

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

FOURTH SECTION

DECISION

Application no. 70773/11
A.N.H.
against Finland

The European Court of Human Rights (Fourth Section), sitting on 12 February 2013 as a Chamber composed of:

Ineta Ziemele, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Vincent A. De Gaetano,
Faris Vehabović, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 17 November 2011,

Having regard to the interim measure indicated to the respondent Government under Rule 39 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:

FACTS AND PROCEDURE

1. The applicant, Mr A.N.H., is a Somali national, who was born in 1995. He was represented before the Court by Ms Kirsi Hytinantti, a lawyer practising in Helsinki.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

The circumstances of the case

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

4. The applicant claimed that he left Somalia in 2008 and arrived in Italy in October 2008. He was granted a residence permit but it is not known whether it is still valid and, if so, for how long it will remain valid. The applicant claimed that he lived on the streets and that he did not receive food for many days. He did not receive appropriate medication and was robbed and assaulted. He claimed not to have any relatives in Italy.

5. On 11 July 2011 the applicant arrived in Finland and sought asylum on the same day. After leaving Italy and before entering Finland, the applicant had also sought asylum in Norway and Sweden. The Norwegian and Swedish authorities had decided to remove the applicant to Italy but those decisions could not be enforced as the applicant went missing.

6. On 10 October 2011 the Finnish Immigration Service (*Maahanmuuttovirasto, Migrationsverket*) decided not to examine the applicant's application on the merits and ordered him to be returned to Italy. It found that, according to Articles 6 and 20(1)(c) of the Dublin Regulation, Italy was responsible for examining the applicant's asylum application. Even though the Italian authorities had failed to confirm that they would receive the applicant, they were still responsible for examining his case. As the applicant's asylum application had already been examined by the Italian authorities and, according to the applicant, he had been granted a residence permit there, his application was not examined on the merits in Finland. Despite the fact that the applicant had already been granted a residence permit in Italy, his application could have been examined on the merits in Finland if he were considered to be a vulnerable person due to his young age or his medical condition. The Service found, however, that he was not a vulnerable person. The applicant had access to free medical and social care in Italy. The Italian authorities had signed the UN Convention on the Rights of the Child and paid special attention to vulnerable groups. The Italian authorities normally granted Somali asylum seekers either asylum or secondary protection. Even if the nature of the applicant's residence permit was unknown, he could have had it extended if it was no longer valid. The Service found it probable that the applicant had told the Italian authorities that he was an adult asylum seeker. He had also twice sought asylum in Sweden as an adult asylum seeker. In order to receive the services provided for vulnerable persons in Italy, the applicant needed to correct the information given to the Italian authorities about his age.

7. On 8 November 2011 the decision of the Immigration Service was served on the applicant. The decision could be enforced immediately unless the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*) stayed the removal.

8. By letters dated 8 and 11 November 2011 the applicant appealed to the Administrative Court, requesting that the Immigration Service's decision be quashed and the matter referred back to it for examination on the merits. He also requested the court to order a stay of removal.

9. The Administrative Court did not order a stay.

10. On 17 November 2011 the applicant lodged an application with the Court, requesting that the removal to Italy be stayed. On the same day the Court granted interim measures in the case and decided to communicate the case to the Government under Articles 3 and 13 of the Convention.

11. On 18 November 2011 before 8 a.m. the applicant was deported by plane to Italy, without an accompanying person (the applicant had consented to travel alone), as the competent Finnish authorities were not aware of the interim measure granted by the Court the day before, due to a technical error. Following the realisation of the technical error, the Finnish authorities tried to have him returned. The applicant, according to his account, on leaving the airport of Milan, and following interview by the Italian immigration authorities, went to Turin without leaving a trace of his movements. He was later located through the Finnish Consulate in Milan, which arranged for his travel back to Finland. The applicant was returned to Finland on 23 November 2011.

12. On 2 February 2012 the President of the Section decided to extend the time-limit for submission of the Government's observations until a final decision in the applicant's case had been taken.

13. On 13 March 2012 the Administrative Court quashed the Immigration Service's decision of 10 October 2011 and referred the case back to it for an examination on the merits.

14. On 26 October 2012 the Immigration Service granted the applicant asylum and refugee status in Finland. He received a residence permit valid for a continuous period of four years. This decision was served on the applicant on 13 November 2012 and it has become final.

COMPLAINTS

15. The applicant complained under Article 3 of the Convention about the poor conditions in Italy for asylum seekers. He had been traumatised by previous bad experiences there, when he had been living on the streets and had not received food for many days. He had not received appropriate medication and had been robbed and assaulted. He had no relatives in Italy. The health of the applicant was poor and he claimed that he would not receive any treatment in Italy if returned there.

16. He also complained under Articles 6 and 13 of the Convention that he did not have an effective remedy allowing him to remain in Finland pending the outcome of his challenge to his removal.

17. Finally, by letter dated 26 March 2012, the applicant complained that his unnecessary deportation to Italy in spite of the interim measure granted by the Court had caused a deprivation of his liberty and a violation of his private life when he had been taken by the Finnish authorities to the airport. Moreover, he had also been subjected to inhuman and degrading treatment and deprivation of liberty by the Italian authorities. He claimed that Articles 3, 5, 8, 13 and 34 of the Convention had been violated.

THE LAW

A. Complaints communicated to the Government under Articles 3 and 13 of the Convention

18. The applicant complained under Articles 3 and 13 of the Convention that his removal to Italy would subject him to a risk of inhuman and degrading treatment and contended that he should have been able to stay in Finland until a final decision had been reached in his case.

19. Article 3 of the Convention reads as follows:

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

20. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

21. On 4 December 2012 the Government informed the Court that, on 26 October 2012, the Finnish Immigration Service had granted the applicant asylum and refugee status in Finland. He had received a residence permit valid for a continuous period of four years. Consequently, the Government suggested that the circumstances allowed the Court to reach the conclusion that the matter had been resolved, thereby justifying the discontinuation of the examination of this part of the application. The Government invited the Court to strike the application out of its list of cases and to lift the interim measure indicated on 17 November 2011.

22. On 2 January 2013 the applicant replied that he was very grateful for the decision to grant him asylum as he was the only Somali minor to have been granted such status in 2012. However, he considered that the case had not been resolved as, by deporting him to Italy in the face of an interim

measure granted by the Court, the Finnish Government had deprived him of his liberty and violated his private life when taking him to the airport. He had also been subjected to inhuman and degrading treatment and deprivation of liberty by the Italian authorities. This had caused the applicant damage which could not be made good by the decision to grant him asylum. The applicant maintained that he should be awarded compensation for the violation of Articles 5, 8 and 34 of the Convention.

23. Article 37 § 1 of the Convention provides:

> "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
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> (a) the applicant does not intend to pursue his application; or
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> (b) the matter has been resolved; or
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> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
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> 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."

24. The Court notes that the domestic proceedings have ended and that the applicant has been granted refugee status and a residence permit valid for a continuous period of four years. He is thus no longer subject to an expulsion order.

25. In these circumstances, and having regard to Article 37 § 1 (b) of the Convention, the Court is of the opinion that the matter giving rise to the complaints against Finland under Articles 3 and 13 of the Convention can now be considered to be "resolved" (see *F.S. and Others v. Finland* (dec.), no. 57264/09, 13 December 2011). Therefore, 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 this part of the case.

26. In view of the above, it is appropriate to lift the interim measure indicated under Rule 39 of the Rules of Court and to strike this part of the case out of the list.

27. As to the alleged violation of Article 34 of the Convention, raised after the applicant was brought back to Finland, the Court notes that the fact that information about the grant of interim measures did not reach the competent Finnish authorities in time was caused by a technical error. As soon as this error was discovered, the Finnish authorities, anxious to respect their Convention obligations, acted rapidly to have the applicant returned to Finland. As soon as the applicant had been located, he was immediately taken into the care of the Finnish Consulate in Milan. There is thus no indication of any bad faith or culpable conduct on the part of the Finnish Government in complying with the interim measure indicated by the Court

(compare and contrast *Paladi v. Moldova* [GC], no. 39806/05, §§ 95-102, 10 March 2009; and the cases referred to in *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, §§ 162-166, ECHR 2010 (extracts)). There is thus no need to examine this matter further.

28. As concerns the applicant's further allegations that Articles 3, 5 and 8 of the Convention have been violated, the Court notes that none of these complaints has been communicated to the Government. As far as Articles 5 and 8 of the Convention are concerned, the Court notes that the applicant has failed to exhaust any domestic remedies in that respect. Furthermore, the alleged inhuman and degrading treatment by the Italian authorities under Article 3 of the Convention is not attributable to the Finnish authorities and the applicant's complaint against Finland is accordingly inadmissible as being incompatible *ratione personae*.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in so far as it relates to the applicant's complaints under Articles 3 and 13 of the Convention against Finland;

Decides that there is no need to examine further the alleged breach of Article 34 of the Convention;

Declares the remainder of the application inadmissible.

Lawrence Early
Registrar

Ineta Ziemele
President