



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

FOURTH SECTION

DECISION

Application no. 30953/11

A.E.

against Finland

The European Court of Human Rights (Fourth Section), sitting on 22 September 2015 as a Committee composed of:

Krzysztof Wojtyczek, *President*,

Päivi Hirvelä,

Yonko Grozev, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 19 May 2011,

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 deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr A.E., is an Iranian national. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4). He was represented before the Court by Mr Pirkka Lappalainen, a lawyer practising in Tampere.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

A. The circumstances of the case

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

4. The applicant is a Kurd by ethnic origin and a Muslim. He realised in his early childhood that he was homosexual. In his home village he had four homosexual friends. On 13 October 2008 these friends were arrested by the

police at a private party which the applicant did not attend. The next day the applicant's father called him and told him that the police had come looking for him and had searched the house. On 15 October 2008 the applicant left Iran for Turkey where he spent over a month. He then flew to Stockholm and continued from there to Finland.

First ordinary set of proceedings in Finland

5. On 29 November 2008 the applicant entered Finland and sought asylum on the same day.

6. On 1 February 2010 the Finnish Immigration Service (*Maahanmuuttovirasto, Migrationsverket*) rejected his application and ordered his removal to Iran. In its reasons the Service found that, according to the country information, Iran was a relatively tolerant country as concerned homosexuality, as long as it was not exercised in public. Even though the death penalty could be imposed, the threshold for conviction was very high. A conviction required that four "right-minded persons" were eye witnesses to the intercourse or that the accused confessed. During recent years no-one had been executed in Iran on that ground alone. Even though homosexuals could be discriminated against in Iran, they were not systematically persecuted. The Service did not consider credible the applicant's account that the police knew about his homosexuality. The police had not even tried to look for the applicant after they had allegedly learnt about his homosexuality. However, if he really was persecuted, he could move to another city in Iran. It was unlikely that the applicant would be arrested, at least if residing outside his home town, just because of his homosexuality. The applicant had been able to live peacefully in Iran for most of his life. He was thus not in need of humanitarian protection.

7. By letter dated 12 March 2010 the applicant appealed to the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*) claiming, *inter alia*, that he could no longer live peacefully in Iran because the police were aware of his homosexuality. The applicant presented to the Administrative Court a new piece of evidence, a warning letter which the Iranian police had allegedly given to the applicant's father in the context of the search. According to the letter, the applicant was to appear in court on 15 October 2008. The Immigration Service had obtained a statement from an Iranian lawyer at the Finnish Embassy in Tehran, according to whom the document was a fake.

8. On 12 May 2011 the Administrative Court, after having held an oral hearing, rejected the applicant's appeal. In addition to the Immigration Service's reasoning, the court noted that if a homosexual relationship came to the authorities' knowledge, a person could be persecuted. In the present case, the applicant had only assumed that his friends had been arrested and he had never even tried to find out what had happened to them. It was not credible that the Iranian authorities had an interest in him, that they had

conducted a search at his home and seized materials related to homosexuality. The credibility of his account was weakened by the fact that the document which he had presented only before the Administrative Court had turned out to be a fake. The applicant had thus not been able to show that he would have problems with the Iranian authorities, that they would know about his homosexuality and that he would therefore be persecuted if removed to Iran. The applicant had not made any claims about how his sexual orientation would have complicated his life. In Iran both heterosexual and homosexual public behaviour were punishable. As the applicant had been able to live in Iran as an active homosexual for about five years without problems, it could not be said that he had been obliged to suppress his identity in an unbearable manner.

9. By letter dated 19 May 2011 the applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), reiterating the grounds of appeal already presented before the Administrative Court. He also requested a stay on removal, which was not granted.

10. On 13 January 2012 the Supreme Administrative Court refused the applicant leave to appeal.

Extraordinary proceedings

11. By letter dated 18 January 2012 the applicant lodged an application with the Supreme Administrative Court to reopen his case as the Supreme Administrative Court had decided on 13 January 2012 to refer back to the Immigration Service a similar case concerning an Iranian homosexual (*KHO 2012:1*). The applicant claimed that this precedent case had changed the principles according to which persecution directed against sexual minorities was to be assessed. He also requested a stay on removal.

12. On 15 November 2012 the Supreme Administrative Court refused the applicant's application for reopening and rejected the request to stay the removal. It found that the applicant had not presented any grounds on the basis of which the case could be reopened.

Second ordinary set of proceedings

13. On 10 May 2012 the applicant sought asylum for the second time.

14. On 17 July 2012 the Immigration Service rejected his application and ordered his removal to Iran. In its reasons the Service found that the applicant had not presented in his new asylum application any new grounds which had not already been examined by the Service. The applicant was thus not in need of humanitarian protection and could be removed to Iran.

15. On an unspecified date the applicant appealed to the Administrative Court, requesting that the decision of the Immigration Service be quashed and he be granted asylum. He also requested that an oral hearing be held.

The applicant claimed that the Service had erred when it had considered that his new asylum application did not contain any new grounds. The new evidence showed that he would be in real and immediate danger if removed to Iran.

16. On 20 December 2012 the Administrative Court rejected the applicant's appeal as well as his request for an oral hearing. It found that the case concerned a re-application for asylum and that the Immigration Service could reject this application on the grounds presented. It thus upheld the Immigration Service's decision on the same grounds as the latter.

17. On an unspecified date the applicant lodged a further appeal with the Supreme Administrative Court.

18. On 18 September 2013 the Supreme Administrative Court refused the applicant leave to appeal.

Third and fourth ordinary sets of proceedings

19. On 20 November 2013 the applicant sought asylum for the third time in Finland. On 13 March 2014 the Immigration Service rejected his application and ordered his removal to Iran. On 21 July 2014 the Administrative Court rejected the applicant's appeal. On 16 December 2014 the Supreme Administrative Court refused the applicant leave to appeal.

20. On 20 January 2015 the applicant sought asylum for the fourth time. On 28 January 2015 the Immigration Service advised the applicant to seek a residence permit on the basis of studies or work, if he wished to rely on these grounds. The applicant did so on 9 February 2015.

21. On 1 April 2015 the Immigration Service rejected the applicant's fourth asylum application but granted him a continuous residence permit for work for a period of one year starting from the decision date. The residence permit may be renewed.

COMPLAINT

22. The applicant complained under Article 3 of the Convention that he feared ill-treatment or torture if removed to Iran as he was homosexual. He claimed that the Iranian police had evidence of his homosexuality (photographs and videotapes) and that his homosexual friends had already been arrested. In Iran homosexual acts were punishable by the death penalty.

THE LAW

23. The applicant complained of a violation of Article 3 of the Convention if he were to be removed to Iran.

24. Article 3 of the Convention reads as follows:

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

25. On 22 May 2015 the Government informed the Court that, on 1 April 2015, the Finnish Immigration Service had granted the applicant a continuous residence permit for work for one year with a possibility to request its renewal. Consequently, the Government suggested that the circumstances allowed the Court to reach the conclusion that the matter had been resolved, thereby 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 19 May 2011.

26. The applicant disagreed with the Government and claimed that he would still be in real and imminent danger if removed to Iran. The fact that the applicant had been granted a work-based residence permit did not take away the human rights violation.

27. 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.”

28. The Court notes that the applicant has been granted a continuous residence permit valid for a period of one year with a possibility of renewal. He is thus no longer subject to an expulsion order. Moreover, the Court observes that the applicant has not put forward any arguments which could be construed as indicating his dissatisfaction that all issues giving rise to his application have not been adequately addressed by the domestic authorities. There is no risk of any imminent *refoulement* as the applicant has been granted a continuous residence permit in Finland.

29. 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 this application against Finland under Article 3 of the Convention can now be considered to be “resolved” (see *F.S. and Others v. Finland* (dec.), no. 57264/09, 13 December 2011). Therefore, 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 present application.

30. 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 of cases.

For these reasons, the Court, unanimously,

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

Done in English and notified in writing on 15 October 2015.

Fatoş Aracı
Deputy Registrar

Krzysztof Wojtyczek
President