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

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Friendly settlement between the Belgian Government and a Nigerian mother suffering from AIDS and facing expulsion

In today's **Grand Chamber** judgment[1] in the case of **S.J. v. Belgium** (application no. 70055/10) concerning the threatened expulsion from Belgium of a Nigerian mother suffering from AIDS the European Court of Human Rights:

took note of the terms of the friendly settlement and the arrangements for ensuring compliance with the undertakings given, namely the fact that the applicant and her children had been issued with residence permits granting them indefinite leave to remain; and,

decided by a majority to lift the interim measure under Rule 39 of the Rules of Court staying execution of the order against the applicant to leave the country and to strike the case out of its list of cases.

Principal facts

The applicant is a Nigerian national who was born in 1989 and lives in Brussels. She arrived in Belgium in the summer of 2007 and lodged an application for asylum with the authorities.

The Aliens Office, observing that the applicant had already applied for asylum in Malta, requested the Maltese authorities to take charge of her asylum application under the Dublin II Regulation[2].

On 13 February 2008 the Aliens Office authorised the applicant to remain in Belgium for three months for medical reasons. She subsequently produced a medical certificate stating that she was HIV positive and would be unable to travel for six months, during which time she required psychological counselling.

In August 2008 the Aliens Office refused the applicant's request for leave to remain on medical grounds, finding that treatment for AIDS was available in Malta and was accessible to non-nationals. In early 2009, since the applicant was due to give birth to her second child, the Aliens Office decided to take charge of the asylum application and revoked its August 2008 decision. The file was sent to the Commissioner General for Refugees and Stateless Persons ("the Commissioner General"), who rejected the asylum application because of inconsistencies in the applicant's account. The applicant appealed to the Aliens Appeals Board, which upheld the Commissioner General's decision on the grounds that the applicant's alleged fear of pursuit and of a real risk of serious harm lacked credibility.

In September 2010 the Aliens Office's medical adviser issued an opinion stating that he saw no objection to the applicant's return to her country of origin, Nigeria, given that treatment for her illness was available there. The Aliens Office therefore refused the application for leave to remain lodged on 30 November 2007. As the asylum proceedings had also ended with the rejection of her asylum application, the applicant was served on 22 November 2010 with an order to leave the country.

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.
2. The Dublin system is designed to determine the Member State responsible for examining an asylum application lodged in one of the European Union Member States by a third-country national. See the *"Dublin" cases* factsheet.

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On 26 November 2010 the applicant lodged a request under the extremely urgent procedure for a stay of execution of the order to leave the country, citing a risk that she would not have access to the appropriate treatment if she returned to Nigeria and an infringement of her right to respect for her private and family life.

On 30 November 2010 the applicant applied to the European Court of Human Rights requesting interim measures under Rule 39 of the Rules of Court, with a view to staying execution of the order to leave the country. On 17 December 2010 the Court requested the Government not to expel the applicant and her children pending the outcome of the proceedings before the Court.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights, the applicant alleged that her expulsion to Nigeria would expose her to a risk of treatment contrary to that provision and would infringe her right to respect for her private and family life as guaranteed by Article 8 (right to respect for private and family life). She also complained of the lack of an effective remedy within the meaning of Article 13 of the Convention (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 30 November 2010 and was declared admissible on 18 December 2012. On 27 February 2014 a Chamber of the Fifth Section of the Court delivered a judgment in which it held unanimously that there had been a violation of Article 13 of the Convention (right to an effective remedy) taken in conjunction with Article 3 (prohibition of torture and inhuman or degrading treatment). It held by a majority that the applicant's deportation to Nigeria would not entail a violation of Article 3 or Article 8 of the Convention. The applicant and the Government requested the referral of the case to the Grand Chamber under Article 43 of the Convention, and the request was granted on 7 July 2014. On 17 September 2014 the Court was informed by the applicant and the Government that they had agreed to a friendly settlement of the case. The hearing originally scheduled for 18 February 2015 was therefore cancelled.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),
Isabelle **Berro** (Monaco),
Işıl **Karakaş** (Turkey),
Khanlar **Hajiyev** (Azerbaijan),
Ján **Šikuta** (Slovakia),
Päivi **Hirvelä** (Finland),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
Ledi **Bianku** (Albania),
Nebojša **Vučinić** (Montenegro),
Paulo **Pinto de Albuquerque** (Portugal),
Erik **Møse** (Norway),
Paul **Lemmens** (Belgium),
Johannes **Silvis** (the Netherlands),
Valeriu **Griţco** (the Republic of Moldova),
Ksenija **Turković** (Croatia),

and also Erik **Fribergh**, *Registrar.*

Decision of the Court

On 26 August 2014 the Court received a proposal for a friendly settlement from the Government, in which the latter stressed the "strong humanitarian considerations weighing in favour of regularising [the applicant's] residence status and that of her children". The applicant accepted the proposal subject to the condition that "she and her three children be granted unconditional and indefinite leave to remain", that she be awarded compensation in an amount of 7,000 euros (EUR) in respect of the pecuniary and non-pecuniary damage she had sustained, and that a residence permit be issued to her in person.

The Government informed the Court that they agreed to the conditions stipulated by the applicant. They specified that the applicant's residence status, and that of her children, would be regularised immediately and unconditionally on an indefinite basis.

The Court noted that, on 6 January 2015, the applicant and her children had been issued with residence permits granting them indefinite leave to remain. It considered that the settlement was based on respect for human rights as defined in the Convention and its Protocols, in accordance with Article 37 § 1 of the Convention and Rule 62 § 3 of the Rules of Court.

Accordingly, the Court struck the case out of the list under Article 39 § 3 of the Convention.

Separate opinion

Judge Pinto de Albuquerque expressed a separate opinion which is annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.