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

FOURTH SECTION

DECISION

Application no. 20190/12
F.Y.
against Finland

The European Court of Human Rights (Fourth Section), sitting on 31 March 2015 as a Chamber composed of:

George Nicolaou, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 29 March 2012,

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 observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr F.Y., is an Iranian national, who was born in 1984. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4). He was represented before the Court by Mr Pirkka Lappalainen, a lawyer practising in Tampere.

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.

1. Account of the events provided by the applicant

4. The applicant is ethnically a Kurd originating from Gangachin city in Iran, close to Urmia (Orumieh). The applicant had difficulties as a Kurd to enter university in Iran and he was disappointed by the position of Kurds in Iran in general. For that reason he joined The Free Life Party of Kurdistan (PJAK) late in 2004, soon after it was founded. He described himself as a regular but active member of the party. His activism included distributing material and information about the party, recruiting new members and accommodating visiting party members at his house, but not taking part in any armed activities. His family members have also been supporters of the Kurdish cause.

5. In September 2007 the applicant's neighbour apparently pretended to want to join the PJAK and managed to obtain important information about the party's recruitment. Subsequently, he informed the Basij-militia about the applicant's activities. Since then the Basij has allegedly been looking for the applicant and three other party members. Two of the other party activists were caught and arrested and the other one fled to the mountains to join the PJAK armed group. The applicant managed to escape, with a smuggler's help, to Turkey and from there through Germany and Sweden to Finland, where his sister is residing permanently.

6. The applicant claims that if he returns to Iran, he will never be free again since it is possible that the authorities arrest him and he might be killed. He also stated that the Iranian police have taken his father twice for questioning since he left the country but his father has never told him why. The applicant was arrested once during the religious feast of the Shiite Muslims years ago, but has never been formally punished or ill-treated by the Iranian authorities.

7. The applicant has submitted three documents which were translated from Kurdish or Persian to Finnish in October 2009 by an official translator. The first is entitled "Warning Announcement" in which the applicant is apparently called to appear before the Iranian Islamic Republic's Court for reasons of his cooperation with the PJAK, causing insecurity in the area and encouraging youngsters in the area to join the Kurdish political parties.

8. The second document is a certificate from the PJAK representative in Scandinavia, Mr S.B., who confirms that the applicant joined the party in 2004 and that he has been politically active, which puts his health and life at risk. Persecution caused the applicant's flight from Iran and, if he is returned there, his life will be in danger.

9. The third document is entitled “Local Certificate”, and it is signed by 15 persons who certify that the applicant has been politically active in Kurdistan by encouraging people to join the party and by distributing PJAK leaflets and material to people. The signatories wish to confirm that the activism of the applicant is known to everyone in the area and also that the security police are after him.

10. On 24 August 2011 the applicant was married to a Dutch citizen residing in Finland.

2. Proceedings relating to the first and second asylum applications

11. The applicant first sought asylum in Finland on 20 December 2007 and claimed to have arrived in the country on the same day. He had also previously sought in Iran a visa to Finland for the period from September 2007 to December 2007 to attend his nephew’s wedding but he had received a negative decision.

12. On 25 August 2008 the Finnish Immigration Service (*Maahan-muuttovirasto, Migrationsverket*) rejected the applicant’s asylum application and decided to expel him to Iran. It noted in its decision that the applicant’s story about his journey from Iran to Finland was unclear and contradictory and that this weakened the credibility of his asylum story as a whole. For example, the applicant had stated in the asylum interview that he had left for Turkey directly after having heard about the arrests of two members of his group, while in a subsequent hearing he had claimed to have been in Turkey already when he had heard about the arrests. Also the applicant’s report about the whereabouts of his passport was contradictory and vague. He had stated that he had joined the party in late 2004 and had immediately started to work actively in it but at the same time he had said that he was in the army from December 2004 to July 2006. The Immigration Service considered that the applicant’s account of his alleged party activities was unclear and contradictory as he had spoken about the PJAK’s activities only in a very general way, giving information which could be found on the PJAK’s website, before its closure. The Immigration Service therefore concluded that there were no reasoned grounds to believe that the Iranian authorities would be interested in the applicant.

13. The applicant appealed to the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), also requesting an oral hearing to be held.

14. On 29 May 2009 the Administrative Court rejected the applicant’s appeal as well as the request for an oral hearing. The court noted that the applicant’s activism had not been very significant but rather low-level. Nor had the applicant ever been arrested in relation to his activities in the PJAK or ill-treated by the Iranian authorities. Furthermore, the court considered that the applicant merely suspected that an arrest warrant for him had been issued but that there was no certainty about it. The court did not find it likely that the Iranian authorities would be interested in the applicant in

particular and therefore it considered that the applicant had failed to demonstrate a real risk of ill-treatment if returned to Iran.

15. On an unspecified date the applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltnings-domstolen*).

16. On 23 November 2009 the applicant lodged a new asylum application, submitting the above-mentioned documents, two of which he claimed to have received from his family members in Iran, as written evidence supporting his application. As his appeal was already pending before the Supreme Administrative Court, the new application was sent directly there as an addendum to his appeal.

17. On 20 May 2011 the Supreme Administrative Court refused the applicant leave to appeal.

3. Proceedings relating to the third asylum application

18. Apparently the order to deport the applicant to Iran was never executed and thus on 14 October 2011 the applicant lodged his third asylum application, citing the same grounds as before. He argued that his relatives in Iran had informed him that there was a court order against him for causing insecurity in the area and for being a member of the PJAK. He claimed that he would receive a death sentence if returned to Iran. He also relied on his marriage as grounds for a residence permit in Finland.

19. On 21 February 2012 the Immigration Service rejected his application. It considered that the application was substantially the same as before, containing the same information as had already been submitted to the Supreme Administrative Court in the context of the applicant's previous asylum applications. The Service therefore dealt with the application in the fast-track procedure. No residence permit could be given to the applicant on the basis of his marriage either, as neither spouse had a job or had provided information about having sufficient means for living. The Service therefore ordered the applicant to be expelled to Iran.

20. By letter dated 16 March 2012 the applicant appealed to the Administrative Court, requesting that an oral hearing be held. He also requested that an interim order be imposed to stay the expulsion, which was not granted. He argued, in particular, that the Immigration Service had not taken into account the written evidence provided by him as no reasoning to that effect had been given in the decision.

21. On 29 June 2012 the Administrative Court rejected the applicant's appeal and his request for an oral hearing. It considered that the Immigration Service had examined the documents submitted by the applicant and that the documents were mentioned in its decision. The Administrative Court considered that the new evidence did not provide grounds to accept the applicant's appeal.

22. On an unspecified date the applicant appealed to the Supreme Administrative Court.

23. On 25 February 2013 the Supreme Administrative Court refused the applicant leave to appeal.

B. Relevant domestic law

1. Constitution of Finland

24. 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.

2. Aliens Act

25. 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.

26. 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.

27. 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.

28. 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 since his or her departure.

29. 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 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.

30. 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.

31. Section 147b of the Aliens Act (as amended by Act no. 1214/2013) incorporates into the Finnish legal system the Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more member States, of third-country nationals who are subjects of individual removal orders. The annex to the Decision contains common guidelines on security provisions for joint removals by air including, *inter alia*, an obligation for the member States to ensure that the returnees for whom they are responsible are in an appropriate state of health, which allows legally and factually for safe removal by air.

C. Relevant international materials

32. According to the Home Office's Operational Guidance Note on Iran, of October 2012:

> "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 ill-treatment or persecution to Article 3 level purely on account of his or her ethnic origin. However the government disproportionately targeted minority groups, including Kurds, for arbitrary arrest, prolonged detention and physical abuse.
>
> Applicants who are able to demonstrate that they are known, or suspected, by the government to be members or supporters of the KDPI, Komala, or PJAK, will be at real risk of persecution and a grant of asylum will generally be appropriate."

COMPLAINT

33. The applicant complained that if he were returned to Iran, he would be subjected to inhuman treatment and his life would be endangered.

THE LAW

34. The applicant complained that he risked being subjected to inhuman treatment contrary to Article 3 of the Convention if removed to Iran.

35. Article 3 of the Convention reads as follows:

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

36. The Government observed that, despite the disturbances in the applicant's home country, it could not be considered so unsafe that he could not be returned there. The situation in Iran had not changed after the delivery of the domestic decisions in a manner that would affect the applicant's personal situation. The applicant had not provided any evidence to demonstrate that he was of particular interest to the Iranian authorities. His own societal and political activities could not be regarded as significant. Nor had he presented any other relevant grounds for believing that he would risk being subjected to torture or other inhuman or degrading treatment in Iran. The issue at hand also related to the credibility of the applicant.

37. The Government noted that the applicant himself had stated that he had been only an ordinary member of the party. He had not been arrested for his activities in the PJAK party, nor ill-treated by the Iranian authorities. He had not been in a leading position in the party, nor taken part in any armed activities. The applicant had served in the army from 2004 to 2006 and had worked for the party during his holidays. He had never experienced any problems in the army due to his party activities. This supported the notion that the applicant's activities in the party had been minor.

38. The Government further noted that the evidence on the applicant's party activity had not been available when the Immigration Service took its first decision in 2008 but had been available when the Administrative Court and the Supreme Administrative Court examined the applicant's first asylum application. The rest of the evidence was submitted to the Immigration Service when the applicant filed his second asylum application and these documents were transferred to the Supreme Administrative Court where the appeal against the first asylum decision was still pending at the time. The latter court had thus dealt with these documents already during the first asylum proceedings. All authorities had had the written evidence submitted by the applicant in autumn 2009 before them at the latest when they considered the applicant's third asylum application. They had

thoroughly examined the grounds on which the applicant feared possible violations of his rights in Iran.

39. As to the credibility of the applicant, the Government maintained that the applicant's report of his arrival in Finland was contradictory. In addition, he had stated in the asylum interview that he had left for Turkey directly after having heard about the arrests of two members of his group while in a subsequent hearing he claimed to have been in Turkey already when he had heard about the arrests. Also the applicant's report about the whereabouts of his passport was contradictory and vague. His credibility was also compromised by the fact that he had been able to talk about the PJAK's activities only on a very general level and did not even know whether party members had membership cards. In the Government's view, the inconsistencies in the applicant's report weakened his credibility. They concluded that the applicant would not face a real risk of being subjected to treatment in breach of Article 3 of the Convention if expelled to Iran.

40. The applicant argued that only the fact that the Supreme Administrative Court had entry-stamped the evidence submitted to it showed that the documents had been included in the case file. The Government had not been able to prove that these documents had been irrelevant or that they had been studied carefully in the proper appeal proceedings. The applicant claimed that it was groundless and artificial to refer to the contradictions in his story at this stage as the State had repeatedly failed to study the crucial evidence and to draw conclusions from it. The applicant maintained that there was a serious breach of Article 3 of the Convention.

41. 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 (see *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 (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008).

42. 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).

43. As argued by the Government, the Court does not find the general human rights situation in Iran to be of such a nature as to show, on its 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.

44. 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.

45. The Court observes, from the outset, that the Government as well as the domestic authorities and courts have questioned the applicant's credibility. The Immigration Service considered that the applicant's story about his journey from Iran to Finland was unclear and contradictory and that this weakened the credibility of his asylum story as a whole. The applicant had also stated in the asylum interview that he had left for Turkey directly after having heard about the arrests of two members of his group while, in a subsequent hearing, he had claimed to have been in Turkey already when he had heard about the arrests. Also the applicant's report about the whereabouts of his passport was contradictory and vague. He had also said that he had joined the party in late 2004 and had immediately started to work actively in the party but, at the same time, he had said that he was in the army from December 2004 to July 2006. Furthermore, the applicant's credibility was compromised by the fact that he had been able to talk about the PJAK's activities only on a very general level and did not even know whether party members had membership cards.

46. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. However, 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.

47. As to the applicant's personal circumstances, the Court therefore shares the Government's view that the inconsistencies in the applicant's

account weaken his credibility. The applicant's sole ground for seeking asylum is his alleged party activities in the PJAK party, which information is based on his own account. The applicant has not even claimed that he had been arrested for his activities in the PJAK party or ill-treated by the Iranian authorities. Even when the applicant served in the army and allegedly worked actively for the party at the same time, he has not claimed to have experienced any problems in the army due to his alleged party activities. The Court therefore finds that the applicant has not been able to present any reasoned grounds to demonstrate that the Iranian authorities would be interested in him due to the alleged party activities.

48. The Court considers that the domestic proceedings were appropriately conducted and thorough. The applicant lodged three asylum applications as a result of which two full sets of proceedings were conducted domestically. As concerns the documents submitted by the applicant in autumn 2009, the Government have demonstrated that one of these documents was available to the Administrative Court and the Supreme Administrative Court during the first asylum proceedings, and that all domestic authorities and courts had the new written evidence in its entirety before them at the latest when they considered the applicant's third asylum application. The Administrative Court examined this evidence most meticulously and found that the new evidence did not give grounds to accept the applicant's appeal (see paragraph 14 above) and the Supreme Administrative Court refused the applicant leave to appeal. All domestic authorities and courts thus assessed this evidence and drew their conclusions from it.

49. 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.

50. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 April 2015.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President