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

THIRD SECTION

DECISION

Application no. 46051/13
S.M.A.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 11 July 2017 as a Committee composed of:
Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar,*
Having regard to the above application lodged on 19 July 2013,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr S.M.A., is an Afghan national who was born in 1961 and was living in the Netherlands at the time the application was lodged. The Committee decided that the applicant's identity was not to be disclosed to the public (Rule 47 § 4 of the Rules of Court). He was initially represented before the Court by Mrs C. Dreessen, who was succeeded by Mr W. de Vilder, a lawyer practising in Beek.

A. The circumstances of the case

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

1. Proceedings on the initial asylum application

3. On 20 December 1999 the applicant, his wife and their two children (a daughter born in 1995 and a son born in 1997) arrived in the Netherlands and applied for asylum, claiming to fear persecution within the meaning of

the 1951 Geneva Convention Relating to the Status of Refugees ("the 1951 Refugee Convention") in Afghanistan. In two interviews with the Netherlands immigration authorities, the applicant stated that he hailed from Kabul, that he had been a member of the communist People's Democratic Party of Afghanistan ("the PDPA") and that, via this party, he had also belonged to the Revolutionary Guard (*Sepah Enghelab*). He had worked in Kabul as a teacher from 1982 until 1992, when the mujahideen had come to power. At that point a mujahid had been appointed as principal of the school and had fired the applicant for being a communist. After 1992 the applicant had worked in Kabul as a money trader, in which capacity the Taliban had sought to extort money from him. In connection therewith, he had been arrested on 24 September 1999 by the Taliban who, during a search of his home, had found incriminating items including a commendation from the former communist Revolutionary Guard. On 17 or 18 October 1999, he had managed to abscond by means of bribery. Fearing for his life, he and his family had then fled Afghanistan.

4. After rejecting the applicant's asylum request on 23 January 2001, on 3 August 2001 the Deputy Minister of Justice (*Staatssecretaris van Justitie*) accepted the applicant's objection (*bezwaar*) and granted him − on the basis of a specific general protection policy (*categoriaal beschermingsbeleid*) for Afghan asylum seekers based on the general situation in Afghanistan − a temporary residence permit for the purposes of asylum (*verblijfsvergunning asiel voor bepaalde tijd*) in accordance with section 29 § 1(d) of the Aliens Act 2000 (*Vreemdelingenwet* 2000) and valid from 26 December 1999 until 26 December 2002. On the same day the applicant's wife and their two children also received a temporary residence permit for asylum.

5. The applicant lodged an appeal with the Regional Court of The Hague but withdrew it on 1 July 2002. In the meantime, on 24 May 2002, another daughter was born to the applicant and his wife.

6. On 9 September 2002 the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie*) informed the Speaker of the Lower House of Parliament (*Tweede Kamer*) that the Government had decided to end the aforementioned general protection policy for Afghan asylum seekers as − according to an official report (*ambtsbericht*) on Afghanistan by the Ministry of Foreign Affairs released on 19 August 2002 − the general security situation in Afghanistan had improved.

7. On 21 December 2002 the applicant filed an application for an indefinite residence permit for the purposes of asylum (*verblijfsvergunning asiel voor onbepaalde tijd*).

8. On 17 February 2003 the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie*) issued notice of his intention (*voornemen*) to reject the applicant's asylum application since the basis for its issue, that is to say the general protection policy, had ceased to exist and the applicant had not demonstrated that he would risk persecution

within the meaning of the 1951 Refugee Convention. On 4 April 2003, assisted by a lawyer, the applicant submitted written comments (*zienswijze*) on the notice of intent.

9. On 30 May 2003 a further interview was held with the applicant. He stated that during the time that the communist government of Babrak Karmal was in power, he had spent two years in the Soviet Union. He had gone there together with orphans from a "Watan" orphanage for the children of communists, specifically KhAD[1] officials or party members whose fathers had died. With the aid of Russian teachers in the boarding school in Russia, he had given 150 children a communist and anti-mujahideen education. He stated that he had been involved in the KhAD because the orphanage belonged to the KhAD. His work for this orphanage gave the impression that he had been in the service of the KhAD and he claimed that he risked being punished or even killed by the mujahideen, or by these children's relatives. It was only in the context of the three-yearly review of teachers' salary scales that the mujahideen had looked into his file and found out about his activities during the communist regime. That is why it was only three years after the mujahideen had come to power that his membership of the former communist party and his involvement in the education of the orphans had been discovered, which had resulted in his dismissal.

10. On 25 July 2003 the Minister for Immigration and Integration informed the applicant that his case had been transmitted to the 1F Unit (see *A.A.Q. v. the Netherlands* (dec.), no. 42331/05, §§ 47-49, 30 June 2015) and that a supplementary interview would be held with him in this connection.

11. On 27 August 2003 the 1F Unit conducted a supplementary interview with the applicant. During this interview, he declared, inter alia, that he had never really worked for the KhAD but that in 1986 he had started to work for an orphanage which fell under the auspices of the KhAD, so indirectly he had been in the service of the KhAD. As the orphanage lacked teachers, the Ministry of Education had temporarily deployed teachers there. After one month he had been sent to the Soviet Union, accompanying a group of orphans to a boarding school. He had worked in that boarding school for the agreed period of two years and had then returned to Afghanistan, where he had resumed his former teaching job. He did not know that children had been kidnapped and placed in orphanages by the KhAD, the army and the police (Sarandoy) nor did he know that orphans had been trained in the Soviet Union to commit attacks on the mujahideen. The applicant further stressed that he had never worked for the

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.

KhAD but that his only task had been to educate children and to ensure that they would not forget their mother tongue.

12. On 27 July 2004, having given the applicant the opportunity to submit written corrections and/or additions to the written record of the supplementary interview of 27 August 2003, the Minister for Immigration and Integration issued notice of her intention to reject the applicant's asylum application under Article 1F of the 1951 Refugee Convention. The notice of intention of 17 February 2003 was withdrawn.

13. The Minister noted that the applicant had indicated that, being a secondary school teacher, he had become an active member of the PDPA in about 1983, that he had been active for the Revolutionary Guard from 1984 to 1985, that in 1986 he had started to work for an orphanage that fell under the auspices of the KhAD and that he had accompanied a group of orphans to a place in the Soviet Union where they were trained as KhAD collaborators, amongst other things.

The Minister found the applicant's statements credible and took into account an official report, drawn up on 29 February 2000 by the Netherlands Ministry of Foreign Affairs, entitled "Security Services in Communist Afghanistan (1978-1992), AGSA, KAM, KhAD and WAD" ("*Veiligheidsdiensten in communistisch Afghanistan* (1978-1992), AGSA, KAM, KhAD en WAD"; DPC/AM 663896) and, as regards the Watan orphanages, descriptions given in "Afghanistan, Organization of the People's Democratic Party of Afghanistan/Watan Party, Governments and Biographical Sketches (1982-1998)" by S. Fida Yunas, "The Sovietization of Afghanistan" by A. Rasul Amin, "A nation is dying" by J. Laber and B.R Rubin and a Helsinki Watch report, "Tears, blood and cries", published in December 1984. According to these reports, the orphanages were controlled and led by the KhAD/WAD and children from such orphanages would be sent to the Soviet Union for an education aimed at turning them into committed communists and KhAD agents.

Taking into account this material and the applicant's asylum statement, together with the fact that the large-scale commission of human rights violations by KhAD/WAD under the PDPA's rule was common knowledge of which the applicant could not have been ignorant, the Minister decided that Article 1F of the 1951 Refugee Convention was applicable to the applicant's asylum application. The Minister did not find it proven that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 3 by the Taliban or the mujahideen if returned to Afghanistan. The Minister also rejected the applicant's argument that his removal to Afghanistan would violate Article 3, given the general security situation there.

14. With the assistance of a lawyer, the applicant submitted written comments on the notice of intent in letters dated 3 and 16 September 2004.

15. In her decision of 5 October 2004 the Minister rejected the applicant's asylum application, confirming the reasoning set out in her notice of intent of 27 July 2004 and contesting the applicant's written comments. The applicant filed an appeal with the Regional Court of The Hague on 1 November 2004.

16. In its judgment of 24 April 2007, the Regional Court of The Hague sitting in Dordrecht rejected an appeal lodged by the applicant and an appeal lodged by his wife and their children, whose asylum applications had also been rejected by the Minister. As regards the applicant, it accepted the decision and the Minister's underlying reasons for denying the applicant asylum pursuant to Article 1F of the 1951 Refugee Convention. It also agreed with the Minister that it had not been demonstrated that the applicant would be exposed to a risk of being subjected to treatment proscribed by Article 3 of the Convention if expelled to Afghanistan.

17. A further appeal lodged by the applicant and a further appeal filed by his wife and their children were rejected by the Administrative Jurisdiction Division of the Council of State on 22 August 2007.

2. Proceedings on the revision request

18. On 8 January 2008, the applicant submitted a letter dated 26 December 2007 from the Consulate-General of the Islamic Republic of Afghanistan in The Hague stating that he was an Afghan national and that he "had not committed any crime against human rights during his duty as a teacher in the service of the former Government of Afghanistan", and requested a review of the decision on his asylum application of 21 December 2002.

19. On 16 January 2008 the Deputy Minister of Justice rejected this request, finding that this letter did not constitute newly emerged facts or circumstances warranting reconsideration of the applicant's asylum application. The applicant filed an objection against this decision with the Deputy Minister on 22 April 2008. No further information about these proceedings has been submitted.

3. Proceedings on fresh applications for a residence permit

20. On 1 October 2008 the applicant filed a fresh asylum application and on the same day was interviewed about the new facts and circumstances on which it was based (*gehoor nieuwe feiten en omstandigheden*). A further interview on a subsequent (asylum) application (*nader gehoor inzake opvolgende aanvraag*) was held with him on 20 March 2009.

21. On 10 September 2009 the Deputy Minister of Justice informed the applicant of her intention to reject the asylum application. She stated that the content of the letter of 26 December 2007 from the Consulate-General of Afghanistan and two letters from the Ministry of Education of

Afghanistan meant that no other decision was possible where it concerned the application of Article 1F to the applicant's case, as it was unclear on what sources or investigation the Consulate-General's conclusion was based. The Deputy Minister also rejected the applicant's argument that his removal to Afghanistan would be contrary to Article 3 of the Convention. On 7 October 2009 the applicant submitted written comments on the notice of intent.

22. On 20 October 2009 the Deputy Minister rejected the applicant's asylum application of 1 October 2008 and also refused to grant him a temporary regular residence permit (*verblijfsvergunning regulier voor bepaalde tijd*) on the basis of his having a family life in the Netherlands.

23. On 18 July 2011 the applicant's spouse and their three children were granted a temporary residence permit for the purposes of asylum. It is not apparent from the applicant's submissions whether this decision was based on their individual asylum statement or on a general protection policy such as, for instance, the special policy for Afghan westernised school-aged girls which entered into force on 3 May 2011 (WBV 2011/5; *Beleid Afghaanse verwesterde schoolgaande meisjes*; for further details see *M.R.A. and Others v. the Netherlands*, no. 46856/07, § 64, 12 January 2016).

24. According to a letter of 29 March 2012 from a specialist working at the Mental Health Care Department of Maastricht Academic Hospital, the applicant's oldest daughter was suffering from a type of psychotic disorder NOS (Not Otherwise Specified) characterised by chronic hallucinations and residual PTSD (Post-Traumatic Stress Disorder) symptoms. The relatively favourable development in her condition had been mainly due to the intelligent system of informal care (*mantelzorg*) developed by her parents, in particular the applicant. The applicant's removal would almost certainly result in her re-traumatisation.

25. On 31 August 2012 the Regional Court of The Hague sitting in 's-Hertogenbosch rejected the applicant's appeal against the decision of 20 October 2009. It found that the Minister had given sufficient reasons for opining that the statement submitted by the applicant did not demonstrate that he had not been involved in the commission of crimes such as those referred to in Article 1F of the 1951 Refugee Convention. In so far as the applicant had now admitted that he had exaggerated his asylum statement, the judge held that this was his own responsibility. The judge did not find that the statement demonstrated that the applicant's removal to Afghanistan would be contrary to his rights under Article 3 of the Convention, either on the basis of individual circumstances or on the basis of the general security situation there. Lastly, as regards the letter of 29 March 2012 concerning the applicant's daughter, the judge found that the Minister had been right in ruling that the applicant was not eligible for a residence permit on any basis other than asylum, given the decision to apply Article 1F to the applicant's asylum application. Moreover, this part of the applicant's appeal failed in

any event as the applicant had not formulated any grounds for appealing against the decision to refuse to grant him a temporary regular residence permit.

26. A further appeal lodged by the applicant was rejected on summary grounds by the Administrative Jurisdiction Division on 16 May 2013. No appeal lay against this ruling.

27. In the meantime, on 31 October 2012, the applicant had also applied for a temporary regular residence permit for the purpose of staying with his spouse in the Netherlands. This was rejected on 30 May 2013 by the Deputy Minister for Security and Justice, who also ordered the applicant to leave the Netherlands immediately and imposed an entry ban (*inreisverbod*) on him. The applicant filed an objection (*bezwaar*) with the Deputy Minister and a request for a provisional measure (*voorlopige voorziening*) – namely stay of removal pending the objection proceedings – with the Regional Court of The Hague.

28. On 19 July 2013, the provisional-measures judge of the Regional Court of The Hague sitting in Roermond rejected the request for a provisional measure, accepting the Deputy Minister's findings and the underlying reasoning that the applicant's removal would not be contrary to Article 8 and/or Article 3 of the Convention.

29. On 21 July 2013 and holding a valid Afghan passport, the applicant was removed to Afghanistan. Since then and to date, he has been residing in Kabul.

30. On 17 September 2013 the Deputy Minister rejected an objection lodged by the applicant against the decision of 30 May 2013.

31. In a judgment of 23 April 2014 the Regional Court of The Hague sitting in Roermond rejected an appeal lodged by the applicant against the decision of 17 September 2013. It noted that it was not disputed that the decision to apply Article 1F in the applicant's case had acquired the status of res judicata. As regards the applicant's reliance on Article 8 of the Convention, it accepted that a family life existed between the applicant, his spouse and their three children and that the impugned decision interfered with that family life. As to the question whether this interference was justified under the second paragraph of Article 8, the Regional Court found that the decision had a basis in domestic law, namely sections 13 and 16 of the Aliens Act 2000, section 3.77 of the Aliens Decree 2000 (*Vreemdelingenbesluit* 2000) and Article 1F of the 1951 Refugee Convention, and that it served legitimate aims, namely the interest of public order, the prevention of crime and the economic well-being of the country. With regard to the remaining question of whether it was "necessary in a democratic society", the Regional Court took into account the "guiding principles" formulated in the judgments of the European Court of Human Rights in the case of *Boultif v. Switzerland*, (no. 54273/00, ECHR 2001-IX)

and *Üner v. the Netherlands* ([GC], no. 46410/99, ECHR 2006-XII). It held as follows:

> "18. In the court's opinion the [Deputy Minister] was justified in finding that the outcome of the balancing exercise was to the [applicant's] disadvantage. Despite the fact that the events concerned date back to the period 1986-1988, the [Deputy Minister] had reasonable grounds for attaching great importance to fact that Article 1F of the 1951 Refugee Convention had been applied against the [applicant]. The [Deputy Minister] took into account the fact that the [applicant] has never committed a crime in the Netherlands, but found that this did not have a counterbalancing effect. The [Deputy Minister] has weighed the time that has elapsed since 1986-1988 against the suffering caused by the event, and had good reason for taking the view – to the [applicant's] detriment – that it offered no comparison. The [Deputy Minister] also took into account the fact that the [applicant] has lived in Afghanistan for most of his life (in which context the [Deputy Minister] observed that the [applicant's] ties with Afghanistan were still deemed to exist) and that, after Article 1F had been applied against him, he knew that he must leave the Netherlands. The [Deputy Minister] could thus adopt the stance that the consequences (in particular where it concerns his family life) of his decision not to do so but to remain in the Netherlands are purely his own choice and risk. In this context, the fact that the [applicant] and his wife have been together for 18 years likewise does not necessarily have to result in a balancing of interests in the [applicant's] favour. In this respect the [Deputy Minister] had good reason to point out that after their arrival in the Netherlands it was already clear that the development of a family life there would not be without its obstacles.
>
> The [Deputy Minister] also took into consideration the fact that the [applicant's] spouse and children hold Afghan nationality and that their residence permits are valid until 3 May 2016. The [Deputy Minister] thereby had reason to note that the children were free to visit the [applicant] outside of the Netherlands or to follow him [abroad]. The medical problems of the [applicant's] wife and daughter – for which the [applicant] provides informal care – were taken into consideration by the [Deputy Minister] but it was reasonable for [the latter] to adopt the position that this factor did not cause the balancing exercise to produce a result in [the applicant's] favour, especially since it was not evident that there was no one else who could provide similar informal care.
>
> Despite a strong suspicion of objective obstacles to the exercise of family life in the applicant's country of origin, noting the seriousness of the crimes committed and also noting the fact that there is no apparent barrier to the exercise of a family life elsewhere, the balancing of interests does not result in the [applicant's] favour. ....
>
> 20. The [applicant] has argued that the imposition of an entry ban for a period of ten years violates Article 8 of the Convention. ...
>
> 25. The court finds that the [Deputy Minister] imposed an entry ban for the duration of ten years justly and for good reason. To this end, the court considers as follows:
>
> 26. Now that Article 1F has been applied against the applicant and this application has acquired the status of res judicata, the court finds that the [Deputy Minister] also rightly considered that the [applicant] represents a serious threat to public order and public security. Under section 6.5.a § 5(c) of the Aliens Decree 2000, the [Deputy Minister] is empowered to impose a ten-year entry ban. Furthermore, the [Deputy Minister] has given the [applicant] the opportunity to state (orally on 31 October 2012 and in writing on 7 January 2013) whether there are humanitarian or other reasons to revoke the imposition of an entry ban for ten years. In the impugned decision as well

> as in the preceding intended decision ("*voornemen*"), the [Deputy Minister] has stated the reasons why he does not see any grounds in the circumstances adduced by the [applicant] to revoke the issuance of the entry ban or to shorten its duration. In this the [Deputy Minister] has taken into account, in his balancing of interests, the 'guiding principles' from the cases *Boultif* and *Üner*. Noting the seriousness of the crimes committed in the context of Article 1F of the 1951 Refugee Convention, the court agrees with the [Deputy Minister] that the fact that the [applicant] had a family life in the Netherlands does not automatically mean that the [Deputy Minister] should have adopted a different position and does not provide a sufficient basis for concluding that the [Deputy Minister] imposed the entry ban in violation of Article 8 of the Convention .....
>
> 27. The appeal is unfounded. ..."

32. Although possible, there is no indication in the case file that the applicant has filed a further appeal against this judgment with the Administrative Jurisdiction Division.

4. Proceedings on request for deferral of removal on medical grounds

33. On 9 July 2013 the applicant also filed a request under section 64 of the Aliens Act 2000 for deferral of removal for medical reasons (see *Hunde v. the Netherlands* (dec.), no. 17931/16, § 30).

34. On the basis of advice issued by the Medical Assessment Section (*Bureau Medische Advisering*) of the Ministry for Security and Justice (*Ministerie van Veiligheid en Justitie*), which stated that the applicant was fit to travel and no medical emergency would arise in the short term if he were to be removed to Afghanistan as he was not receiving any medical treatment, the Deputy Minister for Security and Justice rejected that request on 16 July 2013. The applicant lodged an objection against this decision, which was rejected by the Deputy Minister on 12 August 2013.

35. Although possible, there is no indication in the case file that the applicant has lodged an appeal against this decision before the Regional Court of The Hague.

B. Relevant domestic law and practice

36. A general overview of the relevant domestic law and practice in respect of asylum proceedings, exclusion orders and enforcement of removals has been set out in *K. v. the Netherlands* ((dec.), no. 33403/11, §§ 16-32, 25 September 2012).

37. Pursuant to the strict distinction made under the provisions of the Aliens Act 2000 between an asylum application and a regular application for a residence permit for any purpose other than asylum, arguments based on Article 8 of the Convention cannot be entertained in asylum proceedings unless they concern an application for an asylum-derived residence permit (*verblijfsvergunning met een afgeleide asielstatus*) for the purposes of

refugee-family reunification (*nareisvergunning*) (see *Gereghiher Geremedhin v. the Netherlands* (dec.), no. 45558/09, §§ 30-31, 23 August 2016). Instead, they should be raised in proceedings on an application for a regular residence permit (see *Mohammed Hassan v. the Netherlands and Italy and 9 other applications* (dec.), no. 40524/10, § 13, 27 August 2013; *J. v. the Netherlands* (dec.), no. 33342/11, § 9, 18 October 2011; and *Joesoebov v. the Netherlands* (dec.), no 44719/06, § 27, 2 November 2010) or in proceedings concerning the imposition of an exclusion order (see *Üner*, cited above, and *Arvelo Aponte v. the Netherlands*, no. 28770/05, 3 November 2011) or in proceedings regarding an entry ban (see, concerning the entry ban, *A.K.C. v. the Netherlands* (dec.), no. 36953/09, §§ 14-15, 30 August 2016), for instance.

38. The relevant domestic policy, law and practice in respect of asylum seekers from Afghanistan in respect of whom Article 1F of the 1951 Refugee Convention has been found to be applicable have been summarised in *A.A.Q.* (cited above, §§ 37-52).

C. Relevant international material

39. 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."

40. According to an official report on Afghanistan released in August 2002 by the Netherlands Ministry of Foreign Affairs, Taliban forces captured Kabul on 27 September 1996. They remained in control of Kabul until November/December 2001, when the Taliban forces were defeated by forces of the Northern Alliance.

41. On 4 September 2003 the United Nations High Commissioner for Refugees (UNHCR) issued the "Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees". They superseded "The Exclusion Clauses: Guidelines on their Application" (UNHCR, 1 December 1996) and "Note on the Exclusion Clauses" (UNHCR, 30 May 1997) and are intended to provide interpretative legal guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field. These guidelines state

that in cases where the main asylum applicant is precluded from obtaining refugee status, his or her dependants will need to establish their own grounds for seeking refugee status. If the latter are recognised as refugees, the precluded individual is not able to rely on the right to family unity in order to secure protection or assistance as a refugee (paragraph 29).

42. An overview of the relevant guidelines and the country operations profile on Afghanistan by the United Nations High Commissioner for Refugees ("the UNHCR") have recently been summarised in *A.G.R. v. the Netherlands* (no. 13442/08, §§ 32-41, 12 January 2016).

COMPLAINTS

43. The applicant alleged violations of various provisions of the Convention, namely Articles 1, 3, 5, 6, 7, 8, 13 and 14. He complained in particular that his removal to Afghanistan was contrary to Article 3 because treatment in breach of this provision awaited him there for having worked as a teacher for the former communist regime, that the refusal to admit him to and the decision to remove him from the Netherlands violated his rights under Article 8, and that he had no effective remedy within the meaning of Article 13 against the false accusation of being a war criminal. The applicant also relied on Article 3 of the United Nations Convention on the Rights of the Child.

THE LAW

A. Article 3 of the Convention

44. The applicant complained that his removal to Afghanistan had been contrary to Article 3 because treatment in breach of this provision awaited him there for having worked as a teacher for the former communist regime.

45. Article 3 provides as follows:

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

46. 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. As indicated in Article 31 § 3 (c) of the 1969 Vienna Convention on the Law of Treaties, account should be taken 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)).

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

48. The Court reiterates the relevant principles in the Court's case-law under Article 3 of the Convention (see, most recently, *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 77-106, ECHR 2016, with further references).

49. Noting that the applicant in the instant case was expelled to Afghanistan in July 2013, the question of whether he would face a real risk of persecution upon his return to Afghanistan must be examined on the basis of the situation at the time of his removal.

50. As regards the individual features of the risk of ill-treatment claimed by the applicant, the Court notes that the applicant did not flee the country when the communist regime in Afghanistan was overthrown by mujahideen forces in 1992 but continued to work as a teacher without encountering any problems. It was only when the nature of his teaching activities under the communist regime came to the attention of the mujahid principal of his school three years later, in 1995, that the applicant was fired as a teacher. He then started to work as a money trader without encountering any problems from the mujahideen. The Court therefore considers that the applicant's treatment by the mujahideen does not attain the minimum level of severity required for treatment to fall within the scope of Article 3.

51. The Court further notes that there is no indication in the case file that the applicant encountered any problems from the Taliban after they captured Kabul on 27 September 1996. It was not until September 1999 that the applicant was arrested by the Taliban in the context of their attempt to extort money from him in his capacity as a money trader. The Court has found no indication in the case file that he would have attracted their attention on account of his work during the former communist regime. It appears from the applicant's asylum statement that they only became aware of this after having found certain allegedly incriminating items during a subsequent search of the applicant's home. It furthermore does not appear from the applicant's submissions that, after his departure from Afghanistan in late 1999 and/or after his return there on 21 July 2013, he attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his professional activities during the former communist regime or for any other reason.

52. In view of the above, the Court does not find that it has been demonstrated that, on individual grounds, the applicant was exposed to a

real risk of being subjected to treatment contrary to Article 3 when he was removed to Afghanistan on 21 July 2013.

53. Regarding the question of whether the general security situation in Afghanistan in July 2013 was 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* (nos. 70073/10 and 44539/11, §§ 92-93, 9 April 2013), the Court did not find that in Afghanistan there prevailed 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 view of the evidence now before it, the Court has found no reason to hold otherwise in the instant case.

54. The Court therefore finds that the applicant has not demonstrated that there were 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 when on 21 July 2013 he was removed to Afghanistan.

55. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Article 8 of the Convention

56. The applicant complained that the refusal to admit him to and the decision to remove him from the Netherlands had violated his rights under Article 8 of the Convention, which reads in its relevant part as follows:

> "1. Everyone has the right to respect for his private and family life ..."

57. The Court notes that under domestic law, Article 8 complaints cannot be entertained in asylum proceedings unless they relate to an application for a residence permit for the purposes of refugee-family reunification, but they can be raised in proceedings regarding applications for regular, non-asylum-based residence permits.

58. The applicant challenged the refusal to grant him a residence permit to stay with his spouse in the Netherlands and the decision to impose an entry ban on him before the Regional Court of The Hague. However, the Court has found no indication in the applicant's submissions that he has filed a further appeal with the Administrative Jurisdiction Division against the judgment given by the Regional Court on 23 April 2014.

59. In these circumstances, it follows that the complaint under Article 8 of the Convention must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention (see *A.M. v. the Netherlands*, no. 29094/09, §§ 94-95, 5 July 2016).

C. Article 13 of the Convention

60. The applicant complained that he had had no effective remedy within the meaning of Article 13 against the false accusation of being a war criminal. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

61. The Court reiterates that it cannot review the correctness of the application of the provisions of the 1951 Refugee Convention by domestic authorities (see paragraph 47 above) and that proceedings and decisions regarding the entry, stay and deportation of aliens fall outside the scope of Article 6 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000‑X).

62. It follows that this complaint is inadmissible *ratione materiae* and must therefore be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

D. Other complaints

63. The applicant also alleged a violation of his rights under Articles 1, 5, 6, 7 and 14 of the Convention, and Article 3 of the United Nations Convention on the Rights of the Child. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that there is no appearance of a violation of the provisions invoked. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to 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 3 August 2017.

Stephen Phillips
Registrar

Luis López Guerra
President