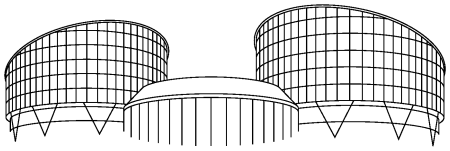

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 77691/11
G.R.S.
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 December 2011,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the parties' submissions,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr G.R.S., is an Afghan national who was born in 1964 and lives in the Netherlands. The Acting President decided that the applicant's identity was not to be disclosed to the public (Rule 47 § 4). The applicant was represented before the Court by Mr I. Wudka, a lawyer practising in Maastricht.

2. The Dutch Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

4. On 6 March 1998 the applicant, together with his wife and their five children (born between 1986 and 1991) entered the Netherlands. The applicant applied for asylum, claiming fear of persecution within the meaning of the 1951 Geneva Convention Relating to the Status of Refugees ("the 1951 Refugee Convention") for having been a member of the former communist People's Democratic Party of Afghanistan ("PDPA") and for having worked for the KhAD/WAD[1] from 1982 to 1992. He was detained by the mujahideen from 16 August 1992 until 27 August 1994, but was freed after his brother paid money for his release, after which he joined his family in Mazar-e Sharif. There he worked as a car dealer without encountering any problems until 8 January 1998 when, for unknown reasons, he was arrested by the Hezb-e Wahdat[2] but was released after two days. On 22 January 1998 the applicant and his family left Afghanistan and travelled to the Netherlands via Pakistan. The asylum application filed by the applicant's spouse was entirely based on the applicant's asylum statement. She herself had never encountered any problems in Afghanistan.

5. On 27 January 1999 a sixth child was born to the applicant and his wife.

6. On 29 September 2000 the Deputy Minister of Justice (*Staatssecretaris van Justitie*) denied the applicant asylum pursuant to Article 1F of the 1951 Refugee Convention. This provision was found to be applicable to the applicant's case on account of his work as a high-ranking officer for the KhAD/WAD during the former communist regime in Afghanistan. The applicant worked for the KhAD/WAD from 1982 until 25 April 1992, when the mujahideen seized power in Afghanistan, and his final rank in the KhAD/WAD had been that of captain-major.

7. An objection (*bezwaar*) lodged against this decision by the applicant, including his arguments under Article 3 of the Convention, was rejected by the Minister for Immigration and Integration (*Minister voor Vreemdelingzaken en Integratie*) on 31 March 2003. The applicant's subsequent appeal against this decision was allowed on 15 August 2005 by the Regional Court (*rechtbank*) of The Hague sitting in Roermond. It accepted the decision in so far as Article 1F had been applied to the applicant's asylum claim but found that the Minister had given insufficient reasons for rejecting the applicant's arguments under Article 3 of the Convention. It remitted the case to the Minister for a fresh decision.

8. In his decision of 10 January 2007 the Minister again rejected the applicant's objection. He noted that the Regional Court of The Hague had

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.

2. For further details about this faction, see *A.M. v. the Netherlands*, no. 29094/09, §§ 38-43, 5 July 2016.

endorsed the decision to apply Article 1F to the applicant's asylum request and, after having considered the applicant's arguments based on Article 3, concluded that it had not been demonstrated that the applicant, if expelled to Afghanistan, would be exposed to the risk of being subjected to treatment proscribed by Article 3.

9. In his decision of 21 February 2007 the Minister of Justice (*Minister van Justitie*) imposed an exclusion order (*ongewenstverklaring*) on the applicant, acknowledging that the inevitable conclusion arising from the applicability of Article 1F to the applicant's case was that he represented a threat to public order.

10. An objection against the decision of 21 February 2007 lodged by the applicant, including the arguments that he based on Articles 3 and 8 of the Convention, was rejected on 18 April 2007 by the Deputy Minister of Justice. As to Article 8, the Deputy Minister took into account the so-called "guiding principles" taken from *Boultif v. Switzerland* (no. 54273/00, ECHR 2001‑IX) and concluded that the interests of public order and national security and the need to prevent crime and protect the rights and freedoms of others outweighed the applicant's interest in having an unhindered family life in the Netherlands. On this point the Deputy Minister noted that the applicant's wife and children had not been granted a Netherlands residence permit and found that the fact that the crimes referred to in Article 1F had been committed a long time ago did not cause her to alter her view, given the seriousness of these crimes and the great human suffering they had caused. Nor was her conclusion altered by the fact that the applicant had been resident in the Netherlands since 1988, given that he had not entered the country until he was aged 33 and could thus be assumed to still be full proficient in the language of Afghanistan, where he had been educated and had worked and in so doing had developed social ties. The Deputy Minister further found no insurmountable obstacle to the exercise of the applicant's family life in Afghanistan. As the applicant's spouse also hailed from Afghanistan, spoke the language and was familiar with Afghan society, the Deputy Minister could see no reason why she could not be expected to accompany the applicant there in order to continue their family life. In this context, the Deputy Minister also took into account firstly the fact that, according to the asylum statement given by the applicant's spouse, she herself had never encountered problems in Afghanistan and had left the country due to the applicant's problems, and secondly the fact that the applicant's children were all Afghan nationals.

11. On 16 November 2007 the Regional Court of The Hague, sitting in Maastricht, declared inadmissible the applicant's appeal against the decision of 10 January 2007. There is no indication in the case file that the applicant lodged a further appeal with the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State, although this would have been possible.

12. The applicant's appeal against the decision of 18 April 2007 was rejected on 13 March 2008 by the provisional-measures judge (*voorzieningenrechter*) of the Regional Court of The Hague sitting in Maastricht. A further appeal lodge by the applicant against this ruling was rejected on 11 February 2009 by the Administrative Jurisdiction Division. No further appeal lay against this decision.

13. On 9 February 2009 the applicant's spouse and their six children were granted a residence permit under the terms of a general amnesty scheme (*RANOV*[3] *pardonregeling*) for asylum seekers who had applied for asylum before 1 April 2001 and had been living in the Netherlands on an uninterrupted basis ever since.

14. On 29 April 2009 the applicant submitted a request to have the exclusion order imposed on him lifted. This request, including the applicant's arguments under Articles 3 and 8 of the Convention, was rejected on 2 March 2010 by the Minister of Justice. An objection lodged by the applicant was rejected on 20 November 2010 by the Minister for Immigration, Integration and Asylum Policy (*Minister voor Immigratie, Integratie en Asiel*).

15. An appeal lodged by the applicant against this decision was rejected on 12 December 2011 by the Regional Court of The Hague sitting in Maastricht. It noted that it was not disputed that the applicant did not meet the requirement of having resided abroad for an uninterrupted period of at least ten years. Nor did it find established that in Afghanistan the applicant would be exposed to the risk of treatment proscribed by Article 3. As regards Article 8, it accepted that there was "family life" within the meaning of this provision between the applicant and his spouse and children. It also found that the Minister had adequately considered the circumstances adduced as evidence by the applicant and – bearing in mind the fair balance that needed to be struck between the competing interests, and having considered all the relevant facts and circumstances – that it could not be concluded that the Minister was obliged under Article 8 to lift the exclusion order.

16. On 15 December 2011 the applicant was informed that his removal to Afghanistan had been scheduled for 2 January 2012.

17. On 19 December 2011 the applicant lodged the present application with the Court, accompanied by a request under Rule 39 of the Rules of Court that the Court indicate to the Government that he should not be expelled to Afghanistan whilst the proceedings were pending before it. On 22 December 2011 the Acting President of the Section to which the case had been allocated decided to grant the applicant's request as regards Rule 39.

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3. *Regeling Afwikkeling Nalatenschap Oude Vreemdelingenwet*.

18. On 9 March 2012 the applicant filed an application for a residence permit for the purpose of exercising family life in the Netherlands. This request was not taken up for examination as the applicant had failed to comply with procedural requirements. The applicant challenged this in administrative appeal proceedings in which the final – for the applicant negative – decision was given on 20 August 2014 by the Administrative Jurisdiction Division.

19. In the meantime, the applicant's further appeal against the judgment of 12 December 2011 had been rejected by the Administrative Jurisdiction Division on 4 January 2013. No further appeal lay against this ruling.

B. Relevant domestic law and practice

20. 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.

21. In the light of the strict separation under the provisions of the Aliens Act 2000 between an asylum application and a regular application for a residence permit for a purpose other than asylum, arguments relying 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 refugee-family reunification (*nareisvergunning* – see *Gereghiher Geremedhin v. the Netherlands* (dec.), no. 45558/09, §§ 30-31, 23 August 2016). Such arguments should instead be raised in proceedings on a regular application for a 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 proceedings concerning the imposition of an exclusion order (see *Üner v. the Netherlands* (cited above), and *Arvelo Aponte v. the Netherlands*, no. 28770/05, 3 November 2011) or an entry ban (see, on the entry ban, *A.K.C. v. the Netherlands* (dec.), no. 36953/09, §§ 14-15, 30 August 2016).

22. 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. v. the Netherlands* (dec.), no. 42331/05, §§ 37-52.

23. The most recent official country assessment report on Afghanistan was drawn up by the Netherlands Ministry of Foreign Affairs in November 2016. The relevant part of this report reads:

"3.5.9 (Former) communists

Under 'potential risk profiles' in the UNHCR Eligibility Guidelines [for assessing the international protection needs of asylum-seekers from Afghanistan, 19 April 2016] no information is given about persons who identify with the communist ideology (or who are suspected thereof). In the part 'Exclusion from International Refugee Protection' the UNHCR does give information about former members of the KhAD and WAD.

Many former members of the People's Democratic Party of Afghanistan (PDPA) and former employees of the former intelligence services the KhAD and the WAD are currently working for the Afghan Government. They have, for example, been appointed as governors of provinces, occupy high positions in the army [or] the police, or are mayors. Some former PDPA members have founded new parties.

In so far as is known, ex-communists and their relatives have nothing to fear from the ... Government.

It therefore cannot be said that the group of (former) communists as a whole has reasons to fear being in Afghanistan. It depends on each individual person whether someone has or has not reason to fear being in Afghanistan, and this also applies to former employees of the KhAD/WAD."

C. Relevant international material

24. 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."

25. On 4 September 2003 the United Nations High Commissioner for Refugees ("the 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, *inter alia*, that where the main asylum applicant is excluded from refugee status, his or her dependants will need to establish their own grounds for refugee status. If the latter are recognised as refugees, the excluded

individual is not able to rely on the right to family unity in order to secure protection or assistance as a refugee (paragraph 29).

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

27. The most recent update of the *"UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan"* was released on 19 April 2016 ("the April 2016 UNHCR Guidelines") and replaced the August 2013 *"UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan"*. As in the 2013 guidelines, the April 2016 UNHCR Guidelines do not include persons who worked for the KhAD/WAD or the police during the former communist regime in the fifteen cited potential risk profiles. However, they again state that, as regards Article 1F of the 1951 Refugee Convention, careful consideration needs to be given in particular to former members of the armed forces and the intelligence/security apparatus – including KhAD/WAD agents during the former communist regimes under Taraki, Hafizullah Amin, Babrak Karmal, and Najibullah – as well as former officials of those communist regimes.

28. The United Nations Office for the Coordination of Humanitarian Affairs ("the OCHA") reported in the *Afghanistan Humanitarian Bulletin* of 31 May 2016 on humanitarian access and aid-worker incidents in the following terms:

> "The total number of incidents relating to NGOs, UN and International Organizations from 1 January to 31 May 2016 stands at 91 which is slightly less than 2015. To date in 2016, national and international NGOs are the most directly affected with 56 incidents. Six aid workers have been killed, 12 injured and 81 abducted.
>
> The number of security incidents across the country is consistent with 2015 numbers, but there has been a significant increase in armed clashes as a percentage of overall security incidents. This has manifested itself by way of increased large scale ground engagements which have led to a reduction in access to many areas and for longer periods of time."

29. The report by the Secretary-General of the United Nations on *"The situation in Afghanistan and its implications for international peace and security, 10 June 2016"* (A/70/924-S/2016/532) of 10 June 2016 reads under the heading "Security":

> "12. The security situation in Afghanistan deteriorated, with Taliban operations at an unprecedented high rate since the beginning of 2016. Armed clashes increased by 14 per cent in the first four months of the year compared with the same period in 2015 and were higher for each month compared with previous years. In April 2016, the highest number of armed clashes was reported since June 2014, a period that coincided with the presidential elections.
>
> 13. Notwithstanding the increase in armed clashes, overall security incidents decreased. Between 16 February and 19 May, the United Nations recorded 6,122

security incidents, representing a decrease of 3 per cent compared with the same period in 2015, attributed primarily to a reduction in incidents involving improvised explosive devices. The southern, south-eastern and eastern regions continued to account for the majority of incidents (68.5 per cent). Consistent with previous trends, armed clashes accounted for the majority of security incidents (64 per cent), followed by improvised explosive devices (17.4 per cent). Targeted killings decreased: from 16 February to 19 May, 163 assassinations, including failed attempts, were recorded, representing a decrease of 37 per cent compared with the same period in 2015. A total of 15 suicide attacks were reported, compared with 29 in the same period in 2015, as well as several high-profile incidents. The latter included a complex attack against the consulate of India in Jalalabad on 2 March, an attack against the residence of the acting Director of the National Directorate of Security in the city of Kabul on 21 March and the targeted killing of two high-ranking army commanders on 24 and 27 March in Kandahar and Logar provinces, respectively. The Taliban claimed responsibility for those two attacks.

14. Insurgent attacks increased notably after the beginning of the Taliban spring offensive, Operation Omari. In its declaration of 12 April launching the annual campaign, the Taliban pledged large-scale attacks against "enemy positions" alongside tactical attacks and targeted killings of military commanders. Unlike in previous years, the movement did not threaten civilian government officials specifically. In the first two weeks of the offensive, the number of Taliban-initiated attacks almost doubled compared with the previous two weeks, resulting in the highest number of armed clashes recorded for the month of April since 2001. Since the beginning of the offensive, the Taliban has launched 36 attacks on district administrative centres, including a concerted push on the city of Kunduz. The Afghan National Defence and Security Forces repelled the vast majority of those attacks. The offensive gained further momentum with the completion of the seasonal poppy harvest in Helmand Province early in May, resulting in increased clashes in the southern region. The Taliban also concentrated efforts to seize strategically important parts of Uruzgan Province along the Kandahar-Tirin Kot highway and retook control of strategic areas of Baghlan Province, where security forces had conducted a clearance operation in January.

15. The Afghan National Defence and Security Forces remained under pressure, in particular in Baghlan, Faryab, Helmand, Kunar, Kunduz, Nangahar and Uruzgan provinces, and were reinforced by Afghan special forces and international military assets. Notwithstanding intensified efforts to strengthen army units, in particular in Helmand Province, significant shortcomings remained in the areas of command and control, leadership, logistics and overall coordination. In the first four months of 2016, reports indicated rising casualties among the security forces. The sustainability of the forces remains a challenge in the light of high attrition rates. Even though recruitment was on target, re-enlistment rates remained particularly low and needed to be increased to compensate for other losses. In April 2016, army troop levels and Afghan National Police numbers reached 87 per cent and 74 per cent respectively, of the levels projected for August 2016. Some progress was made in increasing air capacity, and the air force carried out a limited number of air missions.

16. Discussions on the presence of the Resolute Support Mission of NATO beyond 2016 and future funding arrangements for the Afghan National Defence and Security Forces continued ahead of the NATO summit in July. The Secretary-General of NATO, Jens Stoltenberg, visited the city of Kabul on 15 and 16 March, during which he met with the President and the Chief Executive of Afghanistan, Abdullah Abdullah, and reaffirmed the commitment of NATO to Afghanistan. On 11 May,

NATO members and donor representatives discuss financial support for the Afghan National Defence and Security Forces up to 2020 in a meeting in Brussels of the board of the Afghan National Army Trust Fund. On 20 May in Brussels, ministers for foreign affairs of participating countries agreed on the extension of the Mission beyond 2016.

17. Other armed groups maintained small presences on Afghan territory, including the Islamic Movement of Uzbekistan in northern Afghanistan and the Islamic State in Iraq and the Levant-Khorasan Province (ISIL-KP) in the east. Since my previous report, operations by the Afghan National Defence and Security Forces, supported by international military air strikes, further reduced the presence of ISIL-KP in Nangarhar Province, where the group also faced pressure from the Taliban. This contributed to ISIL-KP establishing a small, secondary presence in neighbouring Kunar and Nuristan provinces in search of safe havens and recruitment.

18. A total of 25 recorded incidents had an impact on the United Nations, including 6 cases of intimidation, 3 incidents relating to an improvised explosive device and 6 criminal-related incidents. On 20 May, a guard contracted by the United Nations was killed in the city of Kabul and another guard and a United Nations staff member were injured in a shooting incident, the circumstances of which are under investigation."

30. The German Federal Office for Migration and Asylum, Information Centre Asylum and Migration: Briefing Notes (27 June 2016) reported on Afghanistan:

"**Security situation**

In a report submitted to Congress, the U.S. Department of Defense notes a deterioration of security in view of the reduced international military presence and the weakness of the Afghan forces. While the Afghan government retained control of most city centres, the Taliban continued to expand their influence, especially in rural areas, the report says, demonstrating their resilience by attacks in Nangarhar, Herat, Kunduz and other northern provinces as well as in Helmand.

Increasingly, the Taliban insurgents were launching major attacks in urban centres, the report continues. From January to May, a total of 2,496 civilian casualties including 760 deaths were documented, the report went on.

In Nangarhar province, at least 135 rebels and 12 members of the security forces have died in a clash between the Afghan military and ISIS rebels. The fights started on 24 June 2016, when hundreds of ISIS insurgents attacked a military post in Kot district.

Attacks

On 20 June 2016, an attack on a member of the Kabul provincial council left six people wounded, among them the council member and his body guard.

On the same day, a bomb planted in a motorbike killed 8 people and injured another 14 in a market in northern Badakhshan province.

Intra-Taliban fighting

On 22 June 2016, a spokesman of the governor of Herat province stated that 20 militants were killed in fights between a Taliban splinter faction supporting dissident Mullah Mohammed Rasool, who is opposing the appointment of Mullah Haibatullah Akhundzada as the new Taliban leader, and followers of Akhundzada. The clash did not result in any civilian casualties, it was stated.

Bus passengers kidnapped

On 22 June 2016, Taliban insurgents ambushed a series of buses and other vehicles in Gareshk district (southern Helmand province) and abducted around 60 passengers. Shortly afterwards, they let those go who were travelling with their families. In an internet message, the Taliban stated that they had detained '27 suspected individuals'. If these turned out to be working for the government, they would be submitted to the Islamic emirate's courts, the Taliban said. Tribal elders intervened and succeeded in releasing all but two hostages."

31. In November 2016 the European Asylum Support Office ("the EASO") released the country of origin information report *"Afghanistan Security Situation"*. This report, presenting information up to 31 August 2016, is an update of a previous report released by EASO in January 2015 and an earlier update in January 2016. It provides a general description of the security situation in Afghanistan, as well as a description of the security situation for each of the thirty-four provinces and Kabul. The report states:

"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 (ANSF), supported by the International Military Forces (IMF), and Anti-Government Elements (AGEs), 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.

The UN [Security Council] stated in June 2016 that:

'The security situation was characterized by continued and intense armed clashes, which were at their highest number recorded since 2001 and had a corresponding negative impact on civilians, with rising casualties and displacement rates.' ...

The overall security situation deteriorated during 2015 since ANSF had to act independently without international support. The Taliban continued to conduct high-profile attacks in Kabul. Direct armed clashes and attacks intensified in the provinces of Baghlan, Faryab, Helmand, Kunar, Kunduz, Nangahar and Uruzgan. The Taliban also sometimes successfully captured urban areas. Some sources reported that the conflict was witnessing a fragmentation into more different militant groups, which had a negative impact on civilians, causing more crime growth and less controlled violence.

In 2016, the security situation remained volatile. In June 2016, the UN reported a slight decrease in the overall number of security incidents compared to 2015 but the number of armed clashes, civilian victims and high-profile attacks in Kabul increased. Tolo News reported a 12 % decrease in security incidents and terror attacks during the first half of 2016."

COMPLAINTS

32. The applicant complained under Article 3 of the Convention that there are substantial grounds for believing that he would be subjected to treatment prohibited by that provision if he were expelled to Afghanistan.

He further complained that his expulsion from the Netherlands would be a breach of his rights under Article 8 of the Convention.

THE LAW

A. Article 3 of the Convention

33. The applicant complained under Article 3 of the Convention that, if expelled to Afghanistan, he would be exposed to a real risk of being subjected to treatment prohibited by Article 3 of the Convention on account of his work for the former communist regime in Afghanistan. Article 3 provides as follows:

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

34. The Court refers to the relevant principles established in its case-law concerning Article 3 of the Convention (see, most recently, *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 106-07, ECHR 2016, with further references) and reiterates 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)).

35. The Court 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 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).

36. As regards the individual features of the risk of ill-treatment claimed by the applicant, the Court notes that, after the fall of the communist regime in Afghanistan, the applicant was held by the mujahideen from 16 August 1992 to 27 August 1994, when he was released in return for a cash payment by his brother. After his release, the applicant did not leave Afghanistan but moved to Mazar-e Sharif, where he joined his family. There he worked as a car dealer without encountering any problems until 8 January 1998, when he was arrested and released after two days by the Hezb-e Wahdat. He and his family fled Afghanistan later that month.

37. The Court has found no indication that, since his departure from Afghanistan in 1998, the applicant has attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of his involvement with the former communist regime. The Court further notes that UNHCR does not include persons involved in the former communist regime in its potential risk profiles in respect of Afghanistan.

38. In view of the above, the Court does not find that it has been demonstrated that, on individual grounds, the applicant would be exposed to a real risk of being subjected to treatment proscribed by Article 3.

39. Regarding 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* (nos. 70073/10 and 44539/11, §§ 92-93, 9 April 2013), the Court did not find that in Afghanistan there was a general situation of violence such that there would be a real risk of ill-treatment simply by virtue of an individual's being returned there. It confirmed this finding in its more recent judgments of 12 January 2016 in the cases of *A.W.Q. and D.H. v. the Netherlands* (no. 25077/06, § 71), *S.S. v. the Netherlands* (no. 39575/06, § 66), *S.D.M. and Others v. the Netherlands* (no. 8161/07, § 79), *M.R.A. and Others v. the Netherlands* (no. 46856/07, § 112) and *A.G.R. v. the Netherlands* (no. 13442/08, § 59). In the light of the evidence now before it, the Court has found no reason to hold otherwise in the case at hand.

40. The Court therefore finds that the 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 proscribed by Article 3 of the Convention if removed to Afghanistan.

41. 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

42. The applicant further complained that, in denying him residence on the basis of Article 1F of the 1951 Refugee Convention, the Netherlands authorities had violated his right to respect for his private and family life as guaranteed by Article 8 of the Convention, since his spouse and children had all been admitted into and were living in the Netherlands and could not be expected to return to Afghanistan.

43. Article 8, in so far as relevant, reads as follows:

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

> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

44. The Court accepts that the applicant's relationships with his spouse and their children constitute "family life" for the purposes of Article 8 and that the decision to apply Article 1F of the 1951 Refugee Convention, the decision to impose an exclusion order on the applicant, and the subsequent refusal to lift this order affected that family life.

45. As regards the applicant's family life with his children, all of whom are adults, the Court reiterates that relationships between adult relatives do not necessarily attract the protection of Article 8 without further elements of dependency involving more than normal emotional ties (see, among many other authorities, *A.A.Q. v. the Netherlands* ((dec.), no. 42331/05, § 64 with further references, 30 June 2015). On the basis of the contents of the case file, the Court cannot find that, apart from normal emotional ties, there are any further elements of dependency between the applicant and his children that would bring their relationship into the protective sphere of Article 8 of the Convention.

46. As to the applicant's family life with his spouse, the Court reiterates 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 (see paragraph 34 above).

47. A State is entitled, as a matter of well−established international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there and Article 8 does not entail a general obligation for a State to authorise family reunion within its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit into its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest, including that State's obligations under the 1951 Refugee Convention. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them or in a third country, and whether there are factors of immigration control or considerations of public order weighing in favour of exclusion (see *A.A.Q.*, cited above, § 66 with further references).

48. The Court finds that the decision to apply Article 1F, taken together with the decision to impose an exclusion order and the subsequent refusal to lift this order, interfered with the applicant's rights under Article 8 § 1 of the Convention. Consequently, it must be examined whether this interference was justified under the terms of the second paragraph of this provision.

49. The Court is satisfied that the decisions at issue were taken in accordance with domestic law and pursued the legitimate aims set out in the second paragraph of Article 8, in particular "for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". It thus remains to be determined whether the interference was "necessary in a democratic society".

50. Under the Court's well-established case-law, a measure interfering with rights guaranteed by Article 8 § 1 of the Convention can be regarded as being "necessary in a democratic society" if it has been taken in order to respond to a pressing social need and if the means employed are proportionate to the aims pursued. The national authorities enjoy a certain margin of appreciation in this matter (see *Keegan v. the United Kingdom*, no. 28867/03, § 31, ECHR 2006‑X). The Court's task consists in ascertaining whether the impugned measures struck a fair balance between the relevant interests, namely the individual's rights protected by the Convention on the one hand and the community's interests on the other (see *Boultif v. Switzerland*, no. 54273/00, §§ 46-47, ECHR 2001-IX, and *Slivenko v. Latvia* [GC], no. 48321/99, § 113).

51. The Court has held that, taking into account the seriousness of the crimes and acts referred to in Article 1F, the public interest served by the application of this exclusion clause weighs very heavily in the balance when assessing the fairness of the balance struck under Article 8 of the Convention, also bearing in mind that, according to the UNHCR guidelines on the application of the exclusion clauses of the 1951 Refugee Convention, the excluded individual is not able to rely on the right to family unity in order to secure protection (see *A.A.Q.*, cited above, §§ 46 and 71).

52. The Court notes that, unlike his spouse and children, the applicant has never been granted a residence permit in the Netherlands and that, given the decision to deny him asylum pursuant to Article 1F, the applicant's residence status was such that the continuance of his family life in the Netherlands had always been precarious. The Court further notes that the applicant has lived for 19 years in the Netherlands and that his departure from the Netherlands would entail a separation from his wife. On this point, the Court finds it of relevance that the applicant's wife must be regarded as having been aware of her husband's work for the KhAD/WAD, the cruel character of which was widely known in Afghanistan, and that the residence permit eventually granted to her was based on a general amnesty scheme and was not an asylum-based residence permit based on her individual asylum statement. The Court therefore cannot find that there would be an insurmountable obstacle for her to return with the applicant to Afghanistan. In any event, even assuming that there were some objective obstacle hindering the applicant's wife's return with the applicant to Afghanistan, the Court considers that it has not been established that it would be impossible for them to settle in a third country and exercise their family life there.

53. Having taken into account the above considerations and the particular features of the instant case, the Court finds that, in denying the applicant a residence permit, the Netherlands authorities cannot be regarded as having failed to strike a fair balance between the competing interests at issue. Accordingly, the Court finds that the interference in respect of which complaint is made was justified under the terms of Article 8 § 2 of the Convention.

54. It follows from the above that this part of the application is also manifestly ill‑founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

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