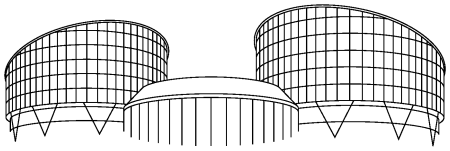

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF S.D.M. AND OTHERS v. THE NETHERLANDS

(Application no. 8161/07)

JUDGMENT

STRASBOURG

12 January 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of S.D.M. and Others v. the Netherlands,

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

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Helen Keller,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 15 December 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 8161/07) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Afghan nationals, Mr S.D.M. ("the first applicant") and Ms M.A. ("the second applicant") and their child O.M. ("the third applicant").

2. They were represented before the Court by Mr M. Wijngaarden, a lawyer practising in Amsterdam. The Netherlands Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, and Deputy Agent, Ms L. Egmond, of the Ministry of Foreign Affairs.

3. The applicants complained under Articles 2 and 3 of the Convention that their expulsion to Afghanistan would expose them to a real risk of death, torture or inhuman or degrading treatment.

4. On 19 February 2009 the President of the Section to which the case had been allocated communicated the application to the Government. The President further decided that the applicants' identity should not be disclosed to the public (Rule 47 § 4). The Government submitted written observations on 15 September 2009 and the applicants submitted observations in reply on 18 December 2009. The Government submitted further observations on 16 February 2010. On 1 October 2013, the parties were requested to submit additional written observations on the admissibility and merits. The Government submitted these on 4 November 2013 and the applicant on 26 November 2013.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1969, 1975 and 2002 respectively. They have been residing in the Netherlands since 1996.

6. The first applicant entered the Netherlands and applied for asylum on 10 March 1996, submitting the following account to the immigration authorities. He stated that he was a single Afghan national of Tajik origin, that he had never joined a political party, and that he had worked from 1988 to 1992 for the Afghan security service *Khadimat-e Atal'at-e Dowlati / Wezarat-e Amniyat-e Dowlati* ("KhAD/WAD")[1] of the former communist regime in Afghanistan.

7. In 1988 he had reported for compulsory military service. In response to his request to be posted close to home, he had been assigned to the KhAD/WAD in Herat. After his basic training, which had lasted three months, he had started to work for Department 5 of the KhAD/WAD in Herat, which – under President Najibullah's national reconciliation policy sought to establish peaceful relations with the mujahideen and their reintegration into Afghan national institutions – did not combat the mujahideen opposition but sought to try to negotiate with and persuade mujahideen groups to conclude peace agreements. These agreements entailed remunerated cooperation with the ruling communist People's Democratic Party of Afghanistan ("PDPA").

8. In the first year and as a conscript, he had performed guard duties and certain administrative tasks, such as making propaganda posters for the PDPA's national reconciliation policy, taking minutes of meetings, copying information from reports into books to be held in the central archives, and collecting and recording neighbourhood reports.

9. After having worked for a year for the KhAD/WAD as a conscript, he had agreed to become a professional soldier. He had been appointed to the rank of Second Lieutenant ("*Doham Bridman*"). His activities had consisted mainly of administrative duties relating to the processing of information gathered by more senior officers about mujahideen commanders. He had worked for the KhAD/WAD until April 1992, when he left work after the communist Najibullah regime was overthrown by the mujahedin. Shortly after they had seized power, the mujahideen proclaimed an amnesty for persons who had worked for the KhAD/WAD. He had returned to work, had been given other tasks and had worked for the mujahideen until 18 or

[1] Between 1978 and 1992 Afghanistan had a communist regime. It had an intelligence and secret police organisation called *Khadamat-e Aetela'at-e Dawlati* (State Intelligence Agency), better known by its acronym KhAD, which became *Wizarat-i Amaniyyat-i Dawlati* (Ministry for State Security), known as WAD, in 1986.

19 January 1996, when the Taliban seized power in Herat. Until that moment, Herat had been governed by a commander who, like the applicant, was of Tajik origin. One day after the arrival of the Taliban in Herat in the second half of January 1996 and fearing for his life, the first applicant had fled to Turkmenistan from where he had travelled by air to the Netherlands.

10. On 12 September 1996, the Deputy Minister of Justice (*Staatssecretaris van Justitie*) rejected the asylum claim then made by the first applicant, holding that he had failed to establish personal circumstances warranting a decision to grant him asylum. The mere fact that he belonged to the Tajik ethnic minority did not suffice in that respect. Although the Deputy Minister acknowledged that it was not unlikely that former KhAD staff members might experience problems from the new Government in Afghanistan, she found this not to be the case as regards the first applicant, as he had continued working for the Afghan authorities during the rule of the mujahideen from 1992 to 1996 without experiencing any problems. The Deputy Minister further considered it unlikely that the Taliban were or would become aware of the first applicant's past professional activities for the former communist regime.

11. The Deputy Minister of Justice did, however, grant the first applicant a conditional residence permit (*voorwaardelijke vergunning tot verblijf*), valid for one year from 10 March 1996, on the basis of the unabated bad situation ("*onverminderd slechte situatie*") in Afghanistan.

12. On 11 October 1996, the first applicant submitted an objection (*bezwaar*) to the Deputy Minister against the decision to reject his asylum request. On 11 December 1996, the Deputy Minister rejected the objection. Although the first applicant could have appealed to the Regional Court (*rechtbank*) of The Hague, he did not do so.

13. On 4 June 1998, the first applicant made a second asylum claim, which pursuant to article 4:6 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*) had to be based on newly emerged facts and/or altered circumstances ("*nova*") warranting a reconsideration of the initial refusal. The new elements on which the first applicant based his fresh asylum request were his relationship with a woman in 1993 in Afghanistan out of which a child might have been born, his past work for the KhAD, and various documents, including a copy of a judgment handed down in October/November 1995 in which a Taliban Islamic Court in Herat - in proceedings held *in absentia* – had convicted the first applicant and seven others of conspiracy against the Taliban and sentenced them to death. For identification purposes, photographs of the convicts, including the first applicant, were appended to this judgment. The first applicant had only learned about the existence of this judgment on 26 November 1997, thus after his flight from Afghanistan, when his mother had sent him the judgment by mail from Iran, where she had gone for medical reasons. The first applicant did not know how or when his mother had obtained the

judgment, but he assumed that it had been put up around his neighbourhood at some point in time, as local custom prescribed. The first applicant had also been informed, in a letter from his mother, that his brother had been captured and tortured in order to locate him. The first applicant further submitted on 11 September 1998 a detailed written account of his activities for the KhAD.

14. Meanwhile, in March 1999, the situation in Afghanistan not having sufficiently improved, the first applicant's conditional residence permit was *ex lege* converted into an indefinite residence permit after he had held it for a period of three years.

15. In her decision of 28 February 2001, after the first applicant had been interviewed again by the immigration authorities during which he stated *inter alia* that he had held the rank of First Lieutenant in the KhAD, the Deputy Minister rejected the first applicant's second asylum claim and, considering that there were serious reasons for believing that the first applicant was guilty of acts referred to in Article 1F of the 1951 Geneva Convention Relating to the Status of Refugees (the 1951 Refugee Convention), applied this asylum exclusion clause.

16. Referring to an official report, drawn up on 29 February 2000 by the Netherlands Ministry of Foreign Affairs on "Security Services in Communist Afghanistan (1978-1992), AGSA, KAM, KhAD and WAD" ("*Veiligheidsdiensten in communistisch Afghanistan (1978-1992), AGSA, KAM, KhAD en WAD*") and concerning in particular the question whether, and if so which, former employees of those services should be regarded as implicated in human rights violations (see *A.A.Q. v. the Netherlands* (dec.), no. 42331/05, §§ 50-52, 30 June 2015), the Deputy Minister emphasised the widely known cruel character of the KhAD/WAD, its lawless methods, the grave crimes it had committed such as torture, murder, arbitrary executions and other human rights violations, and the climate of terror which it had spread throughout the whole of Afghan society, including the army.

17. Having established, on the basis of elaborate argumentation based on various international documents, that those involved in the KhAD/WAD were likely to fall within the scope of Article 1F of the 1951 Refugee Convention, the Deputy Minister proceeded to an analysis of the first applicant's individual responsibility under that Convention. She noted that the KhAD/WAD was considered to be an elite unit of the communist regime, and that only those whose loyalty was beyond doubt were eligible for recruitment to the service. Furthermore, newly recruited officers were initially placed in departments of the KhAD/WAD specifically responsible for investigating "elements of State security", where – in order to prove their loyalty unequivocally – they were directly involved in the human rights violations. In the light of the above, and noting that KhAD's Directorate 5, for which the first applicant had worked in Herat, had two interrogation centres in Kabul, the first applicant's plea that he had never

been involved in any human rights violations and had worked his whole career for one department only was dismissed. The Deputy Minister dismissed the first applicant's claim that he had only performed tasks of an administrative nature. The Deputy Minister found, on the basis of the first applicant's statements, that he had actually been involved in activities of an operational nature: persuading enemies of the regime to cooperate by accompanying his superiors on field missions and taking minutes of meetings that had taken place between the KhAD and those enemies, namely the mujahideen. The Deputy Minister did not attach credence to the first applicant's claim that he had been ignorant of the human rights violations committed by the KhAD/WAD. In this regard it was held that the first applicant had worked directly for the commanders in chief of his Directorate and had accompanied them on field missions. It was therefore highly implausible that he would have had no knowledge whatsoever of the human rights violations for which the KhAD/WAD was responsible. The Deputy Minister held that it should be concluded from the first applicant's functions and work effected for the KhAD/WAD that he had been specifically implicated in the human rights violations committed by the KhAD/WAD.

18. The Deputy Minister underlined that the application of Article 1F of the 1951 Refugee Convention did not require proof of personal commission by the first applicant of the alleged crimes; it sufficed that serious reasons existed to consider that the first applicant had, or should have had, knowledge of those crimes and that he bore responsibility for them, which responsibility he had voluntarily assumed. Accordingly, Article 1F of the 1951 Refugee Convention was held against the first applicant, and as a consequence his application for a residence permit for asylum purposes was denied.

19. The Deputy Minister also revoked the first applicant's residence permit, which he had obtained by the Deputy Minister's decision of 12 September 1996. It was held in this regard that the first applicant had not given a correct and full insight into his past activities, which, had he done so, would have stood in the way of issuing him the residence permit he had been granted.

20. The Deputy Minister further requested the Public Prosecutor's Office (*Openbaar Ministerie*), by letter of 28 February 2001, to examine the possibilities of prosecuting the first applicant in the Netherlands for the crimes imputed to him on the basis of Article 1F of the 1951 Refugee Convention. The Deputy Minister sent another letter to the same effect on 12 February 2003. No further information about the follow-up to these letters has been submitted.

21. On 27 March 2001, the first applicant submitted an objection (*bezwaar*) to this decision. On 20 December 2002, the first applicant was heard on his objection before an official board of enquiry (*ambtelijke*

commissie). On 12 February 2003, the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie*) rejected the objection. The Minister upheld the Deputy Minister's previous decision and proceeded, in addition thereto, to an analysis of the first applicant's individual responsibility under the 1951 Refugee Convention on the basis of the prescribed and so-called "knowing and personal participation test".

22. As regards the "knowing" element, the Minister found, relying on the aforementioned official report of the Ministry of Foreign Affairs, that the first applicant had known or should have known about the criminal character of the KhAD/WAD. Basing himself on the Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*), the Minister held that, according to a letter of the Deputy Minister of Justice of 3 April 2000, knowing participation was in principle to be assumed in cases of persons who had worked for certain categories of organisations, to which the KhAD/WAD belonged. Having regard to the official report of 29 February 2000 (see paragraph 17 above) and other international materials, the Minister considered that the systematic and large-scale commission of human rights violations by KhAD/WAD under the PDPA's rule was a fact of common knowledge and that therefore the first applicant could not have been ignorant of those acts. The first applicant's argument that, given his low rank, he had had no knowledge of and could not be held responsible for human rights violations attributed to the KhAD/WAD, was thus not accepted by the Minister, who emphasised that the first applicant had declared that everyone had feared the regime and that he had successfully found an administrative post during his mandatory military service. The Minister found that, by admitting to the ubiquitous fear of the regime, the first applicant had admitted to having known of atrocities committed by that regime. As regards the first applicant's personal participation in human rights violations attributed to KhAD, the Minister found that he had failed to establish that he had not committed the alleged crimes himself or that his conduct, by act or omission, had prevented those crimes from being committed. The Minister held, therefore, that the first applicant had personally participated in the crimes imputed to him.

23. Although the Minister considered that it could not be ruled out that the first applicant would run a risk of treatment contrary to Article 3 of the Convention if he were expelled to Afghanistan, it was nevertheless held that he was under an obligation to leave the Netherlands.

24. The Minister lastly found that the first applicant was not eligible for a residence permit under the three-year policy (this was a policy entitling asylum-seekers to a residence permit if their asylum requests had not been finally determined within three years, provided that there were no contraindications such as, for instance, a criminal record) as Article 1F of the 1951 Refugee Convention had been held against him, which constituted a contraindication.

25. The first applicant's objection to the refusal to grant a residence permit under the three-year policy was rejected by the Minister on 17 April 2003.

26. Meanwhile, the second applicant had joined the first applicant in the Netherlands. She was granted a residence permit for the purpose of residing with her husband on 30 March 2000, thus at a time when the first applicant still held his provisional residence permit.

27. On 16 March 2001 the Deputy Minister of Justice also revoked the second applicant's residence permit, as it was linked to the first applicant's residence permit, which had been revoked. The second applicant submitted an objection to this decision. The Minister of Immigration and Integration rejected the second applicant's objection on 12 February 2003. Meanwhile, on 8 November 2002, the second applicant had given birth to the third applicant.

28. Both the first and second applicants appealed to the Regional Court (*rechtbank*) of The Hague against the decisions taken against them, namely, as regards the first applicant, the Minister's decisions of 12 February and 17 April 2003 and, as regards the second applicant, the Minister's separate decision of 12 February 2003.

29. The Regional Court joined both applicants' appeals and, in its judgment of 26 May 2005, agreed with the Minister's decision and underlying reasoning to hold Article 1F of the 1951 Refugee Convention against the first applicant and the consequential decisions to revoke the residence permits held by the first and second applicants. However, as regards Article 3 of the Convention and with reference to case-law of the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State, it held that the Minister should, wherever possible, avoid creating a situation in which an asylum seeker was refused a residence permit but could not be expelled to his or her country of origin for reasons based on Article 3 of the Convention. For that reason, the decision should demonstrate that the Minister had examined whether Article 3 of the Convention would lastingly (*duurzaam*) stand in the way of expulsion to the country of origin and of the possible consequences for the residence situation of the person concerned. This, the Regional Court found, the Minister had failed to do in the present case, for which reason it quashed all decisions appealed against as regards both the first and second applicants, and remitted the case to the Minister in order for her to take a fresh decision.

30. On 12 October 2005, in accordance with the court's judgment and after the first applicant, in view of the changed situation in Afghanistan, had been heard once more before an official board of enquiry on 24 August 2005, the Minister took a fresh decision on the objections submitted by the first and second applicants. She maintained her decisions that Article 1F should be held against the first applicant and that both applicants were accordingly ineligible for a residence permit.

31. As regards Article 3 of the Convention, the Minister noted that, according to an official report on Afghanistan issued by the Netherlands Ministry of Foreign Affairs in July 2005, certain categories of former officials – who were identified with human rights abuses committed during the communist regime, including KhAD officials – continued to be at risk in Afghanistan, not only from current power holders but more so from the population (families of victims) and the mujahideen, unless they enjoyed protection by virtue of good contacts with influential Islamic and political parties and/or tribes. To determine the level of risk, the official report enumerated a set of factors which would need to be balanced in each individual case: the extent to which the person in question was likely to be identified with communist ideology, his or her rank in the former regime, and the existence of any ties which family members might have with the former communist regime. The Minister noted that mere membership of the PDPA did not suffice to establish a real risk of being subjected to treatment in breach of Article 3 of the Convention.

32. The Minister went on to hold that the first applicant had not attracted the particular attention of any groups or individuals in the period prior to the coming to power of the Taliban. The Minister underlined in this regard that, after the fall of the PDPA regime, the first applicant had easily obtained a job in the local police headquarters for the mujahideen governor of Herat, Ismail Khan, who was currently the Minister for Energy in Afghanistan.

33. As regards the first applicant's fear of the Taliban, the Minister held that the general situation in Afghanistan had improved since 2004 and that any Taliban insurgents were concentrated mostly in areas outside Herat. As to the first applicant's fear of execution of the death sentence pronounced against him by the Taliban, the Minister held, basing herself on the most recent official report of the Netherlands Ministry of Foreign Affairs, that the population register, which had already been inaccurate, had not improved during Taliban rule due to illiteracy or a lack of interest in maintaining it. Furthermore, many courts of law had been destroyed during armed conflict. It was, therefore, not likely that the present authorities would be aware of the judgment against the first applicant. Moreover, judgments delivered under the Taliban rule were not executed without prior verification by a court of law of their compliance with current Afghan law. In this light the Minister did not attach much credence to the first applicant's submissions that his mother had not been allowed to collect her possessions in Afghanistan due to her son's conviction by the Taliban court. In addition, the Minister considered that it was unlikely that the first applicant would again be sentenced to death by Afghanistan's present courts, in view of the fact that the conviction had been based on an alleged conspiracy against the Taliban. The first applicant's submission that his being branded an infidel in the judgment could still have value before today's Afghan courts was dismissed by the Minister, who found that, under the Taliban regime, the

mere denunciation of the Taliban government in itself already constituted infidel status.

34. The Minister further noted, basing herself on a person-specific official report (*individueel ambtsbericht*) issued by the Ministry of Foreign Affairs on the first applicant on 19 September 2005, that in 1999 he had obtained an Afghan passport through Afghanistan's diplomatic representation in the United Kingdom. Since the United Kingdom had not recognised the Taliban as Afghanistan's lawful government, the Afghan embassy in the United Kingdom still represented the Government of President Burhanuddin Rabbani, who had been president from 1992 to 1996, thus until the capitulation of Kabul to the Taliban. The Minister took note of the fact that Mr Rabbani's political party, the *Jamiat-e-Islami*, was currently well represented in the present Afghan Government. As the first applicant had successfully applied for a passport from an embassy represented by that party, the Minister held that he could not have come to *Jamiat-e-Islami*'s negative attention. Moreover, the passport had been issued more than three years after the death sentence had been handed down. In addition, as it did not appear that the first applicant had converted to another religion or had in other ways offended Islam, the Minister did not find it likely that he would be deemed an infidel again in today's Afghanistan.

35. As regards the first applicant's identification in present-day Afghanistan with communist ideology, the Minister's finding that this did not pose him any problems during the mujahideen rule over the country led to the conclusion that he was unlikely to encounter such problems in the future. Furthermore, the first applicant had not made any mention, in the course of the interviews held with him, of any ties that members of his family may have had to the communist regime, nor of any problems he expected to encounter upon return as a result of any such ties.

36. The Minister therefore concluded that the first applicant had not demonstrated that he would be exposed to a real of being subjected to treatment contrary to Article 3 of the Convention if returned to Afghanistan.

37. The appeal by the first and second applicants was rejected on 18 August 2006 by the Regional Court of The Hague sitting in Arnhem. It concurred with the Minister on all points. No further appeal lay against this decision.

38. On 11 June 2008, after the first and second applicants' separation and divorce, the second and third applicants submitted a fresh asylum request, which was granted on 10 March 2009, based on the position that the second applicant, as a single woman, and her child would find themselves in on returning to Afghanistan.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. The relevant domestic policy, law and practice in respect of asylum seekers from Afghanistan against whom Article 1F of the 1951 Refugee Convention is being held have recently been summarised in *A.A.Q. v. the Netherlands* ((dec.), no. 42331/05, §§ 37-52, 30 June 2015).

III. RELEVANT INTERNATIONAL LAW AND INTERNATIONAL MATERIALS

A. The 1951 Refugee Convention

40. Article 1F of the 1951 Refugee Convention reads:

> "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

B. Execution of a death sentence in Afghanistan

41. According to information set out in the national report of 24 February 2009 (A/HRC/WG.6/5/AFG/1), submitted by the government of Afghanistan to the UN Human Rights Council and in the United Kingdom Home Office Country of Origin Information Report on Afghanistan of 8 May 2013, Article 129 of the Constitution of Afghanistan provides that the execution of a death sentence given by a court is subject to prior approval by the President.

C. Arrival of the Taliban in Herat

42. On 1 February 1997, the Immigration and Refugee Board of Canada published the "Chronology of Events January 1995 - February 1997", which contains the following passage in respect of events having taken place on 5 September 1995:

> "Herat city, Afghanistan's gateway to Iran, falls to the Taliban with little resistance from Jamiat governor Ismail Khan, who flees with his forces to the Iranian city of Mashhad (The Herald Sept. 1995, 68-69; IPS 25 Oct. 1995; Keesing's Sept. 1995a, 40728). ... The population of Herat, the first Farsi-speaking

city captured by the Taliban, is more sophisticated and religiously liberal than the Taliban are used to (ibid., 69). The population is quickly alienated by the Taliban's strict enforcement of the Shari'a, confinement of women to their homes, and closure of girls' schools (ibid.; IPS 25 Oct. 1995; UN 27 Feb. 1996, 15-16)."

43. The Netherlands daily newspaper *Trouw* reported on 9 September 1995:

"The fundamentalist student militia in Afghanistan, the Taliban, has once again achieved a major military success. Herat, a major city in the northwest of Afghanistan has fallen without a fight into the hands of the students. According to Afghan sources, in taking control, the rebels met with very little resistance. According to eyewitnesses, the students have taken possession of all the important buildings in the city. The troops of governor Ismail Khan, who until had been loyal to President Rabbani Burhannudin, have joined the rebels. ..."

D. United Nations High Commissioner for Refugees ("UNHCR")

44. In July 2003, the UNHCR issued an "*Update of the Situation in Afghanistan and International Protection Considerations*". This paper stated, in respect of persons associated or perceived to have been associated with the former communist regime, that:

"Some of the former military officials, members of the police force and Khad (security service) of the communist regime also continue to be generally at risk, not only from the authorities but even more so from the population (families of victims), given their identification with human rights abuses during the communist regime. When reviewing the cases of military, police and security service officials as well as high-ranking government officials of particular ministries, it is imperative to carefully assess the applicability of exclusion clauses of Article 1 F of the 1951 Geneva Convention. To some extent, many of these previous Afghan officials were involved, directly or indirectly, in serious and widespread human rights violations."

45. In May 2008, the UNHCR issued a "*Note on the Structure and Operation of the KhAD/WAD in Afghanistan 1978-1992*" in the context of the need to assess the eligibility for international protection for Afghan asylum-seekers who were members of KhAD/WAD. It provides information on the origins of the KhAD/WAD, its structure and staffing, linkages between these services and the Afghan military and militias, the distinction between operational and support services, and rotation and promotion policies within the KhAD/WAD. The Note did not express any views as to the question whether or not persons having worked for the KhAD/WAD should be regarded as being eligible for international protection.

46. In July 2009, the UNHCR issued Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan ("the July 2009 UNHCR Guidelines") and set out the categories of Afghans considered to be particularly at risk in Afghanistan in

view of the security, political and human rights situation in the country at that time. Those Guidelines stated, *inter alia*, the following:

> "Significant numbers of the former People's Democratic Party of Afghanistan (PDPA) – subsequently renamed Watan (Homeland) – members and former security officials, including the Intelligence Service (KhAD/WAD), are working in the Government. ...
>
> Former PDPA high-ranking members without factional protection from Islamic political parties, tribes or persons in a position of influence, who may be exposed to a risk of persecution, include the following: ...
>
> • former security officials of the communist regime, including KhAD members, also continue to be at risk, in particular from the population – e.g. families of victims of KhAD ill-treatment – given their actual or perceived involvement in human rights abuses during the communist regime.
>
> Former PDPA high-ranking members, or those associated with the commission of human rights violations during the former Communist regime, may also be at risk of persecution by mujaheddin leaders, and armed anti-Government groups. ...
>
> When reviewing the cases of military, police and security services officials, and those of high-ranking Government officials during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes, it is important to carefully assess the applicability of the exclusion clauses in Article 1F of the 1951 Convention. ...
>
> For individual cases of military officers of the Ministries of Defense and Interior and security services, it is relevant to assess their involvement in operations in which civilians have been subject to arrest, disappearances, torture, inhuman and degrading treatment and punishment, persecution and extrajudicial executions, ..."

47. On 17 December 2010, the UNHCR issued updated Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan ("the December 2010 UNHCR Guidelines"). Those Guidelines read, *inter alia*:

> "These Guidelines supersede and replace the July 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan. They are issued against a backdrop of a worsening security situation in certain parts of Afghanistan and sustained conflict-related human rights violations as well as contain information on the particular profiles for which international protection needs may arise in the current context in Afghanistan. ...
>
> UNHCR considers that individuals with the profiles outlined below require a particularly careful examination of possible risks. These risk profiles, while not necessarily exhaustive, include (i) individuals associated with, or perceived as supportive of, the Afghan Government and the international community, including the International Security Assistance Force (ISAF); (ii) humanitarian workers and human rights activists; (iii) journalists and other media professionals; (iv) civilians suspected of supporting armed anti-Government groups; (v) members of minority religious groups and persons perceived as contravening Shari'a law; (vi) women with specific profiles; (vii) children with specific profiles; (viii) victims of trafficking; (ix) lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals; (x) members of (minority) ethnic groups; and (xi) persons at risk of becoming victims of blood feuds. ...

> In light of the serious human rights violations and transgressions of international humanitarian law during Afghanistan's long history of armed conflicts, exclusion considerations under Article 1F of the 1951 Convention may arise in individual claims by Afghan asylum-seekers. Careful consideration needs to be given in particular to the following profiles: (i) members of the security forces, including KHAD/WAD agents and high-ranking officials of the communist regimes; (ii) members and commanders of armed groups and militia forces during the communist regimes; (iii) members and commanders of the Taliban, Hezb-e-Islami Hikmatyar and other armed anti-Government groups; (iv) organized crime groups; (v) members of Afghan security forces, including the NDS; and (vi) pro-Government paramilitary groups and militias. ..."

48. The December 2010 UNHCR Guidelines further state:

> "Members of the Security Forces, including KhAD/WAD agents and high-ranking officials of the Communist regimes, members of military, police and security services, as well as high-ranking Government officials during the Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah regimes, were involved in operations subjecting civilians to arrest, disappearances, torture, inhuman and degrading treatment and punishment, and extrajudicial executions. ...
>
> In this context, careful consideration needs to be given to cases of former members of Khadamate Ettelaate Dowlati (KhAD), the State Information Service. Although the functions of KhAD/WAD evolved over time, culminating in the coordination and undertaking of military operations following the withdrawal of Soviet troops in 1989, it also included non-operational (support) directorates at central, provincial and district levels. Information available to UNHCR does not link the support directorates to human rights violations in the same manner as the operational units. Thus, mere membership to the KhAD/WAD would not automatically lead to exclusion. The individual exclusion assessment needs to take into consideration the individual's role, rank and functions within the organization."

49. Persons having worked for the KhAD/WAD during the former communist regime were not included in the potential risk profiles set out in the December 2010 UNHCR Guidelines.

50. The most recent update of the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan was released on 6 August 2013 ("the August 2013 UNHCR Guidelines") and replaced the December 2010 UNHCR Guidelines. As in the latter guidelines, the August 2013 UNHCR Guidelines do not include persons having worked for the KhAD/WAD during the former communist regime in the thirteen cited potential risk profiles, but again state that, as regards Article 1F of the 1951 Refugee Convention, careful consideration needs to be given in particular to, *inter alia*, former members of the armed forces and the intelligence/security apparatus, including KhAD/WAD agents, as well as former officials of the Communist regimes.

51. The 2015 UNHCR country operations profile on Afghanistan reads in its relevant part:

> "It is anticipated that the newly-formed national unity Government will demonstrate commitment to creating an enabling environment for sustainable returns. The withdrawal of international security forces, as well as a complex

economic transition are, however, likely to affect peace, security and development in Afghanistan. Humanitarian needs are not expected to diminish in 2015. Support and assistance from the international community will be essential to ensure a transition towards more stable development.

The Solutions Strategy for Afghan Refugees (SSAR) remains the main policy framework for sustainable reintegration of those returning to Afghanistan. The National Steering Committee established in 2014 aims to facilitate the implementation and monitoring of the SSAR's initiatives.

Many returnees have migrated to towns and cities, contributing to the country's rapid urbanization. As rising poverty and unemployment in urban centres prevent them from reintegrating into society, many will need basic assistance. ...

Insurgency continues to spread from southern Afghanistan to large areas of the north and centre and is likely to remain a threat to stability in 2015. While violence may displace more people, insecurity is likely to continue restricting humanitarian access. Economic insecurity and the Government's limited capacity to provide basic services are also challenges. ...

Since 2002, more than 5.8 million Afghan refugees have returned home, 4.7 million of whom were assisted by UNHCR. Representing 20 per cent of Afghanistan's population, returnees remain a key population of concern to UNHCR. Refugee returns have dwindled during the past five years and owing to insecurity and a difficult socio-economic situation, only around 10,000 refugees returned during the first seven months of 2014.

In June 2014, following military operations in North Waziristan Agency, Pakistan, more than 13,000 families (some 100,000 people) crossed into Khost and Paktika provinces in south-eastern Afghanistan. Many of them settled within host communities, however approximately 3,300 families reside in Gulan camp, Khost province. A substantial number could remain in Afghanistan, despite expectations that an early return may be possible.

By mid-2014, 683,000 people were internally displaced by the conflict affecting 30 of the 34 Afghan provinces. More than half of Afghanistan's internally displaced people (IDPs) live in urban areas."

E. The European Asylum Support Office ("EASO") of the European Union

52. The "Country of Origin Information Report: Afghanistan – Insurgent strategies – intimidation and targeted violence against Afghans", published in December 2012 by the EASO deals with strategies used by the Taliban and other insurgent groups in Afghanistan to intimidate the local population. It points out that the ongoing conflict in Afghanistan is largely defined by historical underlying mechanisms: local rivalries, power play and tribal feuds. It further notes regional differences in this campaign of intimidation and targeted violence, which vary for the range of targeted profiles studied in the report, which include government officials and employees, Afghan National Security Forces, government supporters, collaborators and contractors, Afghans working for international military forces; Afghans

working for international organisations, companies and non-governmental organisations, civilians accused by the Taliban of being a spy, journalists, media and human rights activists, educational staff or students, medical staff, construction workers, truck drivers and those judged as violating the Taliban's moral code (for instance, prohibitions on shaving, women working outdoors, selling music and sweets or girls' education). This report does not mention persons having worked for the former communist armed forces of Afghanistan or intelligence service as a targeted profile.

53. In January 2015 the EASO released its "Country of Origin Information Report: Afghanistan - Security Situation". It reads, *inter alia*,:

> "The general security situation in Afghanistan is mainly determined by the following four factors: The main factor is the conflict between the Afghan National Security Forces, supported by the International Military Forces, and Anti-Government Elements, or insurgents. This conflict is often described as an "insurgency". The other factors are: criminality, warlordism and tribal tensions. These factors are often inter-linked and hard to distinguish.
>
> Several sources consider the situation in Afghanistan to be a non-international armed conflict. On 12 November 2014, the World Security Risk Index from the website Global Intake gave Afghanistan the second highest score (48), after Syria (59). Other conflict areas with high scores include: South Sudan (46); Iraq (45); Central African Republic (44); Somalia (41); Ukraine (38). ....
>
> The Taliban are insurgent groups that acknowledge the leadership of Mullah Mohammad Omar and the Taliban Leadership Council in Quetta, Pakistan. The Taliban leadership ruled Afghanistan between 1996 and 2001 and regrouped after it was ousted from power. The different groups have varying operational autonomy, but there is a governing system under the Leadership Council with several regional and local layers. They have a Military Council and a command structure with, at the lowest level, front commanders overseeing a group of fighters. The governing structure and military command is defined in the Taliban's Lahya or Code of Conduct.
>
> On 8 May 2014, the Taliban leadership announced that its spring offensive, called "Khaibar", would be launched on 12 May and would target "senior government officials, members of parliament, security officials, attorneys and judges that prosecute mujahideen, and gatherings of foreign invading forces, their diplomatic centres and convoys".
>
> ... the Taliban's core heartland is located in the south and their influence is strongest in the regions of the south-east and east, where they can count on support from affiliated networks. In terms of the Taliban's territorial control, there are only a limited number of districts under their full control, with most district administrative centres remaining under government control. However, outside these centres, there are varying degrees of Taliban control. They have exerted uninterrupted control over large swathes of territory, reaching from southern Herat and eastern Farah, through parts of Ghor (Pasaband), northern Helmand (Baghran and other districts), Uruzgan and northern Kandahar to the western half of Zabul (Dehchopan, Khak-e Afghan) and southern Ghazni.
>
> The Haqqani network is an insurgent network in the south-east of Afghanistan, with its origins in the 1970s mujahideen groups. Its leader, Jalaluddin Haqqani, has

attacked Afghan government officials since 1971. It is believed he fled to Pakistan in late 2001, where currently the network has its most important base in North Waziristan. Due to his age, he handed over the practical leadership to his son, Serajuddin Haqqani. Although the network has maintained an autonomous position, structure and its own modus operandi, it is considered part of the Taliban. It is known for various high-profile attacks on targets in Kabul city.

Hezb-e Islami Afghanistan (HIA) is an insurgent group led by Gulbuddin Hekmatyar. The group has the withdrawal of foreign troops as a goal, has conducted high-profile attacks in the capital, but has been more open to negotiation with the Afghan government than the Taliban. The latter criticise HIA for this and on occasions there has been fighting between both insurgent groups in different areas. On other occasions they have cooperated. HIA's strongholds are located in the east and south-east of Afghanistan, in the areas surrounding Kabul, in Baghlan and Kunduz. The group's major field commander is Kashmir Khan, who is active in eastern Afghanistan."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

54. The applicants complained that their removal to Afghanistan would violate their rights under Articles 2 and 3 of the Convention. Article 2 of the Convention provides that:

"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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

55. Article 3 of the Convention provides that:

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

56. The Government contested that argument.

A. Admissibility

57. The Court finds that it is more appropriate to deal with the complaint under Article 2 in the context of its examination of the related complaint under Article 3 and will proceed on this basis (see *J.H. v. the United Kingdom*, no. 48839/09, § 37, 20 December 2011).

1. The second and third applicant

58. To the extent that the application has been brought by the second and third applicants, the Court notes that they have both been granted asylum in the Netherlands on 10 March 2009 and thus no longer risk removal to Afghanistan. Reiterating the relevant principles as set out recently in *M.E. v. Sweden* ((striking out) [GC], no. 71398/12, §§ 32-35, 8 April 2015), the Court finds that, in respect of this part of the application, the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court has found no special circumstances relating to respect for human rights as defined in the Convention and its Protocols which require it to continue the examination of the application.

59. Accordingly, to the extent that the application has been brought by the second and third applicants, it is appropriate to strike this part of the application out of the list of cases.

2. The first applicant

60. The Court notes that notes that the application in so far as brought by the first applicant is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

61. The first applicant submitted, as regards the general situation in Afghanistan, that it continued to be fragile, that bombings and attacks were still the order of the day and that the general level of violence appeared to be increasing, including in the Herat area from where he originated. However, it was not his position that the general security situation in itself sufficed to establish a real risk under Article 3. It was rather his individual history which rendered him liable to a risk of treatment contrary to Article 3 in Afghanistan, namely his activities as a former KhAD/WAD officer, the fact that he was associated by the general public in Afghanistan with the former communist regime, the death sentence imposed on him, and his return to Afghanistan after living abroad for a long time.

62. Relying on the Court's case-law under Article 3 (*Ahmed v. Austria*, 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, and *Saadi v. Italy* [GC], no. 37201/06, ECHR 2008), the first applicant argued that, irrespective of the application of Article 1F of the 1951 Refugee Convention, his activities for the former communist regime could not be a material consideration on the basis of which an exception or a derogation on the absolute protection of Article 3 could be made.

63. The first applicant contended that it was not merely his activities within the KhAD/WAD which would render him liable to an Article 3 risk, although these activities – which were not in dispute – in themselves would already suffice to establish such a risk. The mere fact that he was associated with the former communist regime by the Afghan public corroborated the existence of this risk. He further emphasised that the authenticity of the judgment in which he had been sentenced to death had not been disputed in the domestic proceedings and thus should be accepted as authentic in the present proceedings before the Court. He further pointed out that the Taliban were still, if not increasingly, exercising considerable influence in Afghanistan, notably also in the area of Herat from where he originated. Consequently, the continuing presence and activities of the Taliban in the Herat region were conducive to him running a real risk of being treated by the Taliban in violation of Article 3 and this also diluted the idea that a death sentence needed to be endorsed by the President before it could be executed. Moreover, according to the first applicant, death sentences imposed under Sharia law did not require Presidential approval before being executed and, in areas controlled by the Taliban, extra-judiciary sentences by stoning had been carried out in 2011 and 2012.

64. As regards the issuing to him of a passport in 1999 through Afghanistan's diplomatic representation in the United Kingdom, the first applicant submitted that this was completely irrelevant for his claims under Article 3 as, at the time, the Afghan Embassy had hardly any contact at all with the Afghan government, and had only issued the passport because it was convinced that he was an Afghan national.

65. The first applicant lastly argued that, having been away from Afghanistan for such a long time and carrying with him his personal history, he would not be able to rely on the effective support from his own (extended) family, community or tribe. In this context, he pointed out that when he left Afghanistan he only had two family members in Herat, namely his mother, who died in 2005, and his brother, who died in 2008 and whose family were living in London. Consequently, he would not have access to shelter in Herat or elsewhere in Afghanistan.

66. The first applicant was therefore of the opinion that, if the above individual features were weighed cumulatively, it was clear that he would run a real risk in Afghanistan of being subjected to treatment contrary to Article 3 of the Convention.

67. The Government submitted, as regards the complaint brought under Article 3 by the first applicant, that he had not established that he would face a real risk of treatment as defined in Article 3 from the Taliban if returned to Afghanistan. On this point, the Government pointed out that immediately after the Taliban had taken control of Herat on 5 September 1995 without meeting resistance from the troops under the provincial governor Ismail Khan, the Taliban had started severely targeting those whom they considered to be conspiring against their regime. As indicated by him, the first applicant had left Herat in mid-January 1996. In the Government's opinion, is was quite significant that the first applicant had apparently been able to remain at home without encountering any problems with the Taliban in the period from 5 September 1995 until the day he had left Afghanistan in January 1996, whereas – according to a document submitted by him – he had been convicted *in absentia* and sentenced to death by the Taliban in October/November 1995. It could therefore not be said that the Taliban had been displaying a great interest in the first applicant during that period.

68. Further pointing out that since 2001 the Taliban had no longer been in power in Afghanistan and emphasising that the consent of the Afghan President was required for the execution of the death penalty, the Government contested the first applicant's argument that he would remain at risk of the death sentence imposed on him being carried out, the Government considered that the first applicant had failed to establish that, years after having left Afghanistan, he would have reason to fear treatment contrary to Article 3 by the Taliban.

69. The Government further submitted that there was nothing in the first applicant's asylum account indicating that he had ever encountered problems with the mujahideen and, after the former communist regime had been overthrown by the mujahideen, he had continued to live and work with the new regime in Herat. Furthermore, in February 1999, the Afghan Embassy in London had issued the first applicant with a passport. While the Taliban had at that time been in power in Afghanistan, the embassy had continued to be staffed by representatives of the former mujahideen government of Burhanuddin Rabbani. If the first applicant had attracted the adverse attention of the mujahideen at the time, they would not have issued him a passport. As Mr Rabbani's party, *Jamiat-e-Islami*, was well represented in the current Afghan government, the issuing to the first applicant of a passport indicated that he was not an object of suspicion in the eyes of the current central authorities of Afghanistan. The Government lastly submitted that, since December 2010, the UNHCR Guidelines no longer include ex-communists and former KhAD/WAD personnel among the "groups at risk" in Afghanistan.

70. Accordingly, the Government were of the opinion that the first applicant had failed to establish that on individual grounds he would have

reason to fear treatment contrary to Article 3 of the Convention in Afghanistan.

71. In respect of the current general security situation in Afghanistan, the Government submitted that although the security situation in Afghanistan still gave cause for great concern, it was not so poor that returning the first applicant to Afghanistan would in itself amount to a violation of the Convention. On this point, they referred, *inter alia*, to the Court's findings in the cases of *N. v. Sweden* (no. 23505/09, § 52, 20 July 2010); *Husseini v. Sweden*, (no. 10611/09, § 84, 13 October 2011); *J.H. v. the United Kingdom* (cited above, § 55); *S.H.H. v. the United Kingdom* (no. 60367/10, 29 January 2013); and *H. and B. v. the United Kingdom* (nos. 70073/10 and 44539/11, §§ 92-93, 9 April 2013). Further pointing out that both the International Organisation for Migration and the UNHCR were assisting Afghans who wished to return voluntarily to Afghanistan, the Government considered that the general security situation in Afghanistan was not such that for this reason the first applicant's removal to Afghanistan should be regarded as contravening Article 3.

2. The Court's assessment

(a) General principles

72. The Court reiterates at the outset that the Convention and its Protocols cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law of which they form part. Account should be taken, as indicated in Article 31 § 3 (c) of the 1969 Vienna Convention on the Law of Treaties, of "any relevant rules of international law applicable in the relations between the parties", and in particular the rules concerning the international protection of human rights (see *Marguš v. Croatia* [GC], no. 4455/10, § 129 with further references, ECHR 2014 (extracts)).

73. It also reaffirms that a right to political asylum and a right to a residence permit are not, as such, guaranteed by the Convention and that, under the terms of Article 19 and Article 32 § 1 of the Convention, the Court cannot review whether the provisions of the 1951 Refugee Convention have been correctly applied by the Netherlands authorities (see, for instance, *I. v. the Netherlands* (dec.), no. 24147/11, § 43, 18 October 2011).

74. The Court further observes that the Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, expulsion 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 concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3.

In such a case, Article 3 implies an obligation not to deport the person in question to that country. The mere possibility of ill-treatment on account of an unsettled situation in the requesting country does not in itself give rise to a breach of Article 3. Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence, except in the most extreme cases where the general situation of violence in the country of destination is of such intensity as to create a real risk that any removal to that country would necessarily violate Article 3.

The standards of Article 3 imply that the ill-treatment the first applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case. Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection.

Finally, in cases concerning the expulsion of asylum-seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the 1951 Refugee Convention. It must be satisfied, though, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see *M.E. v. Denmark*, no. 58363/10, §§ 47-51 with further references, 8 July 2014).

75. As regards the material date, the existence of such risk of ill-treatment must be assessed primarily with reference to the facts which were known or ought to have been known to the Contracting State at the time of expulsion (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 121, ECHR 2012). However, since the first applicant has not yet been deported, the material point in time must be that of the Court's consideration of the case. It follows that, although the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive (see *Chahal v. the United Kingdom*, 15 November 1996, § 86, *Reports* 1996-V).

(b) Application of the general principles to the present case

76. As regards the individual features of the risk of ill-treatment claimed by the first applicant, the Court notes that after the communist regime in

Afghanistan was overthrown by the mujahideen in 1992 he did not flee the country but remained in Herat where, after the mujahideen had proclaimed an amnesty for people who had worked for the KhAD/WAD, he resumed his work in Herat under mujahideen rule. He worked under the mujahideen regime – without encountering any problem from the authorities, any group or private persons on account of his past activities for the KhAD/WAD – until the Taliban seized power in Herat.

77. The Court has further noted that the first applicant's initial indication of the exact timing of the arrival of the Taliban in Herat does not match the timing of this event indicated by other sources (see paragraphs 42-43 above) and that – according to a copy of a judgment relied on by the first applicant – he had been sentenced to death following proceedings held *in absentia* by a Taliban tribunal in Herat in October/November 1995 whereas, according to the first applicant's account, he had lived in Herat until the second half of January 1996. In any event, and whatever the case may be, there is nothing in the case file demonstrating that the current Government of Afghanistan acknowledge the legal validity of and execute death sentences handed down by Taliban tribunals during the Taliban regime.

78. The Court has further found no indication that the first applicant, since his departure from Afghanistan in 1996, has attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his professional activities for the KhAD/WAD or under the regime of the mujahideen, on account of having been sentenced to death by a Taliban tribunal in October/November 1995 and/or on account of any other personal element cited by him. The Court lastly notes that the UNHCR does not include agents of the former KhAD/WAD in their potential risk profiles in respect of Afghanistan.

79. Although the first applicant does not rely on this argument, the Court has nevertheless examined the question of whether the general security situation in Afghanistan is such that any removal there would necessarily breach Article 3 of the Convention. In its judgment in the case of *H. and B. v. the United Kingdom*, (cited above, §§ 92-93), the Court held that in Afghanistan there was not a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of an individual being returned there. In the evidence now before it the Court has found no reason to hold otherwise in the instant case.

80. The Court is therefore of the opinion that the first applicant has failed to adduce evidence capable of demonstrating that there are substantial grounds for believing that he would be exposed to a real and personal risk of being subjected to treatment contrary to Article 3 of the Convention if removed to Afghanistan.

81. There has accordingly been no violation of Article 3 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (b) of the Convention in so far as it concerns the complaints brought by the second and third applicants;

2. *Decides* to declare admissible the remainder of the application;

3. *Holds* that there would be no violation of Article 3 of the Convention in the event of the first applicant's removal to Afghanistan.

Done in English, and notified in writing on 12 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Luis López Guerra
Deputy Registrar	President