



Dutch authorities' assessment of risks when expelling a Bahraini national to his country of origin was not rigorous enough

The case [A.M.A. v. the Netherlands](#) (application no. 23048/19) concerned the applicant's removal to Bahrain in 2018 following a risk assessment made in the context of his last-minute asylum application. He alleged that the Dutch authorities had not sufficiently assessed the risks of his being ill-treated upon his return to Bahrain and that they had not given him the possibility to effectively challenge their findings.

In today's **Chamber judgment**¹ in the case the European Court of Human Rights held, unanimously, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment/procedural obligations)** of the European Convention on Human Rights.

The Court rejected the Government's argument that the applicant had not used all the [legal avenues available at the national level](#). It could not accept that the remedies mentioned by the Government for the applicant to challenge the decision denying him leave to remain in the Netherlands pending the examination of his new asylum application had been available to him in practice. The authorities had not apparently enabled him to contact and consult a lawyer or offered any other form of legal assistance, while at the same time it was clear that he could not take effective legal action without counsel.

It also found that the authorities had excluded last-minute evidence submitted by the applicant in support of his claim that he was wanted by the Bahraini prosecuting authorities, without assessing its potential relevance in their final risk assessment, especially given other evidence that was already available in his case file. It found that such an approach had been too narrow and had not complied with the rigorous and careful examination expected under Article 3 of the Convention.

Principal facts

The applicant, Mr A.M.A., is a Bahraini national who was born in 1991 and is currently detained in Bahrain.

Mr A.M.A. arrived in the Netherlands in 2017 and submitted a first application for asylum, stating that he feared persecution and ill-treatment in Bahrain on account of his political activities. He alleged in particular that he was a member of the opposition group "Barbar Revolutionary Youth", along with his brother who had been granted international protection in Germany because he was on a list of alleged terrorists wanted by the Bahraini authorities. The applicant was afraid that he was also on that list.

This first application was dismissed. The migration authorities found that his account was not credible: they did not believe that he was politically active; and, the mere assumption that his name was on a terrorist list because of his brother's activities was not enough to substantiate his claim that he was wanted in Bahrain.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

He lodged a request for judicial review. During these judicial proceedings the applicant provided further evidence to substantiate his fear of ill-treatment in Bahrain. However, his request for judicial review was declared inadmissible as out of time.

In anticipation of his removal, the applicant was interviewed several times by the relevant service of the Ministry of Justice. During these interviews he agreed to leave for Iran or Georgia but not Bahrain, repeating his fears of being immediately arrested on arrival because he was wanted for terrorism. Removal to Georgia and Iran proved impossible. The applicant was informed that his expulsion to Bahrain was scheduled for 20 October 2018 and placed in immigration detention with a view to his removal.

On the day before the scheduled removal the applicant submitted another application for asylum with copies of documents that he had just received to further substantiate his claim. These new documents, in Arabic and with the letterhead of the Bahraini Public Prosecutor's Office, named him as being involved in hiding people who were sought by the police.

This new asylum application was dealt with in so-called "last-minute" proceedings. The authorities considered that the application had only been submitted to delay removal, and contained no new elements or findings. They found in particular that the new documents carried no weight as the documents were neither authentic or translated and the applicant had not been able to explain how exactly he had come by them.

The applicant was therefore denied leave to remain in the country pending the final assessment of this asylum application, and was put on a plane for Bahrain on 20 October 2018 as scheduled.

Following his removal to Bahrain, the applicant was immediately detained, allegedly tortured into giving a confession, and subsequently convicted of terrorist activities and sentenced to life imprisonment.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr A.M.A complained that the Dutch authorities had not sufficiently assessed the risks of his being subjected to inhuman and degrading treatment if expelled to Bahrain, despite his submitting last-minute evidence to prove that he had been wanted by the Bahraini prosecuting authorities.

Mr. A.M.A. also alleged, under Article 13 (right to an effective remedy) in conjunction with Article 3, that he had not had an effective remedy to challenge the denial of leave to remain in the Netherlands pending the assessment of his claim.

Lastly, he asked the European Court under Article 46 (binding force and implementation) to order the Dutch Government to do everything in their power to end his detention in Bahrain.

The application was lodged with the European Court of Human Rights on 19 April 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Yonko **Grozev** (Bulgaria),
Georgios A. **Serghides** (Cyprus),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 3

First of all, the Court dismissed the Government's argument that the application was inadmissible as the applicant had not used all the [legal avenues available at the national level](#) for his complaint under Article 3. It noted that the parties did not agree on whether the applicant had been represented by a lawyer in the "last-minute" proceedings. At the same time the Government did not contest the applicant's position that he could not effectively take legal action against the decision of 20 October 2018 – denying him leave to remain in the Netherlands – or submit a request for interim relief without the assistance of counsel. However, the case file did not contain any indication that the authorities had enabled him to contact and consult a lawyer or offered him any other form of legal assistance. Moreover, the decision had been in a language that he could not understand and had been sent to a lawyer who did not represent him, and only after he had already been removed. The Court could not therefore accept that the remedies mentioned by the Government had been available to him in practice.

Next the Court went on to examine whether the authorities had properly assessed the risks to which the applicant could be exposed upon return to Bahrain. It noted that the applicant's case file had contained information on those risks, in particular relevant country-of-origin information, a statement from the leader in Germany of the opposition group he had been involved with, and transcripts of the interviews concerning his removal during which he had repeatedly stated that he feared arrest in Bahrain because he was on a list of alleged terrorists. That information had not apparently been included in their final risk assessment of 20 October 2018.

Nor could the Court accept the finding in that decision that the last-minute asylum application had been submitted solely to delay his removal. It could see no reason to doubt the applicant's good faith with regard to the new documents he had submitted, which could not have been easy to come by. The authorities had simply excluded the documents, without assessing their potential relevance for the applicant's individual situation and in view of the general situation in Bahrain. It found that such an approach had been too narrow, and had not complied with the rigorous and careful examination expected under Article 3 of the Convention.

The Court therefore concluded that the Dutch authorities had failed to properly assess the alleged risk to the applicant of ill-treatment before removing him to Bahrain in the context of his last-minute asylum application, in violation of Article 3 (procedural obligations).

Other articles

The Court held, by 6 votes to 1, that there was no need to examine separately the applicant's complaint under Article 13.

As concerned the applicant's request under Article 46, the Court considered that it was for the Netherlands to implement, under supervision of the Committee of Ministers, the executive arm of the Council of Europe, any measures it considered appropriate to secure the rights of the applicant.

Just satisfaction (Article 41)

The Court held, unanimously, that the Netherlands was to pay the applicant 50,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge Serghides expressed a partly concurring and partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.