



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

FOURTH SECTION

DECISION

Application no. 30815/09
by D.H.
against Finland

The European Court of Human Rights (Fourth Section), sitting on 28 June 2011 as a Chamber composed of:

Nicolas Bratza, *President*,

Sverre Erik Jebens,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 12 June 2009,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court on 12 June 2009 and the fact that this interim measure has been complied with,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

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 D.H., is a Somali national who was born in 1992 and lives in Oulu. He was represented before the Court by Ms Laura Tarvainen,

a lawyer practising in Oulu. The Finnish Government (“the Government”) were represented by their Agent, Mr Arto Kosonen of 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’s reasons for leaving Somalia

The applicant is from Mogadishu. His family could no longer live safely in that town. The administrative structures had fallen apart and the situation had become chaotic. The applicant was forced to join the armed forces. His life was thereby put at serious risk as the Ethiopian troops were targeting young soldiers, in particular, to capture them or kill them.

The applicant’s account concerning his stay in Italy

In November 2007 the applicant arrived in Europe by boat from Libya, along with other asylum seekers. The Italian authorities intercepted the passengers at sea. They were fingerprinted and taken to Sicily. The applicant submitted to the authorities his name and date of birth, thus indicating that he was a minor. He was first held in a small room and then taken out with the others. They were fingerprinted again by force. The applicant, who was in poor health, asked the Italian authorities for help, but did not receive any. There was no interpreter available either. After a few days in Sicily, the applicant and all the others who had arrived on the boat were taken to Rome and left there to manage on their own. The applicant went to a church with some other Somali boys. They were allowed to stay there for a few days, after which they were put on the streets. The applicant heard about a place where one free meal was served per day. It took him four hours to walk there and back each day, but that was the only way he could obtain any food. He slept on the streets and, occasionally, at the train station. He was constantly hungry and cold. Living on the street was also unsafe. He was subjected to physical abuse and humiliating treatment many times. On one occasion a bystander called an ambulance and the applicant was taken to a hospital. He was turned back on the streets the following day. One day an unknown man came up to the applicant and offered him and some other Somali boys work in a vineyard, which they accepted. As compensation, they were given food but no money, as initially promised. When they asked about their wages, they were beaten up.

The applicant continued to live on the streets. One day an African man offered him work. His task was to deliver a certain bag from Rome to

Naples three times a week. He was given train tickets, breakfast and 100 dollars per month in payment. He had been working for some three months, when a Somali woman asked him why he was associating with that man. Having learned about the nature of the applicant's activities, the woman suggested that they open the bag and see what was inside. It turned out that the bag contained drugs. The woman warned the applicant that his work was very dangerous and he might end up in prison, if the authorities caught him. The woman bought the applicant a train ticket to Milan and he left Rome.

In Milan the applicant also lived on the streets. One day a Somali man came to him and advised him to go to the police for help. The applicant did so and waited for the whole day until a police officer came and took him to a small room at the police station. Instead of helping him, the police officer kicked the applicant and beat him with a truncheon. He threatened the applicant that if he ever showed up at the police station again, he would receive the same treatment. The applicant found himself on the streets again, begging for money to buy food. Eventually, a trafficker arranged his journey to Finland.

Asylum proceedings in Finland

The applicant arrived in Finland on 20 October 2008 and sought asylum on that same day. Since he was a minor, he was appointed a representative to exercise guardian's rights in matters pertaining to his person and assets, among other tasks. He was also represented by a lawyer. The immigration authorities ran a check in the Eurodac and noted that the applicant had been registered in Italy on 4 November 2007 for illegal entry and on 23 November 2007 as an asylum seeker. The applicant's counsel submitted a request that his asylum claim be dealt with by the Finnish authorities having regard to the inhuman conditions for asylum seekers in Italy.

On 30 December 2008 the Finnish Immigration Service (*Maahanmuuttovirasto, Migrationsverket*, hereinafter "the FIS") requested the Italian authorities to take the applicant back by virtue of Article 16 § 1 (c) of the Dublin Regulation. On 10 March 2009 Italy acceded to that request.

On 27 April 2009 the FIS issued its decision. Relying on the Dublin Regulation, it dismissed the application without examining its merits. It found that the Italian authorities were responsible for the examination of the applicant's asylum claim and ordered his removal to Italy. In its reasons the FIS stated that differences in reception and detention conditions, work opportunities and social benefits between the receiving States was not a sufficient reason to examine a claim in another State. As a signatory to the Dublin Regulation, Italy had undertaken to observe the rights and principles acknowledged, in particular, in the Charter of Fundamental Rights of the

European Union. It also referred to Article 6 of the Dublin Regulation in stating that if a minor applicant did not have family members in another country, his application was to be examined in that State where he had first sought asylum. Taking into account all relevant circumstances as a whole, the FIS considered that the applicant's removal to Italy was not in breach of Article 3 of the Convention or Section 9(4) of the Finnish Constitution, nor was he at risk of *refoulement* contrary to Section 147 of the Aliens Act.

On 2 June 2009 the decision was served on the applicant in his native language and in the presence of his representative. At the same time he was informed of his right to appeal against it to the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*). He was also informed that the decision was directly enforceable, unless the court ruled otherwise, and that he was entitled to request the court to suspend his removal.

On the same day the applicant appealed submitting, in particular, that having regard to his age, mental condition and the circumstances as a whole, he was to be regarded as a vulnerable person. He also claimed that the immigration authorities had not given him adequate opportunity to participate in the proceedings and it had based the decision on insufficient information. Furthermore, the FIS had on 23 April 2009 informed the applicant that his application would be examined in Finland, thus giving him false hope. The applicant requested that his removal to Italy be suspended.

On 12 June 2009 the applicant lodged an application with the Strasbourg Court, along with a request to stay his removal to Italy. According to the applicant, the Administrative Court had refused him the interim measure requested and the police were planning to remove him on 17 June 2009. A medical certificate was attached to the application indicating that the applicant suffered from post-traumatic stress syndrome and acute symptoms of anxiety and depression. According to that certificate, his condition resulted partly from his past experiences in Somalia but also from later events. It was specifically noted that the applicant's medical condition had been negatively affected by the "withdrawal of the promise" to examine his asylum claim in Finland. In the doctor's opinion, the applicant was in need of long-term support.

On 12 June 2009 the President of the Chamber acceded to the above request indicating to the Government of Finland, under Rule 39 of the Rules of Court, that the applicant should not be removed to Italy until further notice.

On 15 September 2009 the Administrative Court dismissed the applicant's appeal, upholding the immigration authority's decision. Having regard to the reasons given by the FIS and the relevant circumstances as a whole, the court found no reason to prevent the applicant's removal to Italy. It also noted the Strasbourg Court's interim measure and found that there was no reason to grant a stay on the applicant's removal.

On 3 February 2010 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*) refused the applicant leave to appeal.

COMPLAINTS

The applicant complained that his removal to Italy would subject him to a risk of inhuman and degrading treatment contrary to Article 3 of the Convention having regard, in particular, to the fact that he was an unaccompanied minor. He also complained under Article 13 of the Convention that, as his appeal against the immigration authority's decision did not have suspensive effect, he did not have an effective remedy in connection with his claim under Article 3.

THE LAW

Complaints under Articles 3 and 13 of the Convention

The applicant complained under Article 3 of the Convention that his removal to Italy would subject him to a risk of inhuman and degrading treatment as he was an unaccompanied minor. He also complained under Article 13 of the Convention that, as his appeal against the immigration authority's decision did not have suspensive effect, he did not have an effective remedy in connection with his claim under Article 3.

Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 13 of the Convention provides the following:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

On 18 January 2011 the Government informed the Court that, on 19 November 2010, the Finnish Immigration Service had granted the applicant a continuous residence permit on the basis of subsidiary protection for a period of four years. Consequently, the Government maintained that the circumstances allowed the Court to reach the conclusion that the matter had been resolved, so justifying the discontinuation of the examination of the application. The Government invited the Court to strike the application out of its list of cases and to lift the interim measure indicated on 12 June 2009.

On 16 February 2011 the applicant's representative informed the Court that, as the applicant had been granted a continuous residence permit, he did not wish to maintain his application and that the case could be struck out of the list.

Article 37 § 1 of the Convention provides:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

The Court notes that the applicant has now been granted a continuous residence permit and that he is no longer subject to an expulsion order. In these circumstances, and having regard to Article 37 § 1 (b) of the Convention, the Court is of the opinion that the matter giving rise to the complaints can now be considered to be “resolved” (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 97 and 103, ECHR 2007-II). 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 lift the interim measure indicated under Rule 39 of the Rules of Court and 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.

Lawrence Early
Registrar

Nicolas Bratza
President