

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

FIFTH SECTION

DECISION

Application no. 56424/10
A.A.
against Sweden

The European Court of Human Rights (Fifth Section), sitting on 22 May 2012 as a Committee composed of:

Mark Villiger, *President,*
Elisabet Fura,
Ganna Yudkivska, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 October 2010,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Somali national. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 3). He is represented before the Court by Mr S. Zebrowski, a lawyer practising in Uppsala.

The Swedish Government ("the Government") are represented by their Agent, Ms G. Isaksson, of the Ministry for Foreign Affairs.

The applicant, Mr A.A., is a Somali national who was born in 1995 or 1996. He is represented before the Court by Mr Stefan Zebrowski, a guardian appointed by the Swedish Chief Guardians Board (*Överförmyndarkontoret*).

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

The applicant, whose age is unclear, claims to be an unaccompanied minor. At an early age he fled from home and lived his life on the street. The last time he saw his family – father, mother and siblings – was in 2007. They still live in Somalia. He left Somalia in 2008 together with his uncle. From Libya they travelled to Italy. The boats on which they travelled were overcrowded; the one where his uncle was a passenger sank and the uncle drowned, the one with the applicant was rescued by the Italian navy. The applicant was taken to a refugee camp and then moved to another camp. He was given a document stating that he had the right freely to remain in Italy for three months and that thereafter he had to renew the document. No help was given by the social authorities. The applicant claimed to have become involved in criminal activities, mainly drug dealing with the mafia. He was assaulted and received death threats. He received financial support from other Somali nationals in order to travel from Italy. He went to France where he was arrested by the police. Following release, he continued the trip to the Netherlands where he was hospitalised for 24 days to be treated for tuberculosis. He finally arrived in Sweden where he applied for asylum on 31 August 2009.

On 15 January 2010 the Migration Board *(Migrationsverket)* dismissed the applicant's application for asylum and ordered that he should be transferred to Italy in accordance with the Dublin Regulation. On 18 December 2009 the Board had requested the Italian authorities to take back the applicant. As from 2 January 2010, Italy was the responsible state in accordance with Article 20.1 (c) of the Dublin Regulation, as the Italian authorities had not communicated their decision within the prescribed time-limit and was consequently considered to have agreed to take back the applicant.

On 11 March 2011 the Migration Court (*Migrationsdomstolen*) upheld the Board's decision and on 11 April 2011 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused leave to appeal.

On 2 July 2011 the time-limit for a transfer to Italy expired, pursuant to Article 20.1 (d) and 20.2 of the Dublin Regulation. Accordingly, as there is no longer any valid removal against the applicant, it is for the Migration Board to re-open his asylum case and examine it in substance.

COMPLAINTS

The applicant complained that his transfer by the Swedish authorities to Italy under the Dublin Regulation would have violated Articles 3 and 13 of the Convention. He was concerned about the situation of asylum seekers, in particular that of unaccompanied minors, in Italy and about not having had access to asylum proceedings there. He claimed that he had received death threats and that the Italian authorities were not capable of protecting him. He further feared that, if transferred to Italy, he would have been deported to Somalia, where he risks being subjected to treatment contrary to Article 3 of the Convention.

The applicant also invoked Articles 2, 4, 5, 6 and 8 of the Convention.

THE LAW

The respondent Government invited the Court to strike the application out of its list of cases, as there was no longer an enforceable decision to transfer him to Italy and the matter had therefore been resolved. The applicant objected to this request, stating that he had not yet received confirmation that his asylum application would be examined in accordance with the normal procedure for such applications.

The Court notes that, following the expiry of the statutory period for transfers under the Dublin Regulation, there is no enforceable removal order against the applicant. The Migration Board will have to examine the applicant's asylum application in substance and take a decision which, if a residence permit is not granted, may be appealed against to the Migration Court and the Migration Court of Appeal.

Thus, for the time being, the applicant cannot be forcibly removed to Italy or Somalia and does not risk to be subjected to treatment in violation of Article 3 of the Convention. Noting that the applicant may introduce a new application to the Court should his asylum application be rejected, the Court finds that the matter under Article 3 must be considered to have been resolved, within the meaning of Article 37 § 1 (b). Furthermore, the applicant's complaints do not raise any other issues under the Convention. Consequently, pursuant to Article 37 § 1 (c), it is no longer justified to continue the examination of the application. Moreover, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Stephen Phillips
Deputy Registrar

Mark Villiger
President