



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

FIRST SECTION

CASE OF N.A. v. FINLAND

(Application no. 25244/18)

JUDGMENT
(Revision)

Art 35 § 3 (a) • Abuse of the right of application • Subsequent discovery that documents and information central to the Court finding a rights violation had been forged by the applicant, warranting annulment of judgment

STRASBOURG

13 July 2021

FINAL

13/10/2021

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

In the case of N.A. v. Finland, (request for revision of the judgment of 14 November 2019),

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

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Aleš Pejchal,

Pauliine Koskelo,

Tim Eicke,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Renata Degener, *Section Registrar*,

Having deliberated in private on 14 November 2019 and 29 June 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 25244/18) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Iraqi national, Ms N.A. (“the applicant”), on 23 May 2018. The President of the Section acceded to the applicant’s request not to have her name disclosed (Rule 47 § 4 of the Rules of Court).

2. In a judgment delivered on 14 November 2019, the Court held that there had been a violation of Articles 2 and 3 of the Convention in respect of the applicant’s late father on account of the fact that the Finnish authorities and courts had failed to comply with their obligations under Articles 2 and/or 3 of the Convention when dealing with the applicant’s father’s asylum application and his expulsion, which had subsequently led to his death in Iraq only a few weeks after his return. In the light of the submissions made, the Court was not convinced that the quality of the risk assessment conducted by the domestic authorities regarding the relevant facts and the risk to which the applicant’s father would be exposed upon removal to Iraq satisfied the requirements of Articles 2 and 3 of the Convention (see paragraph 84 of the judgment). Hence, the Court held that the domestic authorities and courts had been aware, or ought to have been aware, of facts which indicated that the applicant’s late father could be exposed to a danger to life or a risk of ill-treatment upon his return to Iraq (paragraph 85 of the judgment). The Court also decided to award the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,500 in respect of costs and expenses and dismissed the remainder of her claims for just satisfaction.

3. On 23 April 2020 the Government informed the Court that they had reason to suspect that the documents concerning the death of the applicant's father had been forged and that he was still alive and residing in Iraq. On 6 September 2020 the Government therefore requested revision of the judgment within the meaning of Rule 80.

4. On 22 September 2020 the Court considered the request for revision and decided to give the applicant's representative three weeks in which to submit any observations. On 2 October 2020 the applicant's representative informed the Court that she no longer represented the applicant and that another lawyer had taken over the applicant's case. The applicant's observations were eventually received on 3 February 2021.

THE LAW

I. THE REQUEST FOR REVISION

5. The Government requested revision of the judgment of 14 November 2019 because new facts had been discovered in the case that had been unknown to the Government at the time of the delivery of the Court's judgment. A report had been made to the police on 20 February 2020, as a result of which a criminal investigation had been instituted against the applicant and her ex-husband. During this investigation facts had come to light which had led the police to believe that the applicant's father was still alive in Iraq and that the death certificate and the Iraqi police report concerning his death had been forged. The report of an offence had been recorded on 6 March 2020. On 20 April 2020 the Iraqi authorities had confirmed the above information. On 22 April 2020 the applicant had been arrested on suspicion of aggravated fraud and aggravated forgery in relation to the proceedings both before the Administrative Court and the Court in the present case. The next day the applicant had admitted that her father was alive and that the documents presented to the Court had not been authentic. Moreover, not only had the documents been forged but also the applicant's account of the events, as well as that of her father's, submitted to the domestic courts and to the Court had been false. The Government thus maintained that it was clear that incorrect and misleading information had been submitted to the Court and that it had had a decisive influence on the original judgment.

6. On 11 February 2021 the District Court convicted the applicant on two counts of aggravated forgery, aggravated fraud and of having made a false statement in official proceedings. It sentenced her to one year and ten months' imprisonment. The District Court established that the applicant and her ex-husband had conspired to produce the falsified documents. The forging of the documents had been arranged by the applicant's parents at the request of her ex-husband. The documents had been fabricated for use as

misleading evidence and were used for this purpose both before the Helsinki Administrative Court, in order to secure a residence permit for the applicant, and before the Court, in order to prove that the Government of Finland had violated the applicant's father's human rights and make Government of Finland liable to pay just satisfaction to the applicant as an indirect victim of the human rights violation. According to the information received from the Government, the applicant appealed against the sentencing but not against the conviction, which is final.

7. The applicant's representative noted that his client agreed with the Government and stated that the judgment could be annulled.

II. THE COURT'S DECISION

8. The Court considers that the judgment of 14 November 2019 should be revised pursuant to Rule 80 of the Rules of Court, the relevant part of which provides:

“1. A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment.”

9. The Court notes that the Government's revision request was lodged in accordance with all the substantial and procedural requirements set out in Rule 80.

10. As to the six-month time-limit, the Court notes that the first allegations that the applicant's father was still alive in Iraq and that the death certificate and the Iraqi police report concerning his death had been forged were made on 20 February 2020, when a report was submitted to the Finnish police by the applicant's ex-husband. The report of an offence was recorded on 6 March 2020. Considering that on 20 April 2020 the Iraqi authorities confirmed the above information and that on 23 April 2020 the applicant admitted that these new facts were true, it is clear that the Government's request for revision was lodged within the six-month time-limit.

11. It is also clear from the documents submitted to the Court that these new facts were unknown to the Court when the judgment of 14 November 2019 was delivered (see also paragraph 79 of the judgment). Nor does the Court find that these facts could reasonably have been known to the Government before 20 April 2020. In this regard, the Court notes that in its observations prior to the judgment of 14 November 2019, the Government had merely mentioned that it had not been in a position to verify the authenticity of the certificate attesting the death of the applicant's father, without making any submission the effect that the document could or should not be relied on as evidence in the examination of the applicant's complaint.

In the light of the circumstances, the Court is satisfied that the Government could not reasonably have known or suspected at the time that the document relied on by the applicant was in fact forged.

12. The Court observes that the District Court examined the charges against the applicant and, on the basis of the evidence submitted, convicted her of two counts of aggravated forgery, of aggravated fraud and of making a false statement in official proceedings, and sentenced her to one year and ten months' imprisonment (see paragraphs 5-6 above). It has thus been established that the applicant has relied on false information and forged documents to support the key allegations on which her complaint before the Court was based. The Court notes in this respect that the alleged death of the applicant's father was decisive for the applicant's victim status. Furthermore, the false allegations submitted by the applicant were also designed to substantiate the merits of her complaint. It is therefore warranted to revise the Court's judgment of 14 November 2019.

13. Article 35 § 3 (a) of the Convention reads as follows:

“3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application.”

14. The Court reiterates that an application may be rejected as an abuse of the right of individual application under Article 35 § 3 (a) of the Convention, among other reasons, if it is knowingly based on untrue facts with a view to deceiving the Court (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; see also, in the immigration context, *Bagheri and Maliki v. the Netherlands* (dec.), no. 30164/06, 15 May 2007, and *Bencherref v. Sweden* (dec.), no. 9602/15, 5 December 2017).

15. In the present case, the District Court established that the applicant and her ex-husband had conspired in order to produce the falsified documents relied on to demonstrate that her father had died. The documents were subsequently used as misleading evidence both before the Helsinki Administrative Court, in order to secure a residence permit for the applicant, and before the Court, in order to support her complaint that the authorities of the respondent State had violated the applicant's father's human rights by failing to conduct a proper assessment of the risks involved in his return to Iraq, and to obtain just satisfaction under Article 41 of the Convention. The forged documents and the false information provided in these documents were relied on as essential evidence both before the Helsinki Administrative Court and the Court.

16. For the Court, it is therefore clear that the applicant knowingly intended to deceive the Court as to the core factual elements of her allegations in the complaint. It is also clear that had this information become known to the Court before its adjudication of the case, the applicant's

complaint would have been declared inadmissible under Article 35 § 3(a) of the Convention.

17. It follows that the Court's judgment of 14 November 2019 must now be annulled in its entirety and that the application no. 25244/18 must be rejected as an abuse of the right of individual application pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to revise its judgment of 14 November 2019;

and accordingly,

2. *Declares* the application inadmissible.

Done in English, and notified in writing on 13 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Renata Degener
Registrar

Ksenija Turković
President