

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

FIFTH SECTION

DECISION

Application no. 22107/08
by A.G.
against Sweden

The European Court of Human Rights (Fifth Section), sitting on 6 December 2011 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Elisabet Fura,
Ann Power-Forde, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 May 2008,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of 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 respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Libyan national who was born in Libya and is currently in Sweden. He was represented before the Court by Mr J.J. Wedemeijer, a lawyer practising in Alkmaar, the Netherlands. The Swedish Government ("the Government") were represented by their Agent, Mr B. Sjöberg, of the Ministry for Foreign Affairs.

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

Between July 2002 and May 2008 the applicant was an asylum seeker in Sweden. All his applications for asylum and a residence permit were rejected by the Migration Board (*Migrationsverket*) and, upon appeal, by the Aliens Appeals Board (*Utlänningsnämnden*) and later by the Migration Court (*Migrationsdomstolen*) and the Migration Court of Appeal (*Migrationsöverdomstolen*). On several occasions, the applicant left Sweden for other European countries but was each time returned in accordance with the Dublin Convention. The applicant claimed that he had been, and continued to be, politically active in the Libyan opposition but the Swedish migration authorities did not find him credible.

In May 2008 the applicant was deported from Sweden, but during a stop-over in Amsterdam he managed to apply for asylum in the Netherlands. In November 2008, he was returned to Sweden in accordance with the Dublin Convention and renewed his application for asylum and a residence permit. The Migration Board decided not to grant a new examination of the applicant's request for asylum as he had shown no new circumstances which could amount to an impediment to the deportation.

The applicant appealed to the Migration Court which, on 5 December 2008, decided not to stay the enforcement of the deportation order pending the outcome of the case before it.

On 10 December 2008, following a request by the applicant, the Court decided to apply Rule 39 of the Rules of Court until further notice and, on 16 December 2008, the case was communicated to the Swedish Government.

On 1 July 2009 the Migration Court decided that the applicant's case should be reconsidered on the merits by the Migration Board as the applicant had submitted certain new information which could amount to a lasting impediment to the enforcement of the deportation order against him. The case was remitted to the Migration Board.

In view of this the Court decided, on 9 July 2009, to adjourn its proceedings until the domestic proceedings had been terminated.

COMPLAINTS

The applicant complained under Article 3 of the Convention that he would be arrested, tortured and possibly killed if he were returned to Libya because of his active and open political opposition to the Libyan regime. Moreover, he claimed that he had been deprived of an effective remedy in accordance with Article 13 of the Convention since his request for asylum, based on his political activities in Sweden, had not been open to appeal.

THE LAW

By letter dated 7 February 2011 the Government informed the Court that, on 26 January 2011, the Migration Board had granted the applicant a permanent residence permit and repealed the deportation order. In view of this, the Government submitted that the matter had been resolved and invited the Court to strike the case out of its list of cases in accordance with Article 37 § 1 (b) of the Convention.

The applicant wished to maintain the application as he wanted compensation for the fear and anxiety caused to him by Sweden's repeated attempts to deport him to Libya. He further wanted to be reimbursed for the costs and expenses incurred during the proceedings before the Court, referring to Rule 43 § 4 of the Rules of Court.

The Court reiterates that Article 37 § 1 of the Convention provides as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court further points out that in order to ascertain whether Article 37 § 1 (b) applies to the present case, it must answer two questions in turn: first, whether the circumstances complained of directly by the applicant still obtain and, second, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, § 30, 20 December 2007).

As to the first question, the Court notes that the applicant has been granted a permanent residence permit in Sweden and the deportation order thereby has been repealed. Consequently, he no longer faces any real and imminent risk of removal to Libya. Moreover, as the Migration Board reconsidered his case on the merits, the applicant had an effective remedy in accordance with Article 13 of the Convention. Thus, clearly, the circumstances complained of no longer obtain. As regards the second question, the Court finds that granting the applicant a permanent residence permit in Sweden also provides adequate and sufficient redress for him.

Having regard to the above, the Court finds that both conditions for the application of Article 37 § 1 (b) of the Convention are met. The matter giving rise to the applicant's complaints can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Finally, no particular

reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*.

Accordingly, it is appropriate to discontinue the interim measure indicated under Rule 39 of the Rules of Court and strike the case out of the Court's list of cases.

In so far as concerns the applicant's claim for compensation, the Court reiterates that Article 41 of the Convention allows it to award just satisfaction to the "injured party" only if it has previously "[found] that there has been a violation of the Convention or the Protocols thereto", which it has not in this case (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 132, ECHR 2007-...). Moreover, under Rule 43 § 4 of the Rules of Court, it is at the discretion of the Court to decide whether or not costs should be compensated. In this regard, the Court notes that the applicant did not apply to the Court for legal aid even though information about this possibility was provided in paragraph 7 of the "Information to applicants on the proceedings after communication of an application" which the applicant received with the communication letter and the statement of facts in December 2008. In these circumstances, the Court finds no reason to use its discretion under Rule 43 § 4 of the Rules of Court to compensate the applicant for his costs.

For these reasons, the Court unanimously

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

Stephen Phillips
Deputy Registrar

Boštjan M. Zupančič
President