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

FOURTH SECTION

DECISION

Application no. 68883/13
Omar MAHAMUD AHMED
against Malta

The European Court of Human Rights (Fourth Section), sitting on 3 October 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Péter Paczolay, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 1 November 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant's legal representatives.

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Omar Mahamud Ahmed, is a Somali national, who was born in 1996 and at the time of the introduction of the application was detained in Safi Barracks detention centre.

2. He was represented before the Court Dr M. Camilleri and Dr K. Camilleri, lawyers practising in Valletta. The Maltese Government ("the Government") were represented by their Agent, Dr P. Grech, Attorney General.

A. The circumstances of the case

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

1. Background to the case

4. The applicant entered Malta in an irregular manner by boat on 11 May 2013. Upon arrival, he was registered by the immigration police and given an identification number (13D-020). During the registration process the immigration authorities asked the applicant to provide his personal details including name, nationality and age. He informed them that he was born in 1996 and was therefore seventeen years old.

5. He was then presented with a Return Decision and a Removal Order and was detained at Safi Barracks.

6. Two weeks following the applicant's arrival he was called in for an information session provided by the staff of the Office of the Refugee Commissioner. He was assisted in submitting the preliminary questionnaire thereby registering his wish to apply for asylum. He stated on the form that he had been born in 1996 and that therefore he was seventeen years old.

2. The applicant's age-assessment procedure

7. On 14 May 2013, three people from the Agency for the Welfare of Asylum Seekers (hereinafter "AWAS") interviewed the applicant, in the presence of an interpreter. After the interview they informed him that as they could not confirm his age through the interview they would send him for an FAV test – that is to say an X-ray of the bones of the wrist. He was taken for the FAV test almost six weeks later, on 24 June 2013.

8. According to the documentation supplied by the Government from the FAV test it was concluded that the applicant's approximate calculated bone age was fifteen at the time of the test. The results were approved on 11 July 2013 by a State hospital. This information was not given to the applicant at this stage. In the absence of a reply, and being unable to contact the AWAS, the applicant tried to draw their attention by different means, through the detention centre staff and NGOs, and even by refusing food.

9. On 16 September 2013, he was informed verbally by AWAS staff that he had been found to be a minor and that he would be released shortly.

10. Until the date of the lodging of the application (1 November 2013), that is to say more than five and a half months after his arrival in Malta, the applicant had not received a written decision informing him of the outcome of the age-assessment procedure and he was still in detention.

3. Latest developments

11. Given that there is a two-year margin of error in the FAV test, the date of birth of the applicant was established as 1 January 1996. The applicant was released from detention on 4 November 2013 after a care order had been issued.

12. The applicant's last day of registration at the open centre for unaccompanied minors was 15 November 2013. Since the attempts by the Office of the Refugee Commissioner to contact the applicant failed, and on his part he no longer kept contact with that office, on 1 February 2014 the applicant's asylum application was implicitly "withdrawn as discontinued".

13. According to the Government the applicant absconded and was found in Sweden by the Swedish authorities. On 17 March 2014 the latter requested that the Maltese authorities take back the applicant and supply them with information concerning his claim that he was an unaccompanied minor. Although the Maltese authorities supplied the information, they do not have records as to whether the applicant was actually returned to Malta by the Swedish authorities.

14. By a letter of 24 July 2017 the applicant's legal representatives informed the Court that the applicant had left Malta without informing them and that they had tried to contact him several times to no avail.

COMPLAINTS

The applicant complained, in particular, that his detention had been arbitrary and unlawful, and that he had not had a remedy to challenge the lawfulness of that detention. He further complained of the conditions of detention. He relied on Articles 3 and 5 §§ 1, 2 and 4 of the Convention.

THE LAW

15. In their first round of observations, relying on *Abdi Ahmed and Others v. Malta* ((dec.), no. 43985/13, 16 September 2014), the Government submitted that the application should be struck out as the applicant had not transmitted the information that he had left Malta. This would show that he was no longer interested in pursuing the application. In the second round of observations the Government noted that they did not have information as to his whereabouts. They opined that the case was being pushed by an NGO to succeed in obtaining a declaration from the Court that the facts constituted a repetitive case and asked the Court to strike the application out of its list.

16. The applicant's representatives' observations of 10 March 2015 made no comment on the above. In their letter of 24 July 2017 the applicant's legal representatives confirmed that the applicant had left Malta without informing them and that they had tried to contact him several times to no avail (see paragraph 14 above). However, they argued that there were special circumstances relating to the respect for human rights which justified the continuation of the examination of the case. In particular, they noted that the case concerned the treatment and conditions of the detention of a minor, thus a judgment in this respect had broader implications on vulnerable minors in the same situation.

17. Having regard to these circumstances, the Court considers it necessary first to examine the need to continue the examination of the application according to the criteria set forth in Article 37 of the Convention. This provision reads as follows:

> "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."

18. The Court reiterates that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court) but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application (see *V.M. and Others v. Belgium* [GC], no. 60125/11, § 35, 17 November 2016, and *Sharifi and Others v. Italy and Greece*, no. 16643/09, § 124, 21 October 2014).

19. In the present case the Court observes that the applicant did not maintain contact with his lawyers and failed to keep them informed of his place of residence or to provide them with another means of contacting him. Accordingly, it considers that it can conclude on that basis that the applicant has lost interest in the proceedings and no longer intends to pursue the application, within the meaning of Article 37 § 1 (a) of the Convention (see, for example and *mutatis mutandis*, *V.M. and Others v. Belgium,* cited above, § 36; *Ibrahim Hayd v. the Netherlands* (dec.), no. 30880/10, § 10, 29 November 2011; *Kadzoev v. Bulgaria* (dec.), no. 56437/07, § 7, 1 October 2013; *M.H. and Others v. Cyprus* (dec.), no. 41744/10, § 14,

14 January 2014; and *M.Is. v. Cyprus* (dec.), no. 41805/10, § 20, 10 February 2015).

20. Whilst it is true that the applicant's representatives have power to represent him throughout the entire proceedings before the Court, that power does not by itself justify pursuing the examination of the case (see *V.M. and Others v. Belgium*, cited above, § 37, and *Ramzy v. the Netherlands* (striking out), no. 25424/05, § 64, 20 July 2010). It would appear in the present case that the last time the applicant and his lawyers were in contact was prior to the Government's submission of observations, thus also prior to the legal representatives' submissions on just satisfaction. In these circumstances the Court considers that the applicant's representatives cannot now meaningfully pursue the proceedings before it, in the absence of instructions from their client, particularly regarding the matter of just satisfaction (see *Ali v. Switzerland*, 5 August 1998, § 32, *Reports of Judgments and Decisions* 1998-V; and, *mutatis mutandis, V.M. and Others v. Belgium*, cited above, § 37).

21. Regarding the submission by the applicant's representatives that there were special circumstances in the present case relating to the respect for human rights which justified the continuation of the examination of the case, specifically the fact that the case concerns the detention of minors (see paragraph 16 above), the Court notes that it has already dealt with a very similar case, in respect of detention of minors in Malta, where it found violations of Articles 3 and 5 §§ 1 and 4 of the Convention and declared inadmissible the complaint under Article 5 § 2 (see *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, §§ 64-154, 22 November 2016). There is therefore no special circumstance justifying the examination of similar complaints, in the absence of any interest from the applicant. The Court would observe, moreover, that if the circumstances justify such a course the applicant can request that the application be restored to the list of cases under Article 37 § 2 of the Convention.

22. Having regard to the foregoing and in accordance with Article 37 § 1 (a) of the Convention, the Court has to conclude that the applicant does not intend to pursue his application. It also considers that no particular circumstance relating to respect for the rights guaranteed by the Convention or its Protocols requires it to continue the examination of the application pursuant to Article 37 § 1 *in fine*.

23. Accordingly, the case should be struck out of the list.

For these reasons, the Court, by a majority,

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

Done in English and notified in writing on 26 October 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President