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

THIRD SECTION

DECISION

Application no. 41252/16
Teufik KAZIĆ and Others
against Sweden

The European Court of Human Rights (Third Section), sitting on 29 November 2016 as a Chamber composed of:

Luis López Guerra, *President*,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 July 2016,

Having deliberated, decides as follows:

THE FACTS

1. The first applicant is Mr Teufik Kazić, the second applicant is his wife, Mrs Nafa Kazić, and the third applicant is their son, Mr Admir Kazić. They are nationals of Bosnia and Herzegovina and were born in 1968, 1970 and 1997 respectively. They are currently in Sweden. They were represented before the Court by Mr M. Eklöf, a lawyer practising in Växjö.

A. The circumstances of the case

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

3. In December 2012 the applicants applied for asylum in Sweden. They submitted essentially that the third applicant could not receive the necessary

neuropediatric care in their home town, Bihać, in Bosnia and Herzegovina. They submitted that he suffered from epilepsy and had issues with his head and legs. Up until six to seven years earlier there had been a specialist physician in Bihać but after that time he had had to go to Republika Srpska for health care. No physician in the country had been willing to prescribe medicine as there was no specialist in their home town to issue a certificate. There was also no physiotherapy available in Bosnia and Herzegovina. Moreover, the third applicant had been bullied and humiliated because of his handicap and, on one occasion, the second applicant had been threatened when she had wanted to stay with the third applicant at a hospital. The first applicant also alleged that on one occasion in Republika Srpska he had been assaulted and the windshield of his car had been smashed because he was a Muslim. The applicants submitted their passports and a medical certificate concerning the third applicant.

4. On 24 April 2013 the Migration Agency (*Migrationsverket*) rejected their applications. Firstly, it found that the applicants could turn to the domestic authorities for protection if they were subjected to threats or ill-treatment by private individuals in the future. The Agency further noted that according to the medical certificate the third applicant had difficulties with his daily routines and that, according to his mother, he had been having epileptic attacks since he was two and a half years old. He received medication and the health-care authorities were examining whether he suffered from a developmental disorder. The Agency concluded that the third applicant's health conditions were not serious enough to grant him a residence permit. He had received health care and medication in Republika Srpska, which was part of Bosnia and Herzegovina, and there was no indication that it would not be possible for him to receive health care in his home country in the future. The applicants' applications were therefore rejected and their expulsion to Bosnia and Herzegovina was ordered.

5. The applicants appealed against the decision to the Migration Court (*Migrationsdomstolen*), maintaining their claims and adding that the third applicant suffered from several disabilities for which he required regular care to manage his daily life. The measures which had been put in place in Sweden were beneficial to him.

6. On 6 May 2014 the Migration Court rejected the appeal, upholding the reasoning of the Migration Agency. It noted that according to the available country information, the family could rely on the protection of the authorities in their home country. The court further observed that the third applicant suffered from epilepsy, kyphosis, discreet scoliosis, cerebral palsy and a moderately difficult mental development disorder for which he was in need of medical treatment and constant supervision and care. However, his condition was not life-threatening and he had lived with his condition for sixteen years in his home country where he had received specialist medical treatment and care.

7. Upon further appeal by the applicants, the Migration Court of Appeal (*Migrationsöverdomstolen*) refused leave to appeal on 8 July 2014.

8. Subsequently, the applicants requested that the Migration Agency stay the enforcement of the expulsion order as there were impediments due to the third applicant's health problems, the lack of special schools in Bosnia and Herzegovina and the fact that his sister lived in Sweden. Several medical certificates were submitted which, *inter alia*, stated that in March 2014 the third applicant had undergone orthopaedic surgery which required several months of rehabilitation. If the rehabilitation were to be interrupted, he would run the risk of not regaining the ability to walk, which he had been able to do prior to the surgery.

9. On 26 November 2014 the Migration Agency granted the applicants temporary residence permits for one year. It held that there were temporary impediments to the applicants' expulsion due to the third applicant's age, his need for rehabilitation after the surgery and the consequences for his health if the rehabilitation were to be interrupted. It further noted that if the third applicant needed additional rehabilitation after a year, he could submit a new application for a further stay of enforcement of the expulsion order.

10. In November 2015 the applicants submitted a new request to the Migration Agency to stay the enforcement of the expulsion order. They stated that the third applicant was in need of further surgery and extensive and long-lasting rehabilitation owing to his kyphosis. They relied on additional medical certificates which, *inter alia*, indicated that the third applicant's kyphosis had worsened and that he was deemed to be in need of surgery in the coming years.

11. On 7 April 2016 the Migration Agency rejected the request. It found that it had not been shown that the third applicant's health condition was of such a nature that it would not be possible to enforce the expulsion order. The Agency noted that the third applicant had become an adult and consequently the more generous rule applicable to children, which had previously been applied to him, was no longer applicable. Moreover, it observed that the medical certificates did not support the conclusion that the third applicant's condition was acute, that he was in immediate need of additional surgery or that the medical care in question could be expected to lead to a substantial and permanent improvement in his condition or be of a life-saving nature. Furthermore, the previous rehabilitation, after the surgery in March 2014, was deemed to have been completed. The Agency therefore concluded that the third applicant's health condition could not be considered as being so extremely serious that it would be unreasonable to enforce the expulsion order against him.

12. Subsequently, the applicants again renewed their request for a stay of the enforcement of the expulsion order. They submitted more medical documents, including one from a physician in Bosnia and Herzegovina stating that the third applicant's case was complicated and that it would not

be possible to perform all the surgery he needed there owing to his health complications.

13. On 27 May 2016 the Migration Agency rejected the request, with essentially the same reasoning as in its previous decision. It noted that the medical document from the physician in Bosnia and Herzegovina did not show that the third applicant had no possibility to receive the necessary health care in his home country.

14. Another request by the applicants for a stay of enforcement of the expulsion order was rejected by the Migration Agency on 5 July 2016, with essentially the same reasoning as in its previous decisions.

15. On 14 July 2016 the applicants lodged their application with the Court and requested that it apply Rule 39 of the Rules of Court. On 4 August 2016 the duty judge rejected the request for interim measures.

B. Relevant domestic law and practice

1. Sweden

16. The basic provisions applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the Aliens Act (*Utlänningslagen*, 2005:716). It defines the conditions under which an alien can be deported or expelled from the country, as well as the procedures relating to the enforcement of such decisions.

17. Chapter 5, section 1, of the Aliens Act sets out that an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. According to Chapter 4, section 1, the term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on the grounds of race, nationality, religious or political beliefs, or on the grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, section 2).

18. Moreover, if a residence permit cannot be granted on the above grounds, a permit may nevertheless be issued to an alien if, after an overall assessment of his or her situation, there are such particularly distressing circumstances (*synnerligen ömmande omständigheter*) as to allow him or

her to remain in Sweden (Chapter 5, section 6). During this assessment, special consideration should be given to, *inter alia*, the alien's state of health. According to the preparatory works (Government Bill 2004/05:170, pp. 190 and 280), life-threatening physical or mental illness may be a reason to grant a residence permit in Sweden. However, regard must be had to whether it is reasonable that the required care is provided in Sweden or whether adequate care can be provided in the alien's country of origin. Moreover, the care provided in Sweden must be expected to lead to an evident and enduring improvement in the alien's health or be necessary for his or her survival.

19. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, section 1). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, section 2).

20. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This is the case where new circumstances have emerged which indicate that there are reasonable grounds for believing, *inter alia*, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced (Chapter 12, section 18). If a residence permit cannot be granted under this criterion, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, sections 1 and 2, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not having done so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, section 19).

2. Bosnia and Herzegovina

21. Domestic laws on health care (published in the Official Gazette of FBiH, no. 46/10, and in the Official Gazette of RS, no. 106/09, 44/15) provide for a right to health care, on an equal basis, to persons with disabilities, and provide for specific forms of health care for such persons.

22. As concerns social protection, domestic laws provide for the preferential employment of persons with disabilities, professional rehabilitation, as well as training and the employment of individuals with disabilities and a lowered work capacity. Moreover, it enables persons with

disabilities to obtain financial and material support for the purpose of equal opportunities, including the right to the care and assistance of others for persons with the most serious forms of disability, or persons who need assistance with undertaking their basic life needs (see the Law on professional rehabilitation and employment of individuals with a disability, published in the Official Gazette of FBiH, no. 9/10 and in Official Gazette of RS, no. 37/12, 82/15; the Law on mediation in employment and the social security of unemployed individuals, published in the Official Gazette of FBiH, no. 55/00, 41/01, 22/05 and 9/08; the Law on mediation in employment and on rights during unemployment, published in the Official Gazette of RS, no. 30/10, 102/12; the Law on the foundations of social protection, the protection of civilian victims of war and the protection of families with children, published in the Official Gazette FBiH, no. 36/99, 54/04, 39/06, 14/09; and the Law on social protection, published in the Official Gazette of RS, no. 37/12).

23. Legislation relating to education contains principles on the prohibition of discrimination of persons with disabilities and on the provision of equal opportunities for education through inclusive education or the establishment of special institutions (see, for example, the Framework Law on pre-school upbringing and education in Bosnia and Herzegovina, published in the Official Gazette of BiH, no. 88/07; the Framework Law on elementary and high school education in Bosnia and Herzegovina, published in the Official Gazette of BiH, no. 18/03, 88/07; and the Framework Law on higher education in Bosnia and Herzegovina, published in the Official Gazette of BiH, no. 59/07 and 59/09).

COMPLAINTS

24. The applicants complained under Article 3 of the Convention that it would be inhuman to expel them from Sweden to their home country since the third applicant would not be able to receive the necessary treatment for his health conditions there. Invoking Article 5 of the Convention, they further argued that the third applicant would not be safe in Bosnia and Herzegovina. Lastly, they complained under Article 6 of the Convention that their right to a fair trial had been violated as no appeal lay against the Migration Agency’s decisions concerning a stay of the enforcement of the expulsion order.

THE LAW

A. The applicants' complaint under Article 3 of the Convention

25. The applicants complained that their rights under Article 3 of the Convention would be violated if they were expelled. This provision reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

26. The Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, *inter alia, Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012; *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; and *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, Series A no. 94, p. 34, § 67). However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In those circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008).

27. The assessment of the existence of a real risk must necessarily be a rigorous one (*Chahal v. the United Kingdom*, 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 96, and *Saadi v. Italy*, cited above, § 128).

28. Moreover, aliens who are subject to expulsion cannot, in principle, claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. The fact that an applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of Article 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in exceptional cases, where the humanitarian grounds against the removal are compelling (see, *N. v. the United Kingdom* [GC], no. 26565/05, § 42, 27 May 2008).

29. In the present case, the Court observes that the applicants' request for asylum and requests for a stay of the enforcement of the expulsion order were carefully examined by the domestic authorities. There are no indications that those proceedings lacked effective guarantees to protect the

applicants against arbitrary *refoulement* or were otherwise flawed. In particular, the Court notes that the applicants were granted a temporary residence permit for one year to enable the third applicant to undergo rehabilitation following his surgery.

30. Moreover, while the Court acknowledges the seriousness of the third applicant's health problems and the hardships he suffers as a consequence, it notes that he is now an adult and that his health condition is not such that it would be impossible to execute the expulsion order. Furthermore, as noted by the domestic authorities, his condition is not acute and he is not in immediate need of surgery. There is also no available cure for his health problems, even if he were to remain in Sweden.

31. In that connection, the Court observes that, according to the available information (see above paragraphs 21-23), health care and various arrangements aimed at assisting individuals with disabilities are accessible in Bosnia and Herzegovina. It has not been shown that the health care the applicant may need in the coming years would not be available to him in his home country. The Court further notes that the applicant lived with his health problems for about fifteen years in his home country and benefited from the necessary health care. He also receives continuous, extensive assistance from his parents. As set out above, the fact that the third applicant's circumstances in Bosnia and Herzegovina may be less favourable than those he enjoys in Sweden cannot be regarded as decisive from the point of view of Article 3 of the Convention (see above paragraph 28). Moreover, since Bosnia and Herzegovina is a Contracting Party to the Convention, the applicants can lodge an application with the Court if, upon their return, they consider that their rights under the Convention are not being protected by that State.

32. Lastly, despite the seriousness of the third applicant's health problems, the Court considers that they cannot be compared to the kind of serious suffering which needs to be established in order for a condition to reach the high threshold set by Article 3 of the Convention, particularly where the case does not concern the direct responsibility of the Contracting State for the possible harm. For that reason the Court does not find that it would be contrary to Article 3 if the applicants were to be expelled to Bosnia and Herzegovina. In the Court's view, the present case does not disclose the very exceptional circumstances established by its case-law (see, among others, *D. v. the United Kingdom*, 2 May 1997, § 54, *Reports* 1997-III; compare also with *Ghali v. Sweden* (dec.), no. 74467/12, 21 May 2013, which concerned the expulsion to Lebanon of a child who suffered from the neurological disease hereditary spastic paraplegia; and *Hukic v. Sweden* (dec.), no. 17416/05, 27 September 2005, which concerned the expulsion to Bosnia and Herzegovina of a child who suffered from Down's syndrome and epilepsy).

33. Consequently, the Court finds that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. The applicants' other complaints

34. Invoking Article 5 of the Convention, the applicants submitted that if they were expelled the third applicant would not be safe. They also complained under Article 6 that their right to a fair trial had been violated as it was not possible to appeal against the Migration Agency's decisions concerning a stay of the enforcement of the expulsion order.

35. The Court finds that the complaint under Article 5 of the Convention does not fall within the ambit of that provision since the applicant has not been deprived of his liberty within the meaning of Article 5 and there is no indication that he would be if he were to be returned to his home country. Moreover, it notes that Article 6 of the Convention is not applicable in expulsion cases (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X).

36. It follows that this part of the application is incompatible *ratione materiae* and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 20 December 2016.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President