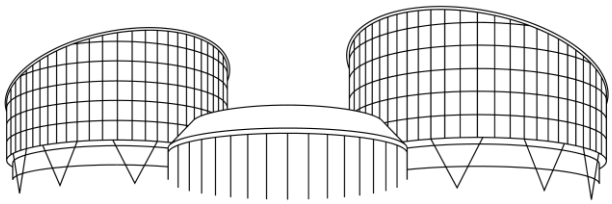

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 26550/10
by D.B.N.
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 31 May 2011 as a Chamber composed of:

Lech Garlicki, *President,*
Nicolas Bratza,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 11 May 2010,

Having regard to the information submitted by the respondent Government and the applicant's representative in reply,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms D.B.N., is a Zimbabwean national who was born in 1978. She was represented before the Court by Ms A. Gonzalez, a lawyer practising in London with Wilson Solicitors LLP, assisted by Ms B. Asanovic and Ms C. Meredith, Counsel. The United Kingdom Government ("the Government") were represented by their Agent, Ms J. Neenan of the Foreign and Commonwealth Office.

A. The circumstances of the case

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

The applicant arrived in the United Kingdom on 8 February 2009 and made an asylum application on 18 March 2009 on the basis of her sexuality and because she would be perceived as being an opponent of the Zimbabwean regime. She claimed that, as an out "butch" lesbian who dressed like a man, she would be at risk in Zimbabwe, not only from her family, but also from the wider community because of their attitude towards gays and lesbians. She claimed, *inter alia,* that in 1996, her and her partner had been gang raped by a group of six men for two hours; that both her and her partner had become pregnant following the attack, as a result of which her partner had committed suicide six months later; that she had given birth to a son conceived by the rape and had tried to take her own life shortly afterwards; that she had been harassed by her family and members of the community over a number of years; and that she had, on two further occasions in 2005 and 2008, been attacked and seriously beaten leading to her admission to hospital and the requirement of surgery on her knee.

On 24 April 2009, the applicant's asylum claim was refused by the Secretary of State. It was accepted, *inter alia,* that the applicant was a lesbian; that some lesbians in Zimbabwe faced discriminatory treatment; and that the incidents in 1996, 2005 and 2008 had occurred as the applicant had described them due to her sexuality. Nevertheless, it was not accepted that the applicant was entitled to international protection because her problems had been caused by her family and other private actors; she had never had any specific problems from the Zimbabwean authorities; and she would be able to internally relocate to avoid her family.

On 30 July 2009, the Asylum and Immigration Tribunal dismissed her appeal. The Immigration Judge accepted that the applicant's account of what had happened to her in Zimbabwe was credible and accepted that the applicant had been raped in 1996; had been assaulted in 2005; and had been attacked in 2008. However, the Immigration Judge considered that any discrimination experienced by the applicant in Zimbabwe had been limited because she had been able to work without difficulty and the amount of incidents which had occurred were "small" and linked to her family's disapproval of her sexuality. The Immigration Judge therefore found that the applicant could relocate within Zimbabwe to avoid any further risk of ill-treatment in the future.

On 24 August 2009, a Senior Immigration Judge refused her application for reconsideration. On 20 October 2009, the High Court dismissed a further application for reconsideration.

B. Subsequent developments

On 27 January 2011, the Vice-President of the Fourth Section decided that notice of the application should be given to the Government and that the Government should be invited to submit written observations on the admissibility and merits of the application.

In a letter dated 8 April 2011, the Government informed the Court that they were having considerable difficulty in establishing the applicant's whereabouts and that there was no evidence that she remained in the United Kingdom. They explained that they understood that she had left the United Kingdom voluntarily in June 2010 travelling as a South African national and had later been identified in Lille, Dublin and Madrid. They stated that it appeared that the applicant had been using two identities in the United Kingdom; one being that of a South African national and the other, a Zimbabwean national.

Given that the questions posed by the Court in the application related to risks associated with the applicant's removal to Zimbabwe from the United Kingdom and that the Government understood that she had left the United Kingdom voluntarily, the Government considered that the Court's questions were no longer relevant. The Government therefore requested that the Court verify with the applicant where she was, whether she accepted that she had South African nationality and whether she continued to pursue her claim before the Court. In the absence of any response, the Government invited the Court to strike the application out its list of cases.

By a fax dated 11 April 2011, the Government's letter was forwarded to the applicant's representative, who was requested to submit any comments in reply by 18 April 2011.

By a further letter dated 21 April 2011, sent by registered post, the applicant's representative was reminded to submit any comments upon the Government's letter by 5 May 2011. The applicant's representative's attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application.

By a letter dated 3 May 2011, the applicant's representative informed the Court that they were not in continuous contact with the applicant and had been unable to take instructions on the issues raised by the Government in their letter dated 8 April 2011. They accepted that, in light of the Court's decisions in similar situations, they were not in a position to request that the Court continue its consideration of the application. Nevertheless, they requested that the Court refrain from closing the application in case contact with the applicant was re-established in the future.

COMPLAINTS

The applicant complained under Articles 2 and 3 of the Convention that she faced a real risk of being killed unlawfully or ill-treated if returned to Zimbabwe on the basis of her sexuality and due to her perceived opposition to the Zimbabwean regime.

Further, she complained under Article 8 of the Convention that her removal to Zimbabwe would completely destroy her right to private life and physical and moral integrity as it protects gender identification, sexual orientation and sexual life.

She also complained under Article 13 that she was not afforded an effective remedy in respect of her Article 3 claim because the statutory review mechanism enacted by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 precluded judicial review.

Finally, she complained that the statutory review mechanism was discriminatory under Article 14 read in conjunction with Articles 3 and 13 because it only applied to non-nationals.

THE LAW

The Court notes the information submitted by the Government in their letter of 8 April 2011 and has particular regard to the fact that it would appear that the applicant voluntarily departed from the United Kingdom in June 2010. The Court further notes that the applicant's representative has had no recent contact with her and has been unable to take instructions upon, or dispute, the information submitted by the Government.

The Court considers that, in these circumstances, the applicant may be regarded as no longer wishing to pursue her application, within the meaning of Article 37 § 1 (a) 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.

Lawrence Early
Registrar

Lech Garlicki
President