

COUR EUROPEENNE
DES
DROITS DE L'HOMME

CONSEIL DE L'EUROPE
STRASBOURG

EUROPEAN COURT
OF
HUMAN RIGHTS

COUNCIL OF EUROPE
STRASBOURG

INGEKOMEN 27 MAART 2003

Mr M.A. COLLET
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SECOND SECTION

ECHR-LE4.1R
AVS/mp

21 March 2003

Application no. 6276/03

A

v. the Netherlands

Dear Sir,

I write to inform you that following a preliminary examination of the admissibility of the above application, the Chamber to which the case has been allocated decided, on 18 March 2003, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of the Netherlands and that the Government should be invited to submit written observations on the admissibility and merits of the case by 2 May 2003.

The Government have been requested to deal with the "Questions to the Government" set out in the annex to this letter.

In due course the Government's observations will be sent to you in order that you may submit written observations in reply. You are invited also to submit a reply to the "Questions to the applicant" (see annex) at that point.

I enclose for your information a statement of facts prepared by the Registry.

/..

I should also inform you that at this stage of the proceedings free legal aid may be applied for under the Court's legal aid scheme by applicants who wish to be legally represented and have insufficient means to pay for such representation. I enclose a copy of the relevant chapter of the Rules of Court for your information. You should let me know as soon as possible whether an application for legal aid will be made in the present case. The necessary forms will then be sent to you.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'S. J. Dollé', with a long horizontal stroke extending to the right.

S. Dollé

Section Registrar

Encs: Questions
Statement of facts
Chapter X

ANNEX**QUESTIONS TO THE GOVERNMENT**

1. In the light of the applicant's claims and the documents which have been submitted, would he face a real risk to his life or of being subjected to treatment in breach of Articles 2 and/or 3 of the Convention if the expulsion order were enforced?
2. Did the authorities consider all of the documents (documents (A)-(G) as they have been referred to in the statement of facts) submitted by the applicant in support of his second request for asylum? If so, what weight did they give to them? Were the documents considered to be authentic?
3. Did the applicant have at his disposal an effective domestic remedy for his Convention complaints, as required by Article 13 of the Convention?

QUESTIONS TO THE APPLICANT

1. What was the extent of the applicant's involvement in the 1999 demonstration(s), for example was he a leader of the demonstration(s)? The applicant should submit documentary substantiation of his reply.
2. Can the applicant prove that the documents which he submitted in support of his second request for asylum relate to him? For what reason does the applicant believe that the contents of these documents should lead to the conclusion that, if returned to Iran, there is a real risk that he would be exposed to treatment contrary to Article 3?

THE FACTS

The applicant, Mr A , is an Iranian national, who was born in and is currently staying in the Netherlands. He is represented before the Court by Mr M.A. Collet, a lawyer practising in Waalwijk.

A. The circumstances of the case

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

On 7 August 2000 the applicant arrived in the Netherlands. On the same day, he applied for asylum. In support of his claim for asylum he submitted the following.

Whilst living in Teheran, the applicant and his family (consisting of his mother and his two brothers) were frequently harassed by the authorities. By threatening to arrest the family members, the authorities wanted to exert pressure on the applicant's father to give himself up. The applicant's father was a professional soldier who did not agree with the regime. When he was ordered to fight against the Kurds in Iran, he deserted, fled the country and applied for asylum in the Netherlands in 1993. It appears from the documents submitted by the applicant that his father was not recognised as a refugee within the meaning of Article 1 of the Convention relating to the Status of Refugees, but that he was nevertheless granted a residence permit in the Netherlands.

In order to avoid arrest, the family stayed with different relatives, making sure never to stay at any one address for very long. However, the authorities always managed to trace them. The applicant was unable to go to school because his name featured on a list of people who were not allowed to attend school. According to the applicant, this was because his father was wanted by the authorities.

In March 1994 the *Vezerat-e Sepah Pasdaran-e Enqelab-e Islamic* (Islamic Revolutionary Guards, "Sepah Pasdaran") came to arrest the applicant's older brother, H , but his uncle B had managed to organise H 's departure to Turkey before he could be arrested. In 1996, the applicant, his mother and younger brother also managed to reach Turkey. However, when H was arrested in Istanbul and sent back to Iran, the other relatives also decided to return to Iran out of concern for H . H was detained for two to three months and tortured during that time. His uncle B managed to obtain H 's release, presumably through payment of bribes.

The applicant resumed his life of staying at different addresses.

On 8 July 1999, students demonstrated in Teheran following the closure of a newspaper. The following night, security services raided dormitories at

the university campus. Several students were wounded and several arrested in the raid. As a result of the raid, more student protests followed. The protests spread to other cities. Non-students, including the applicant, also participated. During one of the demonstrations, the applicant helped set fire to a bus and a fire engine. After the demonstrations, many people were arrested and nothing more was heard of them. The applicant also heard that photographs had been taken of the people who had set fire to the bus and the fire engine. His uncle B. thought that it would be better for the applicant to leave the country and he put up the money for the applicant to go to Turkey in October 2000.

Whilst in Turkey, the applicant was told by his mother on the telephone that a summons in his name, ordering him to report to the Sepah Pasdaran, had been delivered at his uncle's address.

The applicant stayed in Turkey for some ten months. He did not apply for asylum in Turkey. A "travel agent" arranged for him to go to the Netherlands together with a number of other people. They travelled by foot, boat, bus and train. The applicant used a Swedish passport in the name of a man of Iranian origin. The passport had been given to him by the "travel agent". The applicant did not know the countries he passed through.

In the proceedings on his first request for asylum, the applicant submitted copies of two summonses. The first ("document (A)") was dated 17 July 1999 and bore the number 1, the second ("document (B)") was dated 15 August 1999 and bore the number 3 – the applicant stated that the summons bearing number 2 had never been received. The summonses had been issued by the legal office of Sepah Pasdaran and stated, without giving any reasons, that the applicant was to report to a specific place at a specific time. According to the applicant, these summonses had been given to his mother.

On 24 August 2000 the Deputy Minister of Justice (*Staatssecretaris van Justitie*) rejected the request for asylum. The applicant's objection (*bezwaar*) against this decision was dismissed as manifestly ill-founded on 12 September 2000 by the Acting President of the Regional Court of The Hague, together with his request for a stay of expulsion. The Acting President considered that the applicant had failed to submit documents capable of establishing his identity, his nationality or his travel route and this was held to affect the genuineness and credibility of his account. The Acting President further expressed doubts as to the credibility of the applicant's account concerning the problems encountered by his family in Iran allegedly as a result of the situation of his father. It was noted in this respect that the applicant's father had told the Netherlands authorities that he had never encountered problems for political reasons but that he had been unable to obtain promotion in the army on account of several episodes of desertion. The Acting President also did not find it sufficiently established that the Iranian authorities were aware of the applicant's

participation in the student demonstrations, or that he was “wanted” by those authorities as a result of his participation. The applicant was found to have been inconsistent in this regard, first telling the immigration authorities that, whilst in Turkey, his mother had told him that a summons had been sent to his uncle’s address, yet the copies of the summonses submitted dated from the time when the applicant had still been in Iran and they had allegedly been given to his mother. Finally, the summonses submitted were not originals and did not state the reason why the applicant was supposed to report to the authorities.

On 9 July 2001 the applicant requested both the Deputy Minister and the Regional Court to review their respective decisions in view of the fact that he had in the meantime managed to obtain original documents. The Regional Court refused this request in a decision on 15 February 2002, stating in an *obiter dictum* that the documents might lead the applicant to decide to lodge a new request for asylum. On 25 June 2002 the Deputy Minister informed the applicant that the request for revision could only be made in the form of a new request for asylum. The applicant was subsequently informed when and where he should formally lodge such a new request.

The applicant lodged his second request for asylum on 2 August 2002. In support of this request he submitted the originals of the above-mentioned summonses (A) and (B), as well as a further summons (“document (C)”), dated 28 August 1999. He also stated that his uncle in Iran had recently managed to get a third person to obtain the following, original, documents from a file on the applicant:

- a letter/memo dated 11 September 1999 from the legal office of Sepah Pasdaran in the Western Teheran district to the Operations Resistance Units Directorate of Sepah Pasdaran, stating that the applicant was being prosecuted on charges of participation in the revolt at the university campus, and requesting the addressee to arrest the applicant (“document (D)”);
- an undated letter/memo (the space after “date: ” is left blank) from the Deputy of Investigations of the Sepah Pasdaran Operations Unit to the Commander of border control, in which reference is made to a letter dated 29 November 1999 of the public prosecutions department, and in which the addressee is requested to ensure that the applicant does not leave the country and is arrested should he try to leave (“document (E)”);
- an undated letter/memo (the space after “date: ” is left blank) from the Sepah Pasdaran Deputy of Information to the Sepah Pasdaran Identification Department, in which reference is made to the order issued by the Sepah Pasdaran Commander relating to the identification of the suspects at the university campus, and in which the addressee is requested to make available all information concerning the background of the applicant (“document (F)”);

- an undated letter/memo (the space after “date:” is left blank) from the Sepah Pasdaran Deputy of Information to the Sepah Pasdaran commander of the Greater Teheran District, in which reference is made to the order issued by the Sepah Pasdaran Commander relating to the arrest of those persons who “caused the university campus”, and in which the addressee is requested to observe all of the applicant’s movements so that the applicant could be arrested once his whereabouts were known (“document (G)”).

The applicant’s second request for asylum was rejected by the Minister for Aliens Affairs and Integration (*Minister voor Vreemdelingenzaken en Integratie*) on 5 August 2002. The Minister held that the documents submitted by the applicant did not constitute newly discovered facts or changed circumstances. In this respect, the Minister found that no decisive importance could be attributed to the undated documents. The new documents did not lead to a conclusion different from the one taken on the first request for asylum, given that in those earlier proceedings the applicant’s account had not been found wholly credible; the applicant had not established his identity so that it could not be ascertained whether the new documents related to him, and he had failed to give a plausible explanation as to why he could not have submitted the new documents at an earlier stage. For these reasons, the Minister did not consider that the merits of the new request for asylum should be examined. He therefore rejected it by referring to the decision on the first request.

On 6 September 2002 the provisional measures judge (*voorzieningenrechter*) of the Hague Regional Court sitting in Arnhem rejected both the applicant’s request for a stay of expulsion and his appeal (*beroep*) against the decision of the Minister. The judge agreed with the Minister that no newly discovered facts or changed circumstances had been adduced by the applicant. Such facts or circumstances only existed if they had not played a role in the proceedings on the first request for asylum and if they could not have been submitted at that time. Facts and circumstances which had been known to the applicant prior to 12 September 2000 (the date of the final decision on the first request for asylum) could thus in principle not be considered. The documents (E), (F) and (G) could only be seen as further argumentation (*nadere bewijsvoering*) relating to the first request which had already been rejected.

The applicant lodged a further appeal (*hoger beroep*) with the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*) in which he argued that there were “changed circumstances”: his first request for asylum had been rejected because his account was found not to be credible, whereas the new documents showed that it was credible.

The further appeal was rejected on 8 November 2002, the Administrative Jurisdiction Division finding that since documents (E), (F) and (G) were undated, it could not be established that it would have been impossible for

the applicant to submit them in the proceedings on his first request for asylum.

B. Relevant domestic law

Article 4:6 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*) provides that an applicant must adduce newly discovered facts or changed circumstances (*nieuw gebleken feiten of veranderde omstandigheden*) if a new request is filed following a decision in which the original request is, either totally or partially, rejected. When no such facts or changed circumstances have been adduced, the administrative authority may reject the new request with reference to the decision on the original request.

COMPLAINTS

The applicant complains under Articles 2 and 3 of the Convention that if expelled to Iran he would be in danger of being killed and/or exposed to a real risk of being subjected to torture or inhuman treatment. Invoking Articles 6 and 13 of the Convention, he further complains that the new evidence submitted by him in support of his second request for asylum was ignored by the Netherlands authorities who applied Article 4:6 of the General Administrative Law Act in order to bypass any examination of the merits of his request.

RULES OF COURT

CHAPTER X

Legal Aid

Rule 91

1. The President of the Chamber may, either at the request of an applicant lodging an application under Article 34 of the Convention or of his or her own motion, grant free legal aid to the applicant in connection with the presentation of the case from the moment when observations in writing on the admissibility of that application are received from the respondent Contracting Party in accordance with Rule 54 § 3 (b), or where the time-limit for their submission has expired.
2. Subject to Rule 96, where the applicant has been granted legal aid in connection with the presentation of his or her case before the Chamber, that grant shall continue in force for purposes of his or her representation before the Grand Chamber.

Rule 92

Legal aid shall be granted only where the President of the Chamber is satisfied

- (a) that it is necessary for the proper conduct of the case before the Chamber;
- (b) that the applicant has insufficient means to meet all or part of the costs entailed.

Rule 93

1. In order to determine whether or not applicants have sufficient means to meet all or part of the costs entailed, they shall be required to complete a form of declaration stating their income, capital assets and any financial commitments in respect of dependants, or any other financial obligations. The declaration shall be certified by the appropriate domestic authority or authorities.
2. The Contracting Party concerned shall be requested to submit its comments in writing.
3. After receiving the information mentioned in paragraphs 1 and 2 above, the President of the Chamber shall decide whether or not to grant legal aid. The Registrar shall inform the parties accordingly.

Rule 94

1. Fees shall be payable to the advocates or other persons appointed in accordance with Rule 36 § 4. Fees may, where appropriate, be paid to more than one such representative.
2. Legal aid may be granted to cover not only representatives' fees but also travelling and subsistence expenses and other necessary expenses incurred by the applicant or appointed representative.

Rule 95

On a decision to grant legal aid, the Registrar shall

- (a) fix the rate of fees to be paid in accordance with the legal-aid scales in force;
- (b) the level of expenses to be paid.

Rule 96

The President of the Chamber may, if satisfied that the conditions stated in Rule 92 are no longer fulfilled, revoke or vary a grant of legal aid at any time.