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

FOURTH SECTION

DECISION

Application no. 44825/15
S.O.
against Austria

The European Court of Human Rights (Fourth Section), sitting on 28 June 2016 as a Committee composed of:

Vincent A. De Gaetano, *President,*
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 September 2015,

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 decision to grant the applicant anonymity,

Having regard to the observations submitted by the respondent Government and the comments in reply submitted by the applicant,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr S.O., is a Nigerian national, who was born in 1994 or 1996. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4 of the Rules of Court). He was represented before the Court by Mrs N. Lorenz, a lawyer practising in Vienna.

2. The Austrian Government ("the Government") were represented by their Agent, Mr H. Tichy, Head of the International Law Department at the Federal Ministry for Europe, Integration and Foreign Affairs.

3. The Hungarian and Serbian Governments decided not to avail themselves of the possibility afforded under Article 36 § 2 of the Convention and Rule 44 § 3 (a) of the Rules of Court to intervene in the case.

4. The Council of Europe Commissioner for Human Rights accepted the Court's invitation to intervene in the proceedings (Article 36 § 3 of the Convention and Rule 44 § 3 (a) of the Rules of Court) and submitted written comments. The United Nations High Commissioner for Refugees declined the Court's invitation to intervene.

5. The applicant, an asylum seeker, complained under Article 3 of the Convention that his planned transfer to Hungary under the Dublin III Regulation would subject him to inhuman and degrading treatment and that he would run risk of *refoulement* to Serbia. He filed a request with the Court under Rule 39 of the Rules of Court and sought to have his expulsion stayed.

6. The Court granted his request on 14 September 2015 and indicated to the Government that the applicant should not be expelled to Hungary until 28 September 2015.

7. On 22 September 2015 the Court decided to prolong the interim measure indicated under Rule 39 until the Court's final decision in the matter, and communicated the applicant's complaints to the Government.

8. The Government submitted their observations on the admissibility and merits on 10 November 2015, informing the Court at the same time that the applicant's whereabouts were currently unknown. Upon the Court's request, the applicant's counsel confirmed by letter dated 23 February 2016 that she was still in contact with her client and also submitted a statement apparently signed by the applicant that he intended to pursue his application with the Court.

9. Because of doubts as to the applicant's identity and certain irregularities with his signature, the Court considered it necessary to request the Government to submit further observations. In their reply of 28 April 2016 the Government pointed out that the applicant's whereabouts were still unknown to them.

10. After the applicant's representative was served with the Government's further observations, she informed the Court by letter dated 27 May 2016 that she currently was not in contact with the applicant, and that his whereabouts were not known to her either.

11. The applicant's representative's attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application.

THE LAW

12. The Court considers that, in these circumstances, the applicant may be regarded as no longer wishing 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 continued examination of the case.

13. In view of the above, it is appropriate to strike the case out of the list and to discontinue the application of the interim measure under Rule 39 of the Rules of Court.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases, and

Decides to discontinue the application of Rule 39 of the Rules of Court.

Done in English and notified in writing on 21 July 2016.

Andrea Tamietti
Deputy Registrar

Vincent A. De Gaetano
President