

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

THIRD SECTION

DECISION

Application no. 7049/13
Saleh MOHAMED HUSSEIN
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 1 April 2014 as a Chamber composed of:
Josep Casadevall, *President,*
Alvina Gyulumyan,
Dragoljub Popović,
Luis López Guerra,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*
Having regard to the above application lodged on 25 January 2013,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Saleh Mohamed Hussein, claims that he is a Somali national, who was born in 1986 and is currently residing in the Netherlands. He was represented before the Court by Mr J.W.F. Noot, a lawyer practising in Dordrecht.

2. The Dutch Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, and Deputy Agent, Ms L. Egmond, of the Ministry of Foreign Affairs.

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

4. The applicant applied for asylum in the Netherlands on 27 October 2009, claiming that he hailed from Mogadishu, Somalia and belonged to the

minority Reer Hamar population group and the Ashraf clan. When he was three years old, he and his family had moved to Saudi Arabia where he had resided illegally. In 2009, the Saudi Arabian authorities had expelled the applicant to Mogadishu. His mother had accompanied him because he did not know anybody in Mogadishu. They had moved in with an uncle of the applicant's. As the applicant was unknown to most neighbours, he had been suspected of involvement in al-Shabaab. The applicant had been abducted by some neighbours. After a ransom had been paid by his family he had been released and he had fled the country. He feared that, upon return to Somalia, he would fall victim to human rights violations by one of the warring factions there. He also claimed that, as a member of a minority clan, he had a higher risk of falling victim to human rights violations.

5. By decision of 15 July 2010 the Minister of Justice (*minister van Justitie*) rejected the asylum application, considering that the applicant's account lacked credibility. The Minister held that the applicant had failed to establish his nationality and identity. The applicant had been unable to describe how he had been identified as a Somali national by the Somali consular authorities in Saudi Arabia. In this respect it was noted that the applicant had stated that the only Somali words he knew were 'hello' and 'good afternoon'. He had further claimed that the conversation with the consular authorities had been conducted in Arabic. It was thus considered implausible that the consular authorities had been able to determine the Somali origins of the applicant. He had further been unable to describe the airports in Jeddah and Mogadishu.

6. The Minister further disbelieved the account of the applicant's departure from Mogadishu. The applicant had claimed that he had been on a direct flight from Mogadishu to Nairobi, Kenya. However, according to country of origin information all flights from Mogadishu to Nairobi had to make a safety stop at Wajir, Kenya. The applicant had not mentioned this stop.

7. The applicant's appeal was dismissed by the Regional Court (*rechtbank*) of The Hague sitting in Middelburg on 26 May 2011. His further and final appeal was dismissed on summary grounds by the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*) on 29 August 2012.

8. On 26 September 2012, a report of a linguistic analysis of the applicant's speech concluded that he spoke deficient Somali with a Reer Hamar accent; that Somali was not his first or dominant language; and that he had grown up in a diaspora community where (Reer Hamar) Somali was spoken.

COMPLAINT

9. The applicant complained under Article 3 of the Convention that there were substantial grounds for believing that he would be subjected to treatment prohibited by that provision if he were expelled to Somalia. He further claimed that an expulsion to Saudi Arabia would constitute indirect *refoulement*, given that he had previously been expelled from Saudi Arabia to Somalia.

THE LAW

10. The applicant complained that his expulsion to Somalia would be in breach of Article 3 of the Convention, which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

11. The Government submitted that in view of the implausibility of the applicant's stated identity, nationality and origins, and of his account of his reasons for seeking asylum, his expulsion to Somalia in general and to Mogadishu in particular were not currently at issue. This situation would change only at such time as the applicant had established his Somali nationality. The Dutch authorities would now investigate whether the applicant was willing to provide clarity on his stated identity or nationality and to cooperate in his return to his country of origin. If he failed to cooperate, the authorities would present him at various embassies with a view to examining whether, in the context of preparing for his repatriation, more clarity could be obtained on his nationality. Given the language spoken by the applicant, an obvious choice would be the embassy of Saudi Arabia.

12. The applicant argued that the fact that he was unable to submit documents – which did not exist – establishing his identity and nationality should not have been held against him. Given that a language analysis confirmed that he had grown up in a diaspora community in which Reer Hamar Somali was spoken and that his account of his deportation from Saudi Arabia was consistent with general information on the deportation of Somali nationals from Saudi Arabia, he should have been given the benefit of the doubt.

13. The Court reiterates at the outset that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, amongst many authorities, *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). The right to political asylum is not explicitly protected by either the Convention or its Protocols (see *Salah*

Sheekh v. the Netherlands, no. 1948/04, § 135, ECHR 2007-I). However, expulsion 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 individual concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008).

14. With regard to the material date, 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, if the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Saadi*, cited above, § 133).

15. The applicant claimed that he will risk being subjected to treatment in breach of Article 3 in Somalia. However, the Court notes that the Government do not intend to expel the applicant to that country. The Court further considers that it is unlikely that the authorities of another country, such as Saudi Arabia, would be prepared to accept that the Dutch authorities expel the applicant to their territory if he was not a national of that country or at least had a right of abode there.

16. Therefore, bearing in mind that in the current situation there are no prospects for the effective removal of the applicant from the Netherlands to Somalia and no indications that he would be deported to Somalia from another country, the Court finds that the applicant cannot at the present time claim to be a victim within the meaning of Article 34 of the Convention as regards his complaint that treatment in violation of Article 3 would await him in Somalia (see *Afif v. the Netherlands* (dec.), no. 60915/09, § 48, 24 May 2011).

17. It follows that the application must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President