



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

FIFTH SECTION

DECISION

Application no 56167/16
H.A. and H.A.
against Norway

The European Court of Human Rights (Fifth Section), sitting on 3 January 2017 as a committee composed of:

Yonko Grozev, *President*,

Erik Møse,

Mārtiņš Mits, *judges*,

and Anne-Marie Dougin, *Acting Deputy Section Registrar*,

Having regard to the above application lodged on 23 September 2016,

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 deliberated, decides as follows:

THE FACTS

The applicants are two brothers of Iranian nationality, born in Dubai, the United Arab Emirates. The first applicant was born in 1992, and the second in 1995. They are currently living in Norway. The President granted the applicants' request for their identity not to be disclosed to the public (Rule 47 § 4). They were represented before the Court by Mr R. Stub Christiansen, a lawyer practising in Holmestrand, Norway.

A. The circumstances of the case

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

2. The applicants entered Norway via Russia on 30 October 2015 together with their mother and three minor brothers, and applied for asylum

on the same day. In support of their applications they submitted, firstly, that they did not wish to return to Dubai, where they would depend on their father's residence permit. Secondly, they feared being considered as apostates upon travelling to Iran. Thirdly, they could not travel to Nepal as, allegedly, their mother's Nepalese citizenship was false.

3. On 20 January 2016, the Directorate of Immigration (*Utlendingsdirektoratet*) conducted oral interviews with each of the applicants, in the presence of interpreters. Both applicants said that they had grown up and lived in Dubai with their mother of Tibetan origin and their father of Iranian nationality. The father had problems with alcoholism and abusive tendencies. He was also married to an Iranian woman, who lived in Khalili, Iran, together with her sons (the applicants' half-brothers). This second marriage had initially been kept secret from their mother, and the applicants mentioned quarrels and insults between the two wives. In his interview, the first applicant explained that he had only sporadically worked. The second applicant stated that he had been working in a shop selling luxury watches for the last seven months before leaving Dubai.

4. When questioned about their Buddhist beliefs and the manifestation of these beliefs, the first applicant said that they had prayed at home or at the homes of their mother's friends, but that they could not practice their faith outdoors or publicly state that they were Buddhists in Dubai. The second applicant talked of Buddhist tokens he had at home, namely a painting and silverware.

5. The Directorate of Immigration rejected their applications for asylum on 10 June 2016, finding that there was no risk of persecution in Iran. Even though the applicants were of Buddhist faith, there was nothing in the way that they manifested their faith that would attract any sort of negative attention from the Iranian authorities. The Directorate took account of Iranian law, which holds that non-Muslims shall have rights, and of relevant background information, in particular concerning Christians and other religious minorities in Iran.

6. Both applicants, represented by their lawyer, appealed against the decisions to the Immigration Appeals Board (*Utlendingsnemnda*).

7. The second applicant lodged his appeal on 21 June 2016. Besides giving further descriptions of the difficult relationship between the relatives of the applicants' father in Iran and their mother, he submitted that some of them worked for the Iranian army and for the religious police. He further argued that Tibetan Buddhists are considered very religious and that he himself could not refrain from religious rituals or the daily use of religious tokens. The applicant submitted that he carries visible religious symbols at all times and that he would not be capable of hiding his faith. He added that he would be considered as an apostate as his father was Muslim. Lastly, his mother had now notified his father of divorce, and argued that this put him at greater risk. Also, the permit to stay in Dubai had now expired.

8. The first applicant lodged his appeal on 10 July 2016. He essentially put forward the same submissions as the second applicant regarding manifestations of his Buddhist faith. On religious tokens, he described how the family had raised coloured flags with religious texts outdoors in Dubai and submitted that he would feel committed to do the same in Iran. These flags, he explained, played a role in relation to prayer. In addition, he argued that his father had alleged that he was homosexual and that he, his siblings and their mother had harmed the family honour by escaping from their father, and that this would put them at risk. Moreover, he would be considered as an apostate as his father was Muslim. Finally, they would be seen as a threat to their father's Iranian wife, as they were legal heirs to the land she lives on. This, he argued, might motivate that branch of the family to involve the religious police.

9. The Immigration Appeals Board rejected both appeals on 6 September 2016. It initially found that the supplementary information given by the applicants, insofar as it concerned the manifestations of their faith, lacked credibility. The Board therefore assessed their cases in the light of the facts as they had appeared before the Directorate of Immigration.

10. On the merits, the Immigration Appeals Board agreed with the decisions adopted by the Directorate of Immigration. It found that it was improbable that either of the applicants would risk persecution, even though they were not Muslims. As to the first applicant, the Board also held that it was unlikely that the Iranian branch of his family would report him to the religious police or that he would risk persecution due to his father's allegations that he was homosexual.

11. Also, the Immigration Appeals Board considered whether the applicants should be granted permits to stay on humanitarian grounds. In this respect, it took into account that they were young, able to work and both capable and from a resourceful family, as illustrated by the fact that they had been able to apply for Russian visas and pay for the trip to Russia and Norway.

12. On 12 September 2016, the second applicant, represented by his lawyer, requested that the decision of the Immigration Appeals Board be reconsidered. He forwarded several written statements from witnesses of the manifestations of his faith in Norway and photographs in support. He underscored that he could not be obliged to hide his faith. Lastly, he added that he might also face trouble as he would refuse to perform military service in Iran.

13. On 16 September 2016, the applicants' mother and their three younger brothers were granted residence permits on humanitarian grounds.

14. On 20 September 2016, the Immigration Appeals Board refused to reverse the decision concerning the second applicant. The Board stressed that it had never disputed his faith. Nor had its decision imposed upon him the manner of pursuing or expressing his faith. Instead the Board had

assessed how he would *de facto* manifest his Buddhism, and then addressed, in this light, whether he might risk persecution. It also held that he did not have to move to the area where his father's relatives lived. On the topic of military service, the Board noted that, in line with international law, a state may establish armed forces and draft citizens for this purpose. It saw no risks of persecution on this account.

B. Relevant domestic law

15. Section 28 of the Immigration Act 2008 (Act of 15 May 2008 No. 35, *Lov om utlendingers adgang til riket og deres opphold her (utlendingsloven)*) §§ 1-2 reads:

“A foreign national who is in the realm or at the Norwegian border shall, upon application, be recognised as a refugee if the foreign national

(a) has a well-founded fear of being persecuted for reasons of ethnicity, origin, skin colour, religion, nationality, membership of a particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin, see Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967, or

(b) without falling within the scope of (a) nevertheless faces a real risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment upon return to his or her country of origin.

A foreign national who is recognised as a refugee under the first paragraph shall be entitled to a residence permit (asylum).”

16. Section 38 of the Immigration Act 2008 § 1 reads:

“A residence permit may be granted even if the other conditions laid down in the Act are not satisfied, provided there are strong humanitarian considerations or the foreign national has a particular connection with the realm.”

17. Section 73 of the Immigration Act 2008 reads:

“A foreign national may not be sent to an area where he or she would be in a situation as mentioned in section 28, first paragraph (a), unless

(a) the foreign national is excluded from protection under section 31, or

(b) the foreign national is on reasonable grounds deemed to be a danger to national security or has received a judgment against which no appeal lies for a particularly serious crime and for that reason represents a danger to Norwegian society.

A foreign national may not be sent to an area where he or she would be in a situation as mentioned in section 28, first paragraph (b). The protection under this provision shall also apply in situations as mentioned in the first paragraph (a) and (b).

The protection under the first and second paragraphs shall also apply to refoulement to an area where the person concerned would not be secure against subsequent refoulement to such an area as mentioned in section 28, first paragraph.

The protection under the first to third paragraphs applies in respect of all forms of decision under this Act.”

C. Background material

18. The Report of the United Nations Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (A/HRC/31/69), 2016, as far as religious minorities are concerned, addresses in particular Baha’is and Iranian Christians from Muslim backgrounds. Against this background, it is stated, *inter alia*, that the Special Rapporteur

“regrets that concerns remain around the situation of recognised and unrecognised religious minorities and that communities continue to report arrests and prosecution for worship and participation in religious community affairs, including in private homes.”

19. The UK Home Office Country Information and Guidance paper on Iran: Christians and Christian Converts, 2015, stated, *inter alia*, as follows:

“Christians who can demonstrate that in Iran or in the UK they have and will continue to practise evangelical or proselytising activities because of their affiliation to evangelical churches or who would wear in public outward manifestations of their faith such as a visible crucifix, will attract the adverse notice of the authorities on return to Iran and will be at risk of persecution. ... A person should not be expected to conceal aspects of their religion, their conversion or their activities relating to the conversion of others if they are not willing to do so. However, if the person would choose to conceal aspects of his or her religion or religious activities for reasons other than for a fear of persecution then the person would have no basis for their claim for international protection. Since President Rouhani’s election in 2013, imprisonment of Christians has increased. The attitude and treatment of the Iranian authorities towards ‘ordinary’ Christians may result in ill-treatment which in individual cases may reach the level of persecution, torture or inhuman and degrading treatment. Where Christians can demonstrate that they have come to the attention of the authorities previously for reasons other than their religion, then that in combination with their religion, may put them at real risk of persecution. Each case will need to be considered on its facts.”

20. The US Department of State 2015 Report on International Religious Freedom – Iran, 10 August 2016, section II, stated, *inter alia*:

“The constitution states all citizens shall enjoy human, political, economic, social, and cultural rights, “in conformity with Islamic criteria.” It states the investigation of an individual’s beliefs in general is forbidden, and no one may be “molested or taken to task” for holding a certain belief. The constitution does not address the right of Muslim citizens to change or renounce their religious beliefs, nor does the penal code include provisions addressing apostasy, although apostasy is a crime punishable by death under sharia law, which judges may also apply. Under the law, a child born to a Muslim father is considered to be Muslim. By law, non-Muslims may not engage in public religious expression, persuasion, or conversion of Muslims. Such activities are considered proselytizing and are punishable by death.”

21. The Norwegian Landinfo Report on Iran: Christians and Converts, 7 July 2011, stated, *inter alia*, that “charging converts of apostasy appears to have become more common”, but also the following:

“Formal charges of apostasy against converts have occurred relatively seldom in Iran, but threats of such charges have been brought up during the trial as a means of pressuring converts to declare that they repent and wish to return to Islam. In many cases the court has decided to release the convert without any charges, or brought other charges, such as participation in illegal house churches or for having had contact with foreign media.”

22. An earlier query response, Canada: Immigration and Refugee Board of Canada, Iran: Treatment of Buddhists, 1 August 1998, stated, *inter alia*, the following:

“The researcher stated that there are ... very few Buddhists in Iran. The researcher estimated their number at no more than one hundred. This small group includes three categories of Buddhists: foreign nationals working or residing in Iran; the foreign wives of Iranian nationals; and Iranian Muslim[s] who converted to Buddhism inside Iran. The first two categories represent the majority of Buddhists in Iran and they do not face any problems with the authorities. The handful of people included in the third category would face difficulties only if their conversion inside Iran became public knowledge.”

23. As regards the United Arab Emirates, the United States Department of State 2015 Report on International Religious Freedom – United Arab Emirates, 10 August 2016, stated, *inter alia*:

“Individuals belonging to non-Islamic faiths, including Christianity, Hinduism, Buddhism, and Judaism, said they could worship and practice without government interference within designated compounds or buildings, or in private facilities or homes. The government restricted their ability to worship, preach, or pray in public, however. Two Hindu temples and one Sikh temple operated in Dubai. There were no Buddhist temples, but the Sri Lankan embassy held monthly religious services open to the public.”

24. On 28 April 2004, the Office of the United Nations High Commissioner for Refugees (UNCHR) issued Guidelines on International Protection regarding Religion-Based Refugee Claims, which under the heading “Substantive Analysis, A. defining “religion” stated, *inter alia*:

“...9. Establishing sincerity of belief, identity and/or a certain way of life may not necessarily be relevant in every case. It may not be necessary, for instance, for an individual (or a group) to declare that he or she belongs to a religion, is of a particular religious faith, or adheres to religious practices, where the persecutor imputes or attributes this religion, faith or practice to the individual or group. As is discussed further below in paragraph 31, it may also not be necessary for the claimant to know or understand anything about the religion, if he or she has been identified by others as belonging to that group and fears persecution as a result. An individual (or group) may be persecuted on the basis of religion, even if the individual or other members of the group adamantly deny that their belief, identity and/or way of life constitute a “religion”.”

25. This Court, in *F.G. v. Sweden* ([GC], no. 43611/11, § 52, 23 March 2016), stated, *inter alia*, the following on the UNCHR guidelines:

“According to the guidelines, religious belief, identity or way of life is considered as so fundamental to human identity that one should not be compelled to hide, change or renounce it in order to avoid persecution. Restrictions on the freedom to manifest one’s religion or belief are permitted if these limits are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Even though discrimination for reasons of religion is prohibited under international human rights law, all discrimination does not necessarily rise to the level required for recognition of refugee status. Furthermore, where individuals convert after their departure from the country of origin, this may have the effect of creating a *sur place* claim. In such situations, particular credibility concerns tend to arise and a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary. Issues which need to be assessed include the nature of and connection between any religious convictions held in the country of origin and those now held, any disaffection with the religion held in the country of origin, for instance, because of its position on gender issues or sexual orientation, how the claimant came to know about the new religion in the country of asylum, his or her experience of this religion, his or her mental state and the existence of corroborating evidence regarding involvement in and membership of the new religion. So-called “self-serving” activities do not create a well-founded fear of persecution on a Convention ground in the claimant’s country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned.”

COMPLAINTS

26. The applicants complained that their removal to Iran would be contrary to Articles 2, 3 and 8 of the Convention. Moreover they submitted under Article 3, in conjunction with Article 13, that the domestic authorities had failed to engage in a rigorous scrutiny of all the facts on which their decisions were based.

THE LAW

A. Alleged violations of Articles 2 and 3 of the Convention

27. At the outset, the Court observes that in the context of expulsion, where there are substantial grounds to believe that the person in question, if expelled, would face a real risk of capital punishment, torture, or inhuman or degrading treatment or punishment in the destination country, both Articles 2 and 3 imply that the Contracting State must not expel that person. The Court will therefore examine the two Articles together.

1. *General principles*

28. The general principles regarding the assessment of applications for asylum under Articles 2 and 3 of the Convention are set out in *F.G. v. Sweden* (cited above, §§ 111-118, with further references) and were recently confirmed in *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 79-90, 23 August 2016.

29. The Court held in *F.G. v. Sweden* (cited above) §§ 117-118:

“117. In cases concerning the expulsion of asylum-seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention relating to the status of refugees. Its main concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled. By virtue of Article 1 of the Convention the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 286-287, ECHR 2011). The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations (see, among other authorities, *NA. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008).

118. Moreover, where domestic proceedings have taken place, it is not the Court’s task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, 24 March 2011; *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, § 113, 3 October 2013; and *Savridin Dzhurayev v. Russia*, no. 71386/10, § 155, ECHR 2013 (extracts). As a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned (see, for example, *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010).”

30. *F.G. v. Sweden* (cited above) also contains an overview of the State’s procedural duties in the examination of applications for asylum (*ibid.*, §§ 119-127). The Court recalled, *inter alia*:

“120. Regarding the burden of proof, the Court found in *Saadi v. Italy* (cited above, §§ 129-32; see also, among others, *Ouabour v. Belgium*, no. 26417/10, § 65, 2 June 2015 and *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 261, ECHR 2012 (extracts)), that it was in principle for the applicant to adduce evidence capable of proving that there were substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3; and that where such evidence was adduced, it was for the Government to dispel any doubts raised by it (*ibid.*, § 129). In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the destination country, bearing in mind the general situation there and his personal circumstances (*ibid.*, § 130).

Where the sources available describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (*ibid.*, § 131). In cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court considers that the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of the above-mentioned sources, that there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned (*ibid.*, § 132)."

2. *Application of the general principles to the present case*

31. The Court has already had the opportunity to assess the general situation in Iran. In *F.G. v. Sweden* (cited above) § 130, it stated that:

"... while being aware of the reports of serious human rights violations in Iran, (see paragraphs 55-58 above) the Court does not find them to be of such a nature as to show, on their own, that there would be a violation of the Convention if the applicant were returned to that country (see also, *S.F. and Others v. Sweden*, no. 52077/10, § 64, 15 May 2012)."

32. The Court will thus proceed to ascertain whether the applicants' personal situations are such that their return to Iran would contravene Articles 2 and 3 of the Convention. It notes in that regard that the Directorate of Immigration and the Immigration Appeals Board carefully examined the applicants' requests for asylum. The domestic authorities assessed all the possible grounds for persecution that the case gave reason to examine, regardless of the degree to which the applicants relied on them. This included first of all their Buddhist faith, but also the submissions concerning family conflicts, alleged homosexuality and military service in Iran. The decisions were based on information gathered in thorough interviews with the applicants and relevant background information. The Court notes that the information relied on by the authorities is in conformity with other material (see paragraphs 18-22 above).

33. On the topic of Buddhism, the Directorate of Immigration held oral interviews with the applicants on 20 January 2016 and specifically targeted the issue of their religion and how they manifested their Buddhist faith. Both applicants stated independently that they prayed at home (or at the home of friends of their mother) and had Buddhist tokens at home. In their decision of 10 June 2016 to refuse to grant the applicants asylum, the Directorate of Immigration did not dispute that the applicants were Buddhist, but it found that the manifestations of their beliefs, as described by the applicants themselves, were so discreet that they would not attract any attention on that account upon deportation to Iran.

34. Subsequently, upon appeal to the Immigration Appeals Board, the applicants amended their statements about how they manifested their Buddhist faith. They now submitted that they wore visible religious symbols at all times and had raised coloured flags with religious texts outdoors in Dubai and would feel committed to do the same in Iran. The Immigration

Appeals Board found that the applicants lacked credibility in this respect and dismissed these subsequent submissions as being manufactured for the occasion in order to reverse the initial refusal to grant them asylum. The Immigration Appeals Board therefore assessed the risk of persecution due to their Buddhist affiliation on the basis of the applicants' statements before the Directorate of Immigration about how they manifested their Buddhist faith. Taking account of this and the available background information, the Immigration Appeals Board agreed with the Directorate of Immigration that the applicants had failed to substantiate being at risk of treatment contrary to Articles 2 and 3 of the Convention due to their religion upon deportation to Iran.

35. The Court reiterates that the national authorities are best placed to assess the applicants' credibility and whether their amended statements about the manifestation of their Buddhist religion could be considered established facts (see paragraph 30 above). Moreover, it finds it noteworthy that, although being invited to describe thoroughly their religious practices during the interview with the Directorate of Immigration, neither of the applicants mentioned any extrovert observances of their faith, be it by carrying visible symbols or by raising coloured flags with religious texts outdoors. This information was only relied on after the applicants' requests for asylum had been refused. In addition, the applicants have not submitted that their faith has ever caused them to attract negative attention from authorities in the United Arab Emirates, where they have lived all their lives and where there are also restrictions on public manifestations of non-Muslim beliefs. Nor have they submitted that this was because they suppressed wishes or needs in their preferred ways of manifesting their faith. In these circumstances, the Court finds no reason to depart from the domestic authorities' conclusion that the applicants' observances of their faith are so discreet as not to draw negative attention, including charges of apostasy, from the Iranian authorities, and that therefore the applicants have failed to substantiate that they would be at risk of treatment contrary to Articles 2 and 3 of the Convention due to their religion upon deportation to Iran.

36. Finally, as to the other reasons relied on by the applicants in support of their request for asylum, namely family conflict, the allegation of homosexuality or future refusals to perform military service, the Court sees no grounds to deviate from the conclusions drawn by the domestic authorities.

37. It follows that the complaints under Articles 2 and 3 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violations of Articles 8 and 13 of the Convention

38. As regards Article 8 of the Convention, the applicants have not brought their complaints under that provision before the domestic courts, which they could have done.

39. It follows that this part of the application must be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 §§ 1 and 4 of the Convention.

40. In respect of Article 13 of the Convention, it cannot, in the light of the Court's aforementioned conclusions concerning the applicants' complaints under Articles 2 and 3, be said that they have an "arguable claim" under those provisions (see, for example, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131; and *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

41. It follows that this complaint is manifestly ill-founded and must also be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

In view of the above, 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.

Done in English and notified in writing on 26 January 2017.

Anne-Marie Dougin
Acting Deputy Registrar

Yonko Grozev
President