



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

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THIRD SECTION

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AVS/TKO/ezi

21 May 2010

BY FAX AND MAIL (Fax no.: +31 30 233 11 50
Total no. of pages: 2)

Application no. 15112/10

v. the Netherlands

Dear Sir,

I acknowledge receipt on 17 May 2010 of your fax of 14 May 2010 requesting the European Court of Human Rights once more under Rule 39 of the Rules of Court to indicate to the Government of the Netherlands not to expel the applicant to Burundi.

As regards that part of your request in which you once more allege a real risk of treatment contrary to Article 3 of the Convention, I should inform you that in the absence of any relevant new elements, it will not be submitted to the President of the Section for a fresh decision.

As regards that part of your request in which you allege that in the given circumstances the applicants, including their children run a real risk of being put out on the street in the Netherlands and left to their own devices, on 18 May 2010 the President of the Chamber to which the case has been allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of the Netherlands, under Rule 39 of the Rules of Court, that the applicants should not be expelled to Burundi until 9 June 2010.

The parties' attention is drawn to the fact that failure of a Contracting State to comply with a measure indicated under Rule 39 may entail a breach of Article 34 of the Convention. In this connection, reference is made to paragraphs 128 and 129 of the Grand Chamber judgment of 4 February 2005 in the case of *Mamatkulov and Askarov v. Turkey* (applications nos. 46827/99 and 46951/99) as well as point 5 of the operative part.

The President also decided to request you, under Rule 54 § 2 (a) of the Rules of Court, to submit the following information:

When and in what manner, if at all, did you officially request the Government for any measures to be taken to provide the children with adequate shelter pending their expulsion? Did you make reference in any such request to the European Committee of

Social Rights' decision on the merits of 20 October 2009 in the case of *Defence for Children International (DCI) v. the Netherlands*, to which you also referred in your request to this Court? In what way, if any, did the Government react?

You are requested to submit this information by 4 June 2010.

The President also decided to request the Government, under Rule 54 § 2 (a) of the Rules of Court, to submit the following information:

1. When do the Government intend to expel the applicants and their children, considering that it is the Court's understanding that the applicants' social benefits and other allowances have been terminated? In the light of the European Committee of Social Rights' decision on the merits of 20 October 2009 in the case of *Defence for Children International (DCI) v. the Netherlands*, in what manner have the Government, if at all, assured that the applicants' children are being offered adequate shelter pending their expulsion?

2. From the information presented to the Court by counsel for the applicants it would appear that the minor children of the applicants currently hold, in their own names, valid residence permits until 2015 for the purpose of "continued residence" (*voortgezet verblijf*), whereas their parents have been definitely refused residence in the Netherlands by decision of 17 February 2010 by the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*). Would the Government confirm the above information and, if so, comment on what, if any, consequences it might have on the issues raised in the above question?

The Government have been asked to submit this information by 4 June 2010. Their reply will be communicated to you for information.

Lastly, I should note that what appears to be your understanding of the grounds for refusal of your initial request under Rule 39 of the Rules of Court, which decision was taken by the President on 21 April 2010, is not correct. Contrary to what you appear to suggest, your request was not refused due to an absence of an immediate danger to life and limb. The request was refused on its individual merits. The telephonic enquiry made by one of the Court's employees did indeed relate to the urgency of your request, but was made for purposes of streamlining and prioritising the Court's heavy case load in this regard. It had no bearing whatsoever on the later refusal.

The President decided to give priority to the application under Rule 41.

Please inform me of any change in your address or those of your clients.

Yours faithfully,

S. Naismith

S. Naismith
Deputy Section Registrar