



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

## THIRD SECTION

### DECISION

Application no. 78701/14  
A.T.  
against Sweden

The European Court of Human Rights (Third Section), sitting on 25 April 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 30 December 2014,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this measure has been complied with,

Having deliberated, decides as follows:

## FACTS AND PROCEDURE

1. The applicant is an Iranian national, who was born in 1991 and lives in Uppsala. 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 S. Zebrowski, a lawyer practising in Uppsala.

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

3. 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 his expulsion from Sweden to Iran would expose him to a real risk of being sentenced to death or subjected to torture or ill-treatment because of his sexual orientation.

4. On 31 December 2014, the duty judge of the Court decided, under Rule 39 of the Rules of Court, to indicate to the Swedish 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 Iran until further notice.

5. 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 expulsion order against the applicant had become statute-barred on 15 February 2016 and, consequently, was no longer enforceable.

6. On 13 February 2017 the applicant's representative informed the Court that the applicant wanted to maintain his application because, in his view, it was not clear whether the Migration Agency (*Migrationsverket*) would accept a new request for asylum by him. Moreover, he considered that there were special circumstances, in accordance with Article 37 § 1 *in fine* of the Convention, regarding respect for human rights which required the continued examination of his case, since his submission before the national authorities that he was homosexual had been disregarded and not examined on the merits because it had been submitted late in the proceedings. In this respect he referred to the case of *F.G. v. Sweden* ([GC], no. 43611/11, §§ 80-83, ECHR 2016).

7. In reply to the applicant's submissions, on 17 February 2017, the Government invited the Court to strike the application out of its list of cases since they considered that it was no longer justified to continue the examination of the application. In their view, there were no special circumstances regarding respect for human rights which required the Court to pursue its consideration of the case. They noted that the Migration Agency had confirmed that the applicant had lodged a new application for asylum on 6 February 2017 and that a first interview had been held with him on 15 February 2017. It was thus clear that his new application had been accepted by the Migration Agency and that the case was pending. The Government stressed that this new examination entailed a full consideration on the merits of the grounds for asylum presented by the applicant, including his submission that he would risk persecution in Iran due to his sexual orientation.

## THE LAW

8. The applicant complained that his expulsion from Sweden to Iran would be contrary to Articles 2 and 3 of the Convention which, in relevant parts, read:

**Article 2**

“1. Everyone’s right to life shall be protected by law. ...”

**Article 3**

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

9. The Court notes that the applicant no longer risks expulsion 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. 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 have suspensive effect, the applicant cannot be expelled 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 (c) of the Convention, the Court is of the opinion that it is no longer justified to continue the examination of the application.

10. 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. It considers the present case distinguishable from *F.G. v. Sweden* (cited above), notably since that was a Grand Chamber case found to raise important issues concerning the duties to be observed by the parties in asylum proceedings (*ibid.*, § 82) which were then resolved through the Grand Chamber’s judgment in that case.

11. In view of the above, it is appropriate to strike the case out of the list and, consequently, 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 18 May 2017.

Fatoş Aracı  
Deputy Registrar

Branko Lubarda  
President