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

THIRD SECTION

DECISION

Application no. 51315/12
K.S.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 21 January 2014 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 7 August 2012,

Having regard to the information submitted by the respondent Government and the comments submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr K.S., is an Iranian national, who was born in 1971 and lives in the Netherlands. The President decided that the applicant's identity should not be disclosed to the public (Rule 47 § 3 of the Rules of Court) and that the documents concerning his application should remain confidential (Rule 33 § 1 of the Rules of Court). The applicant was represented before the Court by Mr P.J. Schüller, a lawyer practising in Amsterdam.

2. The Netherlands Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker of the Ministry for 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. The applicant fled from Iran to the Netherlands, where he arrived on 14 May 2008 and applied for asylum. He claimed, *inter alia*, that he had been tortured during his four years' detention in Iran.

5. On 15 May 2008, the applicant was interviewed about his identity, nationality and travel route (*eerste gehoor*). On 26 June 2008, the applicant's lawyer submitted corrections and additions (*correcties en aanvullingen*) to the record drawn up of this first interview. In this letter the applicant's lawyer referred to the scars on the applicant's back and requested the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*; "IND") to have these scars examined. The lawyer further mentioned that the applicant was suffering from psychological problems and that he doubted whether the applicant would be able to undergo a long interview concerning the reasons for his asylum request.

6. On 2 July 2008 the applicant was interviewed about the reasons for his asylum request (*nader gehoor*). Due to his medical condition, this interview was aborted.

7. On 17 July 2008 the applicant's lawyer submitted a letter of the applicant's general practitioner, stating that the applicant had been tortured and that he was addicted to Tramadol, a very strong painkiller.

8. On 21 August 2008 the second interview was continued and completed.

9. By letter of 9 October 2008 the applicant submitted his corrections and additions to the record of the second interview.

10. On 6 January 2009 the applicant was informed that the Deputy Minister of Justice (*Staatssecretaris van Justitie*) had requested the Medical Assessment Section (*Bureau Medische Advisering*; "BMA") of the Ministry of Justice to assess whether or not upon return to Iran a medical emergency would arise if the applicant no longer received the necessary medical treatment and whether or not necessary treatment was available in Iran.

11. On 15 April 2009 BMA issued its report, which stated that the applicant was suffering from a serious form of Post-Traumatic Stress Disorder (PTSD) due to traumatic events in the past. The applicant was further addicted to Tramadol. However, his medical condition could not be considered as a terminal illness. No medical emergency would arise in the short term if the applicant no longer received the necessary medical treatment. Furthermore, necessary treatment was available in Iran.

12. By letter of 29 April 2009, sent on 4 May 2009, the Deputy Minister notified the applicant of her intention (*voornemen*) to reject his asylum application. The applicant's failure to submit any documents concerning his nationality, identity and travel itinerary was attributed to him. The applicant's account of having been detained was found to lack credence, therefore his claim that he had been unable to take any documents concerning his nationality and identity with him was disbelieved as well. His asylum account was found to lack positive persuasiveness.

13. By letter of 11 May 2009 the applicant's lawyer claimed that the applicant's mental condition affected his ability to give consistent statements. He requested the Deputy Minister to obtain a medical assessment of the applicant's ability to provide consistent statements, and urged the Deputy Minister to withdraw the intention. By letter of 19 May 2009 the lawyer repeated this request.

14. In her response of 28 May 2009 the Deputy Minister stated that the question whether or not the applicant's mental condition affected his ability to provide consistent statements had not been put before BMA because they were unable to answer this question.

15. On 29 May 2009 the applicant submitted a letter from his general practitioner to his representative. According to this letter, the applicant was suffering from PTSD as a result of severe ill-treatment in his country of origin.

16. In his written comments (*zienswijze*) of 29 June 2009 to the Deputy Minister's intention, the applicant maintained his account. He claimed that due to his medical condition he had been unable to provide consistent statements.

17. On 27 July 2009, the Deputy Minister refused the applicant's asylum application, finding that he had failed to dispel the doubts cast on the credibility of his account. According to the Deputy Minister, BMA was not able to give any indication whether or not an alien was able to provide consistent statements. Furthermore, a request for such an assessment should have been made before any interview had been conducted, which had not been done in the applicant's case. The applicant's lawyer had not claimed that no interview could take place due to the medical condition of the applicant, and there had been no indications that the applicant had been unfit to be interviewed.

18. On 17 August 2009, the applicant filed an appeal with the Regional Court (*rechtbank*) of The Hague.

19. On 14 October 2009 the applicant filed grounds for his appeal. By letter of 10 December 2009, the applicant submitted further grounds of appeal. He submitted a letter of *Stichting Centrum '45* ("Centrum '45"), a centre specialised in the treatment of complex trauma ailments resulting from persecution, war and violence. According to this letter the applicant had been admitted to their treatment programme.

20. By letter of 26 April 2010, the applicant submitted further grounds of appeal, including a further letter from Centrum '45 of 14 April 2010 concerning the applicant's condition.

21. In its judgment of 17 December 2010, the Regional Court accepted the applicant's appeal, quashed the decision of 27 July 2009 and ordered the Minister for Immigration, Integration and Asylum Policy (*Minister voor Immigratie, Integratie en Asiel*; the successor to the Deputy Minister of Justice) to take a fresh decision.

22. Both the applicant and the Minister appealed the judgment to the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*; "the Division").

23. On 8 February 2012, the Division rejected the applicant's further appeal on summary grounds for not raising any points of law. In the same decision, it accepted the Minister's appeal, quashed the judgment of 17 December 2010 and dismissed the applicant's initial appeal. No further appeal lay against this ruling.

24. On 28 June 2012, the Institute for Human Rights and Medical Assessment (*instituut voor Mensenrechten en Medisch Onderzoek*; "iMMO") examined the applicant. According to a report drawn up by iMMO, the applicant had been subjected to torture.

B. Developments after the introduction of the application

25. On 17 January 2013, the President of the Section to which the case had been allocated decided to bring the application to the notice of the Government in accordance with Rule 54 § 2 (b) of the Rules of Court and to invite the Government to submit their written observations on the admissibility and merits of the case.

26. On 12 April 2013, the Government informed the Court that the applicant had filed a fresh asylum application based, *inter alia*, on the results of the examination carried out by iMMO. In addition, the applicant now also claimed that he had converted to Christianity. On this basis, the Government requested an extension of the time-limit fixed for submission of their observations, which request was granted by the President in that a new time-limit would be set, if necessary, once the Government had informed the Court of the decision taken on the applicant's fresh asylum application.

27. On 24 October 2013, the Government informed the Court that – by decision of 14 October 2013 – the applicant had been granted an asylum-based residence permit valid from 26 October 2012 until 26 October 2017. The Government requested the Court to strike the case out of the list of pending cases under Article 37 of the Convention.

28. In his comments of 4 November 2013, the applicant objected to the Government's request to strike the case out as no reasons were given in the decision of 14 October 2013 to grant his asylum request whereas such reasons could provide important guidance for assessing the credibility of asylum accounts of torture victims.

COMPLAINTS

29. The applicant complained under Article 3 of the Convention that there are substantial grounds for believing that he would be subjected to a real risk of treatment contrary to this provision if he were expelled to Iran.

30. The applicant further complained under Article 13 that he did not have an effective remedy in Dutch national law in terms of his complaint under Article 3 of the Convention.

THE LAW

31. The applicant initially complained that his removal to Iran would be contrary to his rights under Article 3 and that, in this respect, he did not have an effective remedy within the meaning of Article 13.

32. The Court notes that the applicant, who has been granted asylum in the Netherlands on 14 October 2013, wishes to maintain his complaints.

33. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified in paragraph 1 of that Article.

Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if :

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application."

Article 37 § 1 *in fine* reads:

> "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."

34. The Court observes that the factual and legal circumstances forming the basis of the application no longer pertain, as the applicant is not at risk anymore of being expelled to Iran where he feared he would be subjected to treatment in breach of Article 3 of the Convention. Consequently, the applicant can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *G.H.H. and Others v. Turkey*, no. 43258/98, § 28, ECHR 2000-VIII). The Court considers, therefore, that under the terms of Article 37 § 1 (c) of the Convention it is no longer justified to continue the examination of the application.

35. The Court is satisfied that respect for human rights as defined in the Convention and the protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*). Accordingly, the case should be struck 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