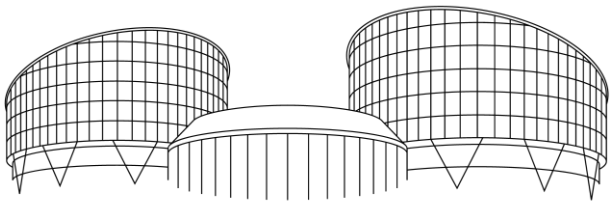

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF S.F. AND OTHERS v. SWEDEN

(Application no. 52077/10)

JUDGMENT

STRASBOURG

15 May 2012

FINAL

15/08/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of S.F. and Others v. Sweden**,**

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

Dean Spielmann, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger,
André Potocki, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 52077/10) 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 three Iranian nationals, S.F., N.S. and A.F. ("the applicants"), on 10 September 2010. The President of the Section acceded to the applicants' request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicants were represented by Ms G. Stenberg, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ms G. Isaksson, of the Ministry of Foreign Affairs.

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

4. On 14 September 2010 the President of the Chamber decided to apply Rule 39 of the Rules of the Court, indicating to the Government, in the interest of the parties and the proper conduct of the proceedings before the Court, that the applicants should not be deported until further notice.

5. On 21 October 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1977, 1979 and 2009 respectively and are currently in Sweden.

7. On 10 September 2007 the first and second applicants, a married couple, arrived in Sweden and applied to the Migration Board (*Migrationsverket*) for asylum, residence and work permits. Applications for refugee status and travel documents were lodged with written submissions dated 28 February 2008.

8. The applicants submitted that they had lived together in Tehran. The first applicant is a Kurdish Sunni Muslim and the second applicant a Persian Shia Muslim. They both had a university degree and had been working, the first applicant as a machine supervisor at a car factory and the second applicant as a teacher, before they left Iran. The first applicant had also been a musician, and he used to perform and sing political music for the Kurdish cause in Iran. He had played at several concerts, which had been criticised by the authorities. He had also been an active athlete as an Iranian kick-boxing champion.

9. The first applicant claimed that he had been politically active in Iran. He had always been interested in the Kurdish issue and had once, in 2003, been arrested and questioned by Etalat, the Iranian security forces, for being involved in a discussion on this topic. Subsequently, he had been sentenced to 12 months' imprisonment by the Mojtama Ghazani e Ghods court. He had served one month in Qasr prison, before being released on bail. Despite the sentence, he had been able to keep his job and stay in Tehran.

10. Approximately one year before they left Iran, the first applicant had been approached by a colleague and close friend, who was a member of the Democratic Party of Iranian Kurdistan (KDPI), and asked if he was interested in supporting and working for the KDPI. He had accepted the proposition and started to disseminate leaflets, compact discs and other information about the party and also to recruit new members. He had sympathised with the party but had not been a full member. His only contact with the party had been through the colleague.

11. On 26 August 2007 the first applicant had witnessed the arrest of a work colleague by Etalat outside their workplace. He had then, out of fear, decided to leave Iran as he assumed that his friend would reveal his contacts under torture. He had left work, gone to the bank to withdraw his savings and then home to tell his wife and to pack their most important belongings. The applicants had travelled first to Karaj, where the second applicant's parents lived and where they also left some personal belongings and documents, and then to Sardesht, where they stayed with the first applicant's grandparents for two nights.

12. On 27 August 2007 the first applicant had called the doorman in their apartment building and been told that four men from Etalat had come looking for the applicants. Etalat had broken into their apartment, where allegedly they found evidence and KDPI-related documents which the applicants had left behind.

13. On the night between 28 and 29 August 2007, the applicants had crossed the border into Turkey and then continued through Europe by truck. Since coming to Sweden they had been in touch with the first applicant's father, who had claimed that he had been threatened by Etalat and that they had been searching for the first applicant. On several occasions, Etalat had approached the father in his home and taken him to their head office for interrogation.

14. The second applicant submitted that she had not been politically involved and that she knew little of the extent of her husband's involvement in political activities while they were living in Iran. She had, however, helped him to distribute some materials from the party to friends and relatives.

15. In the initial contact with the Migration Board the applicants also submitted that they had both been politically active in Sweden. They had taken part in several meetings for the Kurdish cause and were also active in news programmes that were broadcast on a satellite channel banned in Iran and on internet blogs.

16. The first applicant had contacted members of the KDPI when he arrived in Sweden and, soon after his arrival, he had participated in an information meeting concerning the party's 14th Congress. The applicant submitted photographs of his attendance at the meeting before the Migration Board. He also submitted a certificate issued by the KDPI office in Paris on 15 April 2008, stating that the first applicant was a supporter of the party and that his life would be in danger if he were to return to Iran.

17. The second applicant had started in 2008 to work regularly for Newroz TV, a Kurdish TV channel which was banned in Iran and considered critical of the Iranian regime.

18. On 23 May 2008 the Migration Board rejected the applicants' request for asylum. The Board found that the applicants' story lacked credibility in several aspects. Leaving the credibility issues aside, the Board also found that the applicants had only been active in the KDPI at a very low level and that only activists higher up in the hierarchy would be of any interest to the Iranian authorities. Furthermore, the Board found that the applicants had not been very active since their arrival in Sweden and had only participated in general meetings.

19. The first and second applicants proceeded to the Migration Court *(Migrationsdomstolen)* where they maintained their story and added that several of their friends had been arrested since they had left Iran and the first applicant's father had received several threatening telephone calls from

Etalat. In July 2008 the first applicant had been interviewed on Newroz TV about himself, sports and music, and political activity. The second applicant had started to work for Newroz TV as a translator, newscaster and journalist on a daily basis. She had researched and reported, *inter alia*, on the hidden mass killings in Iranian prisons.

20. In September 2008 they had become members of a European support committee for Kurdish prisoners on hunger strike in Iran. Until 9 October 2008, when the hunger strike ended, the first applicant had worked actively to collect support from different NGOs and to spread the information on human rights violations in Iran. The issue was brought up by the European Parliament, on the initiative of the committee. The second applicant, as she could speak English, Farsi and Sorani fluently, had become the universal spokesperson for the committee. During the hunger strike, she had been interviewed by several Kurdish media, Newroz TV and Roj TV and both applicants had participated in debates on human rights violations in Iran on blogs and several internet sites. During another hunger strike in Stockholm, in October 2008, the first applicant had also been interviewed by the Kurdish media, Newroz TV and Roj TV, and both applicants had participated on blogs and several internet sites. They claimed that their involvement with, *inter alia*, Newroz TV must have drawn the attention and interest of Iranian authorities. They submitted a letter from the first applicant's father, compact discs containing interviews with them from Newroz TV and several reports and certificates from NGOs.

21. By a decision on 14 January 2009 the Migration Court rejected the applicants' request to translate the submitted compact discs containing statements about the Iranian government.

22. On 3 April 2009 the Migration Court, after an oral hearing of the case, rejected the applicants' appeal. The applicants' story about their activities in Iran was considered stringent and substantiated by written evidence and the court found no reason to question the credibility of the story. However, reports showed that mainly high-ranking executives or militant members of the KDPI were subjected to violent acts. It was not considered probable that the Iranian authorities would show an interest in someone at such a low level as the first applicant. Furthermore, the political activities in Sweden had been limited in scope and the applicants had not been able to show that these activities were of any interest to the authorities. The submitted letter from the first applicant's father and the certificate from the KDPI's office in France were considered very general or of low value as evidence. Having regard to relevant country information and to the fact that the Iranian authorities were not interested in activities at a low level, the court found that there was no indication that the applicants had come to the direct attention of the Iranian authorities.

23. On 19 June 2009 the third applicant was born.

24. Before the Migration Court of Appeal the first applicant additionally submitted that he had been actively involved for the Kurdish cause on Newroz TV, where he had expressed criticism and continuously informed, *inter alia*, about the situation for Kurds and the severe human rights violations in Iran. He had also been interviewed on TV concerning his own reasons for leaving Iran. Newroz TV was allegedly monitored by the Iranian intelligence services. The second applicant submitted that, in addition to her work for Newroz TV, she had been working for other Kurdish broadcasting services, that she had performed approximately 30 interviews and that she had worked on translations for Amnesty International's international secretariat in London. They submitted that they had been involved in substantial political *sur place* activity and that this activity was known to the Iranian authorities.

25. On 8 July 2009 the Migration Court of Appeal *(Migrations-överdomstolen)* refused leave to appeal.

26. Subsequently, the applicants turned again to the Migration Board to stop the expulsion. On 22 October 2009 the Board decided not to grant a new examination. This decision was upheld by the Migration Court on 28 January 2010 and the Migration Court of Appeal refused leave to appeal on 10 March 2010.

27. In August, September and October 2010, the applicants published several articles in "Kurdish Perspective". The second applicant argued, in the articles, in favour of uniting opposition groups against the Islamic government of Iran. She argued that there were many racial and religious groups in Iran, all of which were oppressed by the Iranian authorities, who tried to take advantage of this variety and distract opposition activities. Several critical articles were also published on various internet sites.

28. In 2010 and 2011 the applicants signed several public petitions to free human rights activists in Iran on an internet site.

29. In 2011, the second applicant was involved in promoting the imprisoned Kurdish Mr. Kabudwand as candidate for the Nobel Peace Prize. In the nomination process, the second applicant was named as a member of the nominating committee on several internet sites. She was interviewed about his candidacy on one of the most popular opposition sites on 15 March 2011.

30. In Sweden, the first applicant had also become a full member of the KDPI.

II. RELEVANT DOMESTIC LAW

31. The provisions mainly applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the Aliens Act (*Utlänningslagen*, 2005:716 – hereafter referred to as "the Aliens Act").

32. Chapter 5, Section 1, of the Aliens 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.

33. According to Chapter 4, Section 1, of the same 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, membership of a particular social group, religious or political beliefs, grounds of gender, sexual orientation 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 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 Aliens Act).

34. 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 Aliens 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 Aliens Act).

35. 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 Aliens 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 treatment as referred to in Chapter 12, Sections 1 and 2, of the Aliens Act 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 Aliens 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 Aliens Act).

III. RELEVANT COUNTRY INFORMATION AND CASE-LAW

A. Country information on Iran

36. After the elections in Iran on 12 June 2009 the Political Affairs Committee of the PACE on 1 October 2009 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.

37. In a document released by Freedom House on 18 April 2011 (*Freedom on the Net – Iran*, p. 1) it was stated:

> "Since the protests that followed the disputed presidential election of June 12, 2009, the Iranian authorities have waged an active campaign against internet freedom, employing extensive and sophisticated methods of control that go well beyond simple content filtering. These include tampering with internet access, mobile-telephone service, and satellite broadcasting; hacking opposition and other critical websites; monitoring dissenters online and using the information obtained to intimidate and arrest them..."

38. The United States Department of State *2010 Human Rights Report: Iran*, section 2: Freedom of Speech and Press/Internet Freedom (8 April 2011) noted that:

> "The government monitored Internet communications, especially via social networking Web sites such as Facebook, Twitter and Youtube, and collected individuals' personally identifiable information in connection with peaceful expression of views. The government threatened, harassed, and arrested individuals who posted comments critical of the government on the internet..."

39. The U.K. Home Office's *Operational Guidance Note – Iran*, dated November 2011, stated the following:

> "3.7.11 ... There is a real risk that high profile activists and political opponents who have come to the attention of the authorities would on return to Iran face a real risk of persecution and should be granted asylum for reason of his or her political opinion.
>
> 3.7.12 Depending on the particular circumstances, some persons who do not have a political profile- which would include for example student demonstrators or other anti-government protestors- are likely to be perceived by the authorities in Iran to oppose the regime and may similarly face a real risk of persecution or ill-treatment on return. Case owners must consider carefully whether the personal circumstances of the individual concerned are such that he or she would face a real risk of persecution on return to Iran.
>
> 3.7.13 Those who have engaged in opposition political activity in the U.K. might, depending on their level of involvement, similarly face a real risk of persecution on return to Iran on account of that activity and in such cases a grant of asylum will also be appropriate. The test to be applied in such cases is set out in detail in *BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC)*.
>
> 3.12.9 Kurdish opposition groups suspected of separatist aspiration, such as the Democratic Party of Iranian Kurdistan (KDPI), are brutally suppressed.

3.12.10 Politically active groups and individuals are considered a threat to national security by the Iranian government. If the Iranian authorities consider a person to be working against national security, (the person may for example be accused of being a spy or of cooperating with an oppositional religious, ethnic or political group), they may face severe punishment ranging from ten years' imprisonment to execution. For instance, being in possession of a CD, a pamphlet or something similar made by the Kurdish Democratic Party of Iran (KDPI), Komala or other Kurdish organisations, may be considered as an act against national security. This form of persecution for political activities is a problem all over Iran. However, the authorities are watching Kurdish areas and Tehran more carefully than other areas.

3.12.12 There is no evidence to suggest that an applicant of Kurdish ethnic origin, in the absence of any other risk factor, would on return face a real risk of serious mistreatment simply on the account of his or her ethnic origin alone. Applicants who are able to demonstrate that they are members or supporters of the KDPI, Komala, or active members of PJAK, and who are known to the authorities as such, will be at real risk of persecution and a grant of asylum will be appropriate unless there are case-specific reasons why it would not be."

40. Amnesty International, in its *Amnesty International Annual Report 2011 – Iran*, stated the following*:*

"The authorities maintained severe restrictions on freedom of expression, association and assembly. Sweeping controls on domestic and international media aimed at reducing Iranians' contact with the outside world were imposed. Individuals and groups risked arrest, torture and imprisonment if perceived as co-operating with human rights and foreign-based Persian-language media organizations. Political dissidents, women's and minority rights activists and other human rights defenders, lawyers, journalists and students were rounded up in mass and other arrests and hundreds were imprisoned. Torture and other ill-treatment of detainees were routine and committed with impunity. Women continued to face discrimination under the law and in practice. The authorities acknowledged 252 executions, but there were credible reports of more than 300 other executions .

... The authorities continued to restrict access to outside sources of information such as the internet. International radio and television broadcasts were jammed. In January, the authorities banned contact by Iranians with some 60 news outlets and foreign-based organizations. Those willing to speak to the few large Persian-language media outlets on human rights issues were threatened or harassed by security officials .

... The authorities banned newspapers and student journals and prosecuted journalists whose reporting they deemed "against the system". Wiretapping and intercepting of SMS and email communications were routine. A shadowy "cyber army", reportedly linked to the Revolutionary Guards, organized attacks on domestic and foreign internet sites deemed to be anti-government, while other sites, including some associated with religious leaders, were filtered ..."

41. The U.K. Foreign and Commonwealth Office in its *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report – Iran*, (2011), stated:

"The Iranian authorities continued to actively censor the internet, restricting access to wide range of sites including Facebook and YouTube and targeting bloggers and online journalists. The military-run Cyber Army was reported to have taken a leading

role in monitoring and disrupting internet sites and other online tools, including email and blog sites."

42. The Swedish Migration Board, in its legal position document (*Rättsligt ställningstagande*), regarding the determination of individual risk for minorities and other groups in Iran and also the refugee status for individuals with regard to *sur place* activity (31 October 2011) stated that it must be considered that the Iranian regime is interested in internet users and activity abroad. Its ability to track down and monitor Iranians' use of internet and other activities abroad is remarkably high and Iran is considered to be one of the countries which go the furthest in this respect .

43. In its *World Report 2012*, Human Rights Watch stated the following:

"In 2011 Iranian authorities refused to allow government critics to engage in peaceful demonstrations. In February, March, April and September security forces broke up large-scale protests in several major cities... There was a sharp increase in the use of death penalty. The government continues targeting civil society activists, especially lawyers, rights activists, students, and journalists."

B. Relevant references regarding *sur place* activity

44. In a judgment of the U.K. Court of Appeal in *SS (Iran) [2008] EWCA Civ 310*, the issue of *sur place* activities was considered. The case concerned an appeal by an Iranian of Kurdish ethnicity who claimed to have been involved with Komala, a Kurdish political party, in Iran and that Komala leaflets had been found in his home. He had said that after fleeing Iran and applying for asylum he had become more involved with Komala. A photograph of him had been posted on the internet and a film sequence of a demonstration he had attended in London had been broadcast on Komala Television in Sweden. The Court of Appeal considered that the Immigration Judge's conclusions on the credibility of the appellant were not sustainable, however, the court did also consider the appellant's *sur place* activities. Bearing in mind that the burden of proof lay on the appellant, Lord Neuberger found that the Immigration Judge had been entitled to reach the conclusion he did. He commented:

"There must be a limit as to how far an applicant for asylum is entitled to rely upon publicity about his activities in the UK against the government of the country to which he is liable to be returned. It seems to me that it is not enough for such an applicant simply to establish, as here, that he was involved in activities which were relatively limited in duration and importance, without producing any evidence that the authorities would be concerned about them, or even that they were or would be aware of them."

45. However, in *YB (Eritrea) v. Secretary of State for the Home Department [2008] EWCA Civ 360*, which was handed down on 15 April 2008, the Court of Appeal took the following approach to the issue of *sur place* activities. The case involved an Eritrean asylum seeker who claimed

to have been active in support of the opposition Eritrean Democratic Party whilst in the United Kingdom. The Court of Appeal again remitted the issues arising from *sur place* activities to be heard before a differently constituted Asylum and Immigration Tribunal, which stated:

> "... [T]he Tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had 'the means and the inclination' to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which 'paints a bleak picture of the suppression of political opponents' by a named government, it requires little or no evidence or speculation to arrive at a strong possibility, - and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that a claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the [Qualification Directive 2004/83/EC]."

46. In a more recent judgment of the U.K. Upper Tribunal in *BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC)*, the tribunal gave a new "country guidance" determination on returns to Iran in light of the post-presidential election violence. The case concerned an Iranian national's *sur place* activities in the U.K. The Court considered the appellant to be a demonstrator whom the Iranian authorities would particularly wish to identify and that there was a real risk that they would be able to do so. Additionally, because of the nature of his association with Bamdad e Iran there was also a real risk that he would face ill-treatment which would amount to persecution because of his political beliefs. The Court stated, *inter alia*, the following.

> "1 Given the large numbers of those who demonstrate here and the publicity which demonstrators receive, for example on Facebook, combined with the inability of the Iranian Government to monitor all returnees who have been involved in demonstrations here, regard must be had to the level of involvement of the individual here as well as any political activity which the individual might have been involved in Iran before seeking asylum in Britain.
>
> 2 (a) Iranians returning to Iran are screened on arrival. A returnee who meets the profile of an activist may be detained while searches of documentation are made. Students, particularly those who have known political profiles are likely to be questioned as well as those who have exited illegally.
>
> (b) There is not a real risk of persecution for those who have exited Iran illegally or are merely returning from Britain. The conclusions of the Tribunal in the country

guidance case of **SB** (risk on return – illegal exit) Iran CG [2009] UKAIT 00053 are followed and endorsed.

(c) There is no evidence of the use of facial recognition technology at the Imam Khomeini International airport, but there are a number of officials who may be able to recognize up to 200 faces at any one time. The procedures used by security at the airport are haphazard. It is therefore possible that those whom the regime might wish to question would not come to the attention of the regime on arrival. If, however, information is known about their activities abroad, they might well be picked up for questioning and/or transferred to a special court near the airport in Tehran after they have returned home.

3 It is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities and the priority that the Iranian regime would give to tracing him. It is only after considering those factors that the issue of whether or not there is a real risk of his facing persecution on return can be assessed."

A number of factors were considered and placed under four main heads: (i) the type of *sur place* activity involved; (ii) the risk that a person will be identified as engaging in it; (iii) the factors triggering inquiry on return of the person and; (iv) in the absence of a universal check on all entering the country, the factors that would lead to identification at the airport on return or after entry.

47. In a recent judgment of the Swedish Migration Court of Appeal of 16 September 2011, the court considered the need for international protection based on *sur place* activity. The court stated that a real risk to be subjected to severe ill-treatment can be based on an applicant's *sur place* activity and that a comprehensive examination of all circumstances has to be made to determine such a risk. It was considered to be of particular importance whether the claimed activity was an expression and a continuation of opinions already founded in the country of origin.

48. The Swedish Migration Board, in its legal statement of 31 October 2011(as referred to above), recognised that a risk based on *sur place* activity can constitute grounds for refugee status and asylum and listed the following factors to be considered in such assessment:

"1. Whether the person has been politically or religiously active also in his country of origin. It is of importance for the determination whether a need for international protection has occurred *sur place* if the claimed activity is an expression and a continuation of an opinion already founded in the country of origin. The starting point should be that the requirements are higher regarding the extent of *sur place* activity if it has only occurred in Sweden.

2. Whether the political activity and its extent are of interest to the Iranian state. The activity must be sufficiently serious in nature and involve behaviour which would generally be seen to displease the Iranian regime. The assessment should be based on the nature and extent of the activity and should take into consideration the Iranian approach to such activity according to current country information, the degree of exposure in Sweden and the possible subsequent risk on return to Iran.

3. Whether the activity has or may come to the knowledge of the Iranian state. The asylum seeker has to make plausible that the activity has or may come to the knowledge of the Iranian authorities. To this end he must, in the absence of other evidence, provide a clear and coherent story supported by current country information."

THE LAW

I. ADMISSIBILITY

49. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicants complained that, if deported to Iran, they would be subjected to torture or inhuman and degrading treatment or punishment, in violation of Article 3 of the Convention, which reads as follows:

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

51. The Government contested that argument.

A. The parties' submissions

1. The applicants

52. The applicants maintained that they would run a real risk of being caught by the Iranian authorities and subjected to torture, inhuman or degrading treatment or punishment based on the general situation in Iran regarding political dissidents, the high profile that the applicants had as such dissidents and these factors together with the fact that the applicants had left Iran illegally.

53. They further claimed that the country information, referring, *inter alia,* to U.K. Home Office Operational Guidance Note Iran of 15 March 2011, had changed and the situation was now more severe.

54. Regarding their personal situation and *sur place* activities they referred to a collection of internet links, to some of the articles written by the applicants, four compact discs with a summary of their content and links to several interviews and further articles on the internet. They submitted that the second applicant could be found on at least 200 sites on Google and the

first applicant could also be found on several sites. They submitted a selection of print-outs of internet sites and articles to prove that they were actively promoting human rights in Iran in general and the rights of Kurds in particular. The first applicant, who was now a full member of the KDPI, also submitted a membership certificate.

2. The Government

55. The Government argued that the application revealed no violation of the Convention.

56. Furthermore, the Government did not consider the current situation in Iran in general sufficient to warrant international protection.

57. They did not question that the first applicant had, to some extent, been politically active in Iran, before leaving the country. Nor did they contest that the applicants had participated in certain such activities in Sweden. However, they did find reason to question the applicants' allegation that, due to these activities, they would face a real and individual risk of being treated in violation of Article 3 of the Convention if returned to Iran. They also questioned the significance of the documents submitted by the applicants to substantiate their claims.

58. As to the facts presented by the applicants, the Government pointed out that the first applicant had not been a high-ranking member of the KDPI. The events in 2003, when the first applicant allegedly had been arrested and sentenced to imprisonment, were not supported by any written evidence and, further, the alleged proceedings had taken place several years before the applicants left Iran. It therefore appeared improbable in the Government's view that the applicants would still be of interest to the Iranian authorities. Nothing had emerged in the case indicating that the applicants were subjected to any further attention by the authorities in Iran.

59. The Government also noted that the applicants had left Iran due to their mere suspicion that facts about the first applicant's political activities would be disclosed to the authorities by his colleague. Hence, there was no real evidence to substantiate that the authorities would have shown an interest in the applicants in 2007 had they stayed in Iran.

60. Regarding the political activity in Sweden, the Government reiterated that the applicants' story had escalated over time. The applicants' accounts of their activities in Sweden were considered rather vague and the only evidence adduced in this regard - a letter from the first applicant's father – had low value as evidence. Even considering that the applicants were KDPI sympathisers, the Government held that it was not substantiated that the applicants were known to the authorities as such nor had they been able to demonstrate that they would face particular risks upon return.

61. The Governments' view was that, even considering the updated country information, the applicants had still not submitted any evidence which substantiated that they had come, or would risk coming, to the

attention of the Iranian authorities because of their activities in Sweden or for any other reason.

B. The Court's assessment

62. 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).

63. In regard to the present case, the Court observes from the outset that the applicants are to be returned to a country where on all accounts the human rights situation gives rise to grave concern. It is noted that the country information has changed and that the situation appears to have deteriorated in Iran since the domestic authorities determined the case. It is evident from the current information available on Iran (as set out above) that the Iranian authorities frequently detain and ill-treat persons who peacefully participate in oppositional or human rights activities 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 may be at risk of being detained and ill-treated or tortured.

64. Whilst being aware of the reports of serious human rights violations in Iran, 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 an applicant were returned to that country. The Court has to establish whether the applicants' personal situation is such that their return to Iran would contravene Article 3 of the Convention.

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

66. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one and that, as a general principle, the national authorities are best placed to assess not just the facts, but also the general credibility of the applicant's story. The Court finds, in agreement with the Swedish Migration Court, that the applicant's

basic story was consistent throughout the proceedings and that, notwithstanding some uncertain aspects, such uncertainties do not undermine the overall credibility of their story.

67. Turning to the alleged incidents and political activity in Iran the Court notes that the first applicant had sympathised with the KDPI only at a low political level in Iran and that a considerable time has elapsed since the first applicant was arrested in 2003. The applicant had been able to continue his work and life as normal after his time in prison and there was no indication of any further attention from the Iranian authorities. Even considering that the first applicant is allegedly well-known, as a practising musician and prominent kick-boxer, the Court does not find the alleged circumstances sufficient independently to constitute grounds for finding that the applicants would run the risk of Article 3 treatment if returned.

68. Turning then to the applicants' *sur place* activity and incidents after they arrived in Sweden, the Court finds that since 2008 they have continuously participated in political activity of intensifying importance. They have appeared with photographs and names on several internet sites and TV broadcasts, where they have expressed, *inter alia*, their opinions on human rights issues in Iran and criticism against the Iranian regime. They have taken rather leading roles and the second applicant has been the international spokesperson in a European committee for the support of Kurdish prisoners and human rights in Iran. They have expressed their individual views in many articles published on prominent Kurdish internet sites. The Court concludes that the applicants have been involved in extensive and genuine political and human rights activities of relevance for the determination of the risk on return to Iran.

69. To determine whether these activities would expose the applicants to persecution or serious harm if returned to Iran, the Court has regard to the relevant country information on Iran, as set out above. The information confirms that Iranian authorities effectively monitor internet communications and regime critics both within and outside of Iran. It is noted that a specific intelligence "Cyber Unit" targets regime critics on the internet. Further, according to the information available to the Court, Iranians returning to Iran are screened on arrival. There are a number of factors which indicate that the resources available could be used to identify the applicants and, in this regard, the Court also considers that the applicants' activities and alleged incidents in Iran are of relevance. The first applicant's arrest in 2003 as well as his background as a musician and prominent Iranian athlete also increase the risk of his being identified. Additionally, the applicants allegedly left Iran illegally and do not have valid exit documentation.

70. Having considered the applicants' *sur place* activities and the identification risk on return, the Court also notes additional factors possibly triggering an inquiry by the Iranian authorities on return as the applicants

belong to several risk categories. They are of Kurdish and Persian origin, culturally active and well-educated.

71. Having regard to all of the above, the Court concludes that there are substantial grounds for believing that the applicants would be exposed to a real risk of being 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 applicants would give rise to a violation of Article 3 of the Convention.

III. RULE 39 OF THE RULES OF COURT

72. The Court notes that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

73. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above § 4) must remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. 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

76. The applicants have, in two submissions to the Court, claimed a total of 10, 931 Swedish kronor (SEK; approximately EUR 1,240), inclusive of VAT, in legal costs and expenses incurred before the Court.

77. The Government only commented on the first invoice of SEK 6, 923 and considered this amount acceptable.

78. The Court considers that the total amount claimed is reasonable and grants it in full.

C. Default interest

79. 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 UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that the deportation of the applicants to Iran would give rise to a violation of Article 3 of the Convention;

3. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicants until such time as the present judgment becomes final or until further order;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1, 240 (one thousand two hundred and forty 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 15 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President