



THIRD SECTION

DECISION

Application no. 28131/16

M.H.

against Sweden

The European Court of Human Rights (Third Section), sitting on 14 November 2017 as a Committee composed of:

Branko Lubarda, *President*,

Pere Pastor Vilanova,

Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 May 2016,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant is an Afghan national, who was born in 1992. The duty judge of the Court 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 Ms R. Nordström, a lawyer practising in Uppsala.

The Swedish Government ("the Government") were represented by their Agent, Ms K. Fabian, of the Ministry for Foreign Affairs.

The applicant, whose asylum request in Sweden had been finally rejected by the migration authorities and courts, complained under Articles 2 and 3 of the Convention that, if he were to be deported to Afghanistan, he would risk being sentenced to death or subjected to torture or inhuman or degrading treatment because of his Christian faith.

On 27 May 2016 the duty judge decided, under Rule 39 of the Rules of Court, to indicate to the Government that it was desirable in the interest of the parties and the proper conduct of the proceedings before the Court not to expel the applicant to Afghanistan until further notice.

After the Government had been given notice of the application under Rule 54 § 2 (b) of the Rules of Court, and the parties had submitted their observations on the admissibility and merits of the case, the Court was informed that the deportation order against the applicant had become statute-barred on 6 December 2016 and, consequently, that the applicant was no longer at risk of being expelled from Sweden and would be granted a full examination on the merits of the case upon submitting a new application for asylum.

By a letter of 13 July 2017 the applicant's representative informed the Court that the applicant had submitted a new application for asylum. Nevertheless, the applicant wished to maintain his application before the Court and argued that there were special circumstances requiring a continued examination. He stated that an examination would contribute to the Government's observance of their obligations and that the striking out of an application after a deportation order has become statute-barred could allow member States to avoid the scrutiny of the Court. The applicant also stressed that his social benefits were cut by half during the examination of his new asylum application, which will take a long time.

THE LAW

The applicant complained that his deportation from Sweden to Afghanistan would be contrary to Articles 2 and 3 of the Convention.

The Court notes that the applicant no longer risks deportation from Sweden. His new application for asylum and a residence permit in Sweden will receive a full ordinary examination on the merits by the Migration Agency (*Migrationsverket*). If the Agency's decision is negative for the applicant, he may appeal against it to the Migration Court (*Migrationsdomstolen*) and the Migration Court of Appeal (*Migrationsöverdomstolen*). Since such appeals generally have suspensive effect, the applicant will not be deported while the proceedings are pending. The Court further observes that, should the applicant's request for asylum in Sweden be rejected by all domestic instances, he may lodge a new application with the Court.

In these circumstances, and having regard to Article 37 § 1 (b) of the Convention, the Court finds that the matter has been resolved, reiterating its established case-law according to which, in cases concerning the deportation of an applicant from a respondent State, once the applicant no longer risks being deported from that State, it considers the case to have been resolved and strikes it out of its list of cases (see *M.E. v. Sweden* (striking out) [GC], no. 71398/12, § 32, 8 April 2015). 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 and to discontinue the application of Rule 39 of the Rules of Court.

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 7 December 2017.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President