CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

Application no. 32865/03
by Prudent Muzama MUANGA
against Finland

The European Court of Human Rights (Fourth Section), sitting on 31 August 2004 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 12 October 2003,

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

The applicant, Mr Prudent Muzama Muanga, is a citizen of the Democratic Republic of Congo (hereinafter "DRC"). He was born in Kinshasa in 1972 and is residing at the Refugee Centre of Ruukki in Finland. He is represented before the Court by Ms Sari Sirva, a lawyer practising in the Refugee Advice Centre in Helsinki. The respondent Government are represented by their Agent Mr Arto Kosonen, Director in the Ministry for Foreign Affairs.

The circumstances of the case

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

The applicant first arrived in Finland on 10 August 1998, applying for asylum and a residence permit. He claimed to be harassed in the DRC because of his political activities. According to him, he was arrested in Kinshasa on 20 July 1998 and taken to the Ndjili Prison from which he was transferred to the Ndolo Military Prison. He was released on 25 July 1998, after having been tortured in the prison, and ordered to leave Kinshasa.

On 21 May 2001 the Directorate of Immigration (*ulkomaalaisvirasto, utlänningsverket*) rejected the application for asylum and residence permit, refusing the applicant's entry into Finland. The Directorate did not find the applicant to be in need of protection only because of belonging to a certain political party, without having shown any well-founded reason for his alleged persecution. Also the explanation he had given in respect of his alleged arrest was found to be very vague.

The applicant appealed against the decision to the Helsinki Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*), repeating his previous statements and adding that, in March 1999, he was diagnosed with *cysticercosis*. This is a disease of the central nervous system caused by the *taenia solium* parasite. The larva form of the parasite has permanently damaged the applicant's brain, causing epileptic seizures. He emphasised that the human rights' situation in the DRC is chaotic and that, according to the available UNHCR reports, there are no health services or medication available there. He fears that he will die if returned to the DRC.

On 16 April 2002 the Administrative Court rejected the appeal, finding the persecution allegations vague. Neither did it find that the applicant's health had deteriorated to such an extent that it would not allow his transfer

back to the DRC. The decision concerning the refusal of entry has been enforceable as of 16 April 2002.

On 14 April 2003 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvatningsdomstolen*) refused the applicant leave to appeal.

On 22 April 2003 the applicant requested that he be granted a temporary residence permit on the basis of the fact that he needed to have his medical care continued in Finland as no such treatment was available in the DRC. He submitted a new medical statement, according to which the tendency toward epilepsy is now permanent and the use of medication is absolutely necessary. It was noted in the statement that a sudden withdrawal of the medication would most probably cause an epileptic seizure or seizures and would expose the applicant to a life-threatening situation.

On 11 June 2003 the Directorate of Immigration refused the requested residence permit. It found that there was no new information as to the applicant's situation as his health had not deteriorated since the Supreme Administrative Court's decision of 14 April 2003 was issued, and that the applicant had not met a precondition of being in a possession of a valid passport. The applicant appealed against the decision to the Helsinki Administrative Court. It is not known whether the appeal is still pending.

On 29 July 2003 the applicant lodged a new application for asylum or a residence permit. It was rejected by the Directorate of Immigration on 1 December 2003.

The applicant appealed. By its interim decision of 13 January 2004 the Helsinki Administrative Court granted an injunction. On 29 June 2004 the Administrative Court quashed the Directorate of Immigration's decision insofar as the application for a residence permit had been rejected and sent the case back to the Directorate of Immigration.

COMPLAINT

The applicant complains, under Article 3 of the Convention, that he will be subjected to torture or to inhuman or degrading treatment if returned to the DRC, as he will be persecuted there because of his political opinions and, even more importantly, he will be exposed to a life-threatening situation because his medical treatment cannot be continued there.

THE LAW

By letter postmarked 1 July 2004, the applicant's representative informed the Court that the Helsinki Administrative Court on 29 June 2004 had quashed the Directorate of Immigration's decision not to grant the applicant

a residence permit and to refuse his entry and that the applicant wished to withdraw his application in light of the above decision.

The Court finds that the applicant no longer wishes to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, 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 examination of the application to be continued.

For these reasons, the Court unanimously

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

Michael O'BOYLE
Registrar

Nicolas BRATZA
President