

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

THIRD SECTION

DECISION

Application no. 59364/11
A.S.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 10 July 2012 as a Committee composed of:

Luis López Guerra, President,
Egbert Myjer,
Kristina Pardalos, judges,

and Marialena Tsirli, Deputy Section Registrar,

Having regard to the above application lodged on 22 September 2011,

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 Government's submissions of 16 January 2012 and 19 March 2012,

Having regard to the applicant's reaction to these submissions of 15 June 2012,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr A.S., is a citizen of Iran. He was born in 1971 and currently stays in the Netherlands. He is represented before the Court by Mr. J.J. Wedemeijer, a lawyer practising in Alkmaar.

2. The Dutch Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

4. On 5 January 2011 the applicant applied for asylum in the Netherlands. His first interview (*eerste gehoor*) with the Netherlands asylum authorities was held on 5 January 2011 and concerned the determination of his identity, nationality and the manner in which he had travelled to the Netherlands. On 6 January 2011, the lawyer assisting the applicant in the asylum proceedings submitted corrections and additions to the report of the applicant's first interview. A further interview (*nader gehoor*) was held with the applicant on 7 January 2011 and concerned his reasons for applying for asylum in the Netherlands.

5. In these interviews, the applicant claimed to be of Kurdish origin and to have attracted the negative attention of the Iranian authorities. He explained that, while driving his utility van on 11 December 2010 in north-western Iran, he had given a ride to four unknown hitch-hikers. When his van met a police vehicle, his passengers became very nervous and insisted that he turn around. When the police then followed his van, shots were exchanged between the passengers in his van and the police. As his van's tiers had been shot, he had been forced to stop the van and he had fled away, leaving his van behind with the car papers stored in the dashboard. Although he had bought the van, it had not been registered in his name. After having stayed one day in the house of his sister, he had fled from Iran to Turkey the following day. After having obtained a forged identity document, he travelled concealed in a van to the Netherlands, where he arrived on 29 December 2010 and where he was subsequently apprehended whilst travelling in a train from Amsterdam to Kopenhagen.

6. The applicant further stated that, at the advice of his "travel agent", he had left his Iranian identity documents (*shenasnameh* birth certificate, *melli* national identity card, military booklet and driver's licence) behind in the house of his sister in Iran. As soon as he was told by the Netherlands asylum authorities that it was important that he submit original identity documents, he stated that he would ask his family in Iran to send them to him. However, as there was a real risk that the Iranian authorities would intercept them, his family had to find another way to get the documents to him in the Netherlands.

7. On 8 January 2011, the applicant's lawyer submitted corrections and additions to the report of the applicant's further interview, as well as a number of documents faxed from abroad, including the applicant's birth certificate and national identity card.

8. On 9 January 2011, the Minister for Immigration and Asylum (*Minister voor Immigratie en Asiel*; "the Minister") gave reasoned notice of his intention (*voornemen*) to deny the applicant asylum. Written comments

(*zienswijze*) were submitted by the applicant's lawyer on 17 September 2004.

9. The Minister gave his decision on 12 January 2011. The Minister held against the applicant that he had not submitted any original documents to establish his identity or nationality but that he had left these behind in Iran whereas from the faxed copies submitted the authenticity of the documents could not be established. The fact that his "travel agent" had instructed him not to take documents because they would entail a risk of him being returned to Iran from Turkey did not alter this finding, as it was the applicant's responsibility to demonstrate his identity and nationality. There was therefore also no obligation for the Netherlands authorities to await the arrival of the original documents. The Minister further held against the applicant that he had not given a sufficiently detailed, coherent and verifiable account of his journey from Iran to the Netherlands. Consequently, the credibility of his statements was impaired and in these circumstances the applicant bore a heavier burden of proof to establish the plausibility of his asylum account, in that it should not contain any gaps, vagueness, illogical twists or inconsistencies as regards the relevant details; it should, on the contrary, be positively convincing. After having considered the applicant's account in detail, the Minister concluded that it was not positively convincing. The applicant did not know the names of the four hitch-hikers, was unable to say with certainty what the hitch-hikers feared or what their intentions were. Other aspects of his account having remained vague or insufficiently or not explained were also considered to affect the credibility of his account.

10. On 13 January 2011, the applicant filed an appeal with the Regional Court of The Hague, as well as a request for a provisional measure (*voorlopige voorziening*). On 26 January 2011, the applicant's lawyer submitted the originals of the applicant's *shenasnameh* birth certificate, *melli* national identity card and driver's licence which had been received in the meantime.

11. By judgment of 8 February 2011, provisional-measures' judge (*voorzieningenrechter*) of the Regional Court of The Hague sitting in Haarlem accepted the applicant's appeal, quashed the Minister's decision of 12 January 2011, ordered the Minister to take a fresh decision and rejected the request for a provisional measure. The judge found *inter alia* that the Minister had provided insufficient reasoning for his conclusion that the applicant had been unable to give a detailed, coherent and verifiable account of his journey and for his rejection of the applicant's arguments relating to the risk of *refoulement* of Iranian refugees by Turkey. The provisional-measures' judge did not examine the applicant's complaint that he should have been allowed more time to submit original documents and decided not to take regard of the fact that original documents had in the meantime been submitted, because it was now for the Minister to assess in a

newly reasoned decision whether a failure of the applicant to submit original documents could be attributed to him. As it would also appear from the new decision to be taken by the Minister whether he still considered that the applicant's account was not positively convincing, the provisional-measures' judge did not assess the contradictions held against the applicant which had led the Minister to conclude in the impugned decision that the applicant's account was not positively convincing.

12. On 15 February 2011, the Minister filed an appeal with the Administrative Jurisdiction Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*).

13. In its ruling of 15 July 2011, the Administrative Jurisdiction Division accepted the Minister's appeal, quashed the impugned judgment and, deciding anew, retrospectively rejected the applicant's appeal to the Regional Court as ill-founded. It held that the applicant's account of his journey did not contain any elements that were verifiable for the Minister. The provisional-measures' judge had thus incorrectly considered that the Minister had not properly reasoned his opinion that the applicant had failed to make detailed, coherent and verifiable statements about his journey. It further found that the fact that original identity documents had now been submitted did not alter the fact that no documents had been submitted relating to the applicant's journey. As a result, the Minister had rightly held that the lack of documents was attributable to the applicant. As a consequence, the applicant's account had to be positively convincing, but in view of the contradictions and vaguenesses identified by the Minister, the latter could reasonably have found that it was not. No further appeal lay against this decision.

B. Events after the introduction of the application

14. On 10 October 2011, the applicant submitted a faxed copy of a writ of summons, ordering him to report on 28 December 2010 to an unspecified tribunal in Mahabad (Iran). This document states *inter alia* that "*your indictment is based on the collaboration with the disbanded hypocrite little groupings.*" On 25 October 2011, the applicant submitted the original summons.

15. On 21 November 2011, the applicant's representative informed the Court that the applicant's had been taken into aliens' detention for expulsion purposes (*vreemdelingenbewaring*). On the same day, the Acting President decided to indicate to the Government, under Rule 39 of the Rules of Court, that the applicant should not be expelled to Iran pending the proceedings before the Court. The Government were further invited to submit observations on the admissibility and merits of the case.

16. The Government's observations were submitted on 16 January 2012, in which they argued that the applicant had not established that if he were

expelled to Iran there would be a real risk of his being subjected to treatment contrary to Article 3 of the Convention. The Government further expressed their willingness to investigate the authenticity of the writ of summons on the condition that they would be provided with the original. On 8 February 2012, the original writ of summons was transmitted to the Government for an investigation into its authenticity. On 19 March 2012, the Government informed the Court that, on the basis of three features, the Documents Bureau of the Immigration and Naturalisation Service had concluded that the writ of summons was probably not drawn up and issued by a competent authority but, on the basis of a fourth feature, the document might be authentic. The Bureau could not determine whether the content of the document was correct.

17. On 26 March 2012 the applicant was invited to submit by 7 May 2012 his observations in reply and comments on the information submitted by the Government on 19 March 2012. The original writ of summons was returned to him.

18. On 3 May 2012, the applicant's representative requested an extension until 7 June 2012 of the time-limit fixed for the submission of the applicant's observations in reply and comments, as he had sought a counter-expertise in respect of the writ of summons. On 4 May 2012 the President granted this request. When this time-limit expired, no observations in reply or comments had been submitted by the applicant.

19. By letter of 15 June 2012, the applicant's representative informed the Court that a counter-expertise had been drawn up in the meantime but that the applicant had not given permission to submit this document to the Court. The applicant had also not given him permission to withdraw the application. The representative lastly stated that for the remainder he would leave matters to the Court's judgment.

COMPLAINTS

20. The applicant complained under Article 3 of the Convention that there are substantial grounds for believing that he will be subjected to treatment prohibited by that provision if he were expelled to Iran. He further complained that, on this point, he did not have an effective remedy as guaranteed by Article 13 of the Convention.

THE LAW

21. The applicant alleged a violation of his rights under Article 3 of the Convention. This provision reads as follows:

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

He further alleged a violation of Article 13, which provides:

> "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."

22. The Court notes that the applicant, in support of his application, relied on a writ of summons issued by a tribunal in Mahabad. It further notes that, according to the findings of an investigation into the authenticity of this document, there are elements casting doubt on its authenticity. The Court further notes that the applicant has not submitted any observations in reply and that he does not wish to make available the results of a counter-investigation into the authenticity of the summons at issue.

23. The Court reiterates that an application may be rejected as abusive under Article 35 § 3 of the Convention, among other reasons, if it was knowingly based on untrue facts (see, as to abuse of the right of application, *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Popov v. Moldova* (no. 1), no. 74153/01, § 48, 18 January 2005; *Rehak v. Czech Republic* (dec.), no. 67208/01, 18 May 2004; and *Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006).

24. However, although possibly justified in the particular circumstances of the present case, the Court considers that for reasons of expediency only (in particular its overload, see *mutatis mutandis Bock v. Germany* (dec.), no. 22051/07, 19 January 2010), it will not proceed to an examination of the question whether the application was deliberately grounded on a description of untrue facts, such that it should be rejected for constituting an abuse of the right of petition within the meaning of Article 35 § 3 of the Convention (see *Drijfhout v. the Netherlands* (dec.), no. 51721/09, 22 February 2011).

25. The Court observes that the applicant has not disputed the Government's argument that he has not established the existence of the alleged real risk of treatment in breach of Article 3 in case of his expulsion to Iran and that he has not disputed the findings of the Documents Bureau of the Immigration and Naturalisation Service as regards the authenticity of the writ of summons submitted by him.

26. In these circumstances the Court is of the opinion that the applicant's complaint under Article 3 must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention. On the basis of this finding, the Court further holds that the applicant does not have an arguable claim that his right to an effective remedy within the meaning of Article 13 has been violated. Accordingly, also this complaint must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

27. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli Deputy Registrar	Luis López Guerra President