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

THIRD SECTION

DECISION

Application no. 76660/12
I.A.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 27 May 2014 as a Chamber composed of:

Alvina Gyulumyan, *President,*
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 November 2012,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Ms I.A., is a Somali national, who was born in 1953 and lives in Almere. The Acting President decided that the applicant's identity should not be disclosed to the public (Rule 47 § 4). The applicant was represented before the Court by Ms J. van Veelen-de Hoop, a lawyer practising in Rotterdam.

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 10 March 2008 the applicant applied for asylum in the Netherlands, submitting that she had been born in Somaliland (northern Somalia) and belonged to the Issaq clan. In 1983 she had married against the will of her parents a man who belonged to the minority Tumal clan. Since her father had threatened to kill her if she stayed with her husband, they had fled to a village in southern Somalia where they had started a family. At some point, the family had been assaulted by a man from a different clan who had wanted to marry the applicant's daughter, eventually leading to the death of the applicant's son and father-in-law and forcing her to flee the country.

5. The applicant's asylum request was rejected by the Deputy Minister of Justice (*Staatssecretaris van Justitie*) on 11 February 2009. Noting *inter alia* that the applicant had been unable to give a detailed account of the environment in southern Somalia where she had allegedly been living for over 20 years, the Deputy Minister did not consider credible that she indeed hailed from there or that she had had any problems with a man who had wanted to marry her daughter. The applicant's appeal against this decision was rejected by the Regional Court (*rechtbank*) of The Hague, sitting in Roermond, on 22 December 2009, and her further appeal by the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrecht van de Raad van State*) on 16 February 2010.

6. The applicant filed a fresh asylum application on 13 April 2011, arguing that the general security situation in southern Somalia had deteriorated. This application was rejected by the Minister for Immigration, Integration and Asylum Policy (*Minister voor Immigratie, Integratie en Asiel*; the successor to the Deputy Minister of Justice) on 21 April 2011. It was held that, since it was not credible that the applicant hailed from southern Somalia, a change in the general security situation in that area could not constitute a relevant new fact warranting a revision of the decision on the initial asylum request. This refusal was upheld by the Regional Court of The Hague as well as by the Administrative Jurisdiction Division.

B. Developments subsequent to the lodging of the application

7. On 12 December 2013 the applicant requested the Court to indicate to the Government, by way of an interim measure pursuant to Rule 39 of the Rules of Court, that she should not be removed to Somalia. On 15 January 2014 the Acting President decided first to request the Government, under Rule 54 § 2 (a), to inform the Court what modalities, if any, would be put in place for the applicant's onward journey to Somaliland if she were to be returned to Somalia and would be expelled to Mogadishu.

8. In their reply of 11 February 2014, the Government submitted that in view of the country report on Somalia, issued by the Dutch Ministry of Foreign Affairs on 19 December 2013, they had decided to amend their

policy on asylum-seekers from Somalia. This new policy would be elaborated in more detail in an order amending the Aliens Act 2000 Implementation Guidelines (*Wijzigingsbesluit Vreemdelingencirculaire 2000*) one month after the approval of the new policy by the Lower House of Parliament, on which issue the Government undertook to inform the Court as soon as possible. In the light of this development the Government assumed that the Acting President's question did not yet require an answer. The Government added that no forced expulsions to Somalia were taking place, although voluntary return to Somalia was possible and did in fact occur.

9. On 13 March 2014 the Government informed the Court that the order amending the Aliens Act 2000 Implementation Guidelines had been adopted on 27 February 2014 and published in the Government Gazette (*Staatscourant*) on 7 March 2014. Hereupon the Government were requested to submit their reply to the question of the Acting President.

10. By letter of 27 March 2014 the Government submitted that the recent amendment of their policy relating to asylum-seekers from Somalia had not led to a change of their adopted course of action in the present case: the Government still intended in due course to return the applicant to the airport of Mogadishu. Although the Government were discussing forced returns to Somaliland with the authorities of that region – since a number of the Somali aliens in the Netherlands originated from there –, Somalia, including the northern part, was nevertheless considered to be one single country and returns took place to the country of origin as a whole and not to a specific area within the country. From the airport of Mogadishu the applicant would be able independently to continue her journey to a preferred destination, for which the Government would offer financial support.

11. In her reply of 11 April 2014 the applicant argued that it was too dangerous for a woman to travel from Mogadishu to Somaliland on her own, in addition to which her entry to Somaliland was not guaranteed.

12. In their letter of 27 March 2014 the Government further wrote that in 2010 the Netherlands and Somalia had concluded a Memorandum of Understanding, on the basis of which forced returns to Somalia could take place. The present Somali authorities had confirmed this arrangement at the beginning of 2013 and in the course of that year several expulsions to Somalia had taken place. Recently, however, the Somali authorities had requested additional arrangements before cooperating with any further forced returns of Somali nationals. Therefore, at the time of the Government's letter to the Court, forced returns were not taking place. Voluntary return to Somalia continued to be possible. According to the country report on Somalia of 19 December 2013, it was possible to take a flight from the airport of Mogadishu to Somaliland even without proper documents.

13. In reply to questions from a Member of Parliament, the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*; the successor to the Minister for Immigration, Integration and Asylum Policy) stated on 25 April 2014 that so far no reaction had been received from the Somali authorities to working arrangements proposed by the Dutch authorities in February 2014, and that it was not possible to indicate when the negotiations would be finalised (*Tweede Kamer der Staten-Generaal*, *Aanhangsel van de Handelingen* – Lower House of Parliament, Appendix to the parliamentary record – 2013-2014, no. 1806, p. 1).

C. Relevant domestic law and practice

14. In a ruling of 3 December 2008 (*Landelijk Jurisprudentie Nummer* [National Jurisprudence Number] BG5955), the Administrative Jurisdiction Division held that, apart from judicial review by the Regional Court and the Administrative Jurisdiction Division in administrative law appeal proceedings, in principle no further remedy lay against a decision to reject an alien's request for admission to the Netherlands, as the lawfulness of the consequences of that decision had already been judicially determined in the administrative appeal proceedings. It nevertheless accepted that in certain exceptional circumstances, such as a relevant change of circumstances having occurred during the delay between the refusal of the admission request and an act aimed at effective removal (*daadwerkelijke uitzettingshandeling*), an objection (*bezwaar*) and subsequent appeal (*beroep*) may be filed against an act aimed at effective removal. Under the terms of section 72 § 3 of the Aliens Act 2000 (*Vreemdelingenwet 2000*), such an act can be equated with a formal decision within the meaning of the General Administrative Law Act (*Algemene Wet Bestuursrecht*) which can be challenged in separate administrative appeal proceedings.

COMPLAINTS

15. Invoking Article 1 of the Convention the applicant complained of the refusal of her request for protection. She further complained under Articles 2 and 3 that her expulsion to Somalia would expose her to a real risk of falling victim to violence, of being killed, and of being subjected to inhuman treatment. She also argued that upon return to Somalia she would have to live her life in hiding, which amounted to a violation of Article 5. Finally, she complained that, in breach of Article 13, she had not had an effective remedy for her complaint of a violation of Article 3.

THE LAW

16. The applicant complained that a number of Convention articles would be violated if she were forced to return to Somalia.

17. At the outset, the Court reiterates 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 (see, for example, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94; *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI; and *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to remove the person in question to that country (see, among other authorities, *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161, and *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008).

18. The Court has held that in this type of case it is therefore called upon to assess the situation in the receiving country in the light of the requirements of Article 3. With regard to the material date, the Court has on many occasions stressed that the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion. However, the Court has considered that if the applicant has not yet been extradited or deported when it examines the case, the relevant time will be that of the proceedings before the Court (see, for instance, *Chahal v. the United Kingdom*, 15 November 1996, §§ 85 and 86, *Reports* 1996-V, and *Auad v. Bulgaria*, no. 46390/10, § 99, 11 October 2011). It is furthermore the Court's established case-law that even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions in the receiving country which are decisive (see *Chahal*, cited above, §§ 86 and 97, and *H.L.R. v. France*, 29 April 1997, *Reports* 1997-III, § 37).

19. The Court has further previously noted that when it examines a complaint under Article 3 relating to the removal of an alien who is, at the time of that examination, still on the territory of the Contracting State against which the complaint is directed, the underlying assumption is that the removal of that alien is imminent or, at the very least, possible, even if no exact date for the removal has yet been set (see *A.K. v. the Netherlands and 11 other applications* (dec.), no. 50925/10, 4 December 2012;

Mahamed Ahmed v. the Netherlands (dec.), no. 70517/11, 4 December 2012; and *Abdi Mohammed v. the Netherlands* (dec.), no. 2738/11, 4 December 2012). It is precisely to prevent irreparable damage being done to the asserted Convention right that the Court may see fit to apply Rule 39 of the Rules of Court and indicate to the Contracting State not to proceed with the removal pending the Court's examination of the case.

20. However, in the present case it is clear from the information submitted by the Government to the Court and by the Minister of Security and Justice to Parliament that the applicant cannot be forcibly removed to any part of Somalia at the present time (see paragraphs 8 and 12-13 above); she is therefore currently not at risk of being subjected to the treatment she alleges to be in violation of Article 3 of the Convention or of the other Convention provisions invoked by her. There is, in addition, no indication when this situation may change. In these circumstances the Court considers that it would be less than efficient to proceed to an assessment of the present conditions in the receiving country, the more so when it can by no means be excluded that those conditions will have undergone a considerable change by the time the Government decide that removals can take place. For this reason the Court finds that at the present time it is no longer justified to continue the examination of the application (see *A.K.*, cited above; *Mahamed Ahmed*; cited above, *Abdi Mohammed*; cited above; and *mutatis mutandis Atmaca v. Germany* (dec.), no. 45293/06, 6 March 2012) and that it should be struck out of its list of cases in accordance with Article 37 § 1 (c) of the Convention. Moreover, 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.

21. The Court would additionally observe that not only may domestic law enable the applicant to challenge a future removal in the Netherlands (see paragraph 14 above), she may also, pursuant to Article 37 § 2, seek to have her application to the Court restored should no domestic remedies capable of staying such a removal be available to her.

In view of the above, 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