CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38088/97
by S.N.
against the Netherlands

The European Court of Human Rights (First Section) sitting on 4 May 1999 as a Chamber composed of

Mr J. Casadevall, *President*,
Mr L. Ferrari Bravo,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 11 February 1997 by S.N. against the Netherlands and registered on 8 October 1997 under file no. 38088/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Iranian national, born in Teheran in 1969 and, according to the most recent information contained in the file, living in the Netherlands.

He is represented before the Court by Ms C. Fedee-Dreessen, a lawyer attached to the 's-Hertogenbosch Foundation for Legal Assistance to Asylum Seekers (*Stichting Rechtsbijstand Asiel 's-Hertogenbosch*) based in Eindhoven.

The proceedings in question in the present case concern the applicant's application for recognition of his refugee status in the Netherlands.

The following is a summary of the proceedings:

The applicant entered the Netherlands on 2 October 1994 on a valid Iranian passport bearing his own name. A photocopy of the passport was made by the immigration authorities before it was handed back to the applicant. The applicant applied for recognition of his refugee status (or in the alternative, a residence permit on humanitarian grounds) the following day.

According to the report of the interrogation referred to in the following paragraph, the passport contained a Ukrainian visa.

The applicant was interrogated (*nader gehoor*) by an official of the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*) of the Ministry of Justice on 10 October 1994. No lawyer or other assistant was present. The applicant spoke his own language, Farsi, and was assisted by an interpreter.

The applicant stated that the Ukrainian visa had been arranged for him by an acquaintance called M. whose address he did not know. M. was an active member of the Mujahedin organisation, which is illegal in Iran, but the applicant was unable to state particulars on M.'s activities. After arriving at Amsterdam Airport the applicant had given his passport to an assistant of the person who had arranged his journey for him. He had not had to pay for his journey; M. had done that, apparently on the instructions of the Mujahedin.

None of the applicant's relatives – parents, siblings – had ever been in trouble with the Iranian authorities or with any organisations or groups in Iran. Neither had the applicant himself.

The applicant claimed to be a member of the Mujahedin but held no membership card. His activities in Iran had consisted of writing "code-like slogans" (*code-achtige leuzen*) on walls, on the instructions of one H. who was his contact with the party. He was unable to explain the meaning of these code-like slogans.

In addition, he had taken part in a demonstration in the town of Qazwin on 14 August 1994 aimed at obtaining provincial autonomy for that locality. This demonstration, in which 300 to 400 persons had participated, had been indirectly organised by the Mujahedin. It had resulted in the wrecking of a public building. The demonstration had been video taped. On 21 September 1994 the applicant's contact H. had failed to turn up for an appointment and on 24 September 1994 the applicant had gone into hiding.

The applicant had been warned by M. on 30 September 1994 that H. had been arrested and that his (the applicant's) life would be in danger if H. mentioned him to the authorities.

The applicant had been able to leave Iran on his own passport because M. had contacts who could influence the passport officials via the Mujahedin organisation. M. himself had come to Teheran airport to see the applicant off.

The applicant stated that he had nothing further on which to base his request for recognition of his refugee status. He feared that, if returned to Iran, he would be imprisoned and made to tell the authorities everything he knew about the Mujahedin, after which he would be executed.

The Mujahedin are an organisation outlawed in Iran. It follows a Communist ideology and is opposed to the present Iranian government.

On 26 October 1994 the Deputy Minister of Justice gave a decision refusing the applicant's applications. Firstly, he did not consider it credible that the applicant had ever been involved in the activities of the Mujahedin, given that he had never held a party card and was unable to explain the code-like slogans which he had allegedly written on walls. The applicant's participation in the demonstration in Qazwin on 14 August 1994 was in itself not decisive, in view, especially, of the large number of participants and the fact that the applicant was not among its leaders. Secondly, the applicant had been able to return to his home and remain there in perfect safety at least until 24 September; if the Iranian authorities had wanted to prosecute him they would presumably have arrested him immediately. Thirdly, the applicant had left Iran travelling under his own name and on a valid passport which was checked by the authorities at his departure. In view of these circumstances the applicant's application for recognition of his refugee status was manifestly ill-founded. Finally, no cogent reasons of a humanitarian nature to grant the applicant a residence permit had been suggested, nor were any such reasons apparent.

The applicant lodged an objection (*bezwaarschrift*) to the Deputy Minister against this decision. In so far as it was directed against the refusal of recognition of his refugee status, against which no objection was possible, the applicant's objection was transmitted to the Regional Court of The Hague to be dealt with on the basis that it constituted an appeal.

The applicant also applied directly to the President of the Regional Court of The Hague for an interim measure consisting of a decision preventing his expulsion pending the further proceedings.

A single-judge chamber of the Regional Court of The Hague, sitting in Haarlem, dealt with all three of the remedies instituted by the applicant – the objection against the refusal of a residence permit, the appeal against the refusal of recognition of his refugee status, and the application for an interim measure – together. A hearing was held on 19 September 1996. The applicant had not been expelled in the meanwhile.

The Regional Court gave a decision on 11 October 1996. It held that the applicant's story was not credible, and in so far as it was true, insufficient in any case to grant him recognition of his refugee status. The applicant was not able to provide any information at all about the Mujahedin – an organisation which, in any event, was active mostly outside Iran –, he had never even seen a party card and could not state whether other members had such a card or not, and he was unaware of the meaning of the slogans he had allegedly written on walls; on these grounds it was held unlikely that he had been a member of that organisation. Moreover, the slogans were allegedly intelligible only for a select group, and the applicant had never been arrested in connection with his activities. That H. might betray the applicant was no more than a supposition and had not been substantiated. In so far as the applicant's fears were based on his participation in the demonstration in Qazwin, it was noted that the applicant had not been able to substantiate his allegation that the authorities were aware of it, and he had moreover not found it necessary to flee until 2 October 1994. He had, moreover, been able to remain at his own home all that time. The objection, the appeal and the application for an interim measure were therefore all dismissed.

COMPLAINTS

The applicant complains under Article 1 of the Convention that the Netherlands have not secured to him the rights and freedoms defined in Section 1 of the Convention.

The applicant alleges that if he is expelled to Iran he will be in danger of treatment contrary to Article 3 of the Convention.

He further complains that the Regional Court misinterpreted the statements made by the applicant when he was interrogated by the Ministry of Justice official and so violated Article 6 of the Convention.

He also complains that the failure of Netherlands law to provide an appeal against the decision of the Regional Court constitutes discrimination of asylum seekers, contrary to Article 14 taken together with Article 6, given that such an appeal is possible in administrative cases not relating to requests for recognition of refugee status.

The applicant also invokes Articles 1 and 18 of the Convention.

THE LAW

Article 1 of the Convention provides as follows:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention."

Article 3 of the Convention provides as follows:

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

Article 6 of the Convention, in so far as it may be relevant, provides as follows:

"1. In the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. …
…"

Article 14 of the Convention provides as follows:

"The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 18 of the Convention provides as follows:

"The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

1. The applicant argues that he would face a real risk of being exposed to treatment contrary to Article 3 of the Convention if returned to Iran. This risk, in his contention, is borne out by the fact that his Mujahedin contact, H., was arrested on 21 September 1994 and might denounce him to the Iranian authorities.

The Court notes that the decisions of the Deputy Minister of Justice and the Regional Court were based on the finding that the applicant had not been able to substantiate his allegation that he had been a member of the Mujahedin at all. Even at the time of the Regional Court's hearing, some two years after he left Iran, he had not been able to provide any information about the activities of the Mujahedin; he had not been issued with, or even seen, a party card; he had not understood the meaning of the slogans which he claimed to have written on walls. Moreover, he had not been able to convince the Netherlands authorities that he was wanted in Iran in connection with the demonstration in Qawzin. The applicant has not contested any of these findings, which in fact are not even mentioned in his application. Seen in this light the applicant's allegation that he was in danger of being denounced by H. as a Mujahedin member is insufficient to convince the Court that his fears are well-founded. The applicant's complaint under Article 3 must therefore be dismissed as unsubstantiated.

2. The applicant argues that the Regional Court misinterpreted the applicant's statement that he only went into hiding after his Mujahedin contact, H., failed to turn up for an appointment and in so doing violated Article 6 of the Convention.

The Court is of the opinion that this complaint need not be discussed separately given its findings as regards the applicant's complaints under Article 3. Moreover, even if Article 6 should be held to apply to proceedings concerning the grant of residence permits and the expulsion of aliens, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, *mutatis mutandis*, the Garcia Ruiz v. Spain judgment of 21 January 1999, to be published in Decisions and Reports 1999, § 28). This complaint is therefore manifestly ill-founded.

3. The applicant alleges that the failure of Netherlands law to provide an appeal against a decision of the Regional Court upholding the refusal of recognition of refugee status constitutes discrimination against asylum seekers and is contrary to Article 14 of the Convention taken together with Article 6.

The Court notes that, even supposing that proceedings concerning the grant of residence permits and the expulsion of aliens were to come within the ambit of Article 6, that Article does not compel the Contracting States to set up courts of appeal or of cassation (see, as a recent authority, the K.D.B. v. the Netherlands judgment of 27 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 630, § 38). The only right to an appeal guaranteed under the Convention and its Protocols is the right to an appeal following conviction in criminal cases set out in Article 2 of Protocol No. 7, which protocol has in any case not been ratified by the Netherlands.

Moreover, in as much as a further appeal against a decision given on appeal by the Regional Court is not available under Netherlands law in any immigration case, the applicant's situation does not differ from that of other categories of persons (including Netherlands nationals) in an analogous situation – for example, Netherlands nationals seeking to contest a decision refusing a right of residence to a foreign relative (see the Ahmut v. the Netherlands judgment of 28 November 1996, *Reports* 1996-VI, pp. 2018 et seq.). It cannot therefore be found that there is a difference in treatment; it follows that there is no discrimination contrary to Article 14 either, and that this complaint is likewise manifestly ill-founded.

4. The applicant's complaint under Article 1 of the Convention is that the Netherlands failed to secure to him the rights and freedoms guaranteed under the first paragraph of the Convention.

In discussing the applicant's various complaints under Articles 3, 6 and 14 the Court has already found this not to be the case. There is no separate issue under Article 1.

5. The applicant also alleges a violation of Article 18 of the Convention. His argument is that the Commission – i.e., as of the entry into force of Protocol No. 11, the Court – cannot exclude persons who take proceedings in cases concerning the grant of residence permits from the protection of the Convention, as that would constitute "a clear fact of applying a restriction of the said rights and freedoms for another reason than those for which they have been prescribed".

Article 18 prohibits the misuse by Contracting States of the power granted them in certain circumstances to limit rights and freedoms. The Court confines itself to referring to its findings under Article 6 and noting that no such misuse is at issue in the present case.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Josep Casadevall
President