AS TO THE ADMISSIBILITY OF

Application No. 36863/98
by Venous HASSANPOUR-OMRANI
against Sweden

The European Commission of Human Rights sitting in private on 19 October 1998, the following members being present:

MM S. TRECHSEL, President
J.-C. GEUS
M.P. PELLONPÄÄ
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
N. BRATZA
I. BÉKÉS
D. ŠVÁBY
G. RESS
A. PERENIČ
C. BÎRSAN
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs M. HION
MM R. NICOLINI
A. ARABADJIEV

Mr M. de SALVIA, 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 18 June 1997 by Venous HASSANPOUR-OMRANI against Sweden and registered on 15 July 1997 under file No. 36863/98;

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 is an Iranian citizen born in 1964. Before the Commission she is represented by Mr Olle Karlsson, a lawyer practising in Helsingborg, Sweden.

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

The applicant is married and has two children born in 1989 and 1990, respectively. On 21 August 1995 the applicant and her children arrived in Sweden without passports or other identification papers and applied for asylum. The applicant claimed that, on 25 June 1995, she had been arrested by revolutionary guards and taken to prison in Shiraz, Iran. Allegedly, this was due to the fact that some of her husband's relatives, who bore a grudge against her, had provided the guards with false information to the effect that she had committed adultery and converted to Christianity. Following her arrest, she had been interrogated for approximately three hours by two persons who had found her guilty of adultery and orally sentenced her to be stoned to death. However, she did not receive any written judgment. Furthermore, during the detention she had allegedly been beaten and tortured and raped on two occasions. Eventually, on 9 July 1995, after 14 days in detention, a member of Parliament with whom her husband was acquainted, had managed to bribe prison officials into releasing her. On the very same day she and her children had fled to Sweden via Dubai and London.

By decision of 19 January 1996, the National Immigration Board (Statens Invandrarverk) rejected the applicant's and her children's applications and ordered their expulsion. The Board did not find her statements credible. It took into account that it would have been improbable that officials had been bribed into releasing her, had she actually been found guilty of adultery. Considering the evidence allegedly presented against her and taking into account that she had pleaded not guilty, the Board found that there was no reason to believe that she had been convicted of adultery and sentenced to capital punishment. Moreover, in March 1995, five months before her arrival in Sweden, the applicant had unsuccessfully applied for a visa to enter Sweden. The Board also noted that the allegations concerning rape had been introduced at a late stage of the asylum investigation and that it seemed strange that she had been allowed to take her children out of Iran.

The applicant and her children appealed to the Aliens Appeals Board (Utlänningsnämnden) and submitted, inter alia, a doctor's certificate to the effect that the applicant probably suffered from a neurological disease and a letter from the applicant's husband claiming that he had been interrogated about the applicant's whereabouts.

On 29 April 1997 the Aliens Appeals Board rejected the appeal. It gave the following reasons for its decision:

(Translation)

"The Board notes that [the applicant] did not have a passport or any other travel documents when arriving in Sweden. Further, in April 1995 [the applicant's] request for a visa to Sweden had been rejected. Moreover, [the applicant] has stated that she had a passport in her home country which was confiscated by the revolutionary guards in connection with her arrest in June 1995. According to the police investigation of [the applicant's] declared travel route it appears that the family has arrived in Sweden in a way different from that stated. Taking these circumstances into account, the Board finds that it cannot exclude that [the applicant] has left Iran legally with a passport.

The Board finds that [the applicant's] statements regarding the way in which she was sentenced to death on account of adultery are not reasonable. The Board makes this assessment in view of what is known about the Iranian Penal Code and the assessment of evidence with regard to adultery offences. Further, the Board finds it improbable that she could bribe officials into releasing her, had she actually been found guilty of adultery. Therefore, the Board does not find [the applicant's] statement concerning the arrest and punishment for adultery credible."

Later, the applicant and her children submitted a new application to the Aliens Appeals Board. The applicant now stated that she would face persecution in Iran on account of her sex and religion. She submitted, inter alia, a medical statement from the Centre for Torture and Trauma Victims (Centrum för tortyr- och traumaskadade) in Stockholm in which Dr. S, who had interviewed the applicant, concluded that she had posttraumatic stress syndrome and that she had been subjected to frightening events after a long period of harassment. During the interview the doctor had found no reason to question the veracity of her account of what had happened in Iran. Moreover, the applicant claimed that an expulsion would be hazardous for the children as they had been introduced to Christianity.

On 4 September 1997 the Aliens Appeals Board rejected the new application. It found that there was no indication that the applicant had converted to Christianity and that there was therefore no risk of persecution on grounds of religion. Nor was there such a risk on grounds of sex. Furthermore, as regards the statement of Dr. S, the Board did not question his assessment that [the applicant] had developed posttraumatic stress syndrome due to events in her home country, but questioned what had happened to her there. Moreover, having examined the issue carefully, the Appeals Board concluded that an expulsion to Iran would not be hazardous for the children.

On an unspecified date the applicant and her children were expelled to Iran. Following the expulsion, her representative received a letter from a relative of the applicant regarding her present situation in Iran. In the letter, the relative states that the applicant and her children are living with her husband, who has beaten her on several occasions. There is, however, no indication in the letter that the applicant has been subjected to reprisals from Iranian authorities or that she is wanted by the authorities.

COMPLAINTS

The applicant complains, under Article 3 of the Convention, that she risks torture or capital punishment in Iran.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 June 1997 and registered on 15 July 1997.

On 19 June 1997 the Acting President of the Commission decided not to apply Rule 36 of the Commission's Rules of Procedure.

By letter of 3 September 1997, the applicant again requested the Commission to stay her deportation until the present application had been examined on the merits.

On 18 September 1997 the Commission decided not to indicate to the Government of Sweden, pursuant to Rule 36 of the Rules of Procedure, the measure suggested by the applicant.

THE LAW

The applicant complains about her expulsion to Iran, stating that she risks torture and capital punishment in that country.

The Commission has examined the application under Article 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, as a matter of well-established international law and subject to their treaty obligations, including their obligations under the Convention, to control the entry, residence and expulsion of aliens. The right to political asylum is not protected either in the Convention or its Protocols. The decision of a Contracting State to expel a person may nevertheless give rise to an issue under Article 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 faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country. In such circumstances Article 3 implies the obligation not to expel the person in question to that country (see, e.g., Eur. Court HR, Chahal v. the United Kingdom judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, p. 1853, paras. 73-74 with further references).

The applicant submits that, due to allegations from her husband's relatives, she was arrested and after an interrogation found guilty of adultery and orally sentenced to death by the interrogators. However, no written judgment was issued by the Iranian authorities. Furthermore, she submits that she risks persecution in Iran on account of her sex and religion.

The Commission considers, like the Swedish authorities, that the veracity of the applicant's account of the events in Iran can be called into question. In this connection, the Commission recalls that the applicant had applied, unsuccessfully, for a visa to enter Sweden in March 1995, five months before her arrival in Sweden and before the alleged events took place in Iran. Although not of decisive importance, the Commission further notes that it appears from the letter from the applicant's relative that the applicant complains of having been badly treated by her husband. However, the letter does not indicate that she has encountered any particular difficulties with the Iranian authorities upon her return to Iran.

In view of the above, the Commission finds that it has not been established that there were substantial grounds for believing that the applicant faced a real risk of being subjected to treatment contrary to Article 3 of the Convention in Iran.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M. de SALVIA
Secretary
to the Commission

S. TRECHSEL
President
of the Commission