



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

THIRD SECTION

DECISION

Application no. 4854/12
A.S.B.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 10 July 2012 as a Committee composed of:

Luis López Guerra, *President*,

Egbert Myjer,

Kristina Pardalos, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 January 2012,

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 Government's submissions of 20 April 2012,

Having regard to the request submitted by ILGA-Europe,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr A.S.B., is a Jamaican national, who was born in 1972 and lives in the Netherlands. The acting President of the Chamber decided to grant the applicant anonymity (Rule 47 § 3 of the Rules of Court). He was represented before the Court by Mr M. Berg, a lawyer practising in Amsterdam.

The Dutch Government ("the Government") were represented by Deputy Agent, Ms L. Egmond of the Ministry for Foreign Affairs.

A. The circumstances of the case

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

On 22 December 2009 the applicant applied for asylum in the Netherlands, stating that he feared persecution and treatment contrary to Article 3 of the Convention in his country of origin on account of his homosexual orientation. The final negative decision on his asylum request was given on 11 January 2012 by the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*).

B. Subsequent events

On 25 January 2012, the acting President of the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was in the interests of the parties and the proper conduct of the proceedings that the applicant should not be expelled to Jamaica pending the proceedings before the Court. The acting President further decided to give notice of the application to the Government and granted it priority under Rule 41 of the Rules of Court.

On 17 April 2012, the European Region of the International Lesbian, Gay, Trans and Intersex Association (ILGA-Europe) sought leave to submit a third-party intervention in the proceedings before the Court.

On 20 April 2012, the Government informed the Court that on 19 April 2012 the applicant had been granted an asylum-based residence permit. This information was transmitted on 24 April 2012 to the applicant who was invited, in case the assumption was incorrect that in these circumstances he did not wish to pursue the application, to indicate by 22 May 2012 for what reason he considered that the Court ought to continue its examination of his case. When this time-limit expired, no reaction had been received from the applicant.

COMPLAINT

The applicant complained that if expelled to Jamaica he would face a real and personal risk of treatment in violation of Article 3 due to his homosexuality.

THE LAW

The applicant complained that there would be a violation of Article 3 in the event of his expulsion to Jamaica.

The Court notes that on 19 April 2012 the applicant was granted asylum in the Netherlands and finds that, consequently, there is no longer any risk of his expulsion to Jamaica. The matter giving rise to the applicant's above complaint can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b) of the Convention. Furthermore, in the absence of any reaction from the applicant to the Court's letter of 24 April 2012, the Court understands that the applicant does not wish to pursue his application. As no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue its examination under Article 37 § 1 *in fine*, the case should be struck out of the list.

In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court and to reject the third-party intervention request by ILGA-Europe.

For these reasons, the Court unanimously

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

Marialena Tsirli
Deputy Registrar

Luis López Guerra
President