutto-virasto, Migrationsverket*) rejected his application and decided to order his removal to Iran. It found that the applicant had not provided any evidence in support of his alleged activities and membership of the Komala party, nor of the alleged persecution or torture inflicted on him. The Immigration Service

found that the certificate issued by Komala's Swedish office, dated 12 December 2009, which attested to his party membership, did not constitute an evidentiary basis on which any credible conclusions could be drawn about his activities and status in the party and the possibility that he would face a risk of ill-treatment in Iran. Moreover, the applicant was able to describe Komala's objectives and activities only superficially. Even though the applicant had allegedly been tortured repeatedly, he had not provided the Service with any kind of medical certificate. The Immigration Service found the applicant's story, as a whole, not credible. Even if he had been a member of the party, he could not be regarded as a high level party member but only possibly a lower level party activist. It was not probable that the Iranian authorities would persecute the applicant. This conclusion was supported by the fact that the applicant had been able to leave Iran without any problem. The Service did not find it credible that the arrest of the applicant's wife and brother, as alleged, were due to his stay in Finland, or that the Iranian authorities would know that the applicant had continued his political activities in the Komala party in Finland.

9. The applicant appealed to the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), requesting that the Immigration Service's decision be quashed and the applicant be granted asylum, or alternatively, a residence permit. He also requested that an oral hearing be held.

10. On 1 June 2011 the Administrative Court, after having held an oral hearing, rejected the applicant's appeal. The court noted that the applicant did not hold a leading position in the Komala party, nor were his or his family's political activities known in his home region. It had not been shown that the Iranian authorities knew about his activities. Nor did the Administrative Court find it probable that the Iranian authorities had found out about the applicant's political activities during his stay in Finland or that he would otherwise be persecuted by the Iranian authorities upon return. The court thus concluded that the applicant would not be subject to any real risk of ill-treatment when returned to Iran.

11. The applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), requesting also that a stay on removal be granted.

12. On 28 June 2011 the Supreme Administrative Court stayed the applicant's removal to Iran for the duration of the proceedings before it.

13. On 26 October 2011 the Supreme Administrative Court refused the applicant leave to appeal.

## B. Relevant domestic law

*Constitution of Finland*

14. According to Article 9, paragraph 4, of the Constitution of Finland *(Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999), the right of foreigners to enter Finland and to remain in the country is regulated by an Act. A foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

*Aliens Act*

15. According to section 87, subsection 1, of the Aliens Act (*ulkomaalaislaki, utlänningslagen*; Act no. 301/2004), aliens residing in the country are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership of a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.

16. Section 88, subsection 1, of the Act (as amended by Act no. 323/2009) provides that an alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements for granting asylum under section 87 are not met, but substantial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail himself or herself of the protection of that country. Serious harm means: 1) the death penalty or execution; 2) torture or other inhuman or degrading treatment or punishment; or 3) serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts.

17. Under section 88a of the Act (as amended by Act no. 323/2009), an alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under section 87 or 88 for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation.

18. According to section 88b of the Act (as amended by Act no. 323/2009), the well-founded fear of being persecuted referred to in section 87b or the real risk of being subjected to serious harm referred to in section 88 may be based on incidents after the applicant's departure from

his or her home country or country of permanent residence or on acts that the applicant has participated in after his or her departure.

19. Section 98, subsection 2, of the Act (as amended by Act no. 432/2009) provides that the requirements for issuing a residence permit are assessed individually for each applicant by taking account of the applicant's statements on his or her circumstances in the State in question and of real time information on the circumstances in that State obtained from various sources. After obtaining the available statement, the authorities shall decide on the matter in favour of the applicant on the basis of his or her statement if the applicant has contributed to the investigation of the matter as far as possible and if the authorities are convinced of the veracity of the application with regard to the applicant's need for international protection.

20. According to section 147 of the Act, no one may be refused entry and sent back or deported to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity or from where he or she could be sent to such an area.

### C. Relevant international material

21. The Amnesty International Report 2010: *The State of the World's Human Rights: Iran* (AI Report 2010) covering events in 2009 and published on 27 May 2010, notes the following about the general human rights situation in Iran:

> "An intensified clampdown on political protest preceded and, particularly, followed the presidential election in June [2009], whose outcome was widely disputed, deepening the long-standing patterns of repression. The security forces, notably the paramilitary Basij, used excessive force against demonstrators; dozens of people were killed or fatally injured. The authorities suppressed freedom of expression to an unprecedented level, blocking mobile and terrestrial phone networks and internet communications. Well over 5,000 people had been detained by the end of the year. Many were tortured, including some who were alleged to have been raped in detention, or otherwise ill-treated. Some died from their injuries. Dozens were then prosecuted in grossly unfair mass 'show trials'. Most were sentenced to prison terms but at least six were sentenced to death.
>
> The election-related violations occurred against a background of severe repression, which persisted throughout 2009 and whose victims included members of ethnic and religious minorities, students, human rights defenders and advocates of political reform. Women continued to face severe discrimination under the law and in practice, and women's rights campaigners were harassed, arrested and imprisoned. Torture and other ill-treatment of detainees remained rife and at least 12 people died in custody. Detainees were systematically denied access to lawyers, medical care and their families, and many faced unfair trials. Iran remained one of the states with the highest rates of execution and one of very few still to execute juvenile offenders: at least 388 people were executed, including one by stoning and at least five juveniles."

22. According to the country information on Iran (*UK Home Office, Operational Guidance Note: Iran, November 2011*), politically active

groups and individuals are considered a threat to national security by the Iranian Government. If the Iranian authorities consider a person to be working against national security (the person may for example be accused of being a spy or of cooperating with an opposition religious, ethnic or political group), they may face severe punishment ranging from ten years' imprisonment to execution. For instance, being in possession of a CD, a pamphlet or something similar made by the Kurdish Democratic Party of Iran (KDPI), Komala or other Kurdish organisations, may be considered an act against national security. This form of persecution for political activities is a problem all over Iran. However, the authorities are watching Kurdish areas and Tehran more carefully than other areas.

23. Both high and low profile persons may risk persecution. Whether a person is harassed does not depend on the person being a high or low profile opponent of the government. While a high profile person is sure to be persecuted when arrested by the authorities, even a low profile person, who has been in possession of documents with a political message, may face persecution even if the person does not know anything about the movement in question. Moreover, if a person had left Iran illegally, he or she would not have been registered in the computer system as having left Iran and therefore would be questioned upon return (*Danish Immigration Service: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons, and Reporting, etc., April 2009*).

24. According to the Operational Guidance Note, there is no evidence to suggest that an applicant of Kurdish ethnic origin, in the absence of any other risk factor, would on return face a real risk of serious mistreatment simply on account of his or her ethnic origin alone. Applicants who are able to demonstrate that they are members or supporters of the KDPI, Komala, or active members of PJAK, and who are known to the authorities as such, will be at real risk of persecution and a grant of asylum will be appropriate unless there are case-specific reasons why it would not be.

## COMPLAINTS

25. The applicant complained under Article 3 of the Convention that he would face a real risk of being ill-treated if returned to Iran because of his activities in the Komala party. It should be taken into account that he had already previously been arrested and ill-treated by the Iranian authorities, and was thus facing a real risk of ill-treatment in the future.

26. Furthermore, the applicant complained under Article 6 of the Convention that the decision of the Administrative Court was not adequately reasoned.

# THE LAW

## A. Complaint under Article 3 of the Convention

27. The applicant complained under Article 3 of the Convention that he would face a real risk of being ill-treated if returned to Iran due to his activities in the Komala party.

28. Article 3 of the Convention reads as follows:

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

29. The Government pointed out that the applicant had based his asylum application on the fact that his membership in the Komala party had caused him problems. The Immigration Service found, however, that the applicant had been able to describe his ideology and activities in the party only superficially and that he had not been able to present any evidence to support his allegations. Neither had he been able to submit any evidence to support the alleged arrest and torture. The Service had found it very unlikely that the Iranian authorities would be particularly interested in the applicant. This conclusion was supported by the fact that the applicant had been able to leave his country from an international airport without any problems using his own Iranian passport. As the applicant had initially intended to return to Iran, he could not have been facing any persecution when leaving the country. The applicant's continued political activity in the Komala party during his stay in Finland could not have any impact on his alleged political profile in Iran, and it was therefore not credible that the Iranian authorities would be aware of it.

30. The Government maintained that also the Administrative Court had found, after having held an oral hearing, that the applicant had not held any prominent position in the Komala party. It was not credible that the applicant had been an informant to the Iranian secret service or that he had provided them with incorrect information. The court had found that the applicant had not presented any circumstances justifying the presumption that he was in need of international protection due to the political activities of his brothers.

31. As to the applicant's health, the Government stressed that the applicant had told the Immigration Service on 6 February 2009 and in the asylum interview on 1 October 2009 that both his physical and mental health were good. It was only in his application to the Court that the applicant had submitted a medical certificate, dated 13 May 2009, according to which he was suffering from anxiety and depression. No such medical certificate was ever presented to the domestic authorities, nor was this issue even raised before them.

32. The Government concluded that the credibility of the applicant's statements was of vital importance to the examination of the case and that he had not provided any relevant evidence supporting his claims. Like in the case *Ayatollahi and Hosseinzadeh v. Turkey* (dec.), no. 32971/08, 23 March 2010, there was no indication in the case file that the applicant was wanted by the Iranian authorities. During the examination of his asylum claim, no grounds could be found which would have given any reason to believe that the applicant would face a risk of treatment referred to in Article 3 of the Convention if returned to Iran. Nor could such grounds be found among the information submitted to the Court by the applicant.

33. The applicant submitted his observations outside the set time-limit. Accordingly, the President of the Section decided, pursuant to Rule 38 § 1 of the Rules of Court, that the observations would not be included in the case file for the consideration of the Court.

34. The Court observes that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (*Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008-...).

35. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to Iran, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 108).

36. Whilst being aware of the reports of serious human rights violations in Iran, as set out above, the Court does not find them to be of such a nature as to show, on their own, that there would be a violation of the Convention if the applicant were to return to that country. The Court has therefore to establish whether the applicant's personal situation is such that his return to Iran would contravene Article 3 of the Convention.

37. The Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *Collins and Akasiebie v. Sweden* (dec.), no. 23944/05,

8 March 2007, and *Matsiukhina and Matsiukhin v. Sweden* (dec.), no. 31260/04, 21 June 2005). In principle, the applicant has to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005; *N.A. v. the United Kingdom*, no. 25904/07, § 111, 17 July 2008; and *R.C. v. Sweden*, no. 41827/07, § 50, 9 March 2010). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

38. The Court observes, from the outset, that the Government have questioned the applicant's credibility and pointed to certain inconsistencies in his story. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. It accepts that, as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned.

39. The Court notes that, in the present case, the applicant has not provided any evidence to the domestic authorities other than a certificate issued by Komala's Swedish office on 12 December 2009, which attested to his party membership. No medical certificate of the alleged torture has been submitted to the domestic authorities. It was only in his application to the Court that the applicant submitted a medical certificate, dated 13 May 2009, according to which he was suffering from anxiety and depression. The medical evidence cannot therefore corroborate the applicant's story concerning the alleged torture.

40. The Court further notes that there are also certain inconsistencies in the applicant's story. As the Government pointed out, the applicant was able to leave Iran legally through an international airport without any problems by using his own Iranian passport. He had initially intended to return to Iran, which is evidenced by the fact that he had a return ticket in his name. This would indicate that he did not consider himself to be in any danger due to any facts that had taken place before he left the country.

41. Moreover, the Court notes that the applicant was allegedly tortured in 2007. However, it was only in December 2008 that he legally left Iran to visit his brother in Finland. The applicant was thus able to live and continue party activities for over a year in Iran after the alleged torture. Nor is there anything to suggest that he left due to persecution in Iran.

42. In the circumstances of this case, the Court shares the Government's conclusion that the credibility of the applicant's statements was undermined and that he did not provide any relevant evidence supporting his claims. The Court considers that the applicant has not been able to adduce evidence capable of proving that there are substantial grounds for believing that he

would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if returned to Iran.

43. Furthermore, regard must also be had to the specific risk facing Iranians returning to their home country in circumstances where they cannot produce evidence of their having left that country legally. The Court notes that, according to information available from independent international sources (see paragraph 23 above), such Iranians are particularly likely to be scrutinised for verification as to the legality of their departure from Iran. The Court observes, however, that the applicant left Iran legally using his own Iranian passport. Therefore, in the light of the information available to the Court, it finds it improbable that the applicant would come to the attention of the Iranian authorities upon entering Iran.

44. Having regard to all of the above, the Court concludes that there are no substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if deported to Iran in the current circumstances. Accordingly, the complaint under Article 3 of the Convention must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

45. It follows that the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court should be lifted.

### B. Remainder of the application

46. The applicant also complained under Article 6 of the Convention that the decision of the Administrative Court was not adequately reasoned.

47. In the light of all the material in its possession, and in so far as the matter complained of is within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Lawrence Early
Registrar

Ineta Ziemele
President