AS TO THE ADMISSIBILITY OF

Application No. 21808/93
by L.I.
against Sweden

The European Commission of Human Rights sitting in private on 8 September 1993, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA

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 5 May 1993 by L.I. against Sweden and registered on 6 May 1993 under file No. 21808/93;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 4 June 1993 and the observations in reply submitted by the applicant on 8 July 1993;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Iranian woman born in 1972. She is presently detained by the Swedish authorities with a view to expulsion to Iran. Before the Commission she is represented by Mr. Ingemar Strandberg, a lawyer in Stockholm.

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

Particular circumstances of the case

The applicant entered Sweden on 21 April 1992 from France and

applied for asylum.

Allegedly, her father has been a member of the Mujahedin since 1963. During the years 1972-74 the family lived in France. She was, however, born in Iran and was a couple of months old when the family moved to France. After the father moved back to Iran he was sentenced to death because of his Mujahedin activities. His sentence was subsequently commuted to life imprisonment. He managed to flee from prison and during the last five years he has been a Mujahedin leader in Iraq.

The Mujahedin organisation in Iran is a truly fundamentalist movement, whereas its branches abroad tolerate Christians. Its purpose is to overturn the present regime in Iran and replace it with a democratic state where women would also enjoy political rights.

The applicant's participation in the movement consisted of distributing tracts on various subjects. Some described the massacres of Mujahedin supporters in the Evin prison caused by the prisoners' alleged refusal to comply with the Muslim dress code. This was, however, only a pretext for executing the Mujahedin supporters. Others related the United Nations' condemnation of the crimes against human rights committed by Iran.

In the summer of 1991 the applicant was allegedly arrested because revolutionary guards claimed that her dress was improper. When searching her the guards also discovered that she carried certain forbidden literature. As her dress was in fact proper, she believes that she was arrested on suspicion of belonging to the Mujahedin. She was sentenced to birching and a heavy fine. She was detained for six days. While detained she was tortured and raped, but she did not disclose anything about her connections with the Mujahedin. She believes she was raped in order to make sure that she was not a virgin, as virgins may not be executed under islamic law. She was then birched and released after signing a letter promising not to engage in any political activity again. She was also informed that she would be sentenced to 5-10 years' imprisonment if caught again.

Despite her arrest she continued her work for the Mujahedin. One week before she fled to Sweden she learnt on the radio that her group leader had been arrested. She received a message from her father advising her to leave Iran because she risked execution as a result of having broken the above-mentioned promise. With the help of her father and some smugglers she managed to go to Dubai, from where she went to Amsterdam on an Algerian passport. From Amsterdam she travelled to Sweden. Throughout the journey she was accompanied by the smugglers and so was not obliged to show any documents herself. She does not remember what airlines they used, nor can she explain her possession of a boarding card from Paris. She does not wish to give details about her trip in case she would reveal any Mujahedin secrets.

After her arrival in Sweden she was informed by her mother that the police had searched her house in Iran and discovered certain forbidden literature.

While in Sweden she converted to the Christian faith and was baptised on 21 January 1993 in the Missionary Church (missionskyrkan). She had been introduced to the local Christian congregation by friends and felt a calling to convert. According to an affidavit from the priest who baptised the applicant, her conversion is genuine. The affidavit also referred to the persecution in Iran of converted Muslims and stated that conversion meant death, as such persons no longer receive the protection of the law.

On 22 April 1992 the National Immigration Board (statens invandrarverk) decided to send the applicant back to France for the following reasons:

(translation from Swedish)

"[The applicant] came to Sweden on 21 April 1992 from France. [She] has now applied for asylum because she fears that she will be persecuted in her home country.

... [The applicant] is protected against persecution in France ... and against being sent back to her home country or to some other country where she does not enjoy the same protection. There is no reason to engage in a closer examination of her reasons for not wanting to return to her home country.

... [A]ccordingly, ... it is obvious that there is no ground for granting asylum. It is also obvious that there is no other reason for granting a residence permit."

Two enforcement attempts were unsuccessful, the French authorities having refused to receive the applicant. On 21 July 1992 the National Immigration Board quashed its decision insofar as the expulsion was to be made to France. The applicant appealed to the Aliens' Appeals Board (utlänningsnämnden). In its opinion of 6 August 1992 to the Aliens' Appeals Board, the National Immigration Board stated the following:

(translation from Swedish)

"The [applicant] has invoked the following reasons for her asylum request. She is a member of a political organisation which is forbidden in her home country. She has participated in the organisation's activities by distributing tracts and by sending forbidden books and cassettes to the organisation's library. [She] has not been arrested, convicted or detained because of her political activities. [She] was arrested one year ago because she did not wear suitable clothes. She was punished because a forbidden book was found when she was searched. The reason for [her] leaving Iran was that her group leader had been arrested and that she had been advised to leave the country. After her arrival in Sweden she has learnt through her mother that the guards have searched her home.

The reasons invoked are not such that [the applicant] has a right to asylum under Chapter 3, Section 1 ... of the 1989 Aliens Act (utlänningslag 1989:529). Neither are there any other special reasons for granting her a residence permit. The National Immigration Board accordingly proposes that the Aliens' Appeals Board reject the ... application ... [and that] the applicant be expelled to Iran ... ."

Following an oral hearing, the Aliens' Appeals Board rejected the applicant's appeal on 20 April 1993 and ordered her expulsion to Iran. The Board stated the following:

"[The applicant] has received the opportunity to provide information about her travel to Sweden. [She] has maintained that she came to Sweden via Amsterdam, despite the police investigation which showed that she came through Paris. She has subsequently explained that she does not wish to provide information on her travel route, as she wants to protect the persons who helped her. In reply to a direct question [she] has admitted that what she stated about her travel was untrue. [She] has stated that she is no longer sure how she came to Sweden. The fact that [she] has changed her statements as to the route she took in order to go to Sweden is apt to decrease the trustworthiness of the other information she has provided in support of her request ...

[The applicant] has submitted a baptismal certificate to the Board. This has led the Board to make certain inquiries. According to these [the applicant] converted from Islam on 21 January 1993 in the Missionary Church in Ånge.

In order for an assertion of conversion to be acceptable, it is important that the person concerned has provided information which cannot be questioned. When determining the trustworthiness of an assertion, references will often play a decisive role.

The baptiser in the above mentioned congregation has confirmed the applicant's conversion both orally and in writing and he has explained the surrounding circumstances. According to the baptizer the act was preceded by discussions about the Christian faith.

[The applicant] has not told her relatives in Sweden and Iran about her conversion.

The Board notes that [the applicant's] representative was informed on 19 January 1993 of the Board's intention to hold an oral hearing. The baptismal certificate is dated 21 January 1993.

Considering all the circumstances surrounding [the applicant's] asserted conversion, the Board finds that the fact that [she] converted after the Authority gave its decision, and knowing that a decision from the Board was likely to be given shortly, speak against the genuine character of the conversion. The other circumstances around the conversion are also such that they can be questioned. The circumstances seem rather to indicate that the conversion was made in order to enable [the applicant] to obtain a residence permit in Sweden. The asserted conversion can, accordingly, not constitute a ground for asylum.

Considering all the circumstances of the case, the Board does not find that [the applicant] has made a probable case that she is a refugee within the meaning of Chapter 3, Section 2, of the Aliens Act. Nor are there any such circumstances as are mentioned in Chapter 3, Section 1, para. 3, of the same Act.

There do not otherwise exist any reasons for granting [the applicant] a residence permit."

On 22 April 1993 the National Immigration Board rejected a further request for a residence permit. On 5 May 1993 the Police Authority of Sundsvall ordered the applicant's detention with a view to enforcing the expulsion order. On 6 May 1993 a regional daily newspaper in Sundsvall published an interview with the applicant in which she spoke about her conversion. On 14 May 1993 the National Immigration Board decided to stay the enforcement of the expulsion, but upheld the detention order, as there were reasons to believe that the applicant would go into hiding.

On 7 July 1993 the applicant lodged a further request for asylum, referring to her statements, which were broadcast over two local radio stations in Gothenburg and Stockholm, openly critisising the Iranian Government and, in the second interview, describing her conversion. The examination of this request has been suspended pending the outcome of the Commission's examination of the present application.

On 23 July 1993 the applicant's detention was revoked by the National Immigration Board.

The applicant has submitted an opinion of 27 August 1993 by Mr. Jan Hjärpe, a professor at the University of Lund specialising in Islam. Mr. Hjärpe states that apostasy is regarded as an offence equivalent to high treason against the Iranian State, Iran being based

on Islam. Should a convert preach about his new religion or criticise Islam, special rules apply and the person could face the death penalty.

It appears from the applicant's statement to the Aliens' Appeals Board that she has not told her family about her conversion, not even her sister in Sweden, as the applicant has considered the spreading of this information to be dangerous. However, she has told her friends about it.

Relevant domestic law

Under Chapter 2, Section 5, subsection 3, of the Aliens Act a request for a residence permit lodged by an alien, who is to be refused entry or expelled by a decision which has acquired legal force, may only be granted provided the request is based on new circumstances and the applicant is either entitled to asylum or there are weighty humanitarian reasons for allowing him to stay in Sweden.

Under Chapter 3, Section 1, an alien may be granted asylum because he is a refugee or, without being a refugee, if he wishes not to return to his home country because of the political situation there and provided he can put forward weighty reasons in support of his wish. The term "refugee" refers to an alien who is staying outside the country of which he is a citizen because he feels a well-founded fear of being persecuted in that country, having regard to his race, nationality, membership of a special group in society or his religious or political convictions, and who cannot or does not wish to avail himself of his home country's protection (Chapter 3, Section 2).

An alien, as referred to in Chapter 3, Section 1, is entitled to asylum. Asylum may, however, be refused inter alia if, in the case of an alien falling under Chapter 3, Section 1, para. 3, there are special grounds for not granting asylum (Chapter 3, Section 4). An alien may be refused entry into Sweden if he lacks a visa, residence permit or other permit required for entry, residence or employment in Sweden (Chapter 4, Section 1, para. 2). When considering whether to refuse an alien entry or to expel him, it must be examined whether he, pursuant to Chapter 8, Sections 1-4, can be returned to a particular country or whether there are other special obstacles to the enforcement of such a decision (Chapter 4, Section 12). A refusal of entry issued by the National Board of Immigration may be combined with a prohibition on return for a specific period of time (Chapter 4, Section 14). In refusing entry the Government may also issue a prohibition on return for a specific period of time (Chapter 7, Section 5, subsection 2).

Under Chapter 7, Section 10, the National Board of Immigration may review its decision if new circumstances have emerged or for any other reason, provided it would not affect the alien negatively or be irrelevant to him. A review may take place even if an appeal has been lodged against the Board's decision. Once the Board has handed over the file to the Government it may only review its decision if its opinion is requested by the Government. The National Board of Immigration may, for special reasons, refer a request for asylum to the Government together with its opinion in the matter (Chapter 7, Section 11).

An alien who has been refused entry or who is to be expelled may never be conveyed to a country where there is firm reason to believe that he would be in danger of being subjected to capital or corporal punishment or torture, or to a country where he is not protected from being sent to a country where he would be in such danger (Chapter 8, Section 1).

When a refusal of entry or an expulsion order is put into effect, the alien may not be sent to a country where he would risk being persecuted, or to a country where he would not be protected from being sent on to a country where he would risk being persecuted (Chapter 8, Section 2, subsection 1). An alien may, however, be sent to such a

country if he cannot be sent to any other and if he has shown, by committing a particular offence, that public order and safety would be seriously endangered by his being allowed to remain in Sweden. However, this does not apply if the threatened persecution in the receiving state implies danger to his life or is otherwise of a particularly grave nature. Similarly, the alien may be sent to a country referred to in subsection 1 if he has engaged in activities endangering the national security of Sweden and if there is reason to suppose that he would continue to engage in such activities in Sweden and he cannot be sent to any other country (subsection 2).

If the enforcement is not subject to any obstacles under, inter alia, Chapter 8, Sections 1 and 2, an alien who has been refused entry or who is to be expelled is to be sent to his country of origin or, if possible, to the country from which he came to Sweden. If the decision cannot be put into effect in the manner indicated in subsection 1, or there are other special grounds for doing so, the alien may be sent to some other country instead (Chapter 8, Section 5).

When considering a request for a residence permit lodged by an alien to be expelled according to a decision which has acquired legal force, the National Board of Immigration (and in certain cases the Government too) may stay execution of that decision. For particular reasons, the Board may also otherwise stay execution (Chapter 8, Section 10).

If the enforcing authority finds that enforcement cannot be carried out or that further information is needed, the authority is to notify the National Board of Immigration accordingly. In such a case, the Board may decide on the question of enforcement or take such other measures as are necessary (Chapter 8, Section 13).

COMPLAINTS

The applicant complains that her expulsion to Iran would violate Article 3 of the Convention. She claims that she risks persecution, if not execution, on account of her own, as well as her father's, political activities in the Mujahedin movement. She further refers to her conversion and alleges that Muslims who have converted to the Christian faith no longer enjoy the protection of the law in Iran and may be killed there.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 5 May 1993 and registered on 6 May 1993. On 6 May 1993 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on its admissibility and merits. The Commission further decided, pursuant to Rule 36 of its Rules of Procedure, that it was desirable in the interests of the parties and the proper conduct of the proceedings not to return the applicant to Iran until 9 July 1993.

The Government's observations were submitted on 4 June 1993, to which the applicant replied on 8 July 1993.

On 9 July 1993 the Commission decided to prolong its indication under Rule 36 until 10 September 1993.

THE LAW

The applicant complains that, if returned to Iran, she risks persecution and even execution in view of her political activities there and her conversion to Christianity. 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 Government contend that the applicant's request for a residence permit on the basis of her statements in the media has not yet been examined by the National Immigration Board. Accordingly, domestic remedies have not been exhausted. However, regardless of this, the application is, in any event, manifestly ill-founded, as the applicant is not wanted by the Iranian authorities and no substantial

grounds have been shown for believing that she would be subjected to treatment contrary to Article 3 (Art. 3) of the Convention if returned to Iran.

The Government state that they are aware of the substantial risks run by Mujahedin activists of being ill-treated and executed if arrested in Iran. The applicant's father, however, left Iran for Iraq more than five years before she did. She can therefore scarcely be considered a political refugee on account of his activities. There is no indication that the applicant tried to leave Iran during those five years, although it is well known that many members of the Mujahedin have fled to Iraq in order to continue their struggle against the Iranian Government.

As far the applicant's own purported membership of the Mujahedin is concerned, the Government consider her account unsubstantiated. The same conclusion was reached by the Aliens' Appeals Board after having heard her in person. Her credibility is questionable given, for example, her admission that her first account of her journey to Sweden was false, and given her subsequent refusal to reveal how she entered Sweden. The alleged arrest following her violation of the Muslim dress code and her possession of forbidden literature are also not credible. Such conduct by a member of the Mujahedin is highly unlikely. Moreover, her account of the events in connection with that arrest has not been consistent. For instance, she has not explained why, if she was suspected of being a member of the Mujahedin, she was released from detention.

The Government stress that the applicant's lack of credibility as regards her background in Iran also affects her purported conversion to the Christian faith. Admittedly, a convert from Islam might be severely punished if the authorities are informed about the conversion. However, the Government have been informed that, if the convert explains that the conversion took place for non-religious reasons, e.g. in order to obtain a residence permit, and if he or she converts back to Islam, no penalty might be imposed. Moreover, an increasing number of Iranian asylum seekers in Sweden are converting to the Christian faith.

The Government finally point out that Chapter 8, Section 1, of the Aliens Act, regarding the enforcement of an expulsion order, reflects almost exactly the principles outlined by the European Court of Human Rights when applying Article 3 (Art. 3) of the Convention to expulsion or extradition cases.

The applicant contends that her father's activities in Iraq are known to the Iranian authorities. When arrested she was questioned about those activities. As to her own arrest, she believes it to have taken place partly because of her conduct in public and partly because of her suspected collaboration with the Mujahedin. She was released in the absence of evidence.

Concerning her conversion, the applicant states that she is determined to stay a Christian and that her conversion has been deemed

credible by her priest. Moreover, she has twice been interviewed on Swedish radio. In this context she has spoken about her political background and her conversion. In a newspaper interview she has further stated that she hates Islam. She has lodged a new request for a residence permit referring to these new circumstances.

The Commission considers that it is not necessary to examine whether or not the applicant has exhausted domestic remedies in accordance with Article 26 (Art. 26) of the Convention since the application is, in any event, inadmissible for the reasons set out below.

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).

The Commission shares the Government's considerable doubts as to the credibility of the applicant's story. The Commission notes, in particular, that following her father's escape from an Iranian prison the applicant continued to live in Iran. Moreover, she has not told her own family about her conversion to the Christian faith, not even her sister in Sweden.

The Commission also attaches 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 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 was 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; No. 20981/93, P. v. Sweden, Dec. 8.4.93, unpublished).

The Commission observes, in particular, that Chapter 8, Section 1, of the Aliens Act also imposes an absolute obligation on the enforcement authority in Sweden to refrain from expelling an alien should the human rights situation in the receiving country constitute a firm reason to believe that he would be in danger of being subjected to capital or corporal punishment, or torture, in that country.

The Commission concludes, on the evidence before it concerning the applicant's background and the general situation in Iran, that it has not been established that there are substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention if returned to Iran.

It follows that the application must 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.

Deputy Secretary to the Commission	President of the Commission
(M. de SALVIA)	(C.A. NORGAARD)