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. 64599/01
by Ali Reza RAZAGHI
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 11 March 2003 as a Chamber composed of

Mr M. PELLONPÄÄ, *President*,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Ms F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 11 January 2001,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

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

The applicant, Ali Reza Razaghi, is an Iranian national, who was born in 1974. He is represented before the Court by Ms E. Haddadi, a lawyer practising in Sundbyberg. The respondent Government are represented by Ms E. Jagander, Ministry for Foreign Affairs.

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

On 30 November 1998 the applicant applied for asylum in Sweden. He claimed that he had arrived in Sweden the same day. Being interviewed by the Swedish authorities on that day and on 12 January 1999, the applicant stated mainly that he was persecuted by the Iranian authorities, as he had had a relationship with a married woman whose husband was a *mullah*. He believed that two or three persons had seen them having sexual intercourse. He had been warned by a friend that the *mullah* and his followers were going to apprehend him, so he decided to leave his home town. During the following week he was told that a court had decided to close the shop he owned together with his brother and that a warrant for his arrest had been issued. He also believed that he and the woman had been sentenced to death by stoning. He therefore decided to flee from Iran and travelled with the help of smugglers via Dubai, the Netherlands and another, unknown, country to Sweden.

On 14 April 1999 the National Immigration Board (*Statens invandrarverk*) rejected the application and ordered that the applicant be expelled to Iran. The Board did not find his allegations plausible, as it was deemed unlikely that a woman married to a *mullah* would have a relationship with another man. It also noted that the evidence requirements in cases of adultery were very high in Iran. The Board also found it remarkable that the applicant had not submitted any identification papers or evidence of his travel route to Sweden.

The applicant appealed against the decision and stated that, despite the rules on evidence concerning adultery, he could still be convicted on less evidence for having offended public morals and be sentenced to 99 lashes. He also mentioned that he had converted to Christianity on 7 February 1999, for which he could be sentenced to death in Iran. He submitted a certificate of baptism from the congregation of Sion in Flen and an article from a religious periodical which stated that the applicant had converted and showed a picture of him. The article also stated that the applicant's conversion had occurred as part of a "revelation campaign" staged by the congregation during which two bus loads of aliens had been picked up by the congregation's bus at the reception centre for asylum seekers in Flen.

On 13 November 2000 the Aliens Appeals Board (*Utlänningsnämnden*) rejected the appeal. It noted that the applicant had not produced any evidence showing that he had had the above-mentioned relationship or that he would be subjected to inhuman treatment on account of it. In regard to his conversion, the Board stated that conversion to Christianity is regarded by the Iranian authorities as a "technical" step to acquire asylum. As long as the Christian faith is handled discreetly as a personal matter by the person concerned – i.e. without making Christian propaganda or otherwise behaving "provocatively" – there is generally no risk that he would attract the interest of the Iranian authorities.

On 14 December 2000 the applicant lodged a new application for a residence permit with the Aliens Appeals Board. He made submissions to the Board in December 2000 and January 2001 and requested that the enforcement of the expulsion order be stayed. These requests were apparently rejected. In his new submissions, the applicant claimed that he did not have an Iranian passport and that, if returned without a passport, he would be sentenced to imprisonment for 1-2 years. He also stated that he would rather commit suicide than return to Iran. He attached a medical certificate dated 5 January 2001 from Mr Lars Odefors and Mr Nahid Mohseni, qualified psychologists, who stated that the applicant showed signs of desperation and expressed suicide thoughts which should be taken seriously and that the applicant was in need of qualified treatment in a psychiatric ward.

The applicant also submitted a statement of 9 January 2001 by the Swedish section of Amnesty International. According to this document, an unmarried adulterer may, under Iranian law, be sentenced to 100 lashes. A married person could be executed, however. There were several reports of executions of adulterers. Adultery is proven by four male witnesses or by three male and two female witnesses. In regard to religious conversion, Amnesty referred to statements by Iranian officials that conversion was not a crime in Iran unless the persons concerned take part in activities against Islam and the Islamic Republic of Iran. Amnesty concluded, however, that the practical legal situation with regard to conversion was unclear and contradictory.

Furthermore, in support of his new application, the applicant invoked two Iranian documents which he submitted to the Appeals Board. The first one, drawn up on 5 May 1998 (according to the applicant's calculation) or 15 June 1998 (according to the respondent Government's calculation), is purportedly a notice to appear before an Iranian court on 23 January 1999 to answer to charges of *zenâ*, or adultery. Issued by the court, it states that if the applicant would fail to attend the hearing the court would issue a judgment *in absentia*. The second one, dated 15 November 1999, is similar in nature. According to this document, issued by the "public order police", the applicant was ordered to appear before the same court on

31 December 1999 (applicant's calculation) or 30 January 2000 (Government's calculation). The charges are specified in greater detail in that it is stated that a named person had reported the applicant as having committed adultery with (applicant's translation) or raped (Government's translation) that person's wife. Furthermore, it is mentioned that the applicant's failure to appear before the court would be considered as a tacit confession to the charges against him.

On 16 January 2001, following the Court's indication under Rule 39 of the Rules of Court, the National Migration Board (*Migrationsverket*; previously the National Immigration Board) stayed the execution of the expulsion order.

Apparently, the new asylum application is still pending before the Aliens Appeals Board.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he risks torture upon return to Iran on account of his relationship with a married woman in that he might be sentenced to be lashed for having offended public morals. He also risks torture and the death penalty for his conversion to Christianity. By claiming that he might be sentenced to death, his complaints raise issues under Article 2 of the Convention and Article 1 of Protocol No. 6 to the Convention as well. He further maintains, under Article 6 of the Convention, that the criminal charges against him would not be determined in a fair trial in Iran. Finally, he asserts that the risk of punishment for his conversion to Christianity involves a violation of his freedom of religion under Article 9 of the Convention.

THE LAW

A. Articles 2 and 3 of the Convention and Article 1 of Protocol No. 6 to the Convention

The applicant's claims that, upon return to Iran, he risks torture on account of his relationship with a married woman and torture and the death penalty on account of his conversion to Christianity. This complaint raises issues under Articles 2 and 3 of the Convention and Article 1 of Protocol No. 6 to the Convention. These provisions read as follows:

Article 2:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3:

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

Article 1 of Protocol No. 6:

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

1. Exhaustion of domestic remedies

The respondent Government contend that the applicant has not exhausted domestic remedies. They argue that a new application was lodged with the Aliens Appeals Board on 14 December 2000 and that that application is still pending. In his new application, the applicant has referred, *inter alia*, to the medical certificate issued on 5 January 2001. Neither this certificate nor the applicant's health problems has been assessed during the National Immigration Board's and the Aliens Appeals Board's examination of his original application. Nor have the authorities examined his new claim that he would risk imprisonment on account of not possessing an Iranian passport. Furthermore, although the applicant did assert in his original application that he feared corporal punishment for his relationship with a married woman, the two notices to appear before an Iranian court to answer to charges in this respect were submitted as evidence only after the lodging of the new application. In this connection, the Government point out that the Aliens Appeals Board rejected the original application in this regard mainly due to the fact that the applicant had submitted no evidence to support his statements. The Government therefore contend that domestic remedies have not been exhausted until the Appeals Board has decided on the applicant's new application.

The applicant contends that he has submitted all available evidence to the Aliens Appeals Board. The fact that the Board did not decide to stay his expulsion allegedly indicates that it did not find that evidence sufficient to grant him a residence permit. He claims that he has exhausted all possible domestic remedies.

The Court notes that the applicant's original application for asylum has been determined by the National Immigration Board and the Aliens Appeals Board and that, thus, in this respect the domestic remedies have been exhausted. It is true that, on 14 December 2000, the applicant lodged a new application with the Appeals Board in which he made new claims and submitted new evidence. This application is still pending before the Appeals Board. It should be noted firstly that, in his application to the Court, the applicant has not referred to the possibility that he will be sentenced to prison on account of his not possessing an Iranian passport. As the Court has not been called upon to determine this question, its domestic examination cannot impede the Court's examination of the case. However, although the applicant has not made an explicit reference to his mental health, he has provided the Court with a copy of the medical certificate of 5 January 2001. Furthermore, he has invoked two Iranian documents from 1998 and 1999, purportedly notices to appear before an Iranian court, in support of his contention that he will be subjected to treatment contrary to Article 3 of the Convention on account of a relationship with a married woman. Thus, before the Court the applicant has made a claim and submitted material evidence which have not been examined by the Swedish authorities, neither in a decision on the merits nor, apparently, as part of a decision on a request for a stay of expulsion. It may therefore be questioned whether the applicant has exhausted domestic remedies. The Court notes, however, that the applicant has done what is incumbent upon him under Article 35 § 1 of the Convention in order to exhaust domestic remedies. By submitting his new claim and the new evidence to the Aliens Appeals Board as part of his new application for a residence permit, he has given the domestic authorities the opportunity to examine the complaints lodged with the Court and to prevent or redress any possible violations of the Convention. Despite the fact that the new application was lodged more than two years ago, on 14 December 2000, and that the medical certificate and the Iranian documents were submitted shortly thereafter, the Aliens Appeals Board has not yet taken any decision. Having regard to information received in a recent case (*Ammari v. Sweden* (dec.), no. 60959/00, 22 October 2002, unreported), the Court finds it unlikely that such a decision will be taken as long as the present case is pending before the Court. In these particular circumstances, the Court finds that the new application lodged with the Aliens Appeals Board cannot be considered as an effective remedy in the applicant's case. For these reasons, the Court considers that the present

application should not be declared inadmissible for failure to exhaust domestic remedies.

2. Substance of the applicant's complaints

The Government submit that the application should be declared inadmissible as being manifestly ill-founded. They acknowledge that serious violations of human rights occur in Iran. However, it has to be established whether the applicant personally faces a real risk of treatment contrary to the relevant provisions of the Convention and Protocol No. 6. In examining this question, the applicant's credibility is of vital importance. The Government refer to the conclusions drawn by the National Immigration Board, which was in a very good position to assess his credibility after having interviewed him for three hours. Thus, the Government do not consider it likely that a woman would engage in a relationship in the way it has been described by the applicant, especially in view of her position and the alleged risk of severe punishment. They also challenge the plausibility of the applicant's claim that witnesses had observed their having intercourse, a statement made only after he had been specifically asked whether there had been any witnesses or if anybody knew about the relationship.

The Government also contend that the rules on evidence are such that the applicant cannot be convicted for *zenâ*, or adultery, under the set of rules in the Iranian penal law called *hodûd*, which otherwise prescribe as penalty for such a crime death by stoning for a married offender and flogging for an unmarried offender. Acknowleding that a person may be convicted of "immoral behaviour" or "improper relationship" and sentenced to corporal punishment under the set of rules called *tazirât*, the Government, however, state that *zenâ* does not exist as a designation of a crime under *tazirât*.

Moreover, the Government dispute the authenticity of the two Iranian documents, stating that the 1998 notice does not indicate which court is handling the case and that the 1999 notice has purportedly been issued by the "public order police" although the correct Iranian terminology is the "public order forces". According to the Government, under Iranian law both notices should have been issued by the same court. They further allege that the person reporting a crime is never indicated in a notice to appear before a court and that an Iranian court cannot determine a criminal case of the present type in a manner as arbitrarily as allegedly indicated by the second notice. Furthermore, they question why the applicant submitted the two documents only after his original asylum request had been finally rejected by the Aliens Appeals Board in November 2000. In this connection, they point out that the applicant has not provided any information on what happened at the alleged hearing in December 1999 or January 2000, whether any further hearings have been scheduled or whether he has been convicted and sentenced, although such information is of vital importance to

the present case. The Government contend that this points to the conclusion that the two summonses are not authentic and question whether the alleged court case in Iran does in fact exist.

As to the applicant's conversion, the Government agree with the reasons given by the Aliens Appeals Board. Acknowledging that a person who has converted from Islam shall be sentenced for apostasy to death under the *hodûd* rules, they state that, nevertheless, in practice a convert does not generally run any risk of being subjected to interventions by the authorities or other harassment.

The applicant acknowledges that, due to the rules on evidence, he does not risk the death penalty for his relationship with a married woman, nor is it likely that he will be flogged for adultery. However, he faces the prospect of being sentenced to 99 lashes for having offended public morals, a frequently occurring penalty in Iran.

In regard to the Iranian documents, the applicant submits that there is only one authority in Iran in charge of law and order and that is the *nirue entezami* which issued the 1999 notice; whether in English this is called "police" or "force" is simply a question of translation. He further asserts that the naming of the person reporting a crime and the statement that failure to appear is considered as a tacit confession were common practices at the time when the notices were written. He points out that both notices designate the premises of the court as *Modjame Ghazai* (judicial district) *Abivardi*, building no. 1, room no. 24.

The applicant also contends that he has a well-founded fear of persecution on account of his conversion to Christianity. It is allegedly impossible to foresee the actions of the Iranian authorities in this respect.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Articles 6 and 9 of the Convention

The applicant complains that he would not have a fair trial in accordance with Article 6 of the Convention in Iran and that the risk of punishment for conversion involves a violation of his freedom of religion under Article 9 of the Convention. These provisions provide, in so far as relevant, the following:

Article 6 § 1:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

Article 9:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Court notes firstly that the applicant has not claimed that his rights under Articles 6 and 9 of the Convention have been violated in Sweden. The issue raised by these complaints is thus whether the expulsion of the applicant to Iran could give rise to the responsibility of the Swedish Government under these provisions for treatment to which the applicant might be subjected in Iran.

The Court does not exclude that an issue might exceptionally be raised under Article 6 by an expulsion decision in circumstances where the person being expelled has suffered or risks suffering a flagrant denial of a fair trial in the receiving country (see, *mutatis mutandis*, *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 45, § 113). However, the applicant's submissions do not disclose that he faces such a risk.

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

As regards the applicant's right to freedom of religion, the Court observes that, in so far as any alleged consequence in Iran of the applicant's conversion to Christianity attains the level of treatment prohibited by Article 3 of the Convention, it is dealt with under that provision. The Court considers that the applicant's expulsion cannot separately engage the Swedish Government's responsibility under Article 9 of the Convention.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint that his expulsion to Iran would involve a violation of his rights under Articles 2 and 3 of the Convention and Article 1 of Protocol No. 6 to the Convention;

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Matti PELLONPÄÄ
President