

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51721/09
by Tjitske DRIJFHOUT
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 22 February 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 September 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, NN cel Baarn alias Nn.p109.v.20081101.1101, yclept Tjitske Drijfhout, claims to be a Netherlands national. She gives an address in Amsterdam. She states her profession as "student". Her date of birth is given on the application form as "1 January 1900 (as stated by the respondent)".

2. The applicant was represented before the Court by Mr J. Hemelaar, a lawyer practising in Leiden.

A. The circumstances of the case

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

4. On 30 October 2008, the applicant was arrested on suspicion of having committed criminal offences. Because she refused to identify herself, the applicant was, pursuant to article 61a of the Code of Criminal Procedure (*Wetboek van Strafvordering*), detained in order for her identity to be established. She was registered as "NN cel Baarn".

5. On 31 October 2008 she was released and handed over to the aliens' police (*vreemdelingenpolitie*) who held her (*ophouding*), pursuant to article 50 §§ 2 and 4 of the Aliens Act 2000 (*Vreemdelingenwet 2000*), for similar purposes.

6. The applicant, through her counsel Mr Hemelaar, wrote to the police officer responsible arguing that the applicant was being wrongly held. Appended to the letter were a number of statements of fellow suspects, all of whom claimed to know that the applicant had Netherlands nationality. All mentioned the fact that she had had to prove her identity to be admitted to higher education or employment. One, going by the name of "Roelof Pieters", claimed to have seen the applicant's passport. Another, called "Agnes Wijbrandse" in the document, claimed to have seen her driving license. All fellow suspects stated that they had given copies of identity documents to Mr Hemelaar, whom however they had instructed not to circulate them any further.

7. After the initial holding measure had been extended for 48 hours, the applicant was placed in aliens' detention with a view to her expulsion (*vreemdelingenbewaring*). In the course of an interview with the aliens' police on 3 November 2008, she stated among other things that she had Netherlands nationality by birth, held a Netherlands passport and was "presumably" entered in the population register.

8. The same day the applicant appealed against her deprivation of liberty with the Regional Court of The Hague. For the purpose of these proceedings, she was registered as "Nn.p109.v.20081101.1101", date of birth 01 January 1900, Netherlands nationality. In the statement of grounds of appeal submitted by her counsel it was claimed that she was "a normal Dutch young lady" (*een normale Hollandse jonge dame*) and still a minor.

9. On 5 November 2008 the applicant lodged a request with the Provisional Measures Judge (*voorzieningenrechter*) for the suspension of her aliens' detention. In her written statement she claimed to be of age and to have a job.

10. Also on 5 November 2008 the applicant was released.

11. In the further course of the proceedings of the Regional Court, the applicant admitted to the first name Tjitske. Eventually her appeal was

rejected by the Regional Court (*rechtbank*) of The Hague, sitting in Utrecht, by decision of 2 December 2008.

12. The applicant lodged a further appeal with the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*), this time under the name Tjitske Drijfhout.

13. On 15 January 2009, the Administrative Jurisdiction Division dismissed the applicant's further appeal on summary reasoning.

B. Factual information submitted by the Government

14. On 15 April 2010, the Court put the following questions to the Agent of the Government:

"1. In relation to Article 35 § 2 (a) of the Convention:

a. Is the person who lodged the above application as Ms Tjitske Drijfhout, the same person who was apprehended (*aangehouden*), questioned and subsequently put in aliens' detention on or around 31 October 2008?

2. If so, and in relation to the alleged facts:

a. At what point in time was the applicant apprehended?

b. For how long was the applicant held for questioning (*ophouden voor verhoor*)?

c. Following her apprehension, did the applicant provide any information as to her identity?

d. If not, was it easily possible for her identity to be established in another way at that time?

e. If her identity could not be established, was the applicant's apprehension prolonged pursuant to article 61 § 2 of the Code of Criminal Procedure (*Wetboek van Strafvordering*)?

f. What measures were taken at that time in order to establish the applicant's identity?

g. Did the applicant provide any information as to her nationality and, if so, in what way has she co-operated in establishing that nationality?

h. On what grounds was it concluded that the applicant fell under the provisions of the Aliens Act (*Vreemdelingenwet*)?

i. Did the applicant, at the time she was placed in aliens' detention or subsequently, provide further information allowing her identity or nationality to be established and, if so, how?

j. When was the applicant taken into aliens' detention and when was she released?

k. Did the aliens' detention come to an end as a result of the applicant herself demonstrating at any time that the provisions of the Aliens Act 2000 at issue could not be applicable to her?

l. At what point in time and in which manner did the applicant's identity become clear?"

15. On 18 May 2010 the Agent of the Government replied as follows:

"(...) The Government will – out of necessity – limit itself to a short reply, since it cannot confirm that the applicant is the person who was apprehended, questioned and subsequently put in aliens' detention on or around 31 October 2008. A female person was indeed apprehended, questioned and put in aliens' detention on that date, but she was merely known as 'NN cel Baarn' and 'Nn.p109.v.20081101.1101'. Her fingerprints led to a positive identification, but the matching fingerprints were registered under 'NN onbekend' (NN unknown), reference number 1602200810. The latter were taken from a female apprehended in the course of a house-squat in the city of Utrecht on 16 February 2008, whose identity remained unknown.

For the sake of completeness, I should add that the person apprehended on or around 31 October 2008 appealed against the measure of aliens detention under the details mentioned above. Her representative informed the District [i.e. Regional] Court that she was also known as 'Tjitske'. On 2 December 2008, higher appeal against the District Court's judgment was lodged by 'Tjitske Drijfhout, alias NN cel Baarn alias Nn.P109.v.20081101.1101'.

Upon receipt of your letter, the aliens' police in Utrecht checked the information provided in the application. It appears that Tjitske Drijfhout, born in Amsterdam on 1 January 1900 and residing at Van Ostadestraat 55 hs, 1072 JB, Amsterdam, is unknown in the municipal database. There is, however, a person known as Tjitske Drijfhout, born on 1 January 1950. The above mentioned appeal to the District Court was lodged by a person claiming to be of minor age. The age of the apprehended person was estimated between 25 and 35. Under no circumstance could the apprehended person have reached the age of (nearly) sixty, let alone the age of (nearly) hundred-and-ten. Furthermore, the postal code of 1072 JB does not relate to the address provided.

The Government is of the opinion that – since at least part of the personal data submitted by the applicant are proven to be false – there is no reason to assume that the name provided by the applicant would be correct. The applicant's identity has therefore not been disclosed, as a result of which the application should be declared inadmissible for being anonymous, as stipulated in Article 35 § 2(a) of the Convention. The Government refers to the Court's decision to that effect in the case of Blondje v. the Netherlands (Appl. No. 7245/09). The fact that – other than the applicant in that case – the applicant in the present case has chosen to provide a somewhat less obvious pseudonym, does not alter that conclusion. "

16. A copy of this letter was transmitted to the applicant's representative for comment. In a letter dated 11 August 2010, the latter admitted that 1 January 1950 was not the applicant's date of birth but did not give any other date. He claimed that the wrong postcode, which differed only slightly from the actual postcode of the address given, was an honest mistake. He further admitted that the person referred to as NN cel Baarn and Nn.p109.v.20081101.1101 in the domestic proceedings was the applicant.

C. The Court's request for further information from the applicant

17. On 28 September 2010 Court requested the applicant to establish her identity by submitting a copy of a valid identity document held by her.

18. By letter dated 29 September 2010 the applicant's representative, Mr Hemelaar, replied as follows (translation):

"In the above-mentioned case you requested me, in your letter of 28 September 2010, for a copy of a valid identity document of the applicant.

I have been informed by the applicant that she cannot comply with that request, because she does not now hold a valid identity document from which her name as stated appears (*omdat zij thans niet beschikt over een geldig identiteitsbewijs waaruit haar naam als opgegeven blijkt*).

In the Netherlands there is no obligation to have an identity document. People can go through life without an identity document. Especially since the law has been changed and fingerprints are required, there is much resistance against applying for a passport in the circles in which the applicant moves. The situation of being 'identity document-less' (*identiteitsdocumentloos*) now occurs more frequently in those circles than it used to.

On behalf of the applicant, I point out that if the mere fact that the State denies the stated identity were enough to impose a duty of proof on the applicant, the effective exercise of the right of petition [would be] undermined. As you will be aware, especially in cases of aliens' detention identity documents are usually unavailable. If now the State takes the position that the stated identity is incorrect (as in fact the Netherlands State does in a large number of cases, often on the fallacious reasoning that 'The stated identity cannot be correct, because if it were correct, the authorities of the country of origin would issue/have issued a *laissez-passer*'), then no applications at all could be lodged against violations of human rights in cases of aliens' detention.

In certain cases a Netherlands citizen may in fact be asked for an identity document in specific situations and the failure to produce one may attract penal sanctions (such as a 50 euro fine or an extension of detention on remand) and such sanctions were in fact imposed on the applicant. But a general obligation to purchase a passport or identity card, or possess one, does not exist in the Netherlands.

My client takes the view that she has not submitted an anonymous complaint and also refers to the decision of the Council of State, the highest administrative court in the Netherlands, from which it appears that the Council of State did not base its decision on that fiction either. My client has stated a name and an address (albeit with the wrong postcode). That ought to be sufficient. Unlike in the case of 'Blondje' the Council of State has considered this sufficient. It appears incorrect to the applicant that the State should all of a sudden adopt a different position in the present case."

COMPLAINTS

19. The applicant complained that her continued detention by the aliens' police was contrary to her rights under Article 5 of the Convention. She also complained under Article 6 of the Convention that she had been denied a fair hearing. Invoking Article 14 of the Convention, the applicant finally complained that she had been discriminated against.

THE LAW

20. The applicant raised complaints under Articles 5, 6 and 14 of the Convention in relation to the decisions to deprive her of her liberty pursuant to the Aliens Act 2000.

21. It will be recalled that in *"Blondje" v. the Netherlands* (dec.), (no. 7245/09, 15 September 2009), the Court found that the applicant's identity had not been disclosed and held that the application was inadmissible in terms of Article 35 § 2 (a) of the Convention.

22. The present case differs from that of "Blondje" in that the present applicant states an identity. It is characterised instead by the failure to provide objectively verifiable identifying information.

23. It is for this reason that the Court requested relevant information from the Government, the factual accuracy of which, once it was received, was not contested.

24. The name given by the applicant, although that of a living person, belongs to someone who was apparently born in 1950. This does not sit well with the applicant's claims to be a "student" (paragraph 1 above) and (on 3 November 2008 at least, if not afterwards) a "minor" (paragraph 8) and who is described by her own counsel, in documents submitted in the domestic proceedings, as a "young lady" (*ibid.*). Moreover, the applicant's representative has admitted that the applicant's date of birth is different (paragraph 16). In these circumstances, an explanation from the applicant is plainly called for.

25. Asked to produce a copy of a valid identity document as proof of the applicant's identity, the applicant's representative, Mr J. Hemelaar, replied on 29 September 2010 that he was unable to do so. He gave the reason that for ideological reasons his client held no valid identity document from which her "name as stated" appeared (paragraph 18 above).

26. The Court finds this explanation unacceptable. Quite apart from the fact that it is necessary in day-to-day life (in the Netherlands as elsewhere) to produce proof of identity for purposes including personal finance, social security, employment and education, the applicant herself admitted to the aliens' police that she held a Netherlands passport (paragraph 7 above). In statements which Mr Hemelaar transmitted to the police, it was stated in writing that the person referred to as "Roelof Pieters" had seen the applicant's passport, and that the person referred to as "Agnes Wijbrandse" had seen her driving license (paragraph 6). Otherwise, even in the absence (for whatever reason) of either document, the applicant, who calls herself a "student", could reasonably be expected to be in the possession of an identity document delivered by an educational institution at which she was enrolled.

27. In view of the applicant's attitude, the Court takes the expression "name as stated" to indicate that the name "Tjitske Drijfhout", stated on the

application form signed and submitted by Mr Hemelaar to be that of the applicant, is not in truth an accurate rendering of the applicant's name.

28. The Court is forced to conclude on the facts available that an attempt has been made to pass the applicant off under a false identity. It further finds that the applicant persists in refusing to reveal her true identity.

29. 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 *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005; *Řehák v. Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Kerechashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006; *Bagheri and Maliki v. the Netherlands* (dec.), no. 30164/06, 15 May 2007; and *Khvichia and Others v. Georgia* (dec.), no. 26446/06, 23 June 2009).

30. Such is the case here. There has been an abuse of the right of petition; it follows that the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President