

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

THIRD SECTION

DECISION

Application no. 62081/10
Abdullahi DUKULY
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 9 October 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 19 October 2010,

Having regard to the Government's factual submissions of 19 March 2012 and 1 June 2012,

Having regard to the applicant's response to these submissions of 22 March 2012 and 16 June 2012,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Abdullahi Dukuly, is a Liberian national, who was born in 1976 and lives in Amsterdam. He was represented before the Court by Ms M. Terpstra, a lawyer practising in Amsterdam.

2. The Netherlands 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 applicant, may be summarised as follows.

4. The applicant filed an asylum request in the Netherlands on 10 March 1996, stating that rebels had murdered his family before his eyes and that he had been forced to fight for the rebels as a child-soldier. As these experiences had profoundly traumatised him he could not return to Liberia where he had no one left and where the general situation was very bad. His asylum request was rejected because it was not based on any personal problems of persecution encountered by the applicant personally but on the general insecure situation in Liberia where he no longer had any relatives. He was, however, granted a conditional residence permit (*voorwaardelijke vergunning tot verblijf*), valid as of 10 March 1996 under a temporary categorial protection policy given the general security situation in Liberia.

5. The applicant unsuccessfully challenged the decision to deny him asylum in administrative appeal proceedings. The last, for the applicant negative, decision in these proceedings was taken on 29 April 1998 by the Regional Court (*rechtbank*) of The Hague.

6. On 30 October 1998, the applicant's conditional residence permit was withdrawn as the general situation in Liberia was found to have improved. The applicant also challenged this decision in administrative appeal proceedings in which the last, for the applicant negative, decision was given on 2 May 2002 by the Regional Court sitting in The Hague.

7. On 5 August 2003, the applicant filed a second asylum request which, pursuant to section 4:6 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*), must be based on newly emerged facts or altered circumstances (*nieuw gebleken feiten of veranderde omstandigheden*) warranting a revision of the initial decision taken. The applicant claimed that he continued to fear the rebel leader who was responsible for the death of the applicant's family. This fresh request was rejected on 4 February 2005. The applicant's appeal against this decision was rejected on 21 March 2006 as ill-founded. The applicant's subsequent further appeal to the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*) was declared inadmissible on 30 May 2006.

8. On 15 January 2008 the applicant filed a third asylum request, claiming a deteriorated medical/psychiatric condition, namely a severe post-traumatic stress disorder for which no treatment was available in Liberia. The final, for the applicant negative, decision in these proceedings was taken by the Administrative Jurisdiction Division on 23 August 2010. It found that the medical statements on the applicant's mental health condition

could have been submitted much earlier and thus did not constitute "nova" for the purposes of section 4:6 of the General Administrative Law Act.

9. On 6 September 2010, the applicant filed a request for deferment of removal (*uitstel van vertrek*) on medical grounds under the provisions of section 64 of the Aliens Act 2000 (*Vreemdelingenwet 2000*).

B. Events after the introduction of the application

10. On 26 October 2010, the Medical Assessment Section (*Bureau Medische Advisering*) of the Ministry of Justice drew up an advice on the applicant's (mental) health condition. It states that the applicant is suffering from a complex, chronic post-traumatic stress disorder and a psychotic disorder for which there are insufficient treatment possibilities in Liberia. As absence of treatment could result in a medical emergency situation, it was found that it would currently not be safe for the applicant to travel to Liberia.

11. On this basis, the Minister for Immigration, Integration and Asylum Policy (*Minister voor Immigratie, Integratie en Asiel*; "the Minister") decided on 15 November 2010 to grant the applicant deferment of removal until 8 November 2011.

12. On 6 September 2011, the applicant applied for a prolongation of the granted deferment of removal and the Medical Assessment Section was requested to draw up an updated report in respect of the applicant.

13. On 13 February 2012, the applicant's representative informed the Court that the Amsterdam aliens' police had placed the applicant in aliens' detention for expulsion purposes (*vreemdelingenbewaring*) and urgently requested the Court to issue an indication against the Netherlands Government under Rule 39 of the Rules of Court in relation to the applicant's placement in aliens' detention.

14. On 17 February 2012, the Acting President decided that, before determining that request, further information was required on the applicant's situation in the Netherlands. To this end, the Netherlands Government were requested to submit information of a factual nature.

15. On 19 March 2012, the Netherlands Government informed the Court that the applicant had claimed throughout the national proceedings that he was a Liberian national. However, when during a traffic stop he had been arrested on 11 February 2011 for driving a motor vehicle without a licence, it appeared that he was holding a valid, original Gambian passport which – after verification – turned out to be authentic. This had led to the conclusion that the applicant had lied about his nationality and could be expelled to Gambia. On 16 February 2012 the Medical Assessment Section was asked to include treatment options in Gambia in the advice requested in the context of the applicant's request of 6 September 2011 to prolong deferment of removal.

16. On 28 February 2012 the Medical Assessment Section issued its updated report, concluding that there are currently no adequate treatment options for the applicant available in Liberia whereas treatment is possible in Gambia.

17. On 6 March 2012, the Minister rejected the applicant's request of 6 September 2011. He considered that, provided certain measures would be taken, the applicant was fit to travel to Gambia where treatment for him was available. On the same day, the applicant filed an objection (*bezwaar*) with the Minister against this decision.

18. Invited to do so, the applicant submitted comments in reply on 22 March 2012. He explained that he had obtained the Gambian passport illegally because he had been told that he needed a passport to obtain permission to stay in the Netherlands either for medical reasons or for stay with his two children there. Although he had obtained confirmation from the Liberian mission that he was a Liberian national, this mission was not allowed to issue passports. In 2009 it had been possible for non-Gambian nationals to buy a Gambian passport at the Gambian mission. For this reason the Gambian Ambassador had been replaced in 2010 and that mission was no longer allowed to issue Gambian passports. After having obtained the Gambian passport, the applicant had understood that it was illegal and decided not to use it.

19. On 1 June 2012, the Netherlands Government reacted to the applicant's comments in reply. They stated that, following the applicant's presentation to these authorities on 9 May 2012, the Liberian authorities had confirmed that the applicant was a national of Liberia and that, on 11 May 2012, the applicant had been released from aliens' detention. Furthermore, following the applicant's presentation to the Gambian authorities, the latter had established that the applicant was not a Gambian national. The Government lastly stated that the outcomes of these presentations would be taken into account by the Minister in the determination of the applicant's objection of 6 March 2012. On 11 June 2012, the Government submitted that, by decision of 1 June 2012, the Minister had accepted the applicant's objection and granted him a further deferment of removal until 1 June 2013.

20. On 19 June 2012, having been invited to indicate whether in these circumstances he wished to pursue his case, the applicant informed the Court that he withdrew his request for an indication under Rule 39 of the Rules of Court but that he wished to maintain his application as he had only been granted a temporary deferment of removal whereas he aspired a decision granting him leave to remain indefinitely in the Netherlands.

COMPLAINT

21. The applicant complained that his expulsion to Liberia, taking into account that he is suffering from serious mental health problems caused by traumatising experiences he has had in Liberia where he has no relatives or other social support network and where he has no treatment possibilities, will entail a violation of his rights under Article 3 of the Convention.

THE LAW

22. The applicant complained that his expulsion to Liberia will be contrary to his rights under Article 3 of the Convention, which provides:

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

23. The Court would reiterate at the outset that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. However, in exercising their right to expel such aliens, Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies. The Court further reiterates its case-law in respect of Article 3 and the expulsion of the seriously ill (see *N. v. the United Kingdom* [GC], no. 26565/05, §§ 32-45 with further references, ECHR 2008), in particular that aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State (see *D. v. the United Kingdom*, 2 May 1997, § 54, *Reports of Judgments and Decisions* 1997-III).

24. In the very exceptional circumstances of the case of *D. v. the United Kingdom* the Court found that the applicant's removal to St. Kitts would violate Article 3, taking into account his critical medical condition. The Court noted that the applicant was in the advanced stages of AIDS. An abrupt withdrawal of the care facilities provided in the respondent State together with the predictable lack of adequate facilities as well as of any form of moral or social support in the receiving country would hasten the applicant's death and subject him to acute mental and physical suffering. In view of those very exceptional circumstances, bearing in mind the critical stage which the applicant's fatal illness had reached and given the compelling humanitarian considerations at stake, the implementation of the decision to remove him to St. Kitts would amount to inhuman treatment by the respondent State in violation of Article 3 (see *D.*, cited above, §§ 51-54).

25. However, in the circumstances of the present case, the Court does not find it necessary to examine whether the applicant's expulsion to Liberia would be contrary to the standards of Article 3 of the Convention in view of his present state of health as it is precisely on the basis of the applicant's medical condition and lack of adequate treatment possibilities in Liberia that, shortly after the introduction of the instant application, the Netherlands authorities granted the applicant on 15 November 2010 a deferment of removal of one year, which period has been prolonged in the meantime until 1 June 2013.

26. The Court will therefore ascertain whether these new developments are such as to lead it to decide to strike the application out of its list of cases in application of Article 37 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."

27. The Court notes that the applicant intends to pursue his application. Consequently, Article 37 § 1 (a) does not apply. It further finds that the matter before it has not been resolved for the purposes of sub-paragraph (b) of Article 37 § 1 in that the applicant's request for an asylum-based residence permit has been rejected and his effective removal will be carried out as soon as his medical condition in conjunction with adequate treatment options in Liberia for him will allow this.

28. The above-mentioned developments may, however, lead the Court to conclude that, "for any other reason ... it is no longer justified to continue the examination of the application" and that the application should therefore be struck out of the list in application of Article 37 § 1 (c). It is clear from the latter provision that the Court enjoys a wide discretion in identifying grounds capable of being relied upon in striking out an application on this basis, it being understood, however, that such grounds must reside in the particular circumstances of each case (see *Association SOS Attentats and de Boery v. France* [GC], (dec.), no. 76642/01, § 37, ECHR 2006-XIV; *Predescu v. Romania*, no. 21447/03, § 29, 2 December 2008, and *F.I. and Others v. the United Kingdom* (dec.), no. 8655/10, 15 March 2011).

29. The Court notes that in his application form the applicant stated that the object of the present application to the Court was to prevent his expulsion to Liberia because this would result in a violation of Article 3 of the Convention on grounds of his medical condition and the absence of a social safety network. The Court further notes that, at least until 1 June 2013, the applicant does not risk removal to Liberia for reasons based on his present state of health and lack of treatment possibilities in Liberia. As it further appears that the deferment of removal granted to the applicant is eligible for further prolongation in case this is necessary, the Court is of the view that the particular circumstances of this application are such that it is no longer justified to continue its examination.

30. 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.

Santiago Quesada
Registrar

Josep Casadevall
President