AS TO THE ADMISSIBILITY OF

Application No. 20981/92
by M.P.G.
against Sweden

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

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI

Mr. H.C. KRÜGER, 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 17 October 1992 by M.P.G. against Sweden and registered on 20 November 1992 under file No. 20981/92;

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 1 February and 16 March 1993 and the applicant's observations in reply submitted on 24 February 1993;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Iranian citizen born in 1960 and currently resident in Sweden. Before the Commission he is represented by Mr. Hans Östberg, a lawyer practising in Falun.

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

Particular circumstances of the case

In 1979 and 1980 the applicant was an active member of the resistance movement Mujahedin. He distributed leaflets and magazines in Teheran. In 1980 he was detained and tortured. In May 1980 he was released by the Central Revolutionary Court upon signing a declaration

in which he renounced cooperation with "the profane and terrorist groups". He was, however, prohibited from leaving his place of residence.

Until the spring of 1988 he worked as an "ordinary member" of Mujahedin. However, during its military offensive and up to his escape from Iran he again worked actively and openly for Mujahedin.

In July 1989 the activities of the group in which the applicant and his brother were working were revealed and two members of the group arrested. The applicant and his brother then went into hiding.

In October 1989 the applicant and his brother were allegedly twice sought by members of the Iranian Revolutionary Army in the home of their parents.

The applicant and his brother left Iran and arrived in Sweden on 6 November 1989.

On 7 November 1989 the applicant applied for asylum.

The applicant's wife and children are still in Iran.

In 1990 the applicant's wife allegedly received the following notification from the Religious Court of the County of Teheran:

(translation submitted by the applicant)

" ... You shall report, at the latest on 31 December 1990, to interrogation section I at Gsargatan.

Concerning [your] marriage with [the applicant], depraved on earth the court has on 18 November 1990 decided, in accordance with Islamic law, that it is forbidden to have contact with or get married to a member of Monafegh (Mujahedin).

All contact with [the applicant] is contrary to Islamic law and is considered as having illicit sexual relations.

..., interrogator."

On 22 January 1991 the National Immigration Board (statens invandrarverk) refused the applicant asylum in Sweden. The Board stated, inter alia:

(translation from Swedish)

"...
Having regard to all the reasons invoked by [the applicant] in support of his asylum request the Board does not consider it credible that his political activities [in Iran] have been of the alleged extent. There is no reason for granting [him] asylum under Chapter 3, Section 1 of the [1989] Aliens Act (utlänningslag 1989:529).
..."

On the same day the applicant's brother was, for similar reasons, also refused asylum.

In a medical report of 9 April 1991 submitted by Dr. J.E. the following was stated:

(translation from Swedish)

"... [The applicant] was born in Iran, where he has been sympathising with the Mujahedin movement. [He] states that

in 1980 he was detained for 52 days in [the prison of] Evin. During [his] detention he was [allegedly] ill-treated as follows:

- for periods of 5-6 hours his hands were chained together behind his back; one arm was placed over the same shoulder and chained to the other arm ... In this position he was suspended from the ceiling on a chain;
- while he was so suspended he was ... kicked, beaten and burned in several places by cigarettes;
- his teeth were knocked out;
- on some occasions he received strong kicks on the lower part of his legs so that they broke.

...

[The applicant] looks older than he is. Through an interpreter he gives a quiet and seemingly credible account [of his ill-treatment].

His body shows several small scars which may originate from the above-mentioned [cigarette burns].

Both hands and, in particular, his right hand, show curved scars which very likely originate from the above-mentioned chains.

In sum, [the applicant] has been ill-treated during his detention in Iran. ... I conclude

- that his account ... is not contradicted by the examination findings;
- that [his] account is ... compatible with the examination findings.

..."

On 24 May 1991 the National Immigration Board upheld its previous decision and referred the applicant's appeal to the Government.

On 11 September 1991 the applicant stated that he had recently participated in certain Mujahedin activities in Sweden such as a demonstration.

Following the creation of the Aliens' Board (utlänningsnämnden) the Government on 16 January 1992 referred the applicant's appeal to the Board.

In a psychiatric opinion of 25 March 1992 the following was stated:

(translation from Swedish)

[The applicant] ... first came in contact with [the Psychiatric Clinic at the County Hospital in Gävle] on 18 January 1992, as some time ago he had begun to suffer from depression, loss of zest for life, insomnia, concentration difficulties, loss of appetite and chilliness. A reactive depression was then found due to the fact that he had been staying in Sweden since 1989 and had not yet received a residence permit or any final decision regarding his fate. On 18 January [1992] [he] stated that he had begun to contemplate suicide. He was then placed under observation, received medical treatment and [psychiatric therapy] and was released on 19 January [1992]. [He] was sent back to us ... after having tried to commit suicide by means of pills. [He stated] that his wife and children are still in Iran and that his depression had deepened. ... He had contemplated suicide more and more

> often. ... As from 13 March [1992] [he] is staying at ... the Psychiatric Clinic. Neither a depression nor desperate impulsive acts can be excluded. ..."

This opinion was attached to the applicant's appeal to the Aliens Board together with photographs confirming his political activities in Sweden.

On 2 April 1992 the Aliens Board rejected the appeal, stating the following:

> "The [Aliens] Board shares the opinion of the National Immigration Board that [the applicant's] assertion that he runs a risk of persecution in his home country lacks credibility. [The applicant] is not to be considered a refugee under Chapter 3, Section 2 of the Aliens Act. Neither are such circumstances at hand as prescribed in Chapter 3, Section 1, para. 3 ...
> It appears from the investigation that [the applicant's] wife and underaged children remain in [Iran]. His connection with [Iran] is, thus, of such a character that special reasons are at hand for not granting a residence permit under [the 1991 Aliens Ordinance (förordning 1991: 1999 om upphållstillstånd i vissa utlänningsärenden)].
> ...
> The humanitarian reasons invoked are not of such a character as to warrant the granting of a residence permit...
>
> Neither are there any reasons for allowing him to stay ..."

No appeal lay against the Aliens Board's decision.

One member of the Board found that the applicant's connection with Iran was not of such a strength as to warrant the refusal of a residence permit. He noted that on the same day the Board had allowed the applicant's brother to stay in Sweden in the absence of any special reasons speaking against granting a residence permit.

On 14 April 1992 the Supreme Administrative Court (Regeringsrätten) rejected the applicant's request for a re-opening of the proceedings.

On 12 June 1992 the National Immigration Board rejected a further request for a residence permit and suspension of the expulsion order on the ground that the new evidence submitted was not sufficient for the granting of asylum or a residence permit. No appeal lay against this decision.

On 11 November 1992 the National Immigration Board rejected, on grounds similar to those in its decision of 12 June 1992, a further request by the applicant for a residence permit. No appeal lay against this decision.

In support of the last-mentioned request the applicant had submitted a copy of a summons allegedly issued by the Central Office of the Islamic Prosecutor on 7 June 1992, in which the applicant had been summoned to appear at an interrogation section on 26 June 1992.

The Government submit that on 11 August 1992 the National Immigration Board decided to suspend the execution of the expulsion order and to have the authenticity of the summons verified. The investigation concluded that the document was a falsification.

From the summer of 1990 to the summer of 1991 the applicant participated in manifestations organised by the Swedish Mujahedin

movement. Fearing, however, that he had been photographed by an Iranian agent he subsequently stopped supporting Mujahedin activities in the open.

Relevant domestic law

Under Chapter 3, Section 1 of the Aliens Act, an alien may be granted asylum because he is a refugee (no. 1) 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 (no. 3).

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, belonging to 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, no. 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, no. 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, too, may 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. If the Board has handed over the file to the Government it may only review its decision, provided 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 on 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, nor 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 expulsion order is put into effect, the alien may not be sent to a country where he would risk being persecuted, nor 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 a country as referred to in subsection 1 if he cannot be sent to any other

country and if he has shown, by committing a particularly serious offence, that public order and safety would be seriously endangered by his being allowed to remain in Sweden. This does not apply if the persecution threatening him in the other country 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 also the Government) 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).

Under the 1991 Ordinance on Residence Permits in Certain Cases (förordning 1991:1999 om uppehållstillstånd i vissa utlänningsärenden) an alien who has been staying in Sweden for more than eighteen months on 1 January 1992 may be granted a residence permit unless there are special reasons for not granting such a permit. The Ordinance entered into force on 1 February 1992.

COMPLAINT

The applicant alleges that, if returned to Iran, he will be subjected to torture or capital punishment. He refers to his activities within the Mujahedin movement, his previous detention and torture, the annulment of his marriage allegedly only possible if a person is considered an enemy to the Iranian State, and the summons issued by the Islamic Prosecutor in June 1992. He invokes Article 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 October 1992 and registered on 20 November 1992.

On 20 November 1992 the President of the Commission decided, pursuant to Rule 36 of the Commission's Rules of Procedure, that it was desirable in the interest of the parties and the proper conduct of the proceedings not to return the applicant to Iran until the Commission had had an opportunity to examine the application.

The President further decided, pursuant to Rule 34 para. 3 and Rule 48 para. 2(b), to bring the application to the notice of the respondent Government and to invite them to submit written observations on its admissibility and merits.

On 2 December 1992 the President granted an extension of the

Government's time limit for submitting their observations.

On 11 December 1992 the Commission prolonged the President's indication under Rule 36 until 15 January 1993.

On 15 January 1993 the Commission prolonged its indication under Rule 36 until 19 February 1993.

The Government's observations were submitted on 1 February 1993.

On 19 February 1993 the Commission prolonged its indication under Rule 36 until 8 April 1993.

On 19 February 1993 the Commission granted the applicant legal aid.

The applicant's observations in reply were submitted on 24 February 1993.

THE LAW

The applicant complains that, if returned to Iran, he will be subjected to torture or capital punishment. He invokes Article 3 (Art. 3) of the Convention, which reads:

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

The Government argue that the application is manifestly ill-founded, as there are no substantial grounds for believing that the applicant would face a real risk of treatment contrary to Article 3 (Art. 3) upon his return. The applicant had not substantiated his allegation that he was wanted by Iranian authorities. The Government question whether the applicant was really sought by the Iranian authorities, as he managed to live for some time in his sister's house. The applicant had further made contradicting statements about his arrest in 1980. At first he had stated having been arrested in the street while distributing leaflets for Mujahedin. In a subsequent interview with immigration officials he had stated having been arrested in his home. Moreover, on the first occasion he stated having broken off his contacts with Mujahedin following the banning of the movement. Yet subsequently he had stated having stopped working for Mujahedin for private reasons. The Government have further concluded that the summons allegedly issued by an Islamic Prosecutor is a falsification.

The Government further submit that the applicant's knowledge of Mujahedin seems rather limited. As regards the details of the applicant's journey from Iran to Sweden a number of elements raised doubts as to the credibility of his account. The applicant allegedly managed to travel by bus via a number of big cities without his identity ever having been checked. The system for searching for wanted persons in Iran is, however, known to be quite efficient. He allegedly managed to fly from Dubai holding a Saudi-Arabian passport, but without a boarding card or even a flight ticket. No security control was allegedly carried out, not even of the applicant's luggage. Subsequently he had difficulties remembering the name of the airline. In the Government's view it could be questioned whether the applicant really departed from Dubai.

The Government refute the applicant's statement to the Swedish authorities that he did not have to present his passport upon arrival in Copenhagen. This contradicts the routines at the airport, where also Swedish police take part in passport controls. His assertion that he passed the passport control at Arlanda airport in Stockholm seemed even less credible.

The Government point out that there was no reason for the applicant not to apply for asylum immediately upon his alleged arrival on 6 November 1990 instead of on the following day.

The Government state that they have not been faced with any evidence of ill-treatment of Iranians who have returned to their country. Many Iranian asylum seekers travel to and from their country without any problems. More and more Iranians are, however, leaving their country for economic and not for political reasons.

The Government emphasise that in 1991 1.266 and in 1992 743 Iranians applied for asylum in Sweden. About 47 per cent of the applications were rejected by the National Immigration Board in 1992. However, 1.129 Iranians were granted residence permits. Out of these 124 were considered to be political refugees within the meaning of Chapter 3, Section 2 of the Aliens Act, while 311 were granted de facto refugee status within the meaning of Chapter 3, Section 1, no 3. 693 Iranians were granted residence permits on humanitarian grounds.

The Government finally point out that Chapter 8, Section 1 of the Aliens Act reflects almost exactly the principles established in the case-law of the European Court of Human Rights. The final decision in the present case was made by the newly established Aliens Board, which is independent from the Government. Both the applicant and his brother were refused asylum in view of the information submitted by them, which was found to lack credibility. Although the applicant's brother was also refused asylum, he was allowed to stay in Sweden in accordance with the 1991 Ordinance, the authorities having found no special reason speaking against granting him a residence permit. In the applicant's case, however, the fact that his wife and children remain in Iran, was seen as such a reason.

The applicant maintains that when arriving in Sweden he handed over his identity booklet to the National Immigration Board. It appears from this booklet that he has not performed his military service. A person who has such a booklet cannot have a passport, as the booklet is exchanged for the passport. A person suspected of banned political activities cannot exchange his booklet for a passport. An identity booklet is in itself strong evidence of his position and activities in Iran. The fact that he possesses an identity booklet proves that he does not have normal civil and political rights in Iran. The information showing that his marriage has been annulled proves that the Iranian State views him as an enemy of the State. It is known that Iran is violating human rights in its treatment of dissidents.

The applicant further submits that in 1992 the Swedish Government expelled an Iranian, who was immediately arrested at the airport in Teheran and has not been heard of since. Mujahedin requested the Swedish Government to intervene. The Swedish Prime Minister demanded that the man be released so that he could be received in Sweden. This demand seems to have been in vain.

The Government maintain that the fact that the applicant was in possession of an identity booklet when arriving in Sweden does not prove whether or not he has held a valid passport. When a passport is issued to an Iranian, the identity booklet is returned to him, as it may be needed in other contacts with authorities. Many Iranian asylum seekers have arrived in Sweden in possession of both a passport and an identity booklet.

The Government further state that they are unaware of the case of the Iranian expelled from Sweden in 1992 referred to by the applicant. The Swedish Prime Minister has never interfered in an individual asylum case in the manner alleged. In a case which came to the Government's knowledge in 1992 it was alleged that an asylum seeker who had returned to Iran had been arrested. The information proved to be wrong and the person was found living in good conditions. Although

it is not unusual for Iranians returning after a long stay abroad to be interrogated by the police, they are usually released afterwards.

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 of an asylum seeker may give rise to an issue under Article 3 (Art. 3) of the Convention, and hence engage the responsibility of a Contracting 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., p. 34, para. 103). A mere possibility of ill-treatment is not in itself sufficient in this context (ibid., p. 37, para. 111).

The Commission shares the Government's considerable doubts in regard to the applicant's story. The applicant has not commented on the Government's assertion that the summons allegedly issued by an Islamic Prosecutor is a falsification. The Commission finds that on the whole the applicant's account of his background in Iran and escape to Sweden contains inconsistencies.

The Commission also attaches importance to the fact that the Swedish authorities appear to have gained a 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. Moreover, it should be noted that the authorities are obliged to consider basically the same factors as are relevant to the Convention organs' assessment under Article 3 (Art. 3) of the Convention. The applicant's expulsion was made after careful examination of his case (cf. Eur. Court H.R., Cruz Varas and Others judgment of 20 March 1991, Series A no. 201, p. 31, para. 81).

The Commission in particular observes that Chapter 8, Section 1 of the Aliens Act imposes an absolute obligation also on the enforcing authority in Sweden to refrain from expelling an alien, should the evolution of the human rights situation in the receiving country constitute 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 that the evidence before it concerning the applicant's background and the general situation in Iran does not establish 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 there.

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.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NORGAARD)