



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

THIRD SECTION

CASE OF AHMED v. SWEDEN

(Application no. 9886/05)

JUDGMENT
(Striking out)

STRASBOURG

22 February 2007

FINAL

22/05/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ahmed v. Sweden,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mrs I. ZIEMELE,

Mrs I. BERRO-LEFÈVRE, *judges*,

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 1 February 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 9886/05) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Somali national, Mr Mohammed Ibrahim Ahmed (“the applicant”), on 15 March 2005.

2. The applicant, who had been granted legal aid, was represented by Mr J. Tamm, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agent, Mr C. H. Ehrenkrona, Ministry for Foreign Affairs.

3. The applicant alleged that his expulsion to either Somalia or Kenya would involve a violation of Article 3 of the Convention.

4. On 24 March 2005 the President of the Second Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to expel the applicant pending the Court's decision.

5. By a decision of 16 May 2006 the Court (Second Section) declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 19 January 2007 the case was transferred to the Third Section (Rule 52 § 1).

THE FACTS

8. The applicant was born in 1972. On 9 February 1993 he arrived in Sweden and, on the following day, he applied for asylum. In essence, he claimed that he had been born and raised in Somalia, and that, when his village had been attacked by the military, he had been forced to flee to Kenya and from there he had continued to Sweden. He had travelled using a Kenyan passport which he had destroyed upon arrival in Sweden.

9. In April 1993 the applicant underwent a medical examination which showed that he was infected with the HIV virus and treatment commenced immediately at the Huddinge hospital.

10. On 27 October 1994 the Immigration Board (*Invandrarverket*) rejected his request for asylum but granted him a permanent residence permit on humanitarian grounds due to the serious security situation in large parts of Somalia.

11. On 29 December 1995 the District Court (*tingsrätten*) in Södertälje convicted the applicant of attempted murder and sentenced him to five years' imprisonment and life-time expulsion from Sweden. The judgment gained legal force.

12. On 11 March 1999 he was conditionally released from prison and, on 1 July 1999, the Government granted him a temporary residence permit until 1 January 2000, which was subsequently prolonged until 21 February 2002.

13. However, on 10 June 2002 the District Court in Karlstad convicted the applicant of battery and assault, attempted aggravated battery and assault, making illegal threats and threatening a civil servant. He was sentenced to four years' imprisonment. The District Court noted that there was already an expulsion order in force against him, for which reason it dismissed the prosecutor's request with regard to this matter. The judgment was upheld upon appeal by the Court of Appeal (*hovrätten*) for Western Sweden and, on 10 September 2002, the Supreme Court (*Högsta domstolen*) refused leave to appeal.

14. On 23 August 2004 the applicant was conditionally released from prison. However, on 20 August 2004, the Government had decided to stay the expulsion until it had considered a request by him, lodged on 27 July 2004, to revoke the expulsion order and grant him a residence permit.

15. Having requested and received information from the Migration Board (*Migrationsverket*), the Swedish Embassy in Nairobi and *Médecins sans Frontières* (MSF) in Belgium about the applicant's origins and the availability of treatment and medication for persons infected with the HIV virus in Kenya and Somalia, the Government, on 24 February 2005, decided not to revoke the expulsion order and rejected the applicant's request for a residence permit. It found that there was neither any impediment to the enforcement of the expulsion nor any other special reason under the Aliens

Act to revoke the expulsion order. Moreover, the Government expressed the opinion that the applicant originated from Kenya.

16. On 22 March 2005 the border police responsible for the enforcement of the expulsion of the applicant informed him that they intended to expel him to Somalia, not to Kenya.

17. On 24 March 2005, following the Court's indication under Rule 39 of the Rules of Court, the Government stayed the execution of the expulsion order until further notice.

18. On 6 April 2005 the applicant made a new request to the Government to revoke his expulsion order and grant him a residence permit. He maintained that he was from Somalia and that he had no close relatives in Kenya. Moreover, as he had no economic resources, he would not be able to benefit from the care which existed in Kenya. He also underlined that he would not survive for very long if his treatment was interrupted since his HIV infection had become highly resistant and he was dependent on very specific medication.

19. On 26 October 2006 the Government rejected the request to revoke the expulsion order but granted him a temporary residence permit, valid until 31 December 2008, due to the particular circumstances of the case.

THE LAW

20. The Court reiterates that the applicant complained that his expulsion to either Somalia or Kenya would amount to a violation of Article 3 of the Convention since the specific medical treatment and medicines required by his HIV infection were not available in these countries. However, the Court notes that the Government, on 26 October 2006, granted the applicant a temporary residence permit in Sweden until 31 December 2008 and that the applicant has declared that, on the basis of this, he does not intend to pursue his application before the Court.

21. In these circumstances, the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require a continuation of the case by virtue of Article 37 § 1 *in fine*.

22. Accordingly, the application of Rule 39 should be discontinued and the case should be struck out of the list.

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 22 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President