



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

THIRD SECTION

DECISION

Application no. 67295/10
Mounir ISMAIL
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 26 September 2017 as a Committee composed of:

Luis López Guerra, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 October 2010,

Having deliberated, decides as follows:

FACTS

1. The applicant, Mr Mounir Ismail, is a Tunisian national, who was born in 1959 and lives in Veenhuizen. He was represented before the Court by Mr B. van Dijk, a lawyer practising in Groningen.

2. The Dutch Government (“the Government”) were represented by their former Agent, Mr R.A.A. Böcker, and their Deputy Agent, Ms K. Adhin, of the Ministry of Foreign Affairs.

3. An exclusion order (*ongewenstverklaring*) was imposed on the applicant in 2007, which became final in 2010. In 2011, the applicant was expelled to Tunisia, where he was subsequently joined by his wife and four children, who are all Dutch nationals.

4. The applicant complained under Article 8 of the Convention that the decision to impose an exclusion order on him constituted a disproportionate interference with the right to respect for his family life. He claimed that the Government had accorded insufficient weight to his interests, as well as to those of his wife and children, in being able to continue family life in the Netherlands.

THE LAW

5. On 30 June 2017 the Government wrote to the Court in the following terms:

“... concerning the above application, I have the honour to inform you as follows.

On 25 January 2017, the applicant’s objection to the refusal to grant him a provisional residence visa ... was declared well-founded. Subsequently, the applicant has been granted a temporary residence permit, valid from 21 February 2017 until 21 February 2022.

In the light of this new development ..., the Government requests the Court to strike the case off its list of pending cases under Article 37, paragraph 1 of the Convention.”

6. On 25 July 2017 the applicant, having been invited to comment, replied that he did not wish to withdraw the application, the issuance of a residence permit not entailing a justification for the actions of the Dutch authorities forming the basis of his complaint. He further claimed 30,000 euros (EUR) in respect of non-pecuniary damage, namely the family’s alleged emotional distress.

7. The Court observes that the applicant’s complaint under Article 8 of the Convention concerned the exclusion order that was imposed on him and the consequences which it had had on the exercise of his family life with his wife and children, who are all Dutch citizens, in the Netherlands. While indeed the applicant was removed from the Netherlands to Tunisia, and his family had later joined him there, he is no longer subject to an exclusion order and has been granted a temporary residence permit. The object of the application, namely to be able to exercise family life in the Netherlands, has thus been achieved.

8. In the light of the above, the Court considers that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention.

9. In respect of the applicant’s claim for compensation of non-pecuniary damage, the Court reiterates that Article 41 of the Convention allows it to award just satisfaction to the “injured party” only if it has previously “[found] that there has been a violation of the Convention or the Protocols thereto” (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 132, ECHR 2007-I), which it has not in this case.

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. Accordingly, 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.

Done in English and notified in writing on 19 October 2017.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President