CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 65538/01
by Marjan JAVANMARDI and Ahad AHMADI
against Sweden

The European Court of Human Rights (First Section), sitting on 19 March 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 1 February 2001 and registered on 2 February 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mrs Marjan Javanmardi and Mr Ahad Ahmadi, are Iranian nationals, who were born in 1972 and 1968 respectively and live in Umeå, Sweden. They are represented before the Court by Ms L. Isaksson, a lawyer practising in the same town.

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

The applicants left Iran and arrived in Sweden on 14 April 1999 with a visa authorising them to remain in Sweden for 30 days. On 18 May 1999 they applied for political asylum and a residence permit, invoking the following circumstances. The first applicant had, as a midwife at the Iranian Navy Muslim Hospital in Shiraz, carried out an illegal abortion at the hospital on a friend of hers, who was unmarried and politically active. For a few years the applicants had supported this friend financially in her political activities. The friend held views which were close to those of the Moujahadin and obtained help from the applicants for the printing of a political publication. As the first applicant's superior found out about the abortion she was reported to the police. Allegedly, she was arrested and detained for 48 hours. She claims that she was beaten during that period. She was released on bail following the payment of a large sum by her father. Both applicants then left Iran for Sweden. Thereafter, the security guards visited her parents' home on several occasions and looked for her at the hospital and at the university where she had obtained her degree. Her father was interrogated for 5 hours by the police in order to obtain information about her whereabouts.

This was not the first time the applicants had sought entry into Sweden. The first applicant had unsuccessfully applied for a visa once in 1996, once in 1997 and once again in 1998. The second applicant applied twice in 1993, but without success. A further application for a visa had been rejected in 1994 but a second application made in the same year had been granted. The second applicant applied for a residence permit in order to settle with his mother and brothers and sisters. The application was rejected. He avoided returning to Iran but, following his arrest on suspicion of shop lifting, he was expelled in November 1994. His applications for a visa in 1996 and 1997 were rejected.

On 19 November 1999 the National Immigration Board (*Statens invandrarverk*) refused the applicants' above-mentioned application of 18 May 1999 for asylum and residence in Sweden and ordered their expulsion to Iran. The couple were prohibited from re-entering Sweden for 2 years. The National Immigration Board observed that the first applicant did not appear to have been of significant interest to the Iranian authorities since the couple had left Iran lawfully with passports issued in their own names. The couple only applied for asylum 5 weeks after arriving in

Sweden. The applicants had never been active in any political party or organisation. While they asserted that they had contributed financially to the printing of a political publication, they were not able to identify the party or organisation, nor the contents of the publication. Nor had they claimed that the Iranian authorities knew of this. Although abortion was illegal in Iran, it was a frequent occurrence and was seldom pursued by the Iranian authorities and prosecution could be avoided by paying bribes. In any event, the offence in question was only liable to punishment by fines or imprisonment. An appeal by the applicants to the Aliens Appeals Board (*Utlänningsnämnden*) was rejected on 22 December 2000.

The applicants then requested a fresh examination of their application by the Aliens Appeals Board, claiming that the first applicant suffered from a psychotic health condition, which had its background in her experience in Iran. She had been treated at a psychiatric hospital in November and was readmitted on 29 December 2000. The applicants relied on a medical certificate of 2 January 2001, which stated that the first applicant had had psychological problems over the past six months. She described herself as being persecuted and monitored by Iranian spies and had given a strong impression that she was suffering from anxiety and desperation, with a paranoid psychotic character. She had hallucinated in particular about her superior at the hospital who had reported her to the police. On the whole, she displayed unequivocal psychotic symptoms which could have been caused by stress and pressures and was in need of acute psychiatric care. Her condition pointed to a distinct risk of suicide. The doctor recommended that the first applicant continue to undergo psychiatric care and advised against burdensome transportation. On 19 January 2000 the first applicant was discharged as she was no longer considered suicidal and since her husband could look after her.

On 29 January 2001 the Aliens Appeals Board rejected the renewed request, finding that neither the information in the medical certificate nor the other material submitted in the case were of such a character as to warrant granting the couple a residence permit on humanitarian grounds.

On 1 February 2001 the applicants lodged an application complaining that, if expelled to Iran, the first applicant would risk the death penalty, corporal punishment, torture and other forms of ill-treatment and detention. Her mental health was such that expulsion would violate Article 3. Moreover, they requested the Court to indicate to the Swedish authorities not to execute the order to expel them to Iran.

On 4 February 2001 the first applicant was again committed to the psychiatric ward on her husband's initiative since she was suffering from a depressive psychosis.

On 16 February 2001 the parties were informed that the acting President had decided not to grant the Rule 39 request with respect to the husband and was not minded to apply Rule 39 with respect to the wife in the absence of

more specific documentary evidence in support of her account about the abortion, her detention, the payment of bail by her father or the proceedings (investigation/charges) against her.

In response, the applicants submitted two statements dated 9 and 12 February 2001 by Professor J. Hjärpe of the Department of Religious History, Section of Islamology, at the University of Lund, Sweden. They also supplied a medical certificate dated 5 February 2001. According to the medical certificate, the first applicant's condition had worsened despite being given appropriate medication. When examined on 4 February she was found to be autistic and suffering from hallucinations. She was also deeply depressed. In conclusion, the Chief Doctor stated that the patient suffered from an illness of a depressive nature with strong psychotic symptoms. Despite treatment with adequate medication, her condition had lately worsened. The patient was in need of care at a closed psychiatric ward and was at great risk of committing suicide. New forms of treatment were being considered beginning with electro-treatment, which needed to be carried out urgently.

On 8 March 2001 the first applicant was diagnosed as suffering from severe depression. She was found to be in a therapy-resistant condition and required continuing specialist care. There was an imminent risk of suicide but, thanks to her husband, it was possible to treat her as an outpatient. She was last discharged on 23 March 2001.

On 12 April 2001 the Chamber considered the above Rule 39 request with respect to the first applicant, Mrs Marjan Javanmardi. The Chamber found it desirable to continue the deliberations at a later date and, to this end, decided to apply provisionally Rule 39 until its next meeting to be held on 3 May 2001. On the latter date the Chamber rejected the Rule 39 request with respect to the first applicant.

COMPLAINTS

The applicants complain under Article 3 of the Convention that, if expelled to Iran, the first applicant would suffer treatment contrary to that provision.

THE LAW

The applicants complain that, if expelled to Iran, the first applicant would risk the death penalty, corporal punishment, torture and other forms of ill-treatment as well as detention. Her mental health was such that expulsion would violate Article 3, which reads:

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

The Court is struck by the fact that although given ample time to submit evidence in support of their account about the circumstances prompting them to leave Iran, the applicants have failed to do so. The couple's arguments concerning their connections with political opposition groups appear weak and their submissions regarding the factual background to their departure from Iran are unsubstantiated.

Even assuming that their account was true, the Court finds no support for the assertion that, were the first applicant to be returned to Iran, she would risk the death penalty for having carried out an abortion. All that the applicants have submitted in response to the Court's request for further evidence are the statements of a university professor in Sweden, the evidentiary value of which is rather limited since the statements are vague and lacking in specific information about the content, interpretation and application of Iranian penal law. The Court sees no reason to question the Swedish immigration authorities' finding that, under Iranian law, a midwife who carries out an illegal abortion may be liable to imprisonment and payment of a fine but not to capital punishment, as alleged by the applicants.

Nor does the Court find any substantial grounds for believing that the first applicant would face a real and specific risk of being subjected to torture or other form of ill-treatment if returned to Iran.

The question then arises whether, because of her health condition, the removal of the first applicant from the host State would of itself entail a breach of Article 3. In this regard, the Court notes with reference to the evidence submitted that the first applicant's health problems are relatively recent and that she has been treated on a voluntary basis, mostly as an outpatient. She was last discharged from hospital on 23 March 2001. Her psychological problems began more than one year after her arrival in Sweden and more than half a year after the date of the first rejection of the couple's asylum request. The matter was not raised in the couple's appeal to the Aliens Appeals Board. Apparently, it was not until December 2000 that the first applicant sought medical assistance, shortly before the rejection of the appeal by the Aliens Appeals Board on 22 December 2000. Her condition worsened thereafter.

Moreover, the medical certificate of 2 January 2001 stated that the first applicant had hallucinated in particular about the voice of her superior at the hospital in Iran. Stress and pressures, it was stated, could have caused her psychotic symptoms, but there is no specific and clear information linking her condition to the risk of ill-treatment in Iran. On the evidence, it is highly uncertain to what extent her problems could be linked to any traumatic experience that she might have had in Iran.

In addition, it is to be noted that, while the medical certificate of 2 January 2001 (issued at the beginning of her 2 to 3 weeks stay at the hospital), advised against burdensome transportation, the same advice was not repeated in the subsequent certificates submitted to the Court. Following this relatively short period at the hospital, it was considered safe to treat her as an outpatient in view of the assistance and support she received from her husband.

Against this background, the Court considers that there is no evidence that the first applicant's travel to Iran would be dangerous for her health. It thus remains to be considered whether if the first applicant were returned to Iran she would receive there appropriate treatment in order to prevent any deterioration in her mental condition. In this connection, the applicants have not alleged that such treatment would not be available (cf *mutatis mutandis* the Bensaid v. the United Kingdom judgment of 6 February 2001 application no. 44599/98, §§ 39-39; the D. v. the United Kingdom judgment of 2 May 1997, *Reports of Judgments and Decisions* 1997-III, § 53).

As regards the second applicant, the Court considers that there is no evidence that he would risk treatment contrary to Article 3 if expelled to Iran.

It follows that the applicants' complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President