

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

THIRD SECTION

DECISION

Application no. 4142/04
by Hussein Mohamed WARMAHAYE
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 16 June 2011 as a Committee composed of:

Luis López Guerra, *President,*
Egbert Myjer,
Mihai Poalelungi, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 January 2004,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Hussein Mohamed Warmahaye, is a Somali national who was born in 1981 and who was staying in the Netherlands at the time the present application was introduced. He was represented before the Court by Ms I.M. Zuidhoek, a lawyer practising in Groningen. The Dutch Government ("the Government") were represented by their Agents, Mr R.A.A. Böcker and Ms J. Schukking, of the Ministry of Foreign Affairs.

The applicant, who originates from South Somalia, complained under Article 3 of the Convention that his expulsion to North Somalia would expose him to a real risk of torture or inhuman or degrading treatment.

On 30 January 2004 the President of the former Second 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 remove the applicant from their territory (Rule 39 of the Rules of Court). On 18 March 2004 the Court decided to give notice to the Government of the applicant's complaint detailed above.

On 11 May 2004 the Government submitted to the Registry their observations on the admissibility and merits of the application. These were forwarded to the applicant on 12 May 2004, who was invited to submit observations in reply but did not do so.

On 8 April 2011 the Registry sent a letter to the applicant's representative requesting information about any developments that might have occurred, in particular whether any changes had taken place in respect of the applicant's residential status in the Netherlands, whether the representative was still in contact with the applicant or whether, as far as she was aware, the applicant was still in the Netherlands.

On 20 April 2011 the applicant's representative informed the Court that she had not been in contact with her client for a considerable time and that she was unaware of his whereabouts. For this reason she wished to withdraw the application.

THE LAW

The Court is of the opinion that the applicant's failure to inform his representative of his current whereabouts must be taken as indicating that he has lost interest in pursuing his application within the meaning of Article 37 § 1 (a) of the Convention. Given the impossibility of establishing any communication with the applicant, the Court considers that the representative cannot now meaningfully pursue the proceedings before it (see, *mutatis mutandis*, *Sevgi Erdoğan v. Turkey* (striking out), no. 28492/95, 29 April 2003, and *Ali v. Switzerland*, judgment of 5 August 1998, *Reports of Judgments and Decisions* 1998-V, p. 2149, § 32).

In these circumstances, and having regard to Article 37 § 1 (a) of the Convention, the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) 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.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

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

Marialena Tsirli
Deputy Registrar

Luis López Guerra
President