AS TO THE ADMISSIBILITY OF

Application No. 27794/95
by Farhad SADAGHI
against Sweden

The European Commission of Human Rights sitting in private on 14 October 1996, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

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 26 April 1995 by Farhad SADAGHI against Sweden and registered on 5 July 1995 under file No. 27794/95;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Iranian citizen born in 1960. He resides at Tabriz, Iran. Before the Commission he is represented by Mr. Ulf Rahmqvist, a lawyer practising at Uppsala, Sweden.

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

After having left Iran in 1978 the applicant lived in Turkey for six years. On 27 January 1984 he arrived in Sweden. On account of the political situation in Iran and the risk of him being called up for military service, the applicant was granted a temporary residence permit on 12 March 1984. On 12 April 1985 he was granted a permanent residence permit.

By judgment of the District Court (tingsrätten) of Uppsala of 26 October 1994, the applicant was convicted of several counts of drug offences committed in 1993 and 1994, including the purchase, use and sale of cannabis. He was also convicted for having handled stolen goods. He was sentenced to two years' imprisonment. The District Court did not, however, find sufficient reasons to order the applicant's expulsion.

At the District Court's hearing the public prosecutor requested that a witness, J, be heard in person. As J, however, failed to appear at the hearing, the prosecutor was allowed to refer to a statement made by J during the police investigation in regard to one of the drug charges brought against the applicant. J claimed to have bought drugs from the applicant. According to the District Court's judgment, the applicant admitted having assigned a certain quantity of drugs to J. His conviction for this offence was based on his own admission, J's statement and the other evidence in the case.

Both the applicant and the public prosecutor appealed to the Svea Court of Appeal (Svea hovrätt). The prosecutor called for the applicant's expulsion.

In an opinion submitted to the appellate court on 21 November 1994, the National Immigration Board (Statens invandrarverk) stated that the applicant was not considered as a refugee under the Aliens Act (Utlänningslagen, 1989:529). Moreover, although the Iranian authorities regard drug offences as serious crimes, the applicant would not, according to information available to the Board, risk to stand trial in Iran for the offences committed in Sweden. For these reasons, the Board concluded that there were no impediments to the applicant's expulsion.

On 28 December 1994 the Court of Appeal upheld the District Court's verdict but reduced the sentence to one year's imprisonment. With regard to the expulsion issue, the court recalled that, as the applicant had lived in Sweden for ten years, Chapter 4, Section 10 of the Aliens Act provided that he could be expelled only if there were special reasons. The court noted that the applicant had, in a previous relationship with a Swedish woman, a seven year old son with whom he had had only sporadic contacts. Furthermore, the applicant allegedly had no relatives in Iran and he suffered from a back injury for which he had been operated on in 1993. He had, however, been convicted six times, on five occasions for drug offences, and had been sentenced to prison on three occasions in 1990-1991. Moreover, he was unemployed and had abused drugs for many years. Thus, due to the applicant's continued criminal activities and disorderly life, the court found that there were special reasons to order his expulsion.

The applicant appealed to the Supreme Court (Högsta domstolen). He complained, inter alia, that he had not been able to put questions to J, as J had not appeared at the hearings in the District Court and the Court of Appeal. He stated that the purpose of the public prosecutor's request that J be heard in person was to prove that the applicant had sold about one gram of amphetamine to J. He admitted, however, that he had lent J about one gram of amphetamine on the relevant occasion.

On 24 February 1995 the Supreme Court refused the applicant leave to appeal.

On 20 April 1995 the Government rejected the applicant's request for the expulsion order to be revoked. It also rejected the applicant's petition for mercy.

On 6 May 1995 the applicant was released from prison and expelled to Iran.

The applicant's representative was in contact with the applicant on 31 August 1995 and 22 August 1996. The applicant stated, inter alia, that, upon arrival in Teheran, he had been detained in a police cell for ten days and had been lashed by the police. Following his release from detention, he had stayed at Tabriz.

COMPLAINTS

1. The applicant complains that his expulsion violates Article 3 of the Convention. He claims that he risks the death penalty in Iran for his drug offences and that he may also be punished for not having fulfilled his obligations towards the Iranian armed forces. The threats to his person are serious due to his western lifestyle, religious conviction and family background. He also refers to his back injury, his Swedish son, his psychological problems due to the murder of his parents in 1978 and the fact that he has spent half his life outside Iran.

2. The applicant further alleges that his expulsion from Sweden prohibits contacts between him and his son and thus fails to respect his family life. He invokes Article 8 of the Convention.

3. The applicant also maintains that his rights under Article 6 para. 3 (d) of the Convention have been violated in that J was not heard by the District Court or the Court of Appeal.

Furthermore, the applicant challenges the independence and impartiality of the Government deciding in his case. In this respect, he invokes Article 6 para. 1 of the Convention.

4. The applicant also claims that he was expelled without having had his case reviewed in accordance with Article 1 of Protocol No. 7 to the Convention, as the District Court in reality did not examine the question of expulsion, the Supreme Court refused him leave to appeal and the Government's examination did not constitute a full review of the case.

5. Finally, under Article 7 of the Convention, the applicant complains that he was given a heavier penalty than applicable, as no special reasons called for his expulsion.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 26 April 1995. The same day, the applicant requested the Commission to secure a stay of his deportation from Sweden.

On 4 May 1995 the Acting President of the Commission decided not to indicate to the Government of Sweden, pursuant to Rule 36 of the Commission's Rules of Procedure, the measure suggested by the applicant.

Following further correspondence with the applicant, the application was registered on 5 July 1995.

THE LAW

1. The applicant complains that his expulsion violated 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 applicant contends that there is a great risk that he will have to stand trial in Iran for the drug offences committed in Sweden which in Iran carry the death penalty. He may also be imprisoned or receive corporal punishment for his failure to maintain contacts with the Iranian armed forces since his flight from the country in 1978. Furthermore, his western lifestyle, religious conviction and family background allegedly make him unwanted in Iran. The applicant states that his family were victims of political persecution. His father, a mechanic serving in the Iranian air force during the Shah regime and educated in the United States, and his mother, a kurd who received her medical education in France, both died in 1978 after the applicant's escape. His father was executed by the present regime. The death of his parents has given the applicant psychological problems; he finds it unbearable to return to a country where his family was persecuted and his father killed. In this connection, the applicant further states that he has spent half his life abroad and has no relatives in Iran or other connections to the country. He also refers to his chronic back injury for which he cannot presumably receive adequate treatment in Iran and to his Swedish son to whom he has a right of access.

The Commission recalls that Contracting States have the right to control the entry, residence and expulsion of aliens (cf., e.g., Eur. Court HR, Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 34, para. 102). However, an expulsion decision may give rise to an issue under Article 3 (Art. 3) of the Convention, and hence engage the responsibility of the State, 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 or she is to be expelled (ibid., p. 34, para. 103). A mere possibility of ill-treatment is not in itself sufficient (ibid., p. 37, para. 111).

As regards the applicant's criminal record, the Commission recalls its decision of 14 October 1991 (No. 16381/90, R. v. Denmark, not published) in which it found that Iranian courts do not accept judgments pronounced by courts which do not operate in accordance with Islamic law. In a further decision of 7 April 1993 (No. 18807/91, L. v. France, D.R. 74 p. 162), the Commission noted that the applicant in that case had not contradicted the information supplied by the French Government, including a report drawn up jointly by a number of foreign embassies in Teheran, to the effect that persons convicted of drug offences in Western countries had not been prosecuted on their return to Iran.

Notwithstanding the ongoing anti-drug campaign in Iran, including the passing of death penalties for certain drug offences and executions of many offenders, the Commission cannot find any indication of changed practices in regard to persons lawfully convicted by a court outside Iran. Nor does it find that the applicant in the present case has established that he runs a real risk of being punished or tried a second time for the crimes committed in Sweden.

With respect to the other risks allegedly facing the applicant in Iran, the Commission first notes that the applicant has offered no evidence in support of his claims, nor has he supplied any details on his Western lifestyle or religious conviction. Moreover, the Commission does not find the possible imprisonment for failure to maintain contacts with the Iranian armed forces to be a penalty so severe as to raise an issue under Article 3 (Art. 3) of the Convention (cf., e.g., No. 12364/86, Kilic v. Switzerland, Dec. 17.10.86, D.R. 50 p. 280). With respect to the applicant's family background, the

Commission considers that the applicant has not established that he would be of any particular interest to the Iranian authorities on account of his parents' activities before 1978. Finally, the Commission does not find, in the circumstances of the case, that the applicant's expulsion amounts to treatment contrary to Article 3 (Art. 3) due to his psychological problems, the time he has spent abroad and the resultant lack of connections to Iran, his back injury or his difficulties in maintaining contacts with his Swedish son.

In view of the above, the Commission considers that it has not been established that there were substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to Article 3 (Art. 3) of the Convention in Iran.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains that his expulsion fails to respect his family life. He invokes Article 8 (Art. 8) of the Convention, which provides the following:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others."

The applicant maintains that the expulsion will prohibit future contacts between him and his son. Claiming that his criminal activities have been of a relatively limited nature, the applicant contends that the expulsion constituted a disproportionate interference with his family life and was not necessary in a democratic society. He states that he had good contacts with his son until he was detained in the summer of 1994.

The Commission recalls that the expulsion of a person from a country in which close members of his family live may amount to an unjustified interference with his right to respect for his family life as guaranteed by Article 8 (Art. 8) of the Convention (cf. Eur. Court HR, Moustaquim v. Belgium judgment of 18 February 1991, Series A no. 193, pp. 19-20, paras. 43-46).

The Commission considers that the applicant's expulsion interfered with his right to respect for his family life under Article 8 para. 1 (Art. 8-1). It is therefore necessary to ascertain whether the expulsion satisfied the conditions of Article 8 para. 2 (Art. 8-2), that is to say whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph, and was "necessary in a democratic society" for the achievement of that or those aims (cf., e.g., Eur. Court HR, Boughanemi v. France judgment of 24 April 1996, para. 36, to be published in the Reports of Judgments and Decisions for 1996).

It has not been contested that the expulsion order was issued "in accordance with the law". The Commission considers that the enforcement of the order pursued a legitimate aim under Article 8 para. 2 (Art. 8-2), namely the interest of public safety and the prevention of disorder and crime.

The necessity criterion implies the existence of a pressing

social need and, in particular, requires that the measure must be proportionate to the legitimate aims pursued. It has to be determined whether the expulsion in issue struck a fair balance between the relevant interests, in the present case the applicant's right to respect for his family life, on the one hand, and the interest of public safety and the prevention of disorder and crime, on the other. Regard should further be had to the margin of appreciation afforded to the Contracting States (ibid., paras. 41-42).

The Commission recalls the finding of the Court of Appeal on 28 December 1994 that the applicant had had only sporadic contacts with his son. Moreover, the Commission attaches particular importance to the seriousness of the offence on account of which the applicant's expulsion was ordered. It further notes that the applicant previously had been convicted six times, on five occasions for drug offences, and that he had been sentenced to prison on three occasions in 1990-1991.

In view of the above and taking into account the margin of appreciation left to the Contracting States, the Commission concludes that there is nothing to indicate that the Swedish authorities have failed to fulfil their obligation to strike a fair balance between the relevant interests. The applicant's expulsion cannot therefore be regarded as disproportionate to the legitimate aims pursued.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also claims that his rights under Article 6 paras. 1 and 3 (d) (Art. 6-1, 6-3-d) of the Convention have been violated. In so far as relevant, Article 6 (Art. 6) reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ... .
> ...
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
> ..."

In regard to the criminal proceedings against him, the applicant claims that Article 6 para. 3 (d)(Art. 6-3-d) was violated in that J, a person interviewed by the police, was not heard by the District Court or the Court of Appeal. As a consequence, the applicant was not given an opportunity to put questions to J and could thus not examine the information given by him to the police.

The Commission recalls that the taking of evidence is governed by the rules of domestic law. The admissibility and assessment of evidence are in principle matters for the national courts. The Commission's task under the Convention is to ascertain whether the proceedings, as a whole, were fair (cf. Eur. Court HR, Bricmont v. Belgium judgment of 7 July 1989, Series A no. 158, p. 31, para. 89, and Saïdi v. France judgment of 20 September 1993, Series A no. 261-C, p. 56, para. 43).

By referring to the witness J, the public prosecutor sought to prove that the applicant had sold about one gram of amphetamine to J. The applicant admitted having lent the quantity in question to J. His conviction for this offence was based not only on his own and J's statements but also on other evidence in the case. In these circumstances, the Commission, even assuming that the applicant

requested J to be heard in person by the District Court and the Court of Appeal, does not find that the public prosecutor's reference to the statement made by J during the police investigation violated the applicant's rights under Article 6 (Art. 6) of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

With respect to the Government's examination of the applicant's requests to have the expulsion order revoked or to be granted mercy, the applicant contends that it did not meet the requirements as to independence and impartiality. He states that the Government's decisions were prepared by a district prosecutor who, at the time, was on leave from her post at the prosecutor's office in Stockholm. Due to her possible future career as a prosecutor, she was allegedly not independent of the prosecutor taking part in the criminal proceedings.

The Commission recalls that the proceedings in which it is merely decided whether an individual should be expelled from a country (cf., e.g., No. 12364/86, referred to above) or the proceedings concerning the execution of a sentence imposed by a competent court (cf., e.g., No. 16266/90, Aldrian v. Austria, Dec. 7.5.90, D.R. 65 p. 337) are not covered by Article 6 para. 1 (Art. 6-1) of the Convention. They concern neither the determination of a criminal charge nor of civil rights and obligations within the meaning of this provision.

The Commission, noting that the criminal charges brought against the applicant and the question of expulsion were determined by the competent courts whose independence and impartiality have not been called into question, finds that the Government's examination did not concern questions covered by Article 6 para. 1 (Art. 6-1).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains that he was expelled without having had his case reviewed. He invokes Article 1 of Protocol No. 7 (P7-1) to the Convention, which in relevant parts provides the following:

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
> ...
> b. to have his case reviewed ..."

The applicant claims that the question of expulsion in reality was not examined by the District Court, as the prosecutor called for the applicant's expulsion only in his closing argument and the court did not have any opinion from the Immigration Board at its disposal when it decided to reject the prosecutor's request. Following the Court of Appeal's order that the applicant be expelled, the question was not addressed by the Supreme Court, as it refused leave to appeal. Subsequently, the Government did not review all aspects of the issue.

The Commission finds, however, that the question of the applicant's expulsion was examined by the District Court, the Court of Appeal and, in deciding not to grant leave to appeal, the Supreme Court. Furthermore, the Government examined whether there were reasons to revoke the expulsion order. Accordingly, the Commission considers that the applicant's expulsion was reviewed in accordance with Article 1 of Protocol No. 7 (P7-1).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the

Convention.

5. The applicant finally complains that he was given a heavier penalty than applicable in violation of Article 7 (Art. 7) of the Convention, which, in so far as relevant, reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

The applicant alleges that the decision to expel him was not in accordance with national law, as no special reasons called for his expulsion.

Assuming that, in the present case, the applicant's expulsion falls to be considered under Article 7 (Art. 7) of the Convention, the Commission notes the Court of Appeal's judgment of 28 December 1994, in which the court recalled that, under the applicable provisions of the Aliens Act, the applicant could be expelled only if there were special reasons. Having examined the case, the appellate court found that there were special reasons to order his expulsion. Considering that it was for the national courts to assess whether the offences of which the applicant was convicted and the other circumstances of the case constituted sufficient reasons for the applicant's expulsion, the Commission finds that the expulsion order did not violate Article 7 (Art. 7) of the Convention.

It follows that this part of the application is also 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.

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission