CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 14492/03
by Prasanthan PARAMSOTHY
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 10 November 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Ms I. ZIEMELE, *judges*,

and Mr V. BERGER , *Section Registrar,*

Having regard to the above application lodged on 6 May 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Prasanthan Paramsothy, is a Sri Lankan national, who was born in 1980 and is currently staying in Etten-Leur with the family of a cousin. He is represented before the Court by Mr M.R. van der Linde, a lawyer practising in Zaandam. The respondent Government are represented by Mrs J. Schukking of the Ministry for Foreign Affairs.

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

On 19 November 1996 the applicant arrived in the Netherlands, where, on 20 November 1996, he applied for asylum or, alternatively, a residence permit on compelling humanitarian grounds. In support of his claim for asylum he submitted the following:

He belonged to the Tamil population group and used to live in Karaveddy, a village situated on the Jaffna peninsula. This area was controlled by the Tamil Tigers (the "LTTE"), a Tamil terrorist organisation, engaged in an armed struggle for independence. He had been involved with the LTTE since early 1995, putting up posters of Tamil Tigers who had died. In July 1996 he had been summoned to report at the local LTTE camp, where he had been forced to stay. Apart from undergoing military training, his activities had consisted of putting up posters, cooking and digging trenches.

On 13 October 1996 the Sri Lankan army surrounded part of the village and searched 20 houses, including that of the applicant's parents. During this search, photographs showing the applicant together with LTTE members putting up posters and hoisting the LTTE flag were confiscated. The applicant managed to escape from the LTTE camp on 15 October 1996, taking advantage of the fact that the LTTE members in the camp were too preoccupied with the advancing Sri Lankan army.

The applicant submitted that he was wanted both by the Sri Lankan army, because of his LTTE involvement, and by the LTTE, because he had escaped from their camp.

The applicant's request was rejected by the Deputy Minister of Justice (*Staatssecretaris van Justitie*) on 5 February 1997 as it was held that he had no well-founded reasons to fear persecution, *inter alia* because the Sri Lankan army had recaptured the Jaffna peninsula already in May 1996 – it was thus deemed unlikely that the army would only have come to Karaveddy village in October of that year. Neither was the applicant considered eligible for a residence permit on compelling humanitarian grounds.

The applicant lodged an objection (*bezwaar*) against the Deputy Minister's decision, which was dismissed by the latter on 4 April 1997. The applicant's subsequent appeal to the Regional Court (*arrondissementsrechtbank*) of The Hague was rejected on 9 February 1999.

Following this decision, an expulsion order was issued to the Aliens Police (*vreemdelingendienst*) in the applicant's place of residence on 28 April 1997. However, the applicant did not leave the country and neither was he forcibly expelled.

On 11 February 2000 the applicant lodged a new request for asylum. During his interview with the immigration authorities, he stated, *inter alia*, that his general practitioner had referred him to the Regional Institute for Outpatient Mental Health Care (*Regionale Instelling voor Ambulante*

Geestelijke Gezondheidszorg – "RIAGG") as he was sleeping badly, was suffering from nightmares and was very forgetful.

The Deputy Minister dismissed the second request for asylum on 13 February 2000, considering that the applicant did not have well-founded reasons to fear persecution in Sri Lanka and that it had not appeared that there existed a real risk of the applicant being subjected to treatment in breach of Article 3 of the Convention if he was to return to that country. As regards the applicant's alleged psychological problems, it was held that, pursuant to a policy change which had entered into force on 1 July 1998, this was an issue which could not be examined in the framework of a request for asylum. The applicant could lodge a request for a residence permit for the purposes of receiving medical treatment if he wished to stay in the Netherlands for that reason. Also on 13 February 2000, the Deputy Minister issued an expulsion order.

In his objection to the Deputy Minister's decision, the applicant argued that the fact that he had been referred to the RIAGG implied that his psychological problems were serious. For this reason, he requested the Deputy Minister to seek the advice of the Medical Advice Bureau (*Bureau Medische Advisering*) of the Ministry of Justice. He further submitted that his medical complaints were related to the reasons for his flight and that they ought, therefore, to be examined in the course of his request for asylum. The applicant further requested the Regional Court of The Hague to issue a provisional measure allowing him to await the outcome of the proceedings on his objection in the Netherlands.

By a decision of 29 February 2000, the Acting President of the Regional Court rejected the applicant's objection and also refused to issue a provisional measure. No further appeal lay against this decision. Nevertheless, the applicant did not leave the country and neither was he forcibly expelled.

On 18 April 2000 the applicant's lawyer wrote to the Deputy Minister, suggesting that the expulsion of the applicant ought not to be carried out in view of the applicant's state of health. The lawyer enclosed a number of letters from medical practitioners, including one – dated 5 April 2000 – from a RIAGG psychiatrist to the applicant's general practitioner in which the applicant was diagnosed as suffering from a post-traumatic stress disorder. The applicant was prescribed medication for insomnia. The lawyer also enclosed a letter, dated 12 April 2000, from a counsellor in which the latter stated that the applicant had recently told her that his asylum account was not complete. He had been put under pressure by the "travel agent" not to tell the true reason for his flight.

By a letter of 31 May 2000 the Deputy Minister informed the applicant's lawyer that, in accordance with Article 25 of the Aliens Act 1965 (*Vreemdelingenwet 1965*), he intended to have the medical situation of the applicant examined by the Medical Advice Bureau in order to see whether

his state of health militated against expulsion. The applicant's lawyer subsequently wrote to the Deputy Minister, stating that, given the applicant's intention to submit a new asylum application, it was assumed – if nothing was heard to the contrary – that the examination by the Medical Advice Bureau would also extend to the applicant's eligibility for a residence permit pursuant to the leniency policy for traumatised asylum seekers (*traumatabeleid*).

The applicant lodged a third request for asylum on 24 July 2000. In support of this application he submitted, *inter alia*, a letter from a RIAGG psychiatrist of 18 April 2000 to his general practitioner. According to the psychiatrist, the applicant was suffering from a post-traumatic stress disorder, combined with symptoms of a reactive depressive nature. In view of these symptoms, which occasionally included the applicant entertaining thoughts of suicide, the psychiatrist had decided that the applicant should receive counselling from the RIAGG. The applicant also submitted a letter, dated 19 July 2000, from the social-psychiatric nurse who was his counsellor at the RIAGG. She wrote that the applicant was suffering from serious complaints of depression involving anxiety, the reliving of experiences and nightmares which affected his life to such an extent that he hardly dared be alone, was no longer able to concentrate, was prone to losing his emotional balance and continually saw pictures in his head of past experiences. He was again diagnosed as suffering from a post-traumatic stress disorder.

On 26 July 2000 the medical service at the asylum application centre where the applicant had lodged his new request wrote to the immigration authorities at that centre, informing them that the applicant had medical problems and that there was an acute need, which could not be postponed, for further diagnostics and/or therapy.

Also on 26 July 2000 the applicant was interviewed by an immigration official about the reasons for his request for asylum. He submitted that he had not previously related the following events, because his travel agent had told him that if he mentioned them, he would be returned to Sri Lanka and it would also cause problems for his parents.

He had stayed in an LTTE camp from February until May 1996 where he had received military training. After this training he had returned home, albeit that he continued doing small jobs for the LTTE. In May 1996, as he was putting up posters for the LTTE with another boy and two adults, he was arrested by the Sri Lankan army, as were the others. They were taken to an army camp where the two adults were severely ill-treated in front of his eyes. After four to five hours, they were released and the applicant went home. A few days later he witnessed Sri Lankan soldiers severely ill-treating his neighbours and raping the neighbours' daughter.

In July 1996 the LTTE billeted him in a library. After six weeks, the Sri Lankan army surrounded the library and arrested the applicant and the six

other persons present. They were held for seven days at the army camp during which time the applicant was interrogated and forced to admit that he was a Tamil Tiger. He was hit with the butt of a rifle, which caused him to faint, and an electric coil was held against his leg. The detainees were made to dig trenches and clean toilets. On the seventh day he witnessed the adult detainees being tortured. The applicant's parents, assisted by the head of the village, eventually managed to obtain his release. Upon his release he returned to the library. Some time later he heard that the army had searched his parent's house, ill-treating his parents in the process, and that they had found a picture of the applicant together with other Tamil Tigers. After hearing this news, all seven people in the library decided to flee.

The immigration official further asked the applicant whether he had been in touch with his parents after he had left Sri Lanka. The applicant replied that, although he had not had any contact with his parents, he had learned that they were living in the Vanni, a region in northern Sri Lanka.

The Deputy Minister dismissed the new asylum application on 20 October 2000. The Deputy Minister had serious doubts as to the veracity of the applicant's new account and found no convincing excuse for his failure to inform the immigration authorities earlier about his two alleged arrests by the Sri Lankan army. Moreover, the applicant's statements did not lead to the conclusion that as a result of traumatic experiences it could not reasonably be expected of him to return to his country of origin. As there was no connection between what the applicant had experienced in Sri Lanka and his current psychological problems, and bearing in mind that the applicant's statements were subject to doubt, the Deputy Minister perceived no cause to seek the advice of the Medical Advice Bureau. It had been the Deputy Minister's intention to seek such advice pursuant to Article 25 of the Aliens Act 1965 in relation to the question whether the applicant's medical situation stood in the way of his expulsion, but now that the applicant had lodged a new request for asylum this no longer applied. In so far as the applicant had claimed that he required medical treatment in the Netherlands, it was held that this matter could not be examined in the framework of a request for asylum and that the applicant could apply for a residence permit for the purposes of receiving medical treatment.

The applicant lodged an objection against this decision, *inter alia* expressing his amazement at, and dissatisfaction with, the Deputy Minister's refusal to seek advice from the Medical Advice Bureau. The objection was dismissed on 9 November 2001, against which decision the applicant filed an appeal with the Regional Court of The Hague sitting in Almelo. In these proceedings the applicant submitted a letter of 27 March 2003 to his lawyer from a psychiatrist and a social-psychiatric nurse, in which it was once again stated that the applicant was suffering from a post-traumatic stress disorder. He was described as being troubled by the reliving of traumatic events, sleeping badly and often having

nightmares. He suffered from headaches, worried a lot and had difficulties concentrating. In February 2002 the applicant had attempted to commit suicide. His treatment consisted of medication and therapy. The authors of the letter expressed as their opinion that in view of the nature of the applicant's problems, treatment would require a considerable amount of time. The fear and uncertainty about his status in the Netherlands took a heavy toll on the applicant's energy which hindered the therapeutic process.

On 15 April 2003 the Regional Court rejected the appeal, holding as follows:

> "The court's scope for review in the present case is determined by Article 4:6 of the General Administrative Law Act (*Algemene Wet Bestuursrecht* – "AWB"), ... Pursuant to Article 4:6 paragraph 1 AWB, an applicant is obliged to report new facts or altered circumstances if a fresh application is made after a decision dismissing all or part of an application. Pursuant to the second paragraph the administrative authority may ... dismiss the application by referring to its earlier decision, if no such facts or circumstances are reported. ...
>
> If an administrative authority, upon receiving a request to reconsider a decision which has become final and conclusive, reaches the conclusion that there are no grounds for so doing, the lodging of an appeal against the latter decision cannot lead to that appeal being examined by the court as if it were directed against the original decision. The appeal lodged by the applicant is therefore limited to the examination whether the Minister was correct in finding that no new facts or altered circumstances, justifying reconsideration, had occurred after the earlier final and conclusive decisions by which the applicant was refused admittance.
>
> ... The court is of the opinion that what has been submitted by the applicant in his third request for asylum forms a supplement to the account given by him in the proceedings on his previous requests. The alleged facts and circumstances submitted by the applicant in support of his third request cannot be considered "new facts", given that these facts and circumstances were already known, or could have been known, at the time of the first request. The applicant has further claimed that he is traumatised as a result of the ill-treatment to which he was a witness and to which he was subjected during his detentions. The court concludes that although this claim and the supporting documents are new, they are nevertheless not "new facts" within the meaning of Article 4:6 AWB. In this context the court considers that, having qualified the applicant's alleged detentions as not constituting "new facts", it must come to the conclusion that trauma resulting from those detentions and supporting medical documents can similarly not be classified as "new facts". It was not unreasonable to require the applicant to make some reference – no matter how summarily – to this trauma, and to its background or causes, in the proceedings on his first request. ...
>
> In so far as the applicant has submitted that special circumstances exist which prompt a derogation from Article 4:6 AWB, the court notes that, according to the case-law of the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*), procedural rules, including Article 4:6 AWB, which are designed to enable the national authorities to process requests for a residence permit in an orderly manner – even in cases of expulsion to a country where there is an alleged risk of ill-treatment contrary to Article 3 of the Convention –, must be complied with. Only where special facts and circumstances exist, relating to the individual case, there may be cause for not holding these rules against an applicant (see *Bahaddar v. the Netherlands*, judgment of 19 February 1998, *Reports of*

Judgments and Decisions 1998-I). In a case of a repeat-application, where it is alleged that there is a risk of treatment in breach of Article 3 of the Convention, it is thus not in all circumstances excluded that the judicial examination goes beyond the aforementioned scope of review.

The applicant has, however, not made plausible that such special facts or circumstances exist, given that, for example, no medical information has been submitted from which it appears that the applicant was unable to talk about his detentions and torture at an earlier stage. ..."

COMPLAINTS

1. The applicant complained that his expulsion to Sri Lanka would constitute a violation of Article 3 of the Convention because of the trauma involved in being sent back to a country where he had previously been tortured, which treatment had resulted in a post-traumatic stress disorder. Expulsion also entailed a risk of deterioration of his mental and physical health.

2. The applicant further complained under Article 8 of the Convention of an unjustified interference with his right to respect for private life, having regard to the many adverse effects an expulsion to Sri Lanka would have on his physical and psychological integrity.

3. Finally, the applicant argued that he did not have an effective remedy for his Convention complaints, as guaranteed by Article 13 of the Convention. In this context he submitted that his request for asylum was never examined in the light of the information which he was only able to provide to the Netherlands authorities at a late stage, due to the post-traumatic stress disorder from which he was suffering as a result of the torture to which he was subjected by the Sri Lankan army.

THE LAW

1. The applicant complained that his expulsion to Sri Lanka would amount to inhuman treatment. He invoked Article 3 of the Convention, which provides as follows:

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

The Government argued in the first place that the applicant's line of reasoning that, solely because he had been diagnosed as having psychological problems, his claim that he had been detained and tortured in Sri Lanka was credible and that therefore his expulsion would be incompatible with Article 3, was untenable. In their opinion, no credence

could be given to the applicant's claims of having undergone maltreatment during periods of detention, which claims he had not advanced until his third application for asylum. It was impossible to imagine why the applicant would not have mentioned this earlier. In these circumstances, the Government were of the view that there was no connection between what purportedly happened to the applicant in his country of origin and his psychological problems.

Secondly, the Government submitted that mental health care was available in Sri Lanka and that the applicant would in principle have access to this care. In this context they referred to World Health Organisation information according to which Sri Lanka has a separate budget for mental health care, which is part of the general health care system. It further appeared from this information that NGOs are involved in mental health care in Sri Lanka, and that these contribute mainly to the areas of advice, public information and rehabilitation. There are also special programmes for treatment of traumatised patients and various therapeutic medicines available. The Government concluded that even if the health care facilities which the applicant would encounter in Sri Lanka were less favourable than those in the Netherlands, his personal circumstances were not sufficiently exceptional to justify the classification of his expulsion to Sri Lanka as treatment proscribed by Article 3.

The applicant maintained that the alarming state of his mental health had been caused by the traumatic events he had experienced in Sri Lanka. It was wrong for the Netherlands authorities to dismiss his account in this respect as not credible and without further investigation for the sole reason that he had not immediately made mention of these events in the course of his first application for asylum. By reasoning in this way, the Government disregarded the medical evidence submitted by him and ignored the well-known fact that it is not uncommon for evidence of psychological trauma resulting from torture to become available only at a late stage.

The applicant emphasised that, as a young adolescent, he had been tortured as well as forced to witness torture, and that there was medical evidence of the extremely harmful effects this had had on his mental health. After an attempt at suicide upon learning that he would be returned to his country of origin, the applicant had been placed in the family of his niece. Expulsion would entail the loss of that support. The applicant insisted that a deterioration of his mental health was to be expected if he was removed to the country where he had been subjected to torture.

The Court recalls at the outset that the Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. However, in exercising their right to expel such aliens Contracting States must have regard to Article 3 of the Convention which

enshrines one of the fundamental values of democratic societies (see, among others, *Hilal v. the United Kingdom*, no. 45276/99, § 59, ECHR 2001-II).

While it is true that Article 3 has been more commonly applied by the Court in contexts in which the risk to the individual of being subjected to any of the proscribed forms of treatment emanates from intentionally inflicted acts of the public authorities or non-State bodies in the receiving country (see, for example, *Ahmed v. Austria*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2207, § 44), the Court has, in the light of the fundamental importance of Article 3, reserved to itself sufficient flexibility to address the application of that Article in other contexts which might arise. It is not, therefore, prevented from scrutinising an applicant's claim under Article 3 where the source of the risk of proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, do not in themselves infringe the standards of that Article. The Court has held that to limit the application of Article 3 in this manner would be to undermine the absolute character of its protection. In any such contexts, however, the Court must subject all the circumstances surrounding the case to rigorous scrutiny, especially the applicant's personal situation in the expelling State (see *D. v. the United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III, p. 792, § 49).

Turning to the circumstances of the present case, the Court notes that the applicant has been diagnosed as suffering from a post-traumatic stress disorder and depression involving anxiety. As regards the applicant's argument that these problems are directly linked to the traumatic experiences he claims to have undergone in Sri Lanka, the Court would not deny that symptoms of post-traumatic stress disorder may indeed materialise years after events (see *Iryna and Ivan Ovdienko v. Finland* (dec.), no. 1383/04, 31 May 2005). It is nevertheless rather surprising that the applicant did not make any mention of the two episodes of detention, which allegedly traumatised him, until his third application for asylum. In any event, and whatever its cause or causes, the Court accepts the seriousness of the applicant's medical condition. However, in its examination of the question whether the applicant's expulsion to Sri Lanka would be contrary to Article 3, the focus has to be on the foreseeable consequences of that removal in light of the general circumstances in that country as well as the applicant's personal circumstances at the present time, given that the applicant has not yet been expelled (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, Series A no. 215, p. 36, § 108, and *H.L.R. v. France*, 29 April 1997, *Report*s 1997-III, p. 758, § 37).

When notice of the application was given to the respondent Government under Rule 54 § 2 (b) of the Rules of Court, the parties were requested to inform the Court, *inter alia*, of the applicant's current state of health.

However, neither party addressed this matter in their observations. The Court must therefore proceed on the basis of the most recent information on the applicant's health contained in the case file, namely a letter of 27 March 2003 from a psychiatrist and a social-psychiatric nurse to the applicant's lawyer, according to which the applicant was suffering from a post-traumatic stress disorder, was troubled by the reliving of traumatic events, slept badly and often had nightmares. He had attempted to commit suicide one year previously. Treatment, which was expected to require a considerable amount of time, consisted of medication and therapy.

The Court reiterates that, according to established case-law, aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State unless such exceptional circumstances pertain as to render the implementation of a decision to remove an alien incompatible with Article 3 of the Convention owing to compelling humanitarian considerations (see *D. v. the United Kingdom*, cited above, § 54).

The Court notes that the information on the availability of mental health care in Sri Lanka as submitted by the Government has not been disputed by the applicant. It thus appears that, even though such care in Sri Lanka may not be of the same standard as in the Netherlands, there are special programmes for treatment of traumatised patients and various therapeutic medicines available. In any event, the fact that the applicant's circumstances in Sri Lanka would be less favourable than those enjoyed by him while residing in the Netherlands cannot be regarded as decisive from the point of view of Article 3 (see *Bensaid v. the United Kingdom*, no. 44599/98, § 38, ECHR 2001-I). The Court furthermore considers that the risk that the applicant would suffer a deterioration in his condition if he were returned to Sri Lanka and that, if he did, he would not receive adequate support or care is to a large extent speculative. It observes in this context that the applicant's parents are still living in Sri Lanka, and it has not been argued nor has it appeared that they would be unable to provide the applicant with support.

On the basis of the foregoing, and having regard to the high threshold set by Article 3 – particularly where the case does not concern the direct responsibility of the Contracting State for the infliction of harm –, the Court does not find that there is a sufficiently real risk that the applicant's expulsion in these circumstances would be contrary to the standards of that provision. In the view of the Court, the present case does not disclose the exceptional circumstances of *D. v. the United Kingdom* (cited above, § 52), where the applicant was in the final stages of a terminal illness, AIDS, and had no prospect of medical care or family support on expulsion to St. Kitts.

Accordingly, this part of the application is manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant further complained that his expulsion to Sri Lanka would be in breach of Article 8 of the Convention, due to the foreseeable deterioration in his psychological state. Article 8, in so far as relevant, provides:

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

The Government, noting that Article 8 had not been invoked in the proceedings on the applicant's three asylum applications, took the view that domestic remedies had not been exhausted. Alternatively, they were of the opinion that the applicant's expulsion to Sri Lanka would not be incompatible with his right to respect for private life given that medical care, including mental health care, was present and in principle available to the applicant in his country of origin. Any interference with this right was justified under the terms of the second paragraph of Article 8 since it was not compatible with the Government's restrictive admission policy - necessary for the economic well-being of the country - for an alien who was residing illegally in the Netherlands to receive medical care funded by Netherlands taxpayers and thereby placing an additional burden on the national health care system.

The applicant argued that it would have been futile to invoke Article 8 explicitly as such an argument was not entertained in the context of asylum proceedings in the Netherlands. In any event, within the framework of an asylum application, it was incumbent on the national authorities to examine whether compelling humanitarian grounds existed on the basis of which the applicant should be admitted. That was a broad concept, which should encompass the examination of the question whether, in view of the applicant's mental state, a refusal would be compatible with Article 8.

Even assuming that domestic remedies have been exhausted as required by Article 35 § 1 of the Convention, the Court considers that this complaint is manifestly ill-founded for the following reasons.

The Court has previously held that treatment which does not reach the severity of Article 3 treatment may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and psychological integrity (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, pp. 60-61, § 36, and *Bensaid*, cited above, § 46). In that context it has held that mental health must be regarded as a crucial part of private life associated with the aspect of psychological integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. The preservation of mental stability is

in that context an indispensable precondition to effective enjoyment of the right to respect for private life (see *Bensaid*, cited above, § 47).

In the circumstances of the present case, however, the Court considers that it has not been established that, as a result of a return to his country of origin, the applicant's psychological integrity would be substantially affected to a degree falling within the scope of Article 8 of the Convention. Even assuming that the dislocation caused to the applicant by removal from the Netherlands where he has lived for the last nine years was to be considered by itself as affecting his private life, in the context of the relationships and support framework which he enjoyed there, the Court considers that such interference may be regarded as complying with the requirements of the second paragraph of Article 8, namely as a measure "in accordance with the law", pursuing the aims of the protection of the economic well-being of the country, as well as being "necessary in a democratic society" for those aims.

It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

3. Finally, the applicant alleged a violation of Article 13 of the Convention, which reads:

> "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."

The Government submitted that the applicant had had an effective domestic remedy at his disposal, having enjoyed ample opportunity to elucidate both his first asylum request as well as his two repeat applications for asylum. The rejection of the applicant's third application was due to the fact that he had waited until then before claiming that he had been traumatised by the ill-treatment he had allegedly witnessed and received during periods of detention. In such circumstances, Article 4:6 of the General Administrative Law Act provided for the dismissal of the repeat application by referring to the decision on the original application. The applicant had not established any exceptional facts or circumstances providing grounds for assessing the new request outside this legal framework.

The applicant insisted that it was not until his third asylum application that he had been able fully to relate the facts and circumstances of his flight from Sri Lanka. However, formal legal requirements – namely, Article 4:6 of the General Administrative Law Act – had prevented his claim of an expulsion being contrary to Articles 3 and 8 from receiving a rigorous scrutiny; in fact, the Regional Court had been unable to carry out any examination whatsoever of the merits of this claim.

The Court reiterates its constant case-law according to which Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see, amongst many authorities, *A.*

v. the United Kingdom, no. 35373/97, § 110, ECHR 2002-X). The Court has found above that the applicant's complaints under Articles 3 and 8 are manifestly ill-founded. It follows that the applicant does not have an "arguable claim" and these complaints do not attract the guarantees of Article 13.

The Court concludes that this part of the application must therefore also be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President