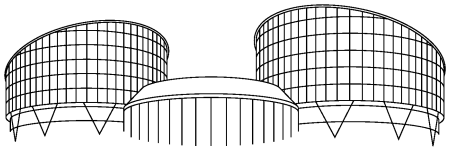

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 63890/16
M.B.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 28 November 2017 as a Committee composed of:

Luis López Guerra, *President*,
Dmitry Dedov,
Jolien Schukking, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 8 November 2016,

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 parties' submissions,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr M.B., is a Guinean national, who was born in 1988 and lives in the Netherlands. The President decided not to disclose the applicant's identity to the public (Rule 47 § 4 of the Rules of Court). He was represented before the Court by Mr R.C. van den Berg, a lawyer practising in Waalwijk. The Dutch Government (" the Government") were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. First set of asylum proceedings

3. The applicant lodged an asylum request on 21 June 2010. During a further interview (*nader gehoor*), taken on 9 August 2010 by the immigration authorities, he stated, *inter alia*, that he was a homosexual and that for a period of five to six years he had had a relationship with a certain J.B., who visited him every weekend at the store where he had worked. On a certain day the applicant and J.B. had been caught, while they were having sexual intercourse, by a customer of the store and the latter had then gathered people from the neighbourhood. The applicant and J.B. were beaten up by the crowd as a consequence of which J.B. had died. The applicant was taken away by the police. The applicant claimed that he had been convicted, imprisoned and fined. Five months after his imprisonment a friend of the applicant, one P., had helped him to get out of prison. P. had subsequently helped the applicant to flee the country.

4. The Minister for Immigration, Integration and Asylum Policy (*Minister voor Immigratie, Integratie en Asiel*, hereafter 'the Minister') rejected the applicant's request on 5 April 2011. However, on 31 October 2011 this decision was quashed by the Regional Court of The Hague due to inadequate reasoning. The Minister was ordered to take a fresh decision.

5. On 21 December 2011 the Minister once again rejected the asylum request. This decision had been upheld by the Regional Court of The Hague. However, on 20 December 2013 the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State upheld the applicant's further appeal against the latter decision and quashed both the decisions of the Regional Court and the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*, the successor to the Minister regarding immigration matters; hereafter "the Deputy Minister").

6. The Administrative Jurisdiction Division referred to an earlier decision it had reached in a separate case concerning the same subject-matter. In those proceedings the Deputy Minister submitted that he needed to adapt his policy for reviewing requests for international protection by persons on grounds of their homosexuality, as a result of the judgment by the Court of Justice of the European Union (hereafter, CJEU) in the joined cases of *X*, *Y*, and *Z* of 7 November 2013 (see paragraphs 22 and 23 below), in so far as his previous policy expected the persons to act with restraint in public as to their sexual orientation.

7. On 19 May and 25 June 2014 the immigration authorities conducted a supplementary interview (*aanvullend gehoor*) with the applicant in the presence of counsel. The applicant reiterated his earlier statements, namely

that he was homosexual and for that reason had been arrested and detained in Guinea.

8. On 13 November 2014 the Deputy Minister informed the applicant once again of his intention to reject his asylum request. The Deputy Minister believed the applicant's sexual orientation. However, the alleged relationship with J.B. as well as the problems he had claimed to have encountered due to his sexual orientation were not believed. As regards J.B., the Deputy Minister noted that the applicant was unable to give personal details about J.B. such as what he was studying, how many siblings he had and where he had lived. In this respect the Deputy Minister stated that it may be expected from the applicant, given the alleged length and nature of his relationship with J.B., that he would be able to give more details about him. As regards the attack in the applicant's shop the Deputy Minister held that the applicant had given only little and vague information. Where he had stated that this attack had occurred in January 2010 during his additional interview, he was unable to give a date during the supplementary interview. In addition, he was unable to indicate how many people were involved in the attack and how many police officers had come afterwards, which was remarkable as the attack had been the main reason for his flight. The Deputy Minister further held that the applicant had given contradicting statements. In this respect he noted that the applicant had given different answers when he was asked about the number of times he had been interrogated and that he had stated that his uncle had paid bail, but later said that the uncle had requested the police to keep the applicant detained. It was observed that the applicant had given little information about fellow prisoners with whom he had shared a cell. He further had given vague statements concerning his escape from prison and about P. With reference to the general official country assessment report (*algemeen ambtsbericht*) on Guinea of June 2014 drawn up by the Netherlands Ministry of Foreign Affairs, the Deputy Minister observed that Guinea had criminalised sexual activities between persons of the same sex but that, despite the societal taboo in Guinea with regard to homosexuality, there was not an active policy in place for prosecuting those acts. The Deputy Minister did not find it established that the applicant would be exposed to a real risk of being subjected to treatment proscribed by Article 3.

9. On 4 December 2014 the Deputy Minister rejected the applicant's asylum request, confirming the reasoning set out in his notice of intention.

10. The applicant's appeal was accepted by the Regional Court of The Hague on 17 June 2015. The Regional Court noted that the Deputy Minister had failed to assess whether the applicant, should his sexual orientation become known in Guinea, would endure discrimination to an extent that he would have to fear for his life or be restrained in the way he lived and for which he would not be able to seek protection from the authorities. The court concluded that the Deputy Minister had had insufficient regard to

whether the applicant would be able to live openly as a homosexual and what it would entail if in practice he would not be able to do so.

11. The Deputy Minister lodged a further appeal, which was upheld by the Administrative Jurisdiction Division on 30 May 2016. It held that the Deputy Minister could in reason conclude that the applicant had given vague and contradicting statements. It further held that the reports the applicant had referred to, namely the Country Report on Human Rights Practices of the United States Department of State of 27 February 2014 and a report of the Immigration and Refugee Board of Canada of 31 March 2014, did not provide a new perspective on the position of homosexuals in Guinea. With reference to a judgment it had delivered on the same day concerning another Guinean asylum-seeker who was homosexual, it held that it did not appear from the documents that were put forward in that case, including the general official country assessment report (see paragraph 23), that homosexuals needed to fear persecution or treatment proscribed by Article 3 in Guinea.

2. Second set of asylum proceedings

12. The applicant left the Netherlands on an unknown date and applied for asylum in Belgium. He was returned to the Netherlands, where on 12 July 2016 he lodged a fresh asylum request. An interview was held on 22 July 2016. The applicant reiterated the reasons advanced in his previous asylum request as a basis for the fresh asylum application. He maintained that because of his sexual orientation he will be discriminated against, detained or killed in Guinea. He added that he had heard that three unknown persons had been arrested and detained in Guinea because they were homosexual. The applicant's counsel had submitted documents concerning the human rights situation for Lesbian, Gay, Bisexual and Transgender (hereafter, LGBT) persons in Guinea. These included, among others, an online news article, the general official country assessment report on Guinea of the Netherlands Ministry of Foreign Affairs, Country Report on Human Rights Practices of the United States Department of State of 13 April 2016 and the Amnesty International 2015/2016 annual report.

13. In his notice of intention (*voornemen*) of 26 July 2016 the Deputy Minister held that in the applicant's previous asylum proceedings his sexual orientation was believed, but not the alleged relationship with J.B. and the problems he had allegedly had due to his sexual orientation. Therefore, the reference by the applicant to what had allegedly happened to third persons was not considered a new element. In respect of the submitted documents the Deputy Minister held that these did not contain any information to warrant a revision of the previous decision. As regards the Amnesty International report which concerned the arrest of two men for their 'perceived sexual orientation', the Deputy Minister observed that the actual reason and cause for their arrest had been unclear. From the online news

article it had appeared that these men were dressed as women and had seduced an intoxicated young man, that neighbours were alarmed by these activities and that later the police had arrived and had arrested the men. It was further noted that it was unclear on what ground the men were later convicted. Therefore this situation as such could not be considered similar to one in which two homosexual men who solely on the basis of their sexual orientation were arrested. The Deputy Minister further noted that the Guinean authorities did not pursue a policy of active prosecution of homosexuals and that the submitted documents, including the general official country assessment report, did not show any incidents to believe that such a policy existed. It was thus considered that there was no reason to hold that the conclusion drawn in respect of the applicant's previous request, namely that it had not appeared that in Guinea he would have to endure serious repression that would result in a situation in contravention to the Convention, could no longer be maintained.

14. On 29 July 2016 the Deputy Minister rejected the applicant's repeat asylum request as inadmissible noting that no new facts or circumstances were put forward. As regards the web sources submitted by the applicant, namely an online video showing an arrest and related articles, the Deputy Minister held that these did not show that the arrests were based on the persons' sexual orientation and what had happened after the arrest, such as whether these persons had actually been prosecuted. Therefore these submissions did not demonstrate a pattern of prosecution of homosexual persons in Guinea.

15. The appeal lodged by the applicant against the Deputy Minister's decision was rejected by the Regional Court of The Hague on 26 August 2016. The Regional Court held that the Deputy Minister was, justified to hold that they did not contain any elements or considerations which were relevant for the assessment of the applicant's request, irrespective of his findings concerning the novity of the documents. From the documents it had not appeared that in Guinea there was a policy of active prosecution of homosexuals. It further held that the Deputy Minister was not required to conduct a further assessment, as the documents submitted by the applicant did not show the practical enforcement of the Guinean legislation criminalising homosexual activities or that this criminalisation had had such consequences that the social position of homosexuals was untenable.

16. On 9 November 2016 the applicant's further appeal was dismissed by the Administrative Jurisdiction Division.

3. Events after the lodging of the application

17. The applicant's expulsion from the Netherlands was scheduled to take place on 10 November 2016. On 8 November 2016 he requested a stay of expulsion to be indicated to the Netherlands Government under Rule 39 of the Rules of Court.

18. On 9 November 2016 the duty judge of the Court decided, at the request of the applicant, to indicate to the Government 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 Guinea for the duration of the proceedings before it (Rule 39 of the Rules of Court).

19. On 23 June 2017 the applicant was requested to provide the Court with further information (Rule 49 § 2 of the Rules of Court), and in particular to submit recent information regarding the human rights situation of LGBT persons in Guinea.

20. On 21 July 2017 the applicant submitted to the Court various documents, including the United States Department of State Country Report on Human Rights Practices 2016 – Guinea of 3 March 2017 and various internet articles.

21. In their reply of 21 August 2017 to the information submitted by the applicant, the Government held that it did not reveal any elements that essentially differed from the information used by the Dutch authorities at the time of their assessment of the applicant's asylum request i.e. the general official country assessment report of June 2014.

B. Relevant domestic law and international case-law and reports

1. Domestic law and the general official country assessment report on Guinea

22. The Aliens Act Implementation Guidelines 2000 (C2/3.2 of *Vreemdelingencirculaire* 2000 as revised following the judgment of the CJEU in the joined cases of *X*, *Y*, and *Z* of 7 November 2013, see paragraphs 6 and 24) provides in its relevant parts:

> "The IND will grant the alien who complies with Article 3.36 of the Regulation on Aliens a temporary residence permit for the purpose of asylum...in one of the following situations:
>
> - The alien has made it plausible that he due to his (perceived) sexual orientation risks being exposed to acts of violence, [that] are of such nature that these acts constitute a serious violation of fundamental human rights;
> - The authorities of the country of origin carry out policies on grounds of (perceived) sexual orientation which are discriminatory or are implemented in a discriminatory way and [these] measures are of sufficient serious nature; or
> - In the country of origin criminal legislations exist with respect to sexual orientation, these provisions are implemented in practice by the authorities and the penalty is of a certain significant nature.
>
> In their assessment of the [alien's] individual situation Immigration and Naturalisation Service (*Immigratie – en Naturalisatie Dienst*, hereafter "IND") takes into account the way in which the alien intends to express his sexual orientation in the country of origin and the plausibility thereof...

In this respect, the point of departure is that the alien does not need to hide his sexual orientation in the country of origin...

The alien does not need to exercise restraint in expressing his sexual orientation with a view to prevent problems...

...

In case there are in the country of origin criminal provisions penalising sexual orientation or sexual activities the IND assesses how these are implemented in practice and by taking into account the personal circumstances of the alien.

In this assessment the IND will include:

- The extent to which there are criminal prosecutions on grounds of sexual orientation;
- the imposition of penalties (imprisonment);
- the (prior) police and criminal investigation; and
- the consequences of the criminalisation for the social position of LGBT persons."

23. The general official country assessment report on Guinea was published by the Ministry of Foreign Affairs on 20 June 2014. It is an update of previous reports on Guinea and covers the period from April 2013 to May 2014. As regards the position of LGBT persons it reads:

"Sexual acts between persons of the same sex is considered a violation of morals, or as unnatural acts. These [acts] are punishable by a prison sentence of at least six months and a maximum of three years and a fine of at least 100,000 franc and up to 1,000,000 franc. This criminalisation is applicable even on parties who are of age and [who] have consented to the act... During the reporting period no prosecutions have taken place for sexual acts between persons of the same sex.

Like in many African countries, in Guinea there are deeply rooted social, religious and cultural taboos with respect to homosexuality. Homosexuality is often perceived as a disease or an anomaly. Therefore many LGBT persons almost never reveal their sexual orientation...

In August 2013 the police arrested a group of over thirty homosexuals. Some of whom were dressed as women. The police confiscated their telephones and jewellery. After representatives of the LGBT community protested with the authorities, the group was released. In January 2014 homosexual artists performed at a wedding in the Matoto area in Conakry. The police had taken several of them to the police station; after paying EUR 150 they were released. In so far as known no major incidents have occurred in the reporting period.

In Guinea the organisation, 'Afrique Arc-en-Ciel', [that was] established in 2011, advocates for the rights of LGBT persons. This organisation receives support from the French embassy, UNAids, and other UN organisations, for, among others, organising meetings. In Conakry, there are informal meeting spots such as Le Ciel Plus. In Guinea there is a small international LGBT community, [where] one can find Ivoirians, Malians, Sierra Leoneans and Gambians.

The parliament denied in 2014 rumours about the existence of a draft legislation that recognized the position of homosexuals. The grand imam of Guinea has openly come out against homosexuality."

2. Relevant case-law of the Court of Justice of the European Union

24. The joined cases *X*, *Y* and *Z* (Joined Cases C-199/12 to C-201/12 of 7 November 2013) concerned asylum-seekers who sought international protection as a result of their homosexuality in circumstances in which it had not been shown that they had already been persecuted or been subject to direct threats of persecution in the past. Although Article 4 § 4 of the Council Directive 2004/83/EC of 29 April 2004 (hereafter, "Qualification Directive") was not directly the subject of the request for a preliminary ruling, the CJEU nevertheless found as follows:

> "72. As regards the restraint that a person should exercise, in the system provided for by the Directive, when assessing whether an applicant has a well-founded fear of being persecuted, the competent authorities are required to ascertain whether or not the circumstances established constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subject to acts of persecution ...
>
> 73. That assessment of the extent of the risk, which must, in all cases, be carried out with vigilance and care (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 Salahadin Abdulla and Others [2010] ECR I-1493, paragraph 90), will be based solely on a specific evaluation of the facts and circumstances, in accordance with the rules laid down in particular by Article 4 of the Directive (Y and Z, paragraph 77)."

25. On 2 December 2014 the Grand Chamber of the CJEU delivered its judgment in the case of *A* (C-148/13), *B* (C-149/13), *C* (C-150/13) *v. Staatssecretaris van Veiligheid en Justitie*. It concerned third country nationals who had lodged an application for asylum in the Netherlands because they feared persecution in their respective countries of origin on account, in particular, of their homosexuality. The Administrative Jurisdiction Division of the Council of State requested a preliminary ruling concerning the interpretation of Article 4 of the Qualification Directive as to whether EU law limited the actions of Member States when assessing requests for asylum made by an applicant who feared persecution in his country of origin on the grounds of sexual orientation. In its conclusion, the CJEU held as follows:

> "Article 4(3)(c) of Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Article 13(3)(a) of Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on stereotyped notions concerning homosexuals.

Article 4 of Directive 2004/83, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the competent national authorities from carrying out detailed questioning as to the sexual practices of an applicant for asylum.

Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of films of such acts.

Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 must be interpreted as precluding, in the context of that assessment, the competent national authorities from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution."

3. International Sources

26. The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) in its report State-Sponsored Homophobia of May 2017 provides a translation of the relevant parts of the Guinean Penal Code:

"Penal Code of 1988.

Article 325: [Act against nature]

'Any indecent act or act against nature committed with an individual of the same sex will be punished by six months to three years of imprisonment and a fine of 100,000 to 1,000,000 Guinean francs.

If the act was committed with a minor under 21 years of age, the maximum penalty must be pronounced.

If the act was consummated or attempted with violence, the guilty will suffer the penalty of imprisonment for period of 5 to 10 years.'"

27. It further states that:

"The atmosphere within which nascent LGBT organising has been happening in the recent period is both volatile and hostile.

Amnesty's 2015/2016 report on Guinea notes: "[a]t least three people were arrested because of their perceived sexual orientation. Two men were arrested on 22 April in Conakry. In May, the Tribunal of Mafanco sentenced them to three months' imprisonment".

In its 2nd cycle UPR in January 2015, Guinea 'noted' two recommendations from Italy and Argentina to remove discriminatory measures based on SOGI, including criminalisation. The State's delegation appeared not to have made any comment regarding SOGI."

28. The United States Department of State Country Reports on Human Rights Practices for 2016 states:

"The law criminalizes consensual same-sex sexual activity, which is punishable by three years in prison; however, there were no known prosecutions. In 2012 the

> government restructured OPROGEM [Office for the protection of gender, children and morals] to include a unit for investigating morals violations, including same-sex sexual conduct. Unlike in the previous year, there were no reports that authorities arrested cross-dressing men in nightclubs on public nuisance charges. Antidiscrimination laws do not apply to lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals.
>
> Deep religious and cultural taboos against consensual same-sex sexual conduct existed. There were no official or NGO reports of discrimination based on sexual orientation or gender identity, although societal stigma likely prevented victims from reporting abuse or harassment. There were no active LGBTI organizations."

29. The 2017, Guide d'information 4e édition of the Ministère de l'immigration, de la diversité et de l'inclusion of Quebec, Canada, on "*Réalités juridiques et sociales des minorités sexuelles dans les principaux pays d'origine des personnes nouvellement arrivées au Québec*" provides the following information:

> "Contexte social
>
> Il y a peu de renseignements sur la situation des personnes de minorités sexuelles en Guinée et, contrairement aux pays voisins, les discours politiques, religieux et médiatiques, s'intéressent peu au sujet. Il en résulte une invisibilité et la perpétuation d'un tabou bien ancré. Des personnes de minorités sexuelles sont parfois victimes de crimes et de stigmatisation, bien qu'aucun cas de condamnation n'ait été rapporté. Selon une enquête réalisée en 2014-2015, seulement 4 % des Guinéennes et Guinéens sont ouverts à l'égard des personnes de minorités sexuelles, une proportion très inférieure à la moyenne des pays africains (21 %).
>
> L'homophobie et l'hétérosexisme obligent les personnes de minorités sexuelles à dissimuler leur orientation sexuelle bien qu'il soit possible d'avoir des pratiques homosexuelles discrètes. À Conakry, plus d'une soixantaine de lieux, telles que des restaurants, des bars et des discothèques sont fréquentés par des hommes qui ont des relations sexuelles avec d'autres hommes. Plusieurs personnes de minorités sexuelles sont mariées à une personne de sexe opposé, afin de préserver l'apparence d'hétérosexualité."

COMPLAINT

30. The applicant complained under Article 3 of the Convention that upon his return to Guinea he will run a real risk of ill-treatment due to his sexual orientation.

31. He further complained under Article 3 together with Article 13 that he did not have access to an effective remedy.

THE LAW

32. The applicant complained that there were substantial grounds for believing that he would be subjected to treatment prohibited by Article 3 of

the Convention if he were expelled to Guinea. He further complained under Article 3 together with Articles 13 that he did not have an effective remedy. Those provisions read as follows:

Article 3

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

Article 13

"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."

A. General principles

33. The general principles regarding the assessment of applications for asylum under Article 3 of the Convention are set out in *F.G. v. Sweden* ([GC], no. 43611/11, §§ 117-127, ECHR 2016) and were recently confirmed in *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 79-90, 23 August 2016).

B. Application of general principles to the present case

34. The Court observes at the outset that it is not disputed that Guinean legislation criminalises homosexual acts and sanctions them, in particular, by imprisonment. The Court further notes that the applicant's sexual orientation was believed by the domestic authorities already in the first set of the applicant's asylum proceedings. It remains nonetheless to be assessed whether the applicant's removal to Guinea would entail a real risk of ill-treatment within the meaning of Article 3 of the Convention in the particular circumstances of the present case.

35. The Court acknowledges, first, that it is often difficult in cases such as the present case to establish precisely the relevant facts; it accepts that, in principle, the national authorities are in a better position to assess the credibility of the applicant if they have had the opportunity to see him, to hear him and to assess his conduct (*R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010, *M.E. v. Sweden*, no. 71398/12, § 78, 26 June 2014, and *F.G. v. Sweden*, cited above, § 118). In this regard, it observes that the applicant gave statements in the presence of counsel during the supplementary interview and had access to counsel throughout the first and second set of his asylum proceedings. His case was examined on the merits in both set of these proceedings during which the applicant was given ample opportunity to state his case, to challenge the submissions by the adversary party and to submit whatever he found relevant for the outcome.

36. The Court notes that the domestic authorities took into account the information the applicant gave about his alleged relationship with J.B. as well as the alleged attack and the arrest by the police. They also took into account country information as regards the situation of LGBT persons and the fact that homosexual activities are criminalised in Guinea. However, making an overall assessment of the statements the applicant had given during various interviews and the documentary evidence adduced by him, the problems he alleged to have encountered were disbelieved. The Court finds it noteworthy in this respect that the domestic authorities assessed the various documents submitted by the applicant concerning the general human rights situation for homosexuals in Guinea, though found that based on this information it cannot be derived that the Guinean authorities pursued an active prosecution policy, or that there was otherwise a practical enforcement of the legislation criminalising homosexual activities or that this criminalisation had such consequences that the social position of homosexuals was untenable. Indeed, it appears from the international reports consulted (see paragraphs 26-29) that this legislation is not systematically applied.

37. In these circumstances, the Court is not convinced by the applicant's claim that the Dutch authorities have failed to duly assess the risk elements. Nor is there any evidence in the case to indicate that the Dutch authorities did not duly take the risk of prosecution into account when assessing the risks faced by the applicant. The additional information provided to the Court about the human rights situation of LGBT persons in Guinea, does not warrant a different finding in this respect.

38. The Court notes that it cannot be concluded, either, that the proceedings before the Dutch authorities were inadequate and insufficiently supported by domestic material or by material originating from other reliable and objective sources. In these circumstances, the Court finds no reason to depart from the domestic authorities' conclusion.

39. In the light of the foregoing, the Court considers that there are no serious and current grounds for believing that the applicant would be exposed to real risks of treatment contrary to Article 3 in the event of his return to Guinea. Consequently, the application should be dismissed as manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

40. The applicant also alleged a violation of Article 13 of the Convention. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that there is no appearance of a violation of the provision invoked. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

41. 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,

Declares the application inadmissible.

Done in English and notified in writing on 21 December 2017.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President