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

THIRD SECTION

DECISION

Application no. 13681/08
Nima Ali DARA
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 1 October 2013 as a Committee composed of:

Alvina Gyulumyan, *President,*
Kristina Pardalos,
Johannes Silvis, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 March 2008,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Nima Ali Dara, is an Iranian national, who was born in 1985 and lives in Utrecht. He was represented before the Court by Mr P.B.P.M. Bogaers, a lawyer practising in Nieuwegein.

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 28 January 2002 the applicant entered the Netherlands, where he requested asylum on 12 February 2002. This request was rejected on 9 August 2002 by the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie*, "the Minister") who considered that the applicant had not made a plausible case for believing that he had attracted the negative attention of the Iranian authorities. The applicant lodged an appeal, but to no avail. On 27 May 2004 the Regional Court

(*rechtbank*) of The Hague, sitting in Groningen, upheld the decision of the Minister. Although possible, the applicant did not lodge a final appeal with the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*).

5. On 12 September 2006 the applicant filed a second asylum request, which was rejected by the Minister on 18 September 2006, the latter being of the view that the applicant had not submitted newly emerged facts or altered circumstances within the meaning of article 4:6 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*) that had occurred after the first asylum proceedings. The applicant's appeal against this decision was rejected by the Regional Court of The Hague, sitting in Haarlem, on 27 August 2007. The applicant lodged a final appeal with the Administrative Jurisdiction Division of the Council of State, which rejected this appeal on 22 November 2007 on summary reasons for not raising any points of law.

B. Developments subsequent to the lodging of the application

6. On 30 September 2010 the President of the Section decided that notice of the application should be given to the Government and that the Government should be invited to submit written observations on the admissibility and merits of the case (Rule 54 § 2 (b) of the Rules of Court).

7. At the request of the Government, the Chamber decided on 22 February 2011 to adjourn the Court's proceedings pending the outcome of a medical recommendation that was to be issued in national proceedings on a request lodged by the applicant for a residence permit for the purpose of residence as an alien who, through no fault of his own, cannot leave the Netherlands (*buitenschuldvergunning*). By decision of the President of 30 May 2011 this adjournment was prolonged until the proceedings in the Netherlands had come to an end.

8. In a letter of 25 July 2013, the Government informed the Court that, by decision of 23 July 2013, the applicant had been granted a residence permit for the purpose of residence as an alien who, through no fault of his own, cannot leave the Netherlands, valid until 9 March 2014.

9. Asked whether, in these circumstances, he nevertheless wished to maintain his application to the Court, the applicant replied on 12 August 2013 that he did indeed wish to maintain it due to the inhuman treatment and the moral harm to which the Netherlands authorities had subjected him. He further sought reimbursement of pecuniary damage to an amount of 228,200 Euros which had been suffered by him and by private organisations which had paid for his cost of living and study costs between 2008 and 2013.

C. Relevant domestic law and practice

10. Pursuant to Article 3.48 § 2a of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*) a temporary residence permit may be issued to aliens who, through no fault of their own, cannot leave the Netherlands. Chapter B8/4.1 of the Aliens Act Implementation Guidelines 2000 (*Vreemdelingencirculaire 2000*) lays down the conditions with which an alien must comply in order to be eligible for such a residence permit:

> "[T]he alien has:
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> - done everything within his power to organise his departure independently;
> - no doubt exists about his nationality and identity; and
> - it is not due to him that he is unable to leave the Netherlands.
>
> the alien has:
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> - turned to the International Organisation for Migration in order to facilitate his departure; and
> - this organisation has indicated that it is not capable of organising the aliens' departure due to the fact that the alien submits that he is unable to have travel documents at his disposal.
>
> the alien has:
>
> - requested the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek*) [of the Netherlands Ministry of Security and Justice] to mediate in obtaining the required documents of the authorities of the country to which departure is possible; and
> - the mediation has not led to the desired result; and
>
> the alien:
>
> - is residing in the Netherlands without a valid residence permit;
> - does not comply with other conditions for being granted a residence permit; and
> - has not also filed an application for a residence permit for the purpose of residence on other grounds."

COMPLAINTS

11. Under Articles 2, 3, and 5 of the Convention the applicant complained that, if expelled to Iran he would be exposed to a real and personal risk of being subjected to torture and imprisonment, resulting in the deprivation of his life. He further complained that his medical situation had not been sufficiently taken into account during the asylum proceedings at the national level.

12. The applicant also complained that, in respect of his complaints under Articles 2, 3, and 5 of the Convention, he did not have an effective

remedy within the meaning of Article 13 of the Convention since his final appeal with the Administrative Jurisdiction Division of the Council of State was rejected on summary reasons for not raising any points of law and thus without a full review of his case having been carried out.

THE LAW

A. Whether the case should be struck out of the list

13. In the Court's view, it is necessary first of all to determine whether the new fact of the applicant having been granted a residence permit is such as to lead it to decide to strike the application out of its list of cases in application of Article 37 § 1 of the Convention, which 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.
>
> 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

1. Application of Article 37 § 1 (a) of the Convention

14. It is clear that there can be no question of striking this part of the application out of the Court's list of cases in application of Article 37 § 1 (a), as the applicant has expressly stipulated that he wishes to pursue it.

2. Application of Article 37 § 1 (b) of the Convention

15. According to the Court's case-law, the question whether the matter at issue has been resolved depends, firstly, on whether the circumstances complained of directly by the applicant still obtain and, secondly, on whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42).

16. Even though it is true that the applicant has now been granted a residence permit and can thus at the present time not be expelled to Iran, the Court notes that the residence permit issued to the applicant does not annul or overturn the decisions taken on his requests for asylum. Moreover, the residence permit having been granted for non-asylum related reasons, it can

furthermore not be said that the decision to grant it was aimed at offering redress for the effects of a possible violation of any of the Articles invoked by the applicant. Since the aforementioned conditions have thus not been met, the case should not be struck out of the list in application of Article 37 § 1 (b).

3. Application of Article 37 § 1 (c) of the Convention

17. In order to decide whether the application should be struck out of the list in application of Article 37 § 1 (c), the Court must consider whether "the circumstances lead it to conclude" that "for any other reason ... it is no longer justified to continue the examination of [it]". As the Court has previously held, it enjoys a wide discretion in identifying grounds capable of being relied upon in striking out an application on the basis of Article 37 § 1 (c), even though it is to be understood that such grounds must reside in the particular circumstances of each case (see *Association SOS Attentats and De Boëry v. France* (dec.) [GC], no. 76642/01, § 41, ECHR 2006-XIV).

18. The Court notes the applicant's submission that the examination of his case should be continued in view of the ill-treatment to which he has been subjected by the Netherlands authorities (see paragraph 9 above). However, the complaint under Article 3 of the Convention made by the applicant in his application to the Court related to the ill-treatment to which he would allegedly run a real risk of being subjected if he were expelled to Iran, whereas the complaint now raised by the applicant in support of his submission that the Court should continue the examination of his case was not included in his application, and the Court sees no reason to entertain it.

19. In particular in view of the fact that at the present time there is no risk of the applicant being expelled to Iran and the alleged risk of treatment contrary to Articles 2, 3 and 5 of the Convention materialising, and in the absence of any specific indications as to why the complaint under Article 13 would still require investigation (see *Mir Isfahani v. the Netherlands* (dec.), no. 31252/03, 31 January 2008), the circumstances of the present case lead the Court to consider that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention.

20. In respect of the applicant's claim for compensation of pecuniary damage, 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-I).

21. Furthermore, 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. Accordingly, 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.

Marialena Tsirli Deputy Registrar	Alvina Gyulumyan President