



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

## FIRST SECTION

### DECISION

Application no. 29855/17  
A.M.  
against Italy

The European Court of Human Rights (First Section), sitting on 15 September 2020 as a Committee composed of:

Pere Pastor Vilanova, *President*,

Jovan Ilievski,

Raffaele Sabato, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 April 2017,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the subsequent decision to lift that measure,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

### THE FACTS

1. The applicant is a Syrian national, who was born in 1987. He was represented before the Court by Mr M. Veglio, a lawyer practising in Turin. The Italian Government (“the Government”) were represented by their former Agent, Mrs E. Spatafora.

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

3. The applicant reached Italy on board of a rudimentary vessel in February 2017. He was then hosted in a migrants’ center, which he later left in order to reach France. Stopped by the French police, the applicant was transferred to the Hotspot of Taranto. Having left this center, he was then hosted in the Reception Centre for asylum seekers of the Red Cross in Milan.

4. On 26 March 2017, the applicant was stopped again by the French police and handed over to the Italian authorities. Accused to hold a false Syrian passport, the applicant was sentenced to one year and four months imprisonment by a judgment of the Court of Aosta issued on 27 March 2017.

5. The following day, the Chief of Police of Turin (*Questore*) ordered that the applicant be expelled and that he be held in the Identification and Removal Centre "Brunelleschi" in Turin, while waiting for the expulsion documents to be collected.

6. On 5 April 2017, the Chief of Police sent a note to the Consulates of Morocco, Tunisia and Algeria with the attempt of identifying the applicant and obtaining a valid document for his expatriation.

7. On 20 April 2017, the applicant introduced a Rule 39 request before the Court, alleging that his removal to Syria would entail a risk of violation of Articles 2 and 3 of the Convention. Relying on Article 5 of the Convention, he also complained about the lack of an effective remedy in order to complain about his continued detention pending expulsion.

8. The Court decided to grant the applicant request and indicated to the Italian Government that the applicant should not be removed for the duration of the proceedings before the Court.

9. In the meantime, the applicant challenged its expulsion order before the Justice of Peace of Aosta. His request was granted by a decision issued on 5 May 2017. The Justice of Peace further confirmed the interdiction to implement the applicant's expulsion, as indicated by the Court within the application of Rule 39.

10. In the meantime, on 26 April 2017, the Chief of Police of Turin filed a request before the Justice of Peace in order to obtain the prorogation of the applicant's confinement (*trattenimento*) in the Identification and Removal Centre. The request was granted and the applicant's confinement was prolonged of thirty days.

11. By a decision of the Chief Police of Turin of 25 June 2017, the applicant was eventually released, due to the expiry of the legal length of his confinement (ninety days). The applicant was returned his ID Syrian card which, in the meantime, he had received from his parents, and ordered to leave the country within seven days.

12. On 6 December 2018, the Court asked the applicant's representative to indicate if he was still in contact with his client. The applicant's representative replied that the "last message received by his client dated back to autumn 2017 and that the applicant's mobile phone number was no longer operating".

13. No other information has been provided to the Court and the applicant's whereabouts are currently unknown.

14. On 6 June 2020, the President of the Section to which the case has been allocated decided to discontinue the application of Rule 39 of the Rules of the Court.

## COMPLAINTS

15. The applicant complained that his removal to Syria would entail a risk to be subjected to treatment contrary to Articles 2 and 3 of the Convention.

16. He also complained about the lack of an effective remedy in order to challenge his continued detention pending expulsion and relied on Article 5 §§ 1 (f) and 5 of the Convention.

## THE LAW

17. The applicant complained about the risk of violation of Articles 2 and 3 of the Convention, if returned to Syria. He also complained that he had been deprived of his liberty in a manner that was contrary to Article 5 §§ 1 (f) and 5 of the Convention. The relevant parts of the Convention's Articles invoked by the applicant read as follows:

### **Article 2 of the Convention**

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. (...)”

### **Article 3 of the Convention**

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

### **Article 5 of the Convention**

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (...)

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.(...)”

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

18. As to the complaints under Articles 2 and 3 of the Convention, the Government pointed out that the Italian authorities' decision was not to expel the applicant to Syria but rather to accompany him to the borders, taking into account that his nationality was uncertain. They also stressed

that, although all necessary information had been provided to him, the applicant has failed to file a request for international protection.

19. The applicant reiterated his complains.

20. As to the part of the application concerning Article 5 of the Convention, the Government noted that the applicant was simply hosted, and not detained, in the Identification and Removal Centre, for the time necessary to his identification.

21. The Government further observed that the applicant has benefitted from an effective remedy, having obtained the suspension of his expulsion by decision of the Justice of Peace of 5 May 2017.

22. The applicant contested the Government's arguments and reiterated his complains.

23. The Court recalls that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court) but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application (see *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 35, 17 November 2016, *Sharifi and Others v. Italy and Greece*, no. 16643/09, § 124, 21 October 2014, and, *mutatis mutandis*, *Ali v. Switzerland*, 5 August 1998, § 32, *Reports of Judgments and Decisions* 1998-V).

24. In the recent case *N.D. and N.T. v. Spain* [GC] (nos. 8675/15 and 8697/15, § 73, 13 February 2020), the Court having found that in some cases in which the applicant's representative had lost touch with his or her client, including in cases concerning the expulsion of aliens, has held that such a situation might warrant striking the application out of the list under Article 37 § 1. The lack of contact was sometimes taken as an indication that the applicant no longer wished to pursue the application within the meaning of Article 37 § 1 (a) (see *Ibrahim Hayd v. the Netherlands* (dec.), no. 30880/10, 29 November 2011, and *Kadzoev v. Bulgaria* (dec.), no. 56437/07, § 7, 1 October 2013) or that examination of the application was no longer justified because the representative could not "meaningfully" pursue the proceedings before it in the absence of instructions from the applicant, despite the fact that the lawyer had authority to continue with the proceedings (see *Ali v. Switzerland*, 5 August 1998, §§ 30-33, *Reports of Judgments and Decisions* 1998-V, and *Ramzy v. the Netherlands* (striking out), no. 25424/05, §§ 64-66, 20 July 2010). In some cases, the Court's findings combined these two reasons (see *M.H. v. Cyprus* (dec.), no. 41744/10, § 14, 14 January 2014, and *M.Is. v. Cyprus* (dec.), no. 41805/10, § 20, 10 February 2015). In *Sharifi and Others* (cited above), the Court struck the application out of its list with regard to some of the applicants in respect of whom the information provided by the lawyer was

vague and superficial and insufficiently substantiated (§§ 127-29 and 131-34).

25. In the present case, following the Court's request to be informed whether the applicant's representative was still in contact with his client, the latter has replied that the "last message received by his client dated back to autumn 2017 and that the applicant's mobile phone number was no longer operating". The Court also notes that the representative has not insisted that the Court would nonetheless continue the examination of the present application (see, *a contrario*, *V.M. and Others*, cited above, § 32).

26. Having regard to the foregoing and in accordance with Article 37 § 1 (a) of the Convention, the Court has to conclude that the applicant does not intend to pursue his application. It also considers that no particular circumstance relating to respect for the rights guaranteed by the Convention or its Protocols requires it to continue the examination of the application pursuant to Article 37 § 1 *in fine*.

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 8 October 2020.

Renata Degener  
Deputy Registrar

Pere Pastor Vilanova  
President