**CASE OF R.C. v. SWEDEN**

*(Application no. 41827/07)*

JUDGMENT

STRASBOURG

9 March 2010

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of R.C. v. Sweden,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges,*
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 9 February 2010,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

1. The case originated in an application (no. 41827/07) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iranian national, Mr R.C. ("the applicant"), on 23 September 2007. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Mr J. Wiklund, a lawyer practising in Skellefteå. The Swedish Government ("the Government") were represented by their Agent, Ms A. Erman, of the Ministry for Foreign Affairs.

3. The applicant alleged that, if deported from Sweden to Iran, he would face a real risk of being arrested and subjected to inhuman treatment and torture in violation of Article 3 of the Convention.

4. On 8 November 2007 the President of the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to deport the applicant until further notice. The case was granted priority under Rule 41 of the Rules of Court.

5. By a decision of 23 September 2008, the Court declared the application admissible.

6. The applicant and the Government each filed written observations (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1965 and is currently in Sweden.

### A. Proceedings before the Swedish authorities and courts

8. On 18 October 2003 the applicant arrived in Sweden and three days later he requested the Migration Board (*Migrationsverket*) to grant him asylum and a residence permit in Sweden.

9. The Board held a first interview with the applicant on 27 May 2004 during which he stated that he was Shia' Muslim and came from a city in the south of Iran where his wife and two minor sons remained. A smuggler had arranged for his travel to Sweden and he had travelled all the way hidden in a lorry. He claimed that he had criticised the Iranian government on several occasions and, the last time he had participated in a student demonstration to show his sympathy, he had been arrested. He had spent seven months in Sepah prison and then been transferred to a prison in his home town where he had spent

another seventeen months. He had never been formally tried in court but every third month there had been a sort of religious trial where he had been put before a priest who had decided on his continued imprisonment. While imprisoned, he had been subjected to torture and still suffered from headaches because of it. He knew others who had participated in the demonstration and who were still imprisoned without trial.

10. A complete asylum investigation was conducted by the Migration Board on 4 June 2004 where the applicant maintained his initial statements and essentially added the following. In 1993 he had quit his job and returned to his village to work as a farmer. He had discussed with other villagers about the lack of human rights and freedom in Iran. One night the *Basij* (a "people's militia", loyal to the Supreme Leader) had come and destroyed his fields with a tractor. When he had tried to report the incident to the police, they had advised him not to, since it would lead nowhere. He had also expressed his opinion of the government when he had watched television in public places. The Basij had later destroyed his car, thrown stones at his house and sent messages that he should stop his activities and "information evenings". He had received the threats through a relative of his wife who worked for the regime. The threats had commenced in 1997 but had become more serious after he had participated in his first demonstration in 2000. It had been a student demonstration and he had escaped when the police intervened. On 9 July 2001 he had participated in his second student demonstration where he had been arrested because police had closed off all escape routes and had been filming the protesters as evidence. Many others had also been arrested. During the demonstration they had shouted slogans against the president and the government and demanded the release of student prisoners. In Sepah prison he had been tortured. He had been stabbed twice in the thigh, boiling water had been poured over his chest and his captors had hit him with their fists. However, on 11 February 2002, he had been transferred to the prison in his home town. He had been planning to escape for almost nine months by being very co-operative with the prison guards so that he had earned their trust. The "religious trials" had taken place at a court outside the prison and the applicant had spoken with three of his friends, who had visited him in prison to help him. On 19 July 2003 he had been taken to the court and his friends had been there. He had worn his normal clothes under his prison outfit and he had not had any handcuffs as the guards trusted him. He had told the guard that he had to go to the bathroom, where he had taken off his prison outfit. In the meantime one of his friends had gone to start the car and another friend had spoken to the guard to distract his attention from the applicant. The applicant had then walked straight out of the court, got into the car and they had driven off. It had been a revolution court and there had been a lot of people. He had then remained hidden at a friend's home for about two months while his friend had found a smuggler to help him out of the country. While he had been in hiding, his wife had been taken to the police twice for questioning about his whereabouts. His father had also been questioned. The applicant underlined that he was not, and never had been, a member of a political party or any organisation and that he had never been formally convicted of any crime. He was convinced that he would be executed if returned to Iran since he had escaped from prison and because he would be accused of having co-operated with those who are against Islam.

11. The applicant further stated that he continuously suffered from headaches and sleeplessness and had problems with his legs. He submitted a medical certificate, dated 4 February 2005 and issued by Dr I. Markström, a physician at a local health care centre. The certificate stated that the applicant had scars around both ankles, scars on the outside of both kneecaps and two lateral scars on his left thigh. He also had a reddish area stretching from his neck down to his chest and when he yawned there was a loud clicking sound from the left side of his jaw. In the physician's opinion, these injuries could very well originate from the torture to which the applicant claimed that he had been subjected in Iran, namely, that he had been chained around his ankles and suspended upside down for several hours, that boiling water had been thrown at his chest, that he had received blows to his head, jaw, abdomen and legs, and that he had been stabbed twice in the left thigh with a bayonet.

12. On 27 May 2005 the Migration Board rejected the request. It first noted that the applicant had not claimed to have been a member either of an organisation or of a political party or to have had a leading role in the organisation of demonstrations. Moreover, the

proceedings before the revolutionary courts were in general not open to the public. The Board found that the applicant had not substantiated his story in any way and that he had thus failed to show that he had been, or would be, of interest to the Iranian authorities. It therefore considered that the applicant would not attract special attention from the Iranian authorities if he were to be returned to his home country. As concerned the ill-treatment and torture of which the applicant claimed to have been the victim, the Board found that the medical certificate did not prove that he had been tortured even if the injuries documented could very well originate from the torture described. In its view, there was no reason to believe that the applicant would be subjected to ill-treatment or torture upon return to Iran. Thus, it concluded that the applicant could neither be granted asylum in Sweden nor a residence permit based on humanitarian grounds.

13. The applicant appealed to the Aliens Appeals Board (*Utlänningsnämnden*), maintaining his claims and adding that about half of the inhabitants in his home town knew him since he used to be a football player. Moreover, he had been one of ten to twelve organisers of the demonstration held in 2001. They had written the banners and decided which slogans to use. The other organisers, who were students and previously imprisoned critics of the regime, had also been punished. Following his escape, his wife had been taken in for questioning about his whereabouts on seven occasions and had been kept in detention on three occasions. His father had been questioned on two occasions and their home had also been searched on two occasions. The applicant further claimed that he had been kept in an isolation cell for the first two months of his detention. Furthermore, the public had access to hearings before the revolutionary courts and it had been relatively easy for him to escape since his friends had distracted the guards and he had thus been able to leave the building. Lastly, submitting four medical certificates, the applicant invoked his deteriorating health as he suffered, *inter alia,* from depression and panic attacks.

14. In March 2006 the applicant was informed that the case would be transferred to the Migration Court (*Migrationsdomstolen*) for further proceedings, following the entry into force of a new Aliens Act (see below under Relevant Domestic Law).

15. On 18 June 2007 the Migration Court held an oral hearing. In response to his lawyer's questions the applicant stated, *inter alia*, that he had participated in demonstrations critical against the regime since 1988 and that, in 1997 or 1998, he had started to notice that his criticism was not appreciated. He had participated in yearly demonstrations, such as on women's day and on labour day. Mostly he had participated in meetings on various premises. A relative of his wife had been an official at the intelligence agency and thus he had been assured that nothing would happen to him. He had been one of 4-5,000 participants in the demonstration in 2001 and he had played no special role, but it had been monitored by the authorities. He had been arrested and accused of being against Islam and the regime. In connection with a visit by his wife to Sepah prison while he was there, she had been detained for three days and questioned about him. However, no other relatives had been summoned or questioned by the authorities. He had escaped when his friends had come to the revolutionary court for his hearing and had pretended to have a fight with each other so that he could go to the toilets to change. It had then taken him fifteen seconds to leave the building since there were no exit controls. In response to questions by the Migration Board, the applicant claimed that he had organised demonstrations and that he had been one of the leaders at the demonstration in 2001. He had been arrested because he had been in the front row and had shouted slogans.

16. In a judgment of 9 July 2007, the Migration Court, by three votes to one, rejected the appeal. It first noted that the applicant appeared to have expanded his grounds for asylum by claiming that he had not just participated in demonstrations but had actually been involved in organising them. However, since he had not been a member of a party or an organisation which was critical of the regime, the court found it unlikely that he would be of any interest to the authorities in his home country if he returned. It further considered that the applicant's account of how he had escaped from the revolutionary court was not credible, having regard, *inter alia,* to international sources which stated that insights into the functioning of the revolutionary courts were very limited. The court also noted that he had remained in Iran for two months following his escape before leaving the country. Moreover, it found that the

applicant had failed to show that he had been tortured in Iran. Thus, having regard to all the circumstances of the case, the court concluded that the applicant could not be considered to be in need of protection in Sweden and that his health problems were not of such a serious nature that he could be granted leave to remain on humanitarian grounds.

17. One of the three lay judges dissented as he considered that the applicant had given a credible account of events and should be granted asylum as a refugee in Sweden.

18. On 17 July 2007 the applicant appealed to the Migration Court of Appeal (*Migrationsöverdomstolen*), maintaining his claims and stating that he was only telling the truth. He was also of the opinion that the Migration Court had failed to take into account the medical certificate testifying to his torture injuries. He further requested some extra time in order to submit certain documents that his family had sent to him from Iran. The court granted an extension of the time-limit and, on 7 August 2007, the applicant submitted, among other things, two summonses, one to his wife and one to his father, to appear before the revolutionary court in his home town on 6 August 2003 to answer questions concerning the applicant and his escape from prison.

19. On 4 September 2007 the Migration Court of Appeal refused leave to appeal.

20. The applicant was called to a meeting with the Migration Board on 9 November 2007.

21. On 8 November 2007, following a request by the applicant, the President of the Chamber to which the case had been allocated decided, under Rule 39 of the Rules of Court, to indicate to the Swedish Government that it was desirable in the interest of the parties and the proper conduct of the proceedings before the Court not to deport the applicant to Iran until further notice.

22. Following the request by the Court, on 9 November 2007 the Migration Board stayed the enforcement of the deportation order until further notice.

### B. Forensic medical report of 14 November 2008

23. Upon request by the Court, the applicant submitted a forensic medical report dated 14 November 2008 and issued by Dr E. Edston, specialist in forensic medicine at the Crisis and Trauma Centre at Danderyd Hospital. The report was drawn up on the basis of the protocols from the interviews with the applicant before the Migration Board, the medical certificate by Dr I. Markström, a letter from the applicant's representative dated 16 October 2008 and the applicant's own story as told to Dr Edston during his examination on 4 November 2008. The report contained photos of the scars together with a written protocol of all the scars and the medical record from the examination as well as Dr Edston's opinion.

24. The report noted that the applicant had claimed that he had been tortured in prison in 2001 and that the torture had consisted of beating with fists, kicks, being hit on his kneecaps with rifle butts, having a bayonet stuck twice in his thigh, as well as being flogged, suspended upside down for prolonged period of times and having hot water poured over him. He further stated that, as a result of the torture, he suffered from chronic headaches, reduced feeling in his right thigh, reduced mobility of his jaw, reduced eye sight, an ulcer, pain in his knees when walking and medical problems with his thyroid gland and diabetes. Dr Edston examined the applicant and found numerous scars on his body.

25. In Dr Edston's opinion, the injuries invoked by the applicant could very well have occurred in 2001 as claimed and the scars observed on his body had the appearance and localisation which corresponded well with his statements of how they had appeared. For example, the scars on his kneecaps could well correspond to blows with rifle butts, the marks on the front of his shins from having been kicked with boots, the marks on his left ankle could have appeared as a consequence of having been suspended upside down by his ankles and the pigmentation on his neck corresponded well with a burn injury. In conclusion, Dr Edston noted that, in cases like this, alternative causes for the origins of the scars could not be completely excluded but that experience showed that self-inflicted injuries and injuries resulting from accidents normally had a different distribution to those showed by the applicant. The findings in the present case favoured the conclusion that the injuries had been inflicted on the applicant completely or to a large extent by other persons and in the manner claimed by him. Thus, the findings strongly indicated that the applicant had been tortured.

## II. RELEVANT DOMESTIC LAW

26. The basic provisions mainly applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the 2005 Aliens Act (*Utlänningslagen*, 2005:716 – hereafter referred to as "the 2005 Act") which replaced, on 31 March 2006, the old Aliens Act (*Utlänningslagen*, 1989:529). Both the old Aliens Act and the 2005 Act define the conditions under which an alien can be deported or expelled from the country, as well as the procedures relating to the enforcement of such decisions.

27. Chapter 5, Section 1, of the 2005 Act stipulates that an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. According to Chapter 4, Section 1, of the 2005 Act, the term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, Section 2, of the 2005 Act).

28. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, Section 1, of the 2005 Act). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, Section 2, of the 2005 Act).

29. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This applies, under Chapter 12, Section 18, of the 2005 Act, where new circumstances have emerged that mean there are reasonable grounds for believing, *inter alia*, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced. If a residence permit cannot be granted under this provision, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, Sections 1 and 2, of the 2005 Act, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not doing so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, Section 19, of the 2005 Act).

30. Under the 2005 Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances; the Migration Board, the Migration Court and the Migration Court of Appeal (Chapter 14, Section 3, and Chapter 16, Section 9, of the 2005 Act). Hence, upon entry into force on 31 March 2006 of the 2005 Act, the Aliens Appeals Board ceased to exist.

## III. INFORMATION ON IRAN

31. On 25 June 2009 the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on the situation in Iran in which it urged the Iranian authorities to refrain from using force and violence against peaceful demonstrators and to release the more than 400 demonstrators arrested since the elections on 12 June 2009 as well as the more than 170

politicians, members of their families and journalists detained. At its subsequent session in Strasbourg, on 1 October 2009, the Political Affairs Committee of the PACE, adopted a declaration in which it considered the violent reactions of the Iranian authorities to peaceful protests to be a serious breach of Iranian citizens' human rights. It also called upon governments of other countries not to expel Iranian citizens to Iran.

32. In a report (A/64/357) of the United Nation's Secretary-General on *The situation of human rights in the Islamic Republic of Iran*, dated 23 September 2009, and presented to the UN General Assembly at its 64th session, it was noted that 2009 had seen an increase in human rights violations targeting women, university students, teachers, workers and other activist groups, particularly in the aftermath of the elections in June 2009. Hence, during June, July and August 2009, several independent UN experts as well as the Secretary-General had voiced grave concerns about the use of excessive police force, arbitrary arrests, killings, ill-treatment of detainees and the use of torture to obtain confessions. Moreover, a variety of cases suggested a widespread lack of due process, access to lawyers and the failure to respect the rights of detainees, including allegations that individuals had been placed in detention without charge and had been kept "incommunicado". It was noted that no visits by any special procedure mandate holders had taken place since 2005.

33. In its *World Report 2009*, Human Rights Watch noted that respect for basic human rights in Iran continued to deteriorate and that the government showed no tolerance for peaceful protests or gatherings, routinely detaining participants and subjecting them to torture. The Judiciary and the Ministry of Intelligence continued to be responsible for many serious human rights violations. Amnesty International, in its *Amnesty International Report 2009*, made the same findings, also noting that demonstrations frequently led to mass arrests and unfair trials. Some were also detained without trial for long periods beyond control of the judiciary and were reported to have been tortured and denied access to lawyers and their families. Amnesty International has repeatedly observed that trials before the revolutionary courts are not public. For instance, on 4 August 2009, in its article "*Over 100 Iranians face grossly unfair trials*", Amnesty International noted that more than 100 persons had gone on trial in Tehran accused of organising widespread civil protests. The trial was held before the Revolutionary Court in Tehran and it was closed to the public and even to the defendants' lawyers.

34. According to Sections 3.28 and 3.31 of the U.K. Home Office's *Country of Origin Information Report on Iran*, dated August 2009, the pressure for democratic reform in Iran changed dramatically after the student protests at Tehran University in July 1999. Every year on the anniversary of the 1999 event, students have gathered at Tehran University and other major campuses throughout the country and the date has been a flashpoint for violence and tension (Section 3.27). Thus, in June 2003, thousands of Iranians took to the streets and about 4,000 people were arrested all over the country before and after the protests. Although many of them had since been released, there were still scores of students behind bars. Some of these had been in prison since they were arrested as a result of similar disturbances in 1999, 2000 and 2001.

35. Section 27.14 of the U.K. Report further noted that in "*Evaluation of the August 2008 Country of Origin Information Report on Iran*" by Dr Reza Molavi and Dr Mohammad M Hedayati-Kakhki of the Centre for Iranian Studies at Durham University, dated 23 September 2008, it appeared that, if an Iranian arrived in the country without a passport or any valid travel documents, they would be arrested and taken to a special court at Mehrabad Airport in Tehran where the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups and any other circumstances would be assessed. This procedure also applied to people who were deported back to Iran, not in the possession of a passport containing an exit visa; in this case the Iranian Embassy would issue them with a document confirming their nationality. Illegal departure was often prosecuted in conjunction with other, unrelated offences since the investigation into the facts surrounding the offence of illegal departure could result in the discovery of an underlying offence.

36. The Danish Immigration Service's report *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting,*

*etc.*, released in April 2009, following a fact finding mission to Iran from 24 August to 2 September 2008, stated that some of its sources had claimed that the granting of travel documents at an Iranian embassy did not necessarily mean that the person would not face problems with the Iranian authorities upon return to Iran. The person in charge of passport border control at the Imam Khomeini International Airport in Tehran (a newly built airport which had replaced Mehrebad airport) had explained that an Iranian travelling on a laissez-passer was likely to be interviewed upon arrival in Iran and questioned about how he or she had lost the previous passport. However, if a person arrived in Iran on a travel document issued by an Iranian representation and the security check had been completed at the embassy, the airport authorities would not check his or her identity. The authorities at the airport would, however, ask the person how he or she had left Iran, since there was no exit stamp in his or her new travel document. A source in Iran claimed that, if a person had left Iran illegally, he or she had not been registered in the computer system as having left Iran and therefore would be questioned upon return. It was added that a person who had left the country illegally could also be arrested if he or she had committed an illegal act before leaving Iran. It was further observed that a person on a laissez-passer, issued by an Iranian representation abroad, might be fined for illegal exit or subjected to a few hours' interrogation.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

37. The applicant claimed that deportation to Iran would subject him to a real risk of being arrested, tortured and perhaps even executed, in violation of his rights under Article 3 of the Convention which reads:

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

### A. The parties' submissions

#### *1. The applicant*

38. The applicant argued that, if forced to return to Iran, he would face a real and serious risk of being arrested, tortured and perhaps even executed because of his earlier activities as a critic of the Iranian regime, for which he had previously been imprisoned and tortured. He also alleged that the fact that he had escaped from prison and left the country illegally would put him at additional risk.

39. He claimed that the forensic medical report by Dr Edston proved that he had been tortured in prison in Iran. Moreover, he was convinced that the Iranian authorities still had a special interest in him due to his activities as an open critic of the regime. He had manifested his opposition to the regime in his contacts and discussions with other people and by participating in several demonstrations. He had been one of the organisers of the demonstration in July 2001, together with some students and formerly imprisoned critics, in total ten to twelve persons. They had assembled various groups of demonstrators from different areas, had written posters and given instructions on slogans to be used during the demonstration, such as "referendum" or "stop the harassment". Together with the other organisers, he had organised the march and had given instructions on when to run from the police and throw away the posters. The other organisers had also been arrested and punished by the authorities. Thus, by spreading criticism against the Iranian government, he had committed a criminal act.

40. The applicant further alleged that he was sought by the authorities because he had escaped from prison. Formally, he was still supposed to be in prison and consequently the authorities were still looking for him. This was also supported by the summonses sent to his wife and father. Furthermore, it was not impossible to escape from the court, due to the extensive corruption in the country. Also, since he had remained outside Iran for a number of

years, he would also be of interest to the Iranian government for this reason. As the Iranian opposition was mainly active outside the country, the applicant would be considered as being allied with the exiled opposition. In this context, the applicant added that, in March 2008, his children had been approached by a former friend of his who was now a general within the Security Service in Iran and who had told them that their father would die if he returned.

41. Taking all the circumstances of the case into account, the applicant considered that he had shown that he was still wanted by the Iranian authorities and that they had a special interest in him. Therefore, if he were to be returned to Iran, he would at the very least be subjected to torture and inhuman or degrading treatment or punishment, as he had previously been.

*2. The Government*

42. The Government considered that the application did not disclose any violation of Article 3 of the Convention.

43. They submitted that, although the situation in Iran was problematic, it did not in itself suffice to establish that the forced return of the applicant to Iran would engage the Government's responsibility under Article 3 of the Convention. For a violation to be found, the Government maintained that substantial grounds had to be shown to establish that the applicant would face a real, personal and concrete risk of being subjected to treatment contrary to Article 3 if return to Iran.

44. In this respect, the Government emphasised that the applicant's credibility was of vital importance to the examination of the case and that much weight had to be given to the national authorities' opinions since they had met with the applicant in person; the Migration Board having held two interviews with the applicant and the Migration Court having held an oral hearing where the applicant was heard. In the Government's view there were serious reasons to question the applicant's credibility as he had given contradictory statements and presented new assertions at a late stage of the proceedings. For instance, the Government strongly questioned the applicant's story about how friends had helped him to escape from the revolutionary court, having regard to international sources that there was very little public control of these courts, that the proceedings were only open to the parties and, exceptionally, to some family members, and that people who entered and exited the court building were carefully checked. That the escape was the result of extensive corruption in the country, as the applicant had claimed before the Court, was unsupported and not in accordance with the applicant's earlier statements about his escape. The Government further stressed that the applicant had given contradictory information about his role in the demonstration in 2001 during the national proceedings and even during the oral hearing in Migration Court. They also observed that the applicant had never mentioned that he had been flogged in prison until the medical examination in November 2008. The same was true of his statement about having been hit on his kneecaps with rifle butts. Previously, he had only stated that he had been kicked on the kneecaps.

45. Turning to the forensic medical report of 14 November 2008, the Government regretted that the Court would examine it as a first instance and considered that it was incumbent on the applicant to have initiated such a medical examination during the national proceedings if he had deemed it to be important for his case, noting that the Migration Board had found the initial medical certificate to have provided insufficient proof of torture injuries. In any event, the Government contended that the conclusions in the medical report should be carefully assessed, in particular regarding the issue of the origin and causes of the injuries referred to and when these injuries had occurred. The main reasons for this were that the medical examination had been performed more than seven years after the alleged torture took place and that the applicant had failed to inform the doctor of other possible causes for some of the injures. Hence in their opinion, it could not be ruled out that the findings relating to the applicant's jaw, teeth, knees and thighs might also have been a result of the applicant's earlier activity as a football player in Iran.

46. However, even assuming that the applicant's own story was to some extent accurate, the Government still maintained that he would not be facing a real risk of being subjected to treatment contrary to Article 3 of the Convention. According to them, the applicant's alleged

political activities had been limited, they had occurred several years ago and the applicant had not even claimed that he had been politically active since he had left Iran. Moreover, he had not presented any official documents or other evidence indicating that he currently would be of interest to the Iranian authorities. As concerned the summonses, the Government referred to their observations on the admissibility of the case in which they questioned the authenticity of the summonses following an inquiry by the Swedish Embassy in Tehran. This inquiry had failed to show that the summonses were authentic. Thus, it remained unclear to the Government why and in what way the Iranian authorities would show a particular interest in the applicant if he were returned. In addition, they noted that the Swedish Embassy in Tehran had stated in a recent report that a person who had left Iran illegally could, upon return, risk punishment by a fine.

47. The Government therefore concluded that there was nothing to support the applicant's submissions that he would risk treatment contrary to Article 3 of the Convention if returned to Iran.

### B. The Court's assessment

48. The Court observes that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (*Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, expulsion 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 concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008-...).

49. Whilst being aware of the reports of serious human rights violations in Iran, as set out 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 to return to that country. The Court has to establish whether the applicant's personal situation is such that his return to Iran would contravene Article 3 of the Convention.

50. The Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *Collins and Akasiebie v. Sweden* (dec.), no. 23944/05, 8 March 2007, and *Matsiukhina and Matsiukhin v. Sweden* (dec.), no. 31260/04, 21 June 2005). In principle, the applicant has to adduce evidence capable of proving that there are 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 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005 and *NA. v. the United Kingdom*, no. 25904/07, § 111, 17 July 2008). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

51. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to Iran, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 108 *in fine*).

52. The Court observes, from the outset, that there is a dispute between the parties as to the facts of this case and that the Government have questioned the applicant's credibility and pointed to certain inconsistencies in his story. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. It accepts that, 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. However, in the circumstances of this case, the Court does not share the conclusion of the Government that the information

provided by the applicant was such as to undermine his general credibility and it notes that one of the Migration Court's lay judges considered that the applicant had given a credible account of events and that he ought to have been granted asylum. The Court further observes that the applicant has never claimed that he was a member of a political party or of any organisation or association. He has consistently maintained only that he participated in demonstrations to express his opposition to the current Iranian regime and that, following a demonstration in July 2001, he was arrested and tortured by the Iranian authorities. The Court finds that the applicant's basic story was consistent throughout the proceedings and that notwithstanding some uncertain aspects, such as his account as to how he escaped from prison, such uncertainties do not undermine the overall credibility of his story.

53. Firstly, the Court notes that the applicant initially produced a medical certificate before the Migration Board as evidence of his having been tortured (see paragraph 11). Although the certificate was not written by an expert specialising in the assessment of torture injuries, the Court considers that it, nevertheless, gave a rather strong indication to the authorities that the applicant's scars and injuries may have been caused by ill-treatment or torture. In such circumstances, it was for the Migration Board to dispel any doubts that might have persisted as to the cause of such scarring (see the last sentence of paragraph 50). In the Court's view, the Migration Board ought to have directed that an expert opinion be obtained as to the probable cause of the applicant's scars in circumstances where he had made out a *prima facie* case as to their origin. It did not do so and neither did the appellate courts. While the burden of proof, in principle, rests on the applicant, the Court disagrees with the Government's view that it was incumbent upon him to produce such expert opinion. In cases such as the present one, the State has a duty to ascertain all relevant facts, particularly in circumstances where there is a strong indication that an applicant's injuries may have been caused by torture. The Court notes that the forensic medical report submitted at its request has documented numerous scars on the applicant's body. Although some of them may have been caused by means other than by torture, the Court accepts the report's general conclusion that the injuries, to a large extent, are consistent with having been inflicted on the applicant by other persons and in the manner in which he described, thereby strongly indicating that he has been a victim of torture. The medical evidence thus corroborates the applicant's story.

54. Secondly, it is evident from the information available on Iran (as set out above) that the Iranian authorities frequently detain and ill-treat persons who participate in peaceful demonstrations in the country. The Court notes that it is not only the leaders of political organisations or other high profile persons who are detained but that anyone who demonstrates or in any way opposes the current regime is at risk of being detained and ill-treated or tortured. The Court notes that the applicant has maintained, before the domestic authorities and the Court, that he was arrested with many others when he participated in a demonstration against the regime in July 2001 and that the torture he endured occurred in the months following his arrest. His account, therefore, is consistent with the information available from independent sources concerning Iran.

55. In view of the foregoing, the Court considers that the applicant has substantiated his claim that he was detained and tortured by the Iranian authorities following a demonstration in July 2001. Since protection against the treatment prohibited by Article 3 is absolute, that provision imposes an obligation not to expel any person who, in the receiving country, would run the real risk of being subjected to such treatment (see *Saadi*, cited above, § 138). The question, therefore, to be considered is whether the applicant would run a real risk of being subjected to such treatment in the event of his return to Iran. Having regard to its finding that the applicant has discharged the burden of proving that he has already been tortured, the Court considers that the onus rests with the State to dispel any doubts about the risk of his being subjected again to treatment contrary to Article 3 in the event that his expulsion proceeds.

56. In assessing such a risk, regard must be had, firstly, to the current situation that prevails in Iran and to the very tense situation in that country where respect for basic human rights has deteriorated considerably following the elections of June 2009 (see paragraphs 31-34). In addition, regard must also be had to the specific risk facing Iranians returning to their home country in circumstances where they cannot produce evidence of their having left that country legally. The Court notes that according to information available from independent

international sources (see paragraphs 35 and 36 above) such Iranians are particularly likely to be scrutinised for verification as to the legality of their departure from Iran. The Court observes that the applicant has claimed that he left Iran illegally and that his claim in this regard has not been rebutted by the Government. Therefore, in the light of the information available to the Court, it finds it probable that the applicant, being without valid exit documentation, would come to the attention of the Iranian authorities and that his past is likely to be revealed. The cumulative effect of the above factors adds a further risk to the applicant (see, *mutatis mutandis*, *NA. v. the United Kingdom*, no. 25904/07, §§ 134-136, 17 July 2008).

57. Having regard to all of the above, the Court concludes that there are substantial grounds for believing that the applicant would be exposed to a real risk of being detained and subjected to treatment contrary to Article 3 of the Convention if deported to Iran in the current circumstances. Accordingly, the Court finds that the implementation of the deportation order against the applicant would give rise to a violation of Article 3 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

59. The applicant made no claim in respect of pecuniary and non-pecuniary damage and the Government similarly made no observations under this head.

### B. Costs and expenses

60. The applicant claimed a total of SEK 32,112 (approximately EUR 3,177), inclusive of VAT, in legal costs and expenses incurred before the Court, less SEK 7,916 (EUR 850) which he had already been granted by way of legal aid by the Council of Europe. His claim comprised the cost of his lawyer (SEK 23,750), the cost of an interpreter (SEK 1,544) and the cost of the medical report requested by the Court (SEK 6,818).

61. The Government considered the amount acceptable, but noted that if the applicant were to receive further legal aid from the Council of Europe, this should also be deducted from the total costs to be awarded under Article 41 of the Convention.

62. The Court considers that the amount claimed is reasonable. However, it notes that the applicant was granted further legal aid in the amount of EUR 622 by the Council of Europe to cover the cost of the medical report. The Court therefore awards the applicant EUR 3,177, inclusive of VAT, less EUR 1,472 already received in legal aid from the Council of Europe, which leaves EUR 1,705 to be paid by the Government.

### C. Default interest

63. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one that the applicant's deportation to Iran would be in violation of Article 3 of the Convention;

2. *Holds* by six votes to one

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,705 (one thousand seven hundred and five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Swedish kronor at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 9 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Josep Casadevall
Deputy Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Fura is annexed to this judgment.

J.C.M.
S.H.N.

# DISSENTING OPINION OF JUDGE FURA

1. I do not share the majority's view that the applicant's deportation to Iran would be in violation of Article 3 of the Convention. Here are my reasons.

2. Like the Government, I find that the applicant failed to substantiate that he would be exposed to a real risk of being arrested and subjected to treatment contrary to Article 3 if deported to Iran.

3. The starting point for anyone alleging a breach of the Convention is to substantiate the allegation. This onus on the applicant can be difficult to discharge but it must nonetheless be done, even in cases like the one at hand. In principle, the applicant has to adduce evidence capable of proving that there are 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 (see *N. v. Finland,* no. 3885/02, 26 July 2005, § 167, and *NA. v. the United Kingdom,* no. 25904/07, 17 July 2008, § 111). It is only when and if such evidence is adduced that it is for the Government to dispel any doubts, failing which there would be a violation.

4. I am not convinced that the applicant has made out a *prima facie* case and that the necessary evidence has been adduced, even with the additional medical certificate dated November 2008.

5. In examining the case before them the domestic authorities must assess facts that are presented by the parties. In this exercise the authorities might come across difficulties when facts are in dispute. Evidence presented must be evaluated and credibility will be of the essence. Domestic courts are normally better placed to do this than an international court, since they have had the opportunity to see and hear the parties.

6. In the present case, the applicant had his case tried in several instances domestically. The review was both administrative and judicial. After arriving in 2004 in Sweden at the age of 38 he asked for asylum. He was assisted by the same legal counsel from the outset and all through the proceedings, including before this Court. He informed the authorities that he had been kept in detention in Iran and tortured but that he had managed to escape in 2003. He submitted a medical certificate before the Migration Board.

7. The mentioned certificate issued by a general practitioner gave an indication that the applicant's injuries might have been caused by ill-treatment or torture. Since the authorities had doubts, however, they ought to have, on their own motion according to the majority (see paragraph 53), directed that an expert opinion be obtained as to the probable cause of the applicant's scars. I am far less assured than the majority and would be reluctant to give any specific instructions to the domestic authorities as to what procedural measure to take and even less willing to advise on what conclusions to draw from certain evidence introduced in a case where I have not had the benefit of seeing the parties and in which the relevant events took place a long time ago.

8. At a later stage the applicant added that he had been involved in organising demonstrations, without giving any details as to where they took place or as to their contents. Also the nature of the applicant's criticism of the Iranian regime remains unclear to this day even though the applicant has been asked specifically about this.

9. A forensic medical report issued in November 2008, **after** the domestic authorities had finalised their examination, concluded that the findings strongly indicated that the applicant had been tortured in 2001.

10. In the majority's view, this forensic medical report is evidence enough to outweigh the inconsistencies of his story (see paragraphs 52 and 53 of the judgment). I respectfully disagree. To me all the evidence adduced must be taken together and evaluated as a whole and I cannot see that the Swedish authorities have failed in carrying out this task. Even if it is taken into account that they did not have the benefit of the forensic medical report and even allowing for the difficult general conditions in Iran, I cannot draw the same conclusion as the majority in this respect.

11. The applicant has not himself claimed that he runs a risk of being specially checked at the border. This is a conclusion the majority draws from the international reports about the

general conditions and practices in Iran and in particular what returning Iranians can expect if they are not carrying any valid travel documents.

12. The applicant alleges that since he has been active organising demonstrations, detained and tortured, been abroad for a long time and received summonses he would be of interest to the Iranian authorities if he were to be returned to Iran today, 7 years later, and as a consequence would run a real risk of being subjected to treatment contrary to Article 3 of the Convention.

13. The fact that the applicant has in all probability been tortured in Iran is not enough in itself to substantiate that he runs a real risk of being tortured again if returned. Here my views differ from the majority (see paragraph 55). The majority's opinion that the onus rests with the State to dispel any doubts about the risk of the applicant's being subjected again to treatment contrary to Article 3 in the event that his expulsion proceeds does not follow the established case-law of the Court (see *Saadi*, among other authorities). Furthermore, I have difficulties to see how, in practice, a State should proceed in order to achieve this aim.

14. For all these reasons I cannot depart from the assessment made by the Swedish authorities and I fail to see that the applicant has substantiated his submissions.



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R. C. v. SWEDEN JUDGMENT – SEPARATE OPINION