



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

SECOND SECTION

DECISION

**AS TO THE ADMISSIBILITY OF**

Application no. 32971/08

by Phrooghosadat AYATOLLAHI and Hojy Bahrouz HOSSEINZADEH  
against Turkey

The European Court of Human Rights (Second Section), sitting on  
23 March 2010 as a Chamber composed of:

Françoise Tulkens, *President*,

Ireneu Cabral Barreto,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

Françoise Elens-Passos, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 July 2008,

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

Having regard to the decision to grant priority to the above application  
under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent  
Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

## THE FACTS

The applicants, Ms Phrooghosadat Ayatollahi and Mr Hojy Bahrouz Hosseinzadeh, are Iranian nationals who were born in 1968 and 1970 respectively and live in Eskişehir. They were represented before the Court by Mr S. Efe, a lawyer practising in Ankara. The Turkish Government (“the Government”) were represented by their Agent.

### A. The circumstances of the case

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

The first applicant, a singer in Iran, was taken into custody and allegedly subjected to ill-treatment on several occasions for being a female singer, which is forbidden in Iran on religious grounds. On one of those occasions the second applicant, who is her husband, was involved in a fight with a police officer in Iran. The applicants fled Iran and entered Turkey on 9 March 2001.

On arrival in Turkey they applied for asylum before the national authorities and requested from the United Nations High Commissioner for Refugees (“the UNHCR”) in Ankara recognition as refugees. The second applicant was registered as a dependant of the first applicant. The national authorities granted the applicants permission to reside in Eskişehir pending asylum proceedings.

On 9 May 2002 the UNHCR Turkey rejected the first applicant’s refugee claim.

On 29 July 2002 the applicants participated in a protest in front of the American Embassy in Ankara against the Iranian regime.

On 26 September 2002 the national authorities notified the applicants that their asylum claims had been rejected and that they had fifteen days to object to this decision. The applicants filed their objection on the same day. They were subsequently permitted to reside in Burdur pending examination of their objection.

Sometime in 2006 the second applicant requested permission to settle in Eskişehir. The applicant’s request was granted and the couple were issued with temporary residence permits.

Following new developments in her case, the first applicant’s file before the UNHCR was re-opened on 13 February 2008. The Turkish authorities were informed of the situation on 22 February and 14 July 2008.

On 2 April 2008 a second deportation order was issued in respect of the applicants, which requested the applicants to leave Turkey by 30 June 2008, at the end of the applicants’ children’s school term. The applicants subsequently informed the Turkish authorities of the reopening of their file before the UNHCR and twice requested a stay of the execution of the

deportation order. According to the information in the case file the applicants' residence permit was extended until 15 May 2009.

Having examined the first applicant's refugee claim after the re-opening of the file, the UNHCR rejected it again on 16 January 2009.

On 21 October 2009 the second applicant informed the UNHCR that he went back to Iran in February 2009 to attend his father's funeral. He claimed that he was arrested at the Iranian border and tortured in detention in Iran for 15 days before he was released on bail. He had then fled back to Turkey in October 2009.

### **B. Procedure before the Court**

On 15 July 2008 the President of the Chamber to which the case was allocated decided to indicate to the Government, under Rule 39 of the Rules of Court, that the applicants should not be deported to Iran until further notice.

On 13 August 2008 the Government informed the applicants that execution of the deportation order in respect of the applicants had been stayed in compliance with the Court's interim measure.

### **C. Relevant international material on Iran concerning returned asylum seekers**

According to the United Kingdom Home Office's *Country of Origin Information Report on Iran*, dated 26 January 2010, in respect of returned asylum seekers, it is reported by observers that they had seen no evidence that failed claimants, persons who had left Iran illegally, or deportees, faced any significant problem upon return to Iran, although individuals in cases that gained a high profile could face difficulties (Section 27.12 of the Report).

## **COMPLAINTS AND THE LAW**

The applicants complained under Articles 2 and 3 of the Convention that their deportation to Iran would place them at risk of ill-treatment and torture and even pose a real threat to their lives. They further maintained that there are no effective domestic remedies with respect to their Convention grievances. The Court holds that this latter element of the applicants' complaints falls under Article 13 of the Convention.

The Court observes that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of

aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies an obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, 28 February 2008).

Moreover, the Court does not exclude that analogous considerations might apply to Article 2 of the Convention where the return of an alien puts his or her life in danger, as a result of the imposition of the death penalty or otherwise (see, among other authorities, *Hakizimana v. Sweden* (dec.), no. 73913/05, 27 March 2008; *Bahaddar v. the Netherlands*, 19 February 1998, *Reports of Judgments and Decisions* 1998-I, opinion of the Commission, pp. 270-71, §§ 75-78; *Sinnarajah v. Switzerland* (dec.), no. 45187/99, 11 May 1999).

In the instant case the Court observes first and foremost that the applicants have not submitted any evidence to substantiate their claims. Their allegations before this Court are confined to general statements, lacking detailed and credible claims. There is no indication in the case file that the first applicant was a singer in Iran or that either of the applicants is wanted by the Iranian authorities. Nor has the second applicant produced any supporting evidence before the Court concerning alleged ill-treatment on his return to Iran in 2009. In this connection, the Court reiterates that it is in principle for the applicants to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see, among other authorities, *N. v. Finland*, no. 38885/02, § 167, 26 July 2005).

The Court also takes note of the UNHCR's conclusion on the applicants' claims regarding the risk which they would face if they were to be removed to Iran (see *Jabari v. Turkey*, no. 40035/98, § 41, ECHR 2000-VIII; *NA. v. the United Kingdom*, no. 25904/07, § 122, 17 July 2008; *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 82, ECHR 2009-... (extracts)). The Court observes in this connection that, when the UNHCR interviewed the applicants, it had the opportunity to test the credibility of their fears and the veracity of their account of the circumstances in their home country. Following these interviews, it rejected the applicants' refugee claims.

It further appears from the United Kingdom Home Office's *Country of Origin Information Report on Iran*, dated January 2010, that there is no evidence that returned asylum seekers face any significant problem upon return to Iran (see above).

Hence, having regard to the foregoing considerations, the Court concludes that the applicants have not established that there are substantial

grounds for believing that they would be exposed to a real risk of being ill-treated or killed, contrary to Articles 2 or 3 of the Convention, if they were to be deported to Iran. Moreover, in these circumstances, the applicants do not have an arguable claim of a breach of the Convention, requiring a remedy under Article 13 of the Convention.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention. Accordingly, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Françoise Elens-Passos  
Deputy Registrar

Françoise Tulkens  
President