

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

THIRD SECTION

DECISION

Application no. 47607/07
S.H. against the Netherlands

The European Court of Human Rights (Third Section), sitting on 5 March 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Luis López Guerra,
Nona Tsotsoria,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 31 October 2007,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and which has been observed,

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, Ms S.H., is an Iranian national, who was born in 1977 and lives in The Hague. She was represented before the Court by Mr P.J.PH. Dietz de Loos, a lawyer practising in Wassenaar.

2. The Dutch Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, and their Deputy Agent, Ms L. Egmond, of the Ministry of 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. On 31 August 2006 the applicant lodged her first, unsuccessful, asylum application. She claimed, *inter alia*, that whilst in Iran she had started a relationship outside her marriage with an acquaintance, who lived in the Netherlands. She had come to the Netherlands to testify in judicial proceedings of her lover against his ex-wife. Whilst in the Netherlands, her husband had found out and had brought her to the attention of the Iranian authorities. By decision of 29 January 2007 the Deputy Minister of Justice (*Staatssecretaris van Justitie*; "the Deputy Minister") refused this application. The Deputy Minister considered that the applicant's asylum account lacked credibility. By a judgment of 2 August 2007 the Regional Court (*rechtbank*) of The Hague, sitting in Assen, dismissed her appeal and upheld the impugned decision. A further appeal by her to the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*; "the Division") was declared inadmissible by a judgment of 25 September 2007 for not meeting the formal requirement to provide the Division with a copy of the impugned judgment.

B. Developments after the introduction of the application

5. On 30 November 2007 the applicant lodged a second asylum application. She based this second application on the same facts as the first application, as well as on the additional fact that she now had a son born out of wedlock. By a decision of 6 December 2007 this application was refused by the Deputy Minister. The Deputy Minister considered that she had failed to demonstrate that there were newly emerged facts and/or circumstances warranting a revision of the negative decision taken on her first request. The final, negative, decision on this second asylum request was taken by the Division on 11 May 2009.

6. On 25 February 2008 the applicant applied for a residence permit on the basis that her family life was with her partner and son in the Netherlands. By a decision of 5 March 2008 this was rejected by the Deputy Minister, as she was not in possession of the prescribed provisional residence permit (*machtiging tot voorlopig verblijf*), which has to be applied for in the country of origin. The applicant lodged an objection to this decision. By a decision of 14 May 2008 the Deputy Minister dismissed the objection. On 19 May 2009 the decision of 14 May 2008 was withdrawn by

the Deputy Minister. In a fresh decision, given on 27 October 2009, the objection was again dismissed. The final negative decision on this request for a residence permit was taken by the Division on 26 August 2010.

7. On 9 March 2012 the Acting President of the Section decided to indicate to the Government of the Netherlands that it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to expel the applicant to Iran for the duration of the proceedings before it (Rule 39 of the Rules of Court). At the same time, he decided under Rule 54 § 2 (b) of the Rules of Court that the Government should be invited to submit written observations on the admissibility and merits of the case. He also decided to give priority to the application (Rule 41 of the Rules of Court).

8. The Acting President lastly 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 her application should remain confidential (Rule 33 § 1 of the Rules of Court).

9. Following receipt of the Government's observations as well as of the applicants' observations in reply, the Government indicated on 19 November 2012 that the applicant had been invited to submit a new asylum request. On 4 December 2012 the Government informed the Court that by a decision of 30 November 2012 the applicant had been granted an asylum permit based on section 29 paragraph 1 sub-paragraph b of the Aliens Act 2000 (*Vreemdelingenwet 2000)*, valid until 30 November 2017. In the same letter, the Government stated that they considered that the application had been resolved and requested the Court to strike the case out of its list on that basis.

10. The applicant was subsequently asked whether, in view of this development, she wished to pursue her application or if she agreed to its being struck out of the Court's list of cases. On 13 December 2012 the applicant informed the Court that she maintained her application. She wanted compensation for the period of time that she had not been allowed to work as she had not been legally in the Netherlands. She further wanted compensation for the fear and anxiety caused to her as she had been under the threat of being expelled from the Netherlands for several years. Lastly, she wanted to be reimbursed for the costs and expenses incurred during the proceedings before the Court.

11. By a letter of 28 January 2013 the Government submitted their comments on the applicant's claim for costs.

COMPLAINTS

12. The applicant complained under Articles 2 and 3 of the Convention that there were substantial grounds for believing that she would be subjected to treatment prohibited by those provisions if she were expelled to Iran.

13. She further complained under Article 8 of the Convention that her expulsion from the Netherlands would be a disproportionate interference with her right to respect for her family life in the Netherlands.

14. Lastly, she complained under Article 13 of the Convention that she did not have an effective remedy at her disposal.

THE LAW

A. Complaints under Articles 2, 3, 8 and 13 of the Convention

15. The Court notes that the applicant has been granted an asylum permit in the Netherlands. Consequently, she no longer faces any real and imminent risk of removal to Iran. Thus, clearly, the circumstances complained of no longer obtain. Furthermore, the Court finds that the grant to the applicant of an asylum permit in the Netherlands also provides adequate and sufficient redress for her (see *Belewal v. the Netherlands* (dec.), no. 9258/07, 12 May 2009).

16. In so far as concerns the applicant's claim for compensation for pecuniary and non-pecuniary damage, 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", which it has not in this case (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 132, ECHR 2007- ...).

17. In these circumstances, and having regard to Article 37 § 1 (b) of the Convention and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention or its Protocols, the Court is of the opinion that it is appropriate to strike the application out of the list.

B. Application of Rule 43 § 4 of the Rules of Court

18. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court. ..."

19. The applicant claimed reimbursement of an amount of 5,176.50 euros (EUR) in respect of the costs of acquiring an expert opinion from Professor Boeles and of an amount of EUR 19,253.41 in respect of the costs of legal assistance. Although she had been granted Government-funded legal aid, this would not result in any compensation being paid to her if there was a right to reimbursement of these costs by either the opposing party or a third party, and the applicant was therefore under an obligation to seek such compensation when possible.

20. The Government were of the opinion that the applicant had been sufficiently compensated as regards the costs of legal assistance by the monetary allowances (*toevoegingen*) granted to her under the domestic legal aid scheme in respect of the request for an interim measure and of the application to the Court. With regard to the costs in respect of the expert opinion, the Government observed that the expert opinion was not included in the applicant's case file. Therefore, no award in respect to those costs should be made. The Government also had serious doubts as to the need for the expert opinion. The Government were of the opinion that the costs of that opinion were not necessarily incurred.

21. The Court reiterates that the general principles governing reimbursement of costs under Rule 43 § 4 of the Rules of Court are essentially the same as under Article 41 of the Convention (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, §§ 53-54, 24 October 2002, and *Voorhuis v. the Netherlands* (dec.), no 28692/06, 3 March 2009). According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

22. Noting that the applicant is entitled to compensation for the costs of legal assistance incurred in the present proceedings under the Netherlands' domestic legal-aid scheme, the Court perceives no cause to make an award in this respect.

23. With regard to the costs of the expert opinion, the Court observes that this expert opinion has not been included in the case file. In these circumstances, the Court finds no reason to use its discretion under Rule 43 § 4 of the Rules of Court to compensate the applicant for those costs.

24. Accordingly, the Court sees no grounds to award the applicant any sum under this head.

C. Rule 39 of the Rules of Court

25. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court unanimously

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

Santiago Quesada
Registrar

Josep Casadevall
President