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

SECOND SECTION

DECISION

Application no. 55607/09
H.P.
against Denmark

The European Court of Human Rights (Second Section), sitting on 13 December 2016 as a Chamber composed of:

Işıl Karakaş, *President*,
Julia Laffranque,
Nebojša Vučinić,
Paul Lemmens,
Ksenija Turković,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges*,
and Stanley Naismith, *Section Registra*r,

Having regard to the above application lodged on 1 October 2009,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr H.P., is a Danish national. He was born in 1944 in Iran. He lives in Copenhagen.

2. The President of the Section granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 3).

3. He is represented before the Court by Mr Jens Brøsted, Special Advisor for the "Documentation and Advisory Centre on Racial Discrimination" (DACoRD), an NGO in Copenhagen, and "Open Society Justice Initiative", an NGO in New York. The Danish Government ("the Government") were represented by their Agent, Mr Tobias Elling Rehfeld, from the Ministry of Foreign Affairs and their Co-agent, Mrs Nina Holst-Christensen, from the Ministry of Justice.

A. The circumstances of the case

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

5. The applicant lived in Iran. In 1984 he was imprisoned and subjected to torture.

6. In 1987, with his wife and two children (born in 1976 and 1979), the applicant escaped to Turkey, where the United Nations High Commissioner for Refugees considered that he should be granted refugee status on the condition that he rejected any right to return to Iran.

7. In July 1989 the applicant applied for re-settlement. In November 1989, upon a recommendation by the Danish Directorate for Foreigners, the applicant and his family entered Denmark where they obtained a permanent residence permit in 1990. The applicant was issued with a refugee travel document in accordance with the 1951 Convention relating to the Status of Refugees (a Geneva passport). Before the Danish Immigration Service (now *Udlændingestyrelsen*) the applicant repeatedly stated that he was an Iranian national. Before the Court, he maintained that he was stateless.

8. In 1991, the applicant and his wife had their third child in Denmark. As a result of the torture to which the applicant was subjected, he has suffered severe mental health problems for years, including insomnia, anxiety, depression, pseudo-dementia, memory loss and difficulties in communicating, even in his native language.

9. Thus, despite having taken numerous language classes, the applicant has never succeeded in mastering the Danish language. He did manage, however, in 2006 to obtain a certificate for "Danish Language level 2".

10. Due to the injuries caused by the torture, the applicant was granted a public pension on 8 October 1997. He divorced the same year.

11. Between 1998 and 2009, the applicant applied for Danish nationality (mainly reopening requests) eight times, in vain. The first refusal was dated 13 December 1999. The first four times Circular no. 90 of 16 June 1999 applied, the fifth time it was Circular no. 55 of 12 June 2002, the sixth and seventh times it was Circular no. 9 of 12 January 2006, and the last time it was Circular no. 61 of 22 September 2008.

12. All his requests were refused because the applicant did not speak the Danish language sufficiently well. Under the 1999 and 2002 Circulars it was a requirement to be granted Danish citizenship, *inter alia*, that applicants pass a Danish language test at the level of "general test 1". However, by virtue of section 23, an applicant could be exempted from the language requirement "where the person in question ...proved unable to learn Danish to a sufficient degree due to a mental disorder, for example as a result of torture."

13. Under the 2006 Circular, the requirements for Danish language skills became stricter and applicants were required to pass a so-called "level 3 examination". In addition they were required to pass a so-called "citizenship test" documenting their knowledge of Danish society, culture and history. Moreover, the above-mentioned exemption in section 23 in the former circulars was removed under Circular no. 9 of 2006. Instead, an exemption was made for an illness "of a very serious nature" in "exceptional circumstances" documented by a statement from a medical professional.

14. In the first seven applications, the applicant did not request exemption from the requirements for Danish language skills or other requirements, nor did he rely on health problems as a reason for his difficulties in learning Danish.

15. On the eighth occasion, however, on 29 May 2008, the applicant, represented by DACoRD, requested that the Ministry of Justice reopen the case maintaining, among other things, that the application should be based on the state of law applicable at the time of the original application, that is the 1999 Circular, which required that applicants pass a Danish language test at the level of "general test 1". Moreover, he submitted that the exemption from Danish language skills, which had been possible under the said circular, had wrongly never been considered or applied to the applicant's case.

16. On 4 March 2009 the Ministry of Justice informed the applicant that his case had been sent to the Parliamentary Naturalisation Committee for a review.

17. On 12 March 2009 the Parliamentary Naturalisation Committee, meeting in camera, refused the application.

B. Subsequent events and procedure before the Court

18. The applicant lodged his application with the Court on 1 October 2009.

19. Subsequently, he submitted to the Court, *inter alia,* a psychiatric statement of 23 November 2009 by a named psychiatrist, X, who had seen the applicant on two occasions, on 28 September and 1 October 2009. X concluded that the applicant was suffering from paranoid psychosis.

20. When the application was communicated on 30 August 2012, the Court submitted to the Government the psychiatric certificate of 23 November 2009 together with 22 other exhibits relied on by the applicant.

21. On 26 November 2012 the Ministry of Justice decided to reopen the applicant's case in order to re-submit his application for nationality to the Parliamentary Naturalisation Committee. In that connection, via the applicant's representation, he was asked to complete an application form for reopening the proceedings and to submit a medical certificate stating his

current state of health. At that time, since 2009, the medical documentation formally submitted by the applicant to the Ministry of Justice and the Parliamentary Naturalisation Committee consisted of

(i) a hospital discharge letter of 6 August 1991 from a named hospital after the applicant's voluntary admission to that hospital from 10 to 26 July 1991 for psychosis "*paranoides and affectiva reactiva*", and

(ii) a medical certificate of 22 March 1996 from a psychiatrist, diagnosing the applicant with stress syndrome with depressive features.

22. On 11 December 2012 the applicant informed the Ministry of Justice that, due to his financial situation, he was unable to defray the expenses of another medical certificate.

23. On 17 December 2012, the President of the Court granted the European Disability Forum (EDF) and the International Disability Alliance (IDA) leave to submit third party interventions.

24. On 14 January 2013 the proceedings before the Court were stayed, awaiting the outcome of the domestic reopening procedure.

25. By letter of 24 May 2013 the Court informed the applicant's representative that the decision to stay the proceedings before the Court was upheld, and that the applicant's failure to submit a medical certificate to the Ministry of Justice would be taken into consideration by the Court when the proceedings before it resumed.

26. On 6 June 2013 a new Circular on Naturalisation was issued (no. 9253). By virtue of section 24 (2) of the Circular, one of the conditions for obtaining Danish nationality was that applicants provide proof of having passed a citizenship test. Where exceptional circumstances made it appropriate, a request for exemption from the condition would be submitted to the Parliamentary Naturalisation Committee. Such a request could be submitted if an applicant was diagnosed with a long-term physical, mental, sensory or intellectual disability and was consequently incapable, or had no reasonable prospect, of satisfying the condition.

27. On 27 June 2013 the applicant submitted to the Court an updated medical certificate of 20 June 2013 issued by X stating, *inter alia*, that the applicant was suffering from paranoid psychosis. X stated that in his opinion: "the applicant is not in the foreseeable future able to learn Danish at the level required for obtaining Danish Citizenship. The condition is permanent and without any prospect of improvement. The treatment options have been exhausted." The medical certificate had not been sent to the Ministry of Justice, but was transmitted by the Court to the Government on 5 July 2013.

28. Referring to the medical certificate, on 23 July 2013 the Ministry of Justice sent a letter to the applicant's representative, requesting that the applicant, in addition to the medical certificate, submit to a citizenship test or provide a medical certificate to say that he was unable to do so. It was also pointed out that the applicant would have to fill out and submit a

formal request for the reopening of the application for Danish nationality. With a view to a potential listing in the naturalisation bill to be introduced in Parliament in October 2013, the Ministry set a deadline for 5 August 2013.

29. On 29 July 2013 the applicant submitted various documents to the Ministry of Justice, but not the documents requested. On 5 August 2013 his representative requested an extension of the deadline to submit these documents. His request was granted by the Ministry of Justice on 29 August 2013 and it was explained that in order for the application to be introduced in Parliament in October 2013, it should have been listed at the latest by 16 August 2013.

30. In a letter of 9 September 2013 to the Ministry of Justice, the applicant's representative stated, *inter alia*, that the medical certificate of 20 June 2013 constituted sufficient basis for exempting the applicant from the requirement of passing a naturalisation test.

31. On 24 September 2013 the proceedings were resumed before the Court, and the parties were invited to submit their observations on the admissibility and merits of the case.

32. By letter of 30 October 2013 the applicant's representative submitted a supplementary rider of 29 October 2013 to the medical certificate of 20 June 2013.

33. The applicant's representative maintained, however, most recently in a letter to the Ministry of Justice of 20 January 2014, that the applicant should be exempted from filling in a new form. Instead, the reopening request form from 2008 was attached.

34. The Ministry of Justice submitted the applicant's case, as it stood, to the Parliamentary Naturalisation Committee, which on 30 January 2014 granted the applicant dispensation from the usual requirements for listing in a naturalisation bill.

35. The applicant was subsequently listed in the naturalisation bill presented to Parliament on 10 April 2014 and passed by Parliament on 11 June 2014. The Act (no. 714 of 25 June 2014) entered into force on 2 July 2014, making the applicant a Danish national as of that date. As all other Acts, the Act was promulgated in the Danish Law Gazette (*Statstidende*).

36. Moreover, on 26 June 2014 the Ministry of Justice informed the applicant that he had become a Danish citizen with effect from 2 July 2014. In order to issue him with a citizenship certificate, he was requested to fill in a form concerning family relations.

37. On 14 August 2014 the Municipality of Copenhagen informed the applicant's representative that it could not issue the applicant with a Danish passport, without him presenting his citizenship certificate.

38. In a letter of 24 September 2014 to the Ministry of Justice the applicant's representative submitted a claim for pecuniary and

non-pecuniary damage. It appears that no decision has been taken in this respect yet.

39. By letters of 29 September 2014 and 5 February 2015 the applicant's representative requested that the Ministry of Justice issue a citizenship certificate without the need to fill in any further forms.

40. The citizenship certificate was issued on 20 March 2015. At the same time the National Registration Office (*Folkeregisteret*) was informed that the applicant had obtained Danish citizenship.

41. Today the applicant is seventy-one years old. He still receives a state pension. He has been divorced for years. His three grown-up children are Danish nationals and it appears that they live in Denmark. The applicant also has family in Iran.

C. Relevant domestic law

42. Article 44 of the Danish Constitution of 1849 set out: "no alien shall be naturalised except by an Act of Parliament".

43. Under section 6 (1) of the Act No. 422 of 7 June 2004 on Danish nationality, Danish nationality may be acquired through naturalisation granted pursuant to the Danish Constitution. Section 12 (5) states that "declarations made for the purpose of applications for nationality or as evidence of nationality can be made subject to solemn declaration.

44. The procedure for application for nationality involves an interview with the police, preparation of the bill by a ministry (currently the Ministry of Justice), a debate and a decision by the Parliamentary Naturalisation Committee, which is made up of seventeen members of Parliament, and finally the passing of the bill by Parliament.

Circular no. 61 of 22 September 2008

45. This circular contained the following conditions as regards "Skills in the Danish language and knowledge of Danish society, culture and history":

Section 24

"(1) It is a condition for listing in a naturalisation bill that the applicant documents skills in the Danish language by a certificate of the Danish 3 Examination of the Danish language centres or one of the examinations listed in Schedule 3.

(2) It is furthermore a condition for listing in a naturalisation bill that the applicant documents knowledge of Danish society, culture and history by a certificate of a special citizenship test.

(3) Where exceptional circumstances make it appropriate, the question of whether exemption from the conditions of subsections (1) and (2) hereof may be granted will be submitted to the Naturalisation Committee of the Danish Parliament. The question will be submitted if the applicant documents that he or she suffers from a physical or mental illness of a very serious nature and consequently finds himself or herself to be

incapable – or to have no reasonable prospects – of satisfying the conditions of subsections (1) and (2) hereof.

(4) The circumstances referred to in subsection (3) hereof must be documented by a certificate from a medical professional. The certificate must state whether the treatment options have been exhausted and whether the person will become able to acquire skills in the Danish language at the required level in future."

Other issues on nationality

46. The Government submitted part of a report on a number of nationality issues which was made prior to the introduction and adoption of new rules on access to mutable nationality in December 2014. One of the conclusions was that only in very few instances will nationality be a condition for a specific right or service. Persons holding a valid permanent residence permit have the same rights as Danish nationals in most aspects of life in Danish society, such as the right to a pension if they are unable to work owing to ill health, and other relevant social benefits. The decision to grant social benefits also to non-nationals is based on one of the objectives of the Danish integration policy, which is to ensure that everyone, regardless of nationality, can participate in and contribute to society on an equal footing and has the competences necessary to make use of his or her abilities and resources. This includes access to language training, the labour market and education. On this basis, most rights and responsibilities set out in Danish legislation are conditional on residence in Denmark and not on the nationality of the person in question. Naturally, however, some rights and responsibilities require Danish nationality. Thus, only Danish nationals can hold a Danish passport and vote in general elections for Parliament, just as appointment to certain public offices, such as judge, police officer or juror, requires Danish nationality. Danish nationals are also granted the right to diplomatic protection and cannot be expelled from Denmark.

THE LAW

47. The applicant complained that the Danish authorities' refusal to grant him Danish citizenship was arbitrary and in breach of Article 8 of the Convention. Moreover, he relied on Article 14 in conjunction with Article 8 and alleged that the Danish authorities had failed to treat him differently as a vulnerable person with a learning disability. Finally, he complained that the lack of any adversarial process by which he could challenge the decision to refuse to grant him Danish citizenship breached his rights under Article 13 of the Convention.

I. PRELIMINARY ISSUES

a) The Government

48. Firstly, the Government requested that the Court strike out the case by virtue of Article 37 § 1 (b) of the Convention since the matter complained of has been resolved.

49. They pointed out that under the Convention case-law, in order for the said provision to apply, it is a condition that the circumstances complained of directly by the applicant no longer obtain and, secondly and that the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I, and *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002.

50. Regarding the first condition, the Government stated that the applicant had been granted Danish nationality on 2 July 2014 by virtue of Act no. 714 of 25 June 2014, passed by Parliament on 11 June 2014 (see paragraph 35 above). Thus, the matter complained of had been resolved within the meaning of Article 37 § 1 (b) of the Convention.

51. As regards the second condition, the Government emphasised that the applicant had failed to submit the documents necessary for examining his case, despite various requests by the Ministry of Justice. They pointed out that until 20 January 2014, the Ministry still needed a completed and signed form requesting a reopening of the applicant's application for nationality. When, on that day, the applicant's representative forwarded a copy of the applicant's reopening request form from 2008, the Ministry exceptionally submitted the applicant's case, as it stood, to the Parliamentary Naturalisation Committee, which on 30 January 2014 granted the applicant dispensation from the usual requirements for listing in a naturalisation bill. Thus, in fact the applicant had received preferential treatment compared to all other applicants for Danish nationality.

52. The Government also pointed out that they had not denied the applicant Danish nationality in the period from 12 March 2009 to 2 July 2014. During that period the applicant had not pursued his application further with the Danish authorities. Instead he had complained to the Court.

53. The Government would not attempt to list any concrete effects of denying nationality to the applicant since that would depend entirely on his life choices. In general, however, they pointed out that it was only in very few cases that Danish nationality was a condition for a specific right or service, such as the right to vote in parliamentary elections and to obtain a Danish passport. Regarding the latter they noted, however, that when the applicant entered Denmark, he had been issued with refugee travel documents, enabling him to leave the country, and that Denmark could not

be liable for visa rules imposed by other countries, which might have prevented the applicant from going there.

54. Moreover, the Government submitted that respect for human rights as defined in the Convention and the Protocols thereto did not require that the Court continue the examination of the application.

55. Secondly, the Government maintained that the applicant had failed to exhaust domestic remedies by not bringing his case before the ordinary courts.

56. Thirdly, the Government contended that since, for a long time, the applicant had failed to submit to the Ministry of Justice the documents required for processing his application for nationality, he had failed to exploit the options available to him under domestic law, and could therefore not be considered a victim of a violation of the Convention within the meaning of Article 34 of the Convention.

57. Finally, the Government submitted that the application was manifestly ill-founded.

b) The applicant

58. While recognising that the granting of nationality by Act no. 714 of 25 June 2014 was an important development in the case, the applicant disputed that the matter complained of had been resolved within the meaning of Article 37 § 1 (b) of the Convention.

59. In particular, the Ministry of Justice had not issued the applicant with a citizenship certificate until 20 March 2015 and the Government had failed to acknowledge that the system of access to nationality was deficient or that there had been any violation of the applicant's rights, and they had failed to provide compensation for those violations.

60. The applicant maintained that the refusal to grant him citizenship for more than 16 years had had an impact on his private life in that he was perpetually stateless. This entailed notably that he was disenfranchised and unable to obtain a Danish passport. As to the former, he pointed out that since 2009 he had been denied the right to vote on five separate occasions. Moreover, although he had lived in Denmark since 1989, due to the refusal he had been deprived of his right to "personal autonomy and to form the political and legal bonds that connect him to Denmark, to acquire and exercise rights and obligations inherent in a political membership and to share the same legal status as his family in Denmark, who had obtained Danish nationality, as well as his right to dignity and to personal development".

61. In the applicant's view, having regard to the impact on his private life, as stated above, his personal attributes and experiences, and notably his actions in pursuit of Danish citizenship, his case differed substantially from *Sisojeva and Others v. Latvia* (cited above), in which the applicants' problems "stemmed to a large extent from their own actions" (ibid., § 94).

62. Moreover, the applicant contended that his case raises serious questions of general interest not only in relation to Denmark, but also as regards human rights as defined in the Convention.

63. Finally, he maintained that the application should be declared admissible under Articles 8, 13 and 14 in conjunction with Article 8 of the Convention.

c) The Court's assessment

64. From the outset, the Court recalls that Article 8 of the Convention does not guarantee a right to acquire a particular nationality or citizenship. Nevertheless, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see, among others, *Petropavlovskis v. Latvia*, no. 44230/06, § 73, ECHR 2015; *mutatis mutandis*, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 339, ECHR 2012 (extracts); *Genovese v. Malta*, no. 53124/09, § 30, 11 October 2011; *Kuduzović v. Slovenia* (dec.), no. 60723/00, 17 March 2005; *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 77, ECHR 2002-II; *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II; and *X. v. Austria*, no. 5212/71, Commission decision of 5 October 1972, DR 43, p. 69).

65. In the present case, however, the Court is called upon to decide, in the first place, whether to strike out the case under 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
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> 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."

66. In order to ascertain whether that provision applies to the case before it, the Court must answer two questions in turn: firstly, whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Sisojeva and Others v. Latvia,* cited above, § 97, and *Pisano v. Italy,* cited above, § 42).

67. In his application to the Court in 2009 the applicant complained that he had arbitrarily been refused Danish citizenship for eleven years; that thereby the Danish authorities had failed to treat him differently as a vulnerable person with a learning disability; and that he could not challenge the refusals.

68. His complaints were communicated on 30 August 2012 and anew on 10 February 2015, relating to the refusal of 12 March 2009 to grant the applicant Danish citizenship, but not to any decisions preceding that date.

69. It is not in dispute between the parties that the applicant became a Danish national on 2 July 2014, when Act no. 714 of 25 June 2014 entered into force.

70. Accordingly, and since the applicant's complaints under Articles 8, 13 and 14 in conjunction with Article 8 of the Convention are inextricably connected to the refusal to grant the applicant Danish citizenship, the circumstances complained of directly by the applicant no longer obtain.

71. The question therefore remains as to whether the effects have been redressed of a possible violation of the Convention due to the refusal in 2009 to grant the applicant Danish citizenship.

72. The applicant referred in particular to his being disenfranchised and lacking a Danish passport, but he also mentioned more personal effects, such as lack of dignity and identity.

73. As regards the fact that the applicant was unable to vote on five occasions since 2009, the Court notes from the outset that the applicant's complaint in the present case does not concern the rights that are laid down in Article 3 of Protocol No. 1 to the Convention (see *Petropavlovskis v. Latvia*, cited above, § 78). Nor does the applicant allege a violation of Article 8 of the Convention on account of being unable to preserve his current civil status (see, *a contrario*, *Kurić and Others v. Slovenia* [GC], cited above, 314). The crux of the matter in the present case is whether this effect of a possible violation of the Convention, related to the refusal in 2009 to grant the applicant Danish citizenship, has been redressed by granting the applicant Danish nationality, which the Court considers in the affirmative, noting that since 2 July 2014 he has been able to participate in general elections for Parliament.

74. Concerning the lack of a Danish passport, the Court notes that upon entry into Denmark in 1989 the applicant was in fact issued with a refugee travel document, in accordance with the 1951 Convention relating to the Status of Refugees, with which he could travel abroad, although subject to limitations imposed by general visa regulations and the limitation implied by his refugee status, notably that he could not return to Iran (see paragraph 7 above). Before the Court the applicant has never claimed that he was prevented from travelling outside Denmark or mentioned any concrete examples of having difficulties travelling with the refugee travel document. In these circumstances, in so far as there has been any effect of a possible violation of the Convention relating to not having had a Danish passport, the Court must conclude that this effect has been remedied, at the latest on 20 March 2015, when the applicant was issued with a citizenship certificate.

75. The applicant also submitted that, although he had been living in Denmark since 1989, due to the refusal to grant him Danish citizenship he

had been deprived of his right to "personal autonomy and to form the political and legal bonds that connect him to Denmark, to acquire and exercise rights and obligations inherent in a political membership and to share the same legal status as his family in Denmark, who had obtained Danish nationality, as well as his right to dignity and to personal development".

76. Before addressing this issue further, the Court finds reason to point out that since 29 May 2008, when the applicant, represented by DACoRD, requested that the Ministry of Justice reopen his case, until 2 July 2014, when he was granted Danish citizenship, the applicant and his representative failed on various occasions to produce the documentation needed to examine his case. Thus, when on the eighth occasion the applicant was represented by professional assistance, and re-applied for Danish nationality, he did not submit a medical certificate setting out that due to permanent health reasons he would not be able speak Danish proficiently or to pass a test on Danish culture, society and history. Instead, he and his representative chose to claim that the 1999 Circular, with its exemption rule from Danish language skills, in force at the time of his original application in 1999, had wrongly never been considered or applied in the applicant's case. It was only later, when lodging the case before the Court, that the applicant obtained the medical certificate of 23 November 2009. That certificate was not submitted by the Court to the Government until August 2012. The Ministry of Justice therefore requested a more recent medical certificate, which the applicant maintained that he could not afford. Eventually the applicant did submit a medical certificate of 20 June 2013, but then he failed to comply with other formal requirements set out in Circular 9253 of 6 June 2013, which in the meantime had entered into force. Accordingly, the Court considers that the applicant and his representative had a significant bearing on the delay in bringing a complete and substantiated request for Danish nationality before the Ministry of Justice and the Parliamentary Naturalisation Committee. In these circumstances, in so far as there has been any effect of a possible violation of the Convention relating to personal autonomy and development, lack of dignity and identity such effect also appears to have been remedied by the granting of Danish citizenship.

77. The applicant has argued, though, that Denmark should acknowledge that the system of access to nationality was deficient, that there has been a violation of the applicant's rights, and that he should be granted compensation for that violation.

78. Such a claim is usually dealt with in the examination of whether an applicant can still maintain victim status rather than in the examination of whether the matter has been resolved. The Court reiterates in this respect that according to its established case-law under Article 37 § 1 (b), it is not a requirement that the Government acknowledge a violation of the

Convention or that the applicant, in addition to having obtained a resolution of the matter complained of directly, is also granted compensation: see, for example, *Sisojeva and Others v. Latvia* (cited above). In that case, the applicants were granted a regularisation of their stay in Latvia, but argued (ibid., § 74) that the measures taken by the Latvian authorities were inadequate as they did not afford sufficient redress for the applicants' suffering over a period of many years. They maintained that they had endured prolonged uncertainty, anguish and distress throughout the whole period, especially when they had faced a real risk of being deported from Latvia. The Court dismissed this argument and found (ibid., §§ 102 and 103) that the regularisation measures would enable the applicants to remain in Latvia and to exercise freely in that country their right to respect for their private and family life as protected by Article 8 of the Convention and that consequently those measures were adequate and sufficient to remedy their complaint.

79. The applicant in the present case submitted that his situation differed significantly from that of the applicants in *Sisojeva and Others v. Latvia* (cited above), notably in that he had been very active in applying for Danish citizenship. The Court points out, however, that its finding in *Sisojeva and Others v. Latvia* is fully in line with its decisions to strike out numerous deportation cases as having being resolved within the meaning of Article 37 § 1 (b) of the Convention, once the applicant has been granted a residence permit and no longer risks being expelled from the relevant State, whether or not the applicant agrees, and whether or not the applicant has been very active in applying for asylum or a residence permit (see, *inter alia*, *M.E. v. Sweden* (striking out) [GC], no. 71398/12, § 32, 8 April 2015; *W.H. v. Sweden* (striking out) [GC], no. 49341/10, § 29, 8 April 2015; *Nasseri v. the United Kingdom* (dec.), § 18, no. 24239/09, 13 October 2015; *H v. Norway* (dec.) no. 51666/13, 17 February 2015; *Girmay v. Sweden* (dec.), 80545/12, 8 July 2014; *O.G.O. v. the United Kingdom* (dec.), no. 13950/12, 18 February 2014; *M.A. v. Sweden* (dec.), no. 28361/12, 19 November 2013; *S.H. v the Netherlands* (dec.), no. 47607/07, 5 March 2013; *Asgari v. Austria* (dec.), no. 62154/10, 29 January 2013; *A.G. v. Sweden* (dec.), no. 22107/08, 6 December 2011; *Sarwari v. Austria* (dec.), no. 21662/10, 3 November 2011; and *Borisov v. Lithuania*, no. 9958/04, §§112-114, 14 June 2011).

80. Furthermore, being aware that the present case concerns a request for citizenship, not asylum or a residence permit, the Court is not convinced that the consequences that may be related to the refusal to grant the applicant citizenship in Denmark, being the asylum protecting country, in the circumstances of the present case, were more serious and detrimental than the consequences in general related to a deportation order to leave a country.

81. Consequently in the light of all the circumstances of the case, the Court considers that the granting of Danish citizenship to the applicant constitutes an adequate and sufficient remedying of his complaints under Articles 8, 13 and 14 in conjunction with Article 8 of the Convention.

82. Having regard to all of the above considerations, the Court concludes that both conditions for the application of Article 37 § 1 (b) of the Convention are met in the instant case. The matter giving rise to this complaint can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b).

83. Finally, as to the requirement under Article 37 *in fine*, the Court is convinced that when granting the applicant Danish citizenship by Act no. 714 of 25 June 2014, which entered into force on 2 July 2014, the Danish Parliament did take the applicant's personal circumstances into account, including his state of health and the fact that he considers himself a vulnerable person with a learning disability.

84. The Court also observes that its case-law is quite clear concerning nationality under Articles 8 and 14 (see paragraph 64 above).

85. Against this background, 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, nor does it consider that further examination of the present application would contribute to elucidating, safeguarding and developing the standards of protection under the Convention (see, for example, *a contrario*, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 90 ECHR 2012 (extracts).

86. Accordingly, it is appropriate to strike the application out of the list of cases.

II. APPLICATION OF RULE 43 § 4 OF THE RULES OF COURT

87. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court. ..."

88. The applicant requested reimbursement of costs and expenses in the total amount of DKK 318,954, consisting of:

1) DKK 5,454, which is approximately 735 Euros (EUR), for pecuniary damage incurred in the reopening proceedings leading to the applicant being granted Danish nationality (DKK 2,000 for the medical certificate of 23 Nov 2009, DKK 918 for interpreter assistance for two sessions, DKK 393 for the medical certificate of 20 June 2013, DKK 250 for interpreter assistance on 20 June 2013, DKK 393 for the medical certificate of 29 October 2013, and DKK 1,500 for interpreter assistance), and

2) DKK 313,500 for legal fees incurred in the proceedings before the Court from 1 October 2009 to 8 July 2015, equal to 191 hours at an hourly rate of DKK 1,650). The applicant informed the Court that legal aid for an amount up to DKK 40,000 had initially been granted to him under the Danish Legal Aid Act (No. 940 of 20 December 1999, *Lov om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettighedskonventioner*).

89. The Government noted that the applicant's claim under item 1) was a claim for pecuniary damages, which it was prepared to pay if the Court were to find a violation of the Convention. As to the applicant's claim for costs, the Government found item 2) excessive.

They also observed that, although the applicant has been granted free legal aid, provisionally in the amount of up to DKK 40,000, the applicant has not requested any payment, nor has he requested further legal aid.

90. The Court points out that, unlike Article 41 of the Convention, which comes into play only if the Court has previously found "that there has been a violation of the Convention or the Protocols thereto", Rule 43 § 4 allows it to make an award solely for costs and expenses in the event that an application has been struck out of the list of cases (see, among others, *Sisojeva and Others*, cited above, § 132).

91. The Court reiterates that the general principles governing reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention. In other words, in order to be reimbursed, the costs and expenses must relate to the alleged violation or violations, must have been actually and necessarily incurred and must be reasonable as to quantum (see *Pisano*, cited above, §§ 53-54, and *Sisojeva and Others*, cited above, § 133).

92. In the present case, it notes that although formally a claim for pecuniary damages, the claim under item 1) for costs incurred in the reopening proceedings leading to the applicant being granted Danish nationality, and consequently to the Court's finding that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention, may be considered so closely connected with the alleged violations of the Convention, that the Court finds it reasonable to award these costs in the total amount of DKK 5,454.

93. As regards item 2) the Court reiterates that the applicant has provisionally been granted an amount of DKK 40,000 due to the existence in Denmark of the Legal Aid Act according to which applicants may be granted free legal aid for their lodging of complaints and the procedure before international institutions under human rights conventions. It reiterates furthermore that the applicant may request further legal aid under the said Act. In these circumstances, the Court is satisfied that the applicant may be sufficiently reimbursed under domestic law and it sees no reason to award the applicant further compensation for costs and expenses (see,

mutatis mutandis, under Article 41, *Valentin v. Denmark*, no. 26461/06, § 82, 26 March 2009 and *Vasileva v. Denmark*, no. 52792/99, § 50, 25 September 2003).

For these reasons, the Court, by a majority,

1. *Hold*s that the matter giving rise to the present case has been resolved and decides to strike the application out of its list of cases;

2. *Holds*

(a) that the respondent State is to pay the applicant, within three months from notification of the present decision, EUR 735 (seven hundred and thirty-five euros) plus any tax that may be chargeable, in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and notified in writing on 19 January 2017.

Stanley Naismith
Registrar

Işıl Karakaş
President