CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40229/98
by A.G. and Others
against Turkey

The European Court of Human Rights (First Section) sitting on 15 June 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr L. Ferrari Bravo,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,
Mr F. Gölcüklü, ad hoc *judge*,

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 12 March 1998 by A.G. and Others against Turkey and registered on 13 March 1998 under file no. 40229/98;

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

Having regard to the observations submitted by the respondent Government on 21 May and 28 August 1998 and the observations in reply submitted by the applicants on 27 July and 9 September 1998;

Having deliberated;

Decides as follows:

THE FACTS

The first applicant is an Iranian national, born in 1961 in Ajab-Shahr, Iran. He is currently living in Kastamonu, Turkey, with his wife (the second applicant) and their three children (the remaining applicants). His wife and children are all Iranian nationals. The family are subject to a deportation order under which they are to be expelled to Iran. The applicants are represented before the Court by the Iranian Refugees' Alliance in collaboration with Rights International, both New York-based organisations.

The facts, as presented by the applicants, may be summarised as follows.

The first applicant was an activist in the Iranian People Fedaee Guerrillas (IPFG), a Marxist-Leninist organisation, and had taken part in the 1978-79 uprising against the Shah of Iran. IPFG's opposition to the Islamic government installed after the uprising led to the organisation being banned and its members arrested and executed.

In August or September 1981, the applicant was shot and wounded in the leg when trying to evade an arrest operation carried out by the Iranian security forces against opponents of the regime. He was subsequently detained without trial for eighteen months in a prison in the town of Tabriz. The first applicant claims that during his detention he was severely and frequently tortured in order to compel him to confess to his illegal political activities, including by means of mock executions and beatings. He was given a summary trial and sentenced to twenty-eight months' imprisonment. Following his release in early 1984, he moved to Tehran where he lived under another name and continued his activities in the IPFG. He married the second applicant who had been involved in a branch of the IPFG and had been arrested in 1981 along with her brother. Their three children were born between 1985 and 1990. The family had to change addresses frequently because of fear of arrest.

Fearing that the authorities would discover his true identity and whereabouts and that he would be arrested and tortured again, the first applicant determined to flee Iran with his family.

The applicant's wife and children entered Turkey legally on 21 July 1995. On 24 July 1995 she was interviewed by the Turkish branch of the Office of the United Nations High Commissioner for Refugees (UNHCR). On the same day the family was granted a temporary residence permit by the Turkish authorities with instructions to reside in the town of Kastamonu. On 15 January 1996 the second applicant was notified by the UNHCR that her asylum claim had been rejected and was subsequently served with a deportation order by the Turkish authorities. Following her appeal against the execution of the order, the authorities agreed on 24 July 1996 to extend the family's residence permit for another three months.

On 4 March 1996 the first applicant entered Turkey illegally and on 6 March 1996 he lodged a request with the Ankara office of the UNHCR for political refugee status. At his interview, which was conducted in the absence of an interpreter, he maintained that he was a member of the IPFG and was wanted by the Iranian authorities.

The applicant was subsequently interviewed by the Turkish authorities, again without the assistance of an interpreter, and was granted a temporary residence permit with instructions to live in the Turkish-Iranian border town of Van. On 29 July 1996 the

authorities authorised the first applicant to join his family in Kastamonu for a period of six months and he moved there the following day.

On 24 July 1996 the UNHCR interviewed the first and second applicants separately. The second applicant alone was provided with an interpreter. On 29 July 1996 the UNHCR rejected their asylum claims and considered that they were on that account ineligible for resettlement in a third country.

Amnesty International appealed successfully to the UNHCR in January 1997 to reconsider the first applicant's case, which they did. However their decision remained unchanged.

On 17 February 1997 the Ministry of the Interior served a deportation notice on the first applicant ordering him and his family to leave Turkey within fifteen days. On 19 February 1997 the applicant requested the authorities to review their decision. Having regard to the fact that the Commission had acceded to the first applicant's request for interim measures under Rule 36 of its Rules of Procedures, the validity of the family's residence permit was extended to December 1997. The Commission declared the first applicant's application inadmissible on 18 September 1997.

On 17 December 1997 the Ministry of the Interior ordered the applicant and his family to leave Turkey. The applicants were informed of this decision on 30 December 1997.

On 14 January 1998 the applicants contested this decision. On 26 January 1998 the Ministry of the Interior rejected their appeal and instructed the Kastamonu police to have the applicants escorted to the border.

On 11 February 1998 the applicants filed proceedings before the Ankara Administrative Court, requesting a stay in the execution of the expulsion decision. On 4 March 1998 the court, on the basis of the dossier submitted by the applicants, rejected their request.

Following his request to the Istanbul Human Rights Foundation, the first applicant was examined by a panel of doctors. According to the applicants, the doctors found that the first applicant had behavioural symptoms which were consistent with his claim that he had been ill-treated when in detention.

COMPLAINTS

The applicants maintain that, being members of an illegal organisation, they would risk arrest and persecution if sent back to Iran. They rely on Article 3 of the Convention. The applicants also invoke Article 8 of the Convention in conjunction with Articles 2 and 3 and claim that their expulsion would interfere with their right to respect for their family life since the detention or execution of the first applicant would result in the break up of a family.

The applicants further invoke Articles 6 § 1 and 13 of the Convention. They contend that they did not have a fair hearing before the domestic courts to challenge the expulsion decision since they were not legally represented and were granted neither legal aid nor the services of an interpreter. They maintain that these shortcomings also gave rise to a breach of

Article 13 in that they had no effective remedy to assert their rights under Articles 2, 3 and 8 of the Convention.

In a letter dated 12 March 1998 the applicants criticised the discriminatory nature of the asylum policy of the respondent State and invoked Article 14 of the Convention in conjunction with Articles 3 and 8 in this respect.

PROCEDURE

The application was introduced on 12 March 1998 and registered on 13 March 1998.

On 13 March 1998 the Commission decided to indicate to the Government, in accordance with Rule 36 of its Rules of Procedure, that it was desirable in the interests of the Parties and the proper conduct of the proceedings before the Commission not to deport the applicants to Iran and to communicate the application to the respondent Government. The indication under Rule 36 was prolonged on 29 October 1998.

The Government's written observations were submitted on 21 May 1998 after an extension of the time-limit fixed for that purpose. The applicants replied on 27 July 1998.

Supplementary observations were submitted by the Government on 10 August 1998. The applicants replied to these observations on 9 September 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

On 23 February 1999 the Court decided under Rule 39 of its Rules of Procedure to prolong until further notice the Commission's requests of 13 March, 23 April, 28 May, 9 July, 17 September and 29 October 1998 to the Government not to deport the applicants.

THE LAW

1. The applicants maintain that their deportation to Iran would violate their rights under Article 3 of the Convention, which provides:

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

The applicants stressed that their application was substantially different from the application which the first applicant had lodged with the Commission and which had been declared inadmissible by the Commission on 18 September 1997 (application no. 32963/96, unpublished). In particular, the present application had been brought by all the family members and they had adduced new evidence which substantiated their allegation that they would be subjected to treatment prohibited by Article 3 of the Convention if returned to Iran. They claimed that this new evidence proved that they had to live underground in Tehran for fear of arrest and torture by the authorities and that the first applicant had been detained in prison and had to be treated for injuries during detention. Furthermore, they rely on the

contents of a letter dated 12 February 1998 in which Amnesty International informed their representatives that "the whole family group may suffer terrible consequences" if the first applicant's political past came to light.

They contended that the first applicant had been subjected frequently to torture when in detention and that the authorities of the receiving State systematically violate international human-rights standards. Furthermore, the torture of detainees in the receiving country was well-documented. The fact that the first applicant was released from detention in 1984 did not mean that he was no longer at risk if removed to Iran. They maintained that he had been an anti-government activist right up until the time of his departure for Turkey. Both he and his wife had had to resort to acts of forgery to conceal their identities and whereabouts in Iran for fear of persecution and their children's birth certificates had been obtained by bribing an official. Furthermore, the allegations which he and his wife had made against the Iranian authorities in their asylum applications heightened the risk of their being ill-treated at the hands of officials. The applicants maintained that the rejection of their asylum requests had to be considered in the light of the inadequate and unsatisfactory way in which the requests had been processed. Neither the UNCHR nor the Turkish authorities had provided them with translation facilities and they did not have the assistance of a lawyer in either the asylum or the deportation proceedings to help them clarify the merits of their fears.

The Government maintained in reply that the first applicant's application had been declared inadmissible as being manifestly ill-founded on account of the fact that the Commission had concluded that he had not substantiated his allegations under Article 3. In the Government's view the evidence which the applicants had adduced in this application to show that they had to use forged documents to conceal their identities before fleeing Iran could have been produced earlier when applying for asylum or when challenging the validity of the deportation order or when lodging the first applications with the Commission. The Government challenged the credibility of the applicants' argument that they were unable to obtain at an earlier stage the materials they now relied on. For these reasons they requested the Court to find the present complaint inadmissible as being substantially the same as the first applicant's previous inadmissible complaint.

The Court notes that although the applicants have collectively as a family relied on Article 3 of the Convention, the evidence which they seek to advance in support of a potential breach of that provision concerns essentially the position of the first applicant. While they have included in their case file documents which in their view indicate that the second applicant had to assume a false identity in Iran and that her former employer, the Ministry of Education, has lodged a complaint against her, there is nothing to indicate that her life or physical integrity would be at risk if removed to Iran or that she is wanted by the authorities for political motives. No evidence has been adduced either to suggest that the children would be at risk if the deportation order were to implemented.

The Court will accordingly confine itself to the consideration of the first applicant's complaint under Article 3.

The Court recalls that the Commission declared inadmissible the first applicant's earlier complaint on 18 September 1997 as being manifestly ill-founded. In the Commission's opinion the first applicant had not furnished any proof in support of his claim that he was a member of an illegal organisation or that he lived under threat from the authorities in Iran. He has now supplied the Court with a postcard addressed to him in Tabriz

prison as well as a medical prescription made out in his name by the Tabriz prison medical service. He has also furnished a recent medical report which he claims confirms that he was ill-treated while in detention.

In the Court's view these new elements, taken with the first applicant's other arguments, do not constitute substantial grounds for believing that he would face a real risk of being exposed to treatment prohibited by Article 3 of the Convention if the decision to deport him and his family were to be implemented (see the Chahal v. the United Kingdom judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1851, § 74). The postcard and the medical prescription which he relies on do not serve to corroborate his claim that he was being sought by the authorities or that he had been engaged in underground activities between his release from Tabriz prison in 1984 and his departure from Iran in 1996. Furthermore, the recent medical report which the first applicant has submitted is by no means conclusive of his having been ill-treated while in prison as alleged, it being noted in this respect that the examination was carried out by doctors fifteen years after his release from prison and the view expressed in that report is described as a provisional one. In making its assessment, the Court has also had close regard to the contents of the letter which Amnesty International addressed to the applicants' representative on 12 February 1998. However, it is to be observed that Amnesty International intervened at an earlier stage with the Ankara office of the UNHCR to have the applicants' case re-examined. The UNHCR acceded to this request but confirmed their earlier position that the applicants were ineligible for asylum since they did not satisfy the criteria laid down in the 1951 Geneva Convention on the Status of Refugees. In the Court's opinion the letter does not substantiate the applicants' contention that the first applicant was active in the IPFG before he left Iran and that he had to flee with his family for fear of arrest and ill-treatment at the hands of the authorities.

Having regard to the above considerations and to the need to conduct a rigorous examination of the existence of the real risk of ill-treatment (see the above-mentioned Chahal v. the United Kingdom judgment, § 96), the Court finds that the applicants have not substantiated their complaint under Article 3.

The Court considers accordingly that this complaint should be declared inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. The applicants maintained that their deportation to Iran would lead to the family being separated or permanently broken up since the parents would be detained and ill-treated or executed while in detention. They invoked Article 8 of the Convention in conjunction with Articles 2 and 3. Article 8 provides as relevant:

> "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 or morals, or for the protection of the rights and freedoms of others."

The Government stated that this complaint had also been submitted to the Commission in the first applicant's earlier application and had been declared inadmissible in view of the applicant's failure to substantiate his Article 3 complaint. They requested the Court to reach a similar conclusion on the renewed allegation.

The Court observes that it has found the applicants complaint under Article 3 of the Convention to be manifestly ill-founded. Having regard to that decision, it must equally be concluded that the applicants have not substantiated their allegation that the family would be separated or broken up if returned to Iran. For this reason the Court finds that this complaint must be declared inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

3. The applicants contended that they were denied a fair procedure to challenge the legality of the deportation order since they were unable, *inter alia*, to obtain legal assistance and the services of an interpreter. They relied on Article 6 § 1 of the Convention which provides, as relevant:

> "In the determination of his civil rights and obligations or 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..."

The applicants stressed that Article 465 of the Turkish Code of Civil Procedure only provided for the grant of free legal assistance in respect of proceedings before the civil courts whereas they had instituted proceedings before the administrative courts. Even if legal assistance was available to asylum seekers before the administrative courts, it would only have been granted to them *in forma pauperis* with the result that they would have had difficulty in securing a lawyer who would be willing to take their case since his fees could only have been recovered from the authorities if he won the case. In any event, the applicants were never informed of the availability of legal aid; nor were they informed of their right to appeal against the decision of the administrative court and to request legal aid for that purpose. They disputed in addition the lack of reasons given by the Ankara Administrative Court for its rejection of their case. In these circumstances they could not be considered to have had practical and effective access to a court as required by Article 6 § 1 of the Convention.

The applicants submitted further that these deficiencies were further compounded by the fact that under the asylum regulations of the respondent State, asylum seekers are confined to particular locations and must submit their applications for asylum within five days of arriving on the territory. They maintained that these factors considerably restricted access to a lawyer, even on a fee-paying basis, and were incompatible with the requirements of Article 6 § 1 of the Convention.

The Government replied that the applicants, although Iranian nationals, could have applied for legal aid to challenge the deportation order. Turkish law provided for this possibility. However, no such request was made. In any event they were assisted by a non-governmental organisation and they did in fact have their case heard by the administrative court whose decision could have been appealed to the Council of State. Moreover, the Government queried the first applicant's claim that he did not understand the Turkish language. As to the complaint that the administrative court had not given its reasons for rejecting the applicants' appeal against the deportation order, the Government maintained that

this point could have been taken on appeal. Since the applicants had not done so they must be considered to have failed to exhaust domestic remedies on this point.

The Court observes that even supposing that Article 6 of the Convention is applicable to deportation proceedings, the applicants did in fact take proceedings before the Ankara Administrative Court in respect of the deportation order. In the Court's view they have not substantiated their claim that they were unaware of their right under domestic law to appeal against the refusal of the administrative court to stay the execution of the deportation order or request legal aid in order to contest that decision on appeal. It notes in this regard that the applicants were able to request that their asylum claims be reviewed by the UNHCR and to make representations to the authorities not to implement the deportation order. Furthermore, it is to be noted that the applicants were being advised by a non-governmental organisation in their dealings with the UNHCR and the authorities. Having regard to these considerations, it would appear surprising therefore that the applicants were unaware of the availability of legal aid to take their case to the administrative court or to a higher court on appeal. These reasons in themselves justify a finding that the applicants' complaints are inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

4. The applicants further maintained that the failure of the authorities to provide them with legal assistance to secure the services of a lawyer violated Article 13 of the Convention since they were unable to avail themselves of judicial review proceedings under Article 125 of the Constitution to challenge the deportation order against them. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government replied that the arguments which they had advanced to counter the applicants' complaints under Article 6 § 1 confirmed that they did in fact have an effective remedy at their disposal.

The Court recalls that the applicants challenged the deportation order before the Ankara Administrative Court. However it is also to be noted that Article 13 of the Convention does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (see the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52). Having regard to the fact that the UNHCR rejected the applicants' asylum applications following two reviews of their case, to the fact that the Commission declared the first applicant's Article 3 complaint inadmissible as being manifestly ill-founded and to its own finding on the applicants' renewed application, the Court considers that the applicants cannot be said to have an "arguable claim" of a violation of their Convention rights. For that reason, it does not consider it necessary in this case to consider whether the Ankara Administrative Court would have been competent to suspend the execution of the deportation order if it had been shown to its satisfaction that the applicants would have been subjected to treatment prohibited by Article 3 of the Convention if they were removed to Iran (see applications nos. 17550/90 and 17825/9, DR 298, p. 298). The Court concludes that their complaint under this head is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

5. The applicants also invoked Article 14 of the Convention in conjunction with Articles 3 and 8, maintaining that the policy of the respondent State to deport non-European asylum seekers who fail to be resettled in a third country was discriminatory on grounds of race and national origin. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... race ... or ... national ... origin."

The Government did not address this complaint in their supplementary observations. However in their main submissions they pointed out that Turkey when becoming a Contracting Party to the 1951 Geneva Convention on the Status of Refugees had availed themselves of the geographic preference option in the Convention to give preference to asylum seekers from European countries. However, for humanitarian reasons the authorities issue temporary residence permits to non-European asylum seekers like the applicants who are recognised as such by the UNHCR until they can be resettled in a third country.

The Court observes that the essence of the applicants' complaints under this head concerns the manner in which the respondent State implements its asylum and refugee policy. It notes that there is no right as such under the Convention or its Protocols to political asylum (see the Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 34, § 102). Having regard to the fact that the guarantee under Article 14 against non-discrimination relates solely to the rights and freedoms contained in the Convention and in that sense has no independent existence (see the Abdulaziz, Cabales and Balkandali v. the United Kingdom judgment of 28 May 1985, Series A no. 94, p. 35, § 71), the Court concludes that this part of the application is inadmissible *ratione materiae* within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President