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

FIFTH SECTION

DECISION

Application no. 28361/12
M.A.
against Sweden

The European Court of Human Rights (Fifth Section), sitting on 19 November 2013 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Ann Power-Forde,
Helena Jäderblom, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 May 2012,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the observations submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

The applicant is an Afghan national who was allegedly born in 1995. The President decided that the applicant's identity should not to be disclosed to the public (Rule 47 § 3). The applicant was represented before the Court by Mr S. Zebrowski, a lawyer practising in Stockholm.

The Swedish Government ("the Government") were represented by their Agent, Ms J. Sjöstrand, of the Ministry for Foreign Affairs.

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

On 27 October 2011, the applicant applied for asylum in Sweden. However, the Migration Board (*Migrationsverket*) noted that the applicant had previously applied for asylum in Italy. Thus, on 17 January 2012, the Board decided to transfer the applicant from Sweden to Italy in accordance with the Dublin Regulation. The applicant appealed to the Migration Court

(*Migrationsdomstolen*) which, on 21 February 2012, upheld the Board's decision in full, having taken into account that the applicant was an unaccompanied minor. On 12 March 2012, the Migration Court of Appeal (*Migrationsöverdomstolen*) refused leave to appeal.

The applicant repeatedly requested the Board to stay the removal to Italy, *inter alia* on the basis of his poor mental health, and he submitted several medical certificates to the Swedish authorities. On 19 and 23 March 2012 as well as on 23 April 2012, the Board rejected the applicant's requests.

On 11 May 2012, the applicant requested the Court to stay his transfer to Italy and, on 16 May 2012, the President of the Section decided to grant the request and apply Rule 39 of the Rules of the Court.

Moreover, on 6 June 2013, the Court requested the Government to submit information on whether the applicant's asylum application would be examined in Sweden – in the light of the judgment of the Court of Justice of the European Union, delivered on 6 June 2013 in case C-648/11, concerning the interpretation of Council Regulation (EC) No. 343/2003 of 18 February 2003 (Dublin Regulation II), in particular in relation to unaccompanied minors. Further, the Court requested the Government to indicate whether such an examination would give reason to amend their observations in the present case.

On 28 June 2013 the Government informed the Court that the Migration Board's Director-General for Legal Affairs had issued a comment regarding the judgment mentioned above (*Rättschefens kommentar angående EU-domstolens dom den 6 juni 2013 i mål MA, BT och DA mot Secretary of State for the Home Department [mål C-648/11]*). According to the comment, the Migration Board considered it clear that when an unaccompanied minor, with no family members legally present in a Member State, had logded asylum applications in more than one Member State, the Member State responsible for determining the asylum application was the Member State of the most recent application, i.e. the Member State where the minor was present, if the asylum application had not been examined in another Member State. In view of this, the Migration Board had decided that the applicant's asylum application would be examined in Sweden, given, *inter alia*, that his asylum application had not been examined in Italy.

COMPLAINTS

The applicant complained that transferring him from Sweden to Italy would amount to a violation of Articles 2 or 3 of the Convention due to the conditions for asylum seekers in Italy and his poor health. Lastly, he

claimed that he would risk being sent to Afghanistan or Iran without having his asylum claims examined by the Italian authorities.

THE LAW

By letter dated 28 June 2013, the respondent Government invited the Court to strike the application out of its list of cases, as it was clear that the applicant no longer risked being transferred to Italy. They noted that the Migration Board had decided that the applicant's asylum application would be examined in Sweden, considering, *inter alia*, the fact that his asylum application had not been examined in Italy.

The applicant objected to his case being struck out stating, *inter alia*, that although he no longer risked being transferred to Italy he still claimed compensation on the basis that the Swedish authorities' failings had led him to become re-traumatised and cause a deterioration of his mental health.

The Court notes that the applicant no longer risks to be transferred to Italy under the Dublin Regulation. His asylum application will be examined in substance by the Migration Board. The Migration Board will have to take a decision which, if a residence permit is not granted, may be appealed against to the Migration Court and the Migration Court of Appeal.

Moreover, while his asylum application is being considered in Sweden, he does not risk being sent to Afghanistan or Iran. Noting that the applicant may introduce a new application to the Court should his asylum application be rejected, the Court finds that the matter under Articles 2 and 3 must be considered to have been resolved, within the meaning of Article 37 § 1 (b) of the Convention. Furthermore, the applicant's complaints do not raise any other issues under the Convention. Consequently, pursuant to Article 37 § 1 (c), it is no longer justified to continue the examination of the application. 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 complaint.

Accordingly, it is appropriate to strike the application out of the Court's list of cases. Therefore the application of Rule 39 of the Rules of Court comes to an end.

As regards the applicant's claim for compensation, the Court reiterates that Article 41 of the Convention allows it to award just satisfaction to the "injured party" only if it has previously "[found] that there has been a violation of the Convention or the Protocols thereto" (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 132, ECHR 2007-I). Since this is not the case in the present application, no compensation can be granted.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Stephen Phillips
Deputy Registrar

Boštjan M. Zupančič
President