



## No Risk of Persecution or Ill-Treatment if Nine Tamils Returned to Sri Lanka

In today's Chamber judgments in the cases *T.N. v. Denmark* (no. 20594/08), *T.N. and S.N. v. Denmark* (no. 36517/08), *S.S. and Others v. Denmark* (no. 54703/08), *P.K. v. Denmark* (no. 54705/08) and *N.S. v. Denmark* (application no. 58359/08), which are not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there would be:

**No violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights if orders to deport the applicants to Sri Lanka were to be implemented.

The five cases concerned applications from nine Tamils claiming they risked persecution and ill-treatment by the authorities &/or the "Tamil Tigers" if deported from Denmark to Sri Lanka.

### Principal facts

The applicants are nine Sri Lankan nationals of Tamil ethnicity who have been refused asylum in Denmark and have been ordered to return to Sri Lanka.

They are all of Tamil ethnicity with Tamil features and all had connections (directly or through their families) with the Liberation Tigers of Tamil Eelam, "Tamil Tigers" (LTTE), a separatist militant organisation involved in the Sri Lankan civil war from 1983 to 2009.

**T.N.** – T.N., born in 1972, currently lives in Ellebæk (Denmark). She comes from Jaffna, in the north of Sri Lanka, but lived in Colombo before her departure. She left her country lawfully to join her Sri Lankan husband in Denmark on a valid passport after the couple had officially married in Sri Lanka. She had been a member of the LTTE and had visible scars on her body which, she claimed, were inflicted in combat while an LTTE soldier.

**T.N. and S.N.** – T.N., and his wife, S.N., born in 1965 and 1979 respectively, currently live at the Jelling Asylum Centre (Denmark). They come from Batticaloa in the east of Sri Lanka. On 14 September 2005, with valid passports and three month visas, they left their country lawfully and entered Denmark, where TN's sister and brother lived permanently. T.N. stated: that he had sometimes been forced to give money to the LTTE as a fisherman until he lost his fishing boat in the tsunami on 26 December 2004; that, in 1998, he had been detained as a suspected LTTE member by the Sri Lankan Army and that he was hit on the jaw and left with a scar; that he also had scars on the back of the head, on his right leg and his left arm, and had lost six teeth due to ill-treatment in 1988 and 1998; and, that his cousin was a member of the LTTE. The applicants also alleged that the various authorities in Sri Lanka knew they were unsuccessful asylum seekers

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

because their cases were mentioned on the Refugee Appeal Board website and in the media in Denmark.

**S.S and Others** - S.S., born in 1969, currently lives in Germany. His wife and their two children, born in 1979, 2000 and 2002 respectively, live in an asylum centre in Denmark. The applicants have all lived in the north of Sri Lanka. They left Sri Lanka in 1999. On 19 July 2005 with Romanian aliens' passports, they entered Denmark, where the applicant wife's sister and cousin lived. On 14 November 2005 they requested asylum. The applicants made numerous claims concerning their involvement with the LTTE of which the Court accepted the following: between 1995 and 1997 S.S.'s wife did social work for the LTTE as an LTTE member and she was also detained for brief periods; S.S. was a member of the LTTE for three months in 1985 and subsequently left without problems to continue his education; he sold the garage he ran in 1998 because both the LTTE and the Sri Lankan authorities were pressuring him to work for them; both left Colombo with valid passports. S.S.'s wife also claimed that her sister was a high-profile member of the LTTE who had appeared on YouTube and S.S. stated that he had a hand injury dating from 1983.

**P.K.** - P.K., born in 1945, lives in a centre for asylum seekers in Denmark. He is from the north of Sri Lanka. On 17 May 2007, with a valid passport, he left Sri Lanka lawfully and entered Denmark where his son, daughter-in-law, grandchild and brother-in-law lived permanently. P.K. stated that he was questioned about his knowledge of LTTE members, in connection with the murder of his nephew three or four years earlier (on 14 November 2006). From 1995 to 1998, when the applicant was living with his eldest son in a refugee camp, he was arrested twice by the authorities, and, from 1998 to 2002, when living in Colombo, he was arrested by the authorities three times.

**N.S** - N.S., born in 1967, is currently living in Denmark. He is from Jaffna in the north of Sri Lanka. He left his country lawfully to join his Sri Lankan wife in Denmark after the couple had officially married in Sri Lanka. The applicant entered Denmark on 13 December 1997 with a valid passport and visa. He did not request asylum in Denmark until 14 June 2007. He maintained that he assisted but was never a member of the LTTE and that his wife and siblings were LTTE members.

## Complaints, procedure and composition of the Court

Relying in particular on Article 3 of the Convention, all the applicants alleged that, if deported to Sri Lanka, they would be at risk of persecution and ill-treatment by the Sri Lankan authorities, notably due to their connections with the LTTE. All the applicants (except those in the case **S.S. and Others**) also claimed that they risked ill-treatment at the hands of the LTTE if returned.

The applications were lodged with the European Court of Human Rights on: 28 April 2008, 1 August 2008, 14 November 2008, 14 November 2008 and 25 November 2008 respectively.

Following their request to the Court, the applicants were granted interim measures (under Rule 39 of the Rules of Court) whereby the Court indicated to the Danish Government that the applicants should not be deported pending the outcome of the proceedings before it.

Judgment was given by a Chamber of seven, composed as follows:

Renate **Jaeger** (Germany), *President*,  
Peer **Lorenzen** (Denmark),  
Karel **Jungwiert** (the Czech Republic),

Rait **Maruste** (Estonia),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),  
Zdravka **Kalaydjieva** (Bulgaria), *Judges,*

and also Claudia **Westerdiek**, *Section Registrar.*

## Decision of the Court

### Article 3

#### The Court's approach

In all five cases the Court maintained its approach as set out in its lead judgment **N.A. v. the United Kingdom** (no. 25904/07 of 17 July 2008) that there was not a general risk of treatment contrary to Article 3 to Tamils returning to Sri Lanka. The protection of Article 3 would enter into play only where an applicant could establish that there were serious reasons to believe that s/he would be of sufficient interest to the authorities to warrant her/his detention and interrogation upon return.

The assessment of whether there was a real risk had therefore still to be made on a case by case basis considering all relevant factors which might increase the risk of ill treatment, including but not limited to: a previous record as a suspected or actual LTTE member; a previous criminal record and/or outstanding arrest warrant; bail jumping and/or escaping from custody; having signed a confession or similar document; having been asked by the security forces to become an informer; the presence of scarring; return from London or other centre of LTTE fundraising; illegal departure from Sri Lanka; lack of an ID card or other documentation; having made an asylum claim abroad; and having relatives in the LTTE.

The Court reiterated that a number of individual factors might not, when considered separately, constitute a real risk, but might do so when taken cumulatively, depending on the overall situation in Sri Lanka at the relevant time.

#### Risk of ill-treatment from the LTTE

For those applicants complaining that they risked ill-treatment from the LTTE, the Court noted that the hostilities between the LTTE and the Sri Lankan Army ended on 19 May 2009. In **T.N.** the applicant left the organisation in 1994 and had not demonstrated that she had a high profile as an opposition activist or that she was seen by the LTTE as a renegade or a traitor. In **T.N. and S.N.** T.N. only assisted the LTTE, as opposed to being a member, and both he, and the applicant in **P.K.** had not mentioned having any previous problems with the LTTE. In **N.S.** the applicant only assisted the LTTE, as opposed to being a member, and the last time he had worked for them was in January 1997, which apparently had not led to any problems.

#### Risk of ill-treatment by the Sri Lankan authorities

In all five cases, having regard to the current general situation in Sri Lanka taken cumulatively with the risk factors identified above, the Court found that there were no substantial grounds for finding that any of the applicants would be of interest to the Sri Lankan authorities if returned. It therefore found that an implementation of the order to deport the applicants to Sri Lanka would not give rise to a violation of Article 3.

In its reasoning in the first four cases the Court found, among other things, that the applicants had never been recorded by the Sri Lankan authorities in connection with arrest or detention; nor was there any indication that photographs, fingerprints or other

means of identification had been stored by the Sri Lankan authorities to identify them on their return. In the last case, **N.S.**, the applicant had failed to substantiate that he would be of interest to the authorities on his return. Even if his photo had been taken in connection with his arrest, from 1991 until his departure in December 1997 he was not detained or questioned, no picture or fingerprints were taken, nor was he in any other way the object of interest from the Sri Lankan authorities.

Specifically in each case the Court found the following:

**T.N. v. Denmark** - The Court found that T.N. had never been arrested or detained and never had any problems with the Sri Lankan authorities. Nothing suggested that the authorities had any suspicion that she had been an LTTE soldier. Her scars did not cause any problems when her passport was issued in 2004 or when she left her country in 2005. There were no grounds for believing that the Sri Lankan authorities were informed that she had made an asylum claim abroad and she would not be deported from a location considered to be a centre of LTTE fundraising. The argument that her former spouse and/or his family would pass or might have passed on information about her to the Sri Lankan authorities was mere speculation.

**T.N. and S.N. v. Denmark** – The Court found that there was nothing to indicate that upon their return the applicants would be of interest to the authorities in their search for T.N.'s cousin. Regarding T.N.'s scars, the Court observed that he did not have any problems in obtaining a passport or in leaving the country in December 2005. Although the applicants' age, sex and home district had been disclosed on a website and in the media, they could "hardly be traceable", notably since Batticaloa was quite a large town with many inhabitants. In the proceedings before the European Court of Human Rights, the applicants had not asked for anonymity and there were no indications that, through the Court's own Internet site or references in the Danish press, the Sri Lankan authorities had become aware that the applicants had been refused asylum or that they were therefore of special interest to the authorities upon return.

**S.S. and Others v. Denmark** – The Court noted that the applicants had no legal basis for staying in Denmark and that they might forcibly be returned to Sri Lanka if they did not leave voluntarily. It had not been established that they had supported the LTTE on more than a lower level, or that they were of interest to the authorities in 1999, when they departed lawfully, or that they were subsequently wanted by the Sri Lankan authorities, or that upon return they would be of interest to the authorities due to their previous involvement with LTTE, which took place more than 12 years previously. Even if S.S.'s wife's sister was a high-profile member of the LTTE and had appeared on YouTube, they had not been in touch for many years. S.S.'s hand injury did not pose any problems in leaving the country in 1999 and there were no grounds for believing that the Sri Lankan authorities had been informed that the applicants had made an asylum claim abroad, or that they had participated in demonstrations in Denmark, and they would not be deported from a location considered to be a centre of LTTE fundraising.

**P.K. v. Denmark** - The applicant had stated that he personally was not an object of interest to the authorities, that he was solely questioned about his knowledge of other LTTE members in connection with the murder of his nephew and that he had not personally been persecuted or threatened in his country of origin. He left Sri Lanka without any problems using his passport. It was not probable that he would have been of interest to the Sri Lankan authorities or suspected of supporting the LTTE. P.K. had not provided any reasons for his arrests from 1995-8, except that in order to leave the refugee camp where he was living it was obligatory to obtain a permit from the military. He stated that his arrests from 1998-2002 were to verify that he had permission to stay in Colombo, which he had. There was no indication that any of the arrests were registered or that in general he had problems with the Sri Lankan authorities. When the military interviewed him after his nephew was killed, P.K. himself stated that they were

mainly looking for his brother's other children. Even if the military took some interest in him at that time, there was nothing to indicate that upon return he would be of interest to the authorities. There were no grounds for believing that the Sri Lankan authorities had been informed that he had made an asylum claim abroad and he would not be deported from a location considered a centre of LTTE fundraising.

**N.S. v. Denmark** – N.S. stated that his last detention by the Sri Lankan authorities took place in 1991, five or six years prior to his departure; that it took place as part of a mass arrest; that he was released in connection with a peace agreement; and that he was released unconditionally without being charged or sentenced. Furthermore, without any problems, he departed lawfully from Sri Lanka in 1997 with his spouse using a valid passport. There was no indication that the Sri Lankan authorities were aware of his siblings' and spouse's alleged previous affiliation with the LTTE, there were no grounds for believing that the Sri Lankan authorities were informed that he had made an asylum claim abroad and he would not be deported from a location considered to be a centre of LTTE fundraising.

### Article 39

The Court decided to continue to indicate to the Government under Rule 39 of the Rules of Court that it was desirable in the interests of the proper conduct of the proceedings not to deport the applicants until such time as the present judgments become final or further order.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.