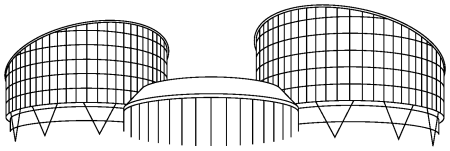

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 15993/09
M.M. against the Netherlands
and 3 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 16 May 2017 as a Chamber composed of:

Helena Jäderblom, *President*,
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the interim measures indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that these interim measures have been complied with,

Having regard to the parties' submissions,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix. The President decided that the applicants' identities were not to be disclosed to the public (Rule 47 § 4 of the Rules of Court). The Government of the Netherlands were represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs.

A. The circumstances of the cases

2. The facts of the case, as submitted by the parties and in so far as relevant, may be summarised as follows.

1. Application no. 15993/09

3. The applicant is an Afghan national who was born in 1950. He has been residing in the Netherlands since 1997. He was represented before the Court by Mr P. Schüller, a lawyer practising in Amsterdam.

4. On 24 June 1997 the applicant entered the Netherlands and applied for asylum, claiming to fear persecution within the meaning of the 1951 Geneva Convention Relating to the Status of Refugees ("the 1951 Refugee Convention"). On the same day the immigration authorities held a first interview (*eerste gehoor*) with the applicant about his identity, nationality and travel itinerary. A written record of this interview report was drawn up and the applicant was given an opportunity to submit corrections and additions.

5. On 21 August 1997 the immigration authorities held a further interview (*nader gehoor*) with the applicant about his reasons for seeking asylum. A written record of this interview was drawn up and on 8 September 1997 a lawyer submitted corrections and additions on the applicant's behalf.

6. In his asylum statement, the applicant stated that he was from Kabul. After he had graduated from the Kabul military academy in 1974, he had worked as teacher at a Kabul aviation academy until 1985 when he had been transferred – he then held the rank of major after periodic promotions – to the Afghan security service, the KhAD/WAD[1], where he had worked until 1992 as chief financial officer of the logistics directorate. His last held rank had been that of colonel. He further stated that he had been a member of the communist People's Democratic Party of Afghanistan (the PDPA) since 26 May 1987.

7. After having lived in hiding from 16 August 1992 to 5 January 1995, he had been arrested by Jamiat-e Islami militia forces operating in Burhanuddin Rabbani. He had been held captive until 27 September 1996 when he had been able to escape after the mujahideen had fled from the approaching Taliban. After first having hidden in the home of a friend, he had left Afghanistan for Pakistan. At the end of September or the beginning of October 1996, he had heard from a maternal aunt that the Taliban had been searching for him. Having not found him at home, the Taliban had taken captive his brother, who had been executed by the Taliban five days

[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.

before the applicant's flight to Pakistan. After having stayed for several months in Pakistan, he had travelled by air – via Moscow – to the Netherlands. His wife and their six children, the latter born between 1982 and 1992, had remained in Afghanistan and were living with his wife's parents.

8. By a decision of 31 October 1997, the applicant was granted asylum in the Netherlands. Having been granted a provisional residence visa (*machtiging tot voorlopig verblijf*) for the Netherlands, his wife and six children joined him about a year later and they were all granted an asylum-derived residence permit (see paragraph 91 below).

9. On 3 December 2002 a special 1F unit of the Immigration and Naturalisation Service (see *A.A.Q. v. the Netherlands* ((dec.), no. 42331/05, § 47, 30 June 2015) asked to be provided with the applicant's case file in view of a possible application of Article 1F of the 1951 Refugee Convention. The applicant was informed accordingly on 9 December 2002 and on 17 February 2003 a supplementary interview (*aanvullend gehoor*) was held with him.

10. On 28 October 2003 the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie*) notified the applicant of her intention (*voornemen*) to revoke his asylum-based residence permit under Article 1F of the 1951 Refugee Convention. Noting that the applicant had worked between 1985 and 1992 as an officer of the KhAD/WAD, his asylum statement had been considered in the light of an official report (*ambtsbericht*) drawn up on 29 February 2000 by the Netherlands Ministry of Foreign Affairs (*Ministerie van Buitenlandse Zaken*) on "Security Services in Communist Afghanistan (1978-92), AGSA, KAM, KhAD and WAD" (*Veiligheidsdiensten in communistisch Afghanistan (1978-1992), AGSA, KAM, KhAD en WAD*). On the basis of this report, the Netherlands immigration authorities had adopted the position that Article 1F of the 1951 Refugee Convention could be applied in respect of virtually every Afghan asylum-seeker who had worked during the communist regime for the KhAD or its successor the WAD and held the rank of third lieutenant or higher.

11. The Minister then proceeded to an elaborate analysis of the applicant's individual responsibility under Article 1F of the 1951 Refugee Convention, based on the prescribed and so-called "knowing and personal participation" test. Noting, *inter alia*, the applicant's steady career path in the KhAD/WAD, the Minister excluded the possibility of the applicant not having known or not having been involved in human-rights violations committed by the KhAD/WAD. Relying on the official report of 29 February 2000, the Minister underlined the widely known cruel practices of the KhAD/WAD, its lawless methods, the grave crimes it had committed such as torture and other human-rights violations as well as the climate of terror which it had spread throughout the whole of Afghan society. The

Minister lastly emphasised that the applicant had done nothing to shirk from his duties for the KhAD/WAD.

12. On 8 December 2003 and 5 March 2004, the applicant submitted written comments (*zienswijze*) on the Minister's intended decision and, on 20 February 2004, he was once more heard before an official board of enquiry (*ambtelijke commissie*).

13. On 28 April 2004, the Minister revoked the applicant's residence permit. The notice of intent of 28 October 2003 was added to the decision and formed part of it. The Minister did not deviate, in the relevant part, from her earlier conclusions in the notice of intent and went on to confirm them on all points, dismissing the applicant's rebuttals. However, as regards Article 3 of the Convention, the Minister accepted that it was possible that the applicant would in the then circumstances run a real risk of being subjected to treatment prohibited by this provision if expelled to Afghanistan and that, for this reason, he would not be expelled for the time being. The Minister added that, should the situation in Afghanistan change, a fresh decision on the applicant's removal would be taken and that that decision could be appealed against.

14. The applicant lodged an appeal to the Regional Court (*rechtbank*) of The Hague. In its judgment of 20 April 2005, the Regional Court allowed the appeal and annulled the impugned decision. Noting that the Minister had acknowledged that in Afghanistan the applicant would be exposed to a risk of treatment proscribed by Article 3 of the Convention, it held the Minister should also have examined whether Article 3 of the Convention constituted a sustained obstacle to his expulsion to Afghanistan. Consequently, as the Minister's examination had been incomplete, it returned the case to the Minister for a fresh decision.

15. On 7 June 2005 a supplementary further interview (*aanvullend nader gehoor*) was held with the applicant on the subject of his fear of being subjected to treatment prohibited under Article 3 if returned to Afghanistan. A written record of this interview was drawn up and on 23 June 2005 the applicant's lawyer submitted written corrections and additions on the applicant's behalf.

16. On 7 July 2006 the Minister notified the applicant of her renewed intention to revoke his asylum-based residence permit under Article 1F of the 1951 Refugee Convention. She further notified him of her intention to also impose an exclusion order (*ongewenstverklaring*) on him. The applicant submitted written comments on this intended decision on 17 August, 9 October and 7 November 2006. On 13 December 2006 the applicant was heard before an official board of enquiry.

17. By a decision of 22 February 2007, the Minister of Justice (*Minister van Justitie*) revoked anew the applicant's asylum-based residence permit, under Article 1F of the 1951 Refugee Convention. In addition, the Minister imposed an exclusion order. As regards Article 3 of the Convention, the

Minister held that it could not be concluded from the applicant's account – viewed against the background of the then political and social situation in Afghanistan – that there existed a real and foreseeable risk that the applicant, if returned to Afghanistan, would be subjected to treatment in breach of Article 3 of the Convention. As he had only been able to state the possible problems he feared he would experience in Afghanistan in general terms without any specific evidence, the Minister concluded that the applicant had not demonstrated the alleged Article 3 risk which was found to be based on assumptions by the applicant and not on anything concrete.

18. On 26 February 2007 the applicant lodged an objection (*bezwaar*) with the Minister to the decision to impose an exclusion order, and on the same day applied to the Regional Court of The Hague to have issued a provisional measure (*voorlopige voorziening*) allowing the applicant to remain in the Netherlands pending the determination of his objection. In addition, also on 26 February 2007, the applicant lodged an appeal and an accompanying application for a provisional measure with the Regional Court of The Hague against the decision to revoke his asylum-based residence permit under Article 1F.

19. On 30 October 2007 the Regional Court of The Hague, sitting in 's-Hertogenbosch, declared inadmissible the applicant's appeal against the revocation of his residence permit. It held that, as long as an exclusion order was imposed on him, the applicant had no legal interest in a determination of the merits of his appeal. It took into account that, in the proceedings on the imposed exclusion order, the applicant's arguments based on Articles 3 and 8 of the Convention could be entertained. Although possible, the applicant did not lodge a further appeal with the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*).

20. Also on 30 October 2007 a provisional-measures judge (*voorzieningenrechter*) of the Regional Court of The Hague, sitting in 's-Hertogenbosch, rejected the applicant's application for a provisional measure which had accompanied his appeal and, in a separate decision, his application for a provisional measure which had accompanied his objection. In the latter decision, the judge noted that the applicant had admitted that he had worked as an officer of the KhAD/WAD and held that the Minister had correctly applied Article 1F in the applicant's case. As regards Article 3, the judge found that the applicant had not established that he would be exposed to a real risk of being subjected to treatment proscribed by this provision, either on account of the general situation in Afghanistan or his individual circumstances.

21. On 27 November 2007 the applicant's objection of 26 February 2007 was rejected by the Deputy Minister of Justice (*Staatssecretaris van Justitie*). On 30 November 2007 the applicant lodged an appeal with the

Regional Court of The Hague. He submitted his written grounds of appeal on 7 December 2007 and additional grounds of appeal on 4 January 2008.

22. By a judgment of 9 September 2008, following a hearing held on 14 April 2008, the Regional Court of The Hague, sitting in Dordrecht, dismissed the applicant's appeal against the decision of 27 November 2007. In so far as the applicant had relied on Article 3, it decided – as the arguments based on this provision had not been raised in the applicant's written grounds of appeal itself but only for the first time during the hearing of 14 April 2008 – not to take them into account.

23. The applicant's further appeal to the Administrative Jurisdiction Division was declared inadmissible on 19 November 2008 as, despite having been provided with an opportunity to repair this failure, the applicant had failed to pay the statutorily prescribed court fees (*griffierecht*) within the time-limit fixed for this purpose.

24. On 9 December 2008 the applicant was placed in immigration detention, which he unsuccessfully challenged. On 3 March 2009 he was informed that his removal to Afghanistan had been scheduled for 30 March 2009. On 2 March 2009, after having been informed that arrangements for an escorted removal were being made, the applicant lodged an objection to an action aimed at his effective removal (*daadwerkelijke uitzettingshandeling*). Under the terms of section 72(3) of the Aliens Act 2000 (*Vreemdelingenwet 2000*), such an action can be equated with a formal decision within the meaning of the General Administrative Law Act which can be challenged in administrative-law appeal proceedings. The applicant further lodged an application with the Regional Court of The Hague for a provisional measure (stay of removal pending the determination of his objection).

25. On 24 March 2009 a provisional-measures judge of the Regional Court of The Hague, sitting in Amsterdam, rejected the application. The judge found, in so far as the applicant had invoked Article 3 of the Convention, that it had not been demonstrated that he would risk treatment contrary to this provision in Afghanistan.

26. On 26 March 2009 the President of the Section to which the case had been allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be expelled to Afghanistan for the duration of the proceedings before the Court.

27. The applicant's objection of 2 March 2009 was declared inadmissible. An appeal by the applicant against that decision was rejected by the Regional Court of The Hague on 20 December 2010. It declared the appeal unfounded as the applicant did not risk removal to Afghanistan for as long as the Rule 39 interim measure was in force. No information has been submitted as to whether the applicant has lodged a further appeal with the Administrative Jurisdiction Division.

2. Application no. 26268/09

28. The applicant is an Afghan national who was born in 1955. He has been residing in the Netherlands since 1997. He was represented before the Court by Ms M. de Boer, a lawyer practising in Lelystad.

29. On 22 November 1997 the applicant, his spouse and their five children (born between 1984 and 1996) applied for asylum in the Netherlands, claiming to fear persecution within the meaning of the 1951 Refugee Convention. In his interviews with the Netherlands immigration authorities, the applicant stated that he had been a member of the PDPA from 1980 to 1992 and that he had worked for the KhAD/WAD from 1981 to 26 April 1992; one day after Mr Yaqubi – who had headed the KhAD/WAD – had been killed. The applicant had simply not returned to work, where he had held the rank of lieutenant-colonel. In July 1992, while searching for the applicant, who had been living there at the time and who had been absent at that moment, mujahideen forces had searched the house of his aunt. He had then left Kabul and gone into hiding in a village near Jalalabad. He had learned on 12 October 1997 that his brother had been arrested by the Taliban in Jalalabad. The Taliban had arrived in Jalalabad on 24-25 September 1996. They had searched for the applicant but had taken his brother prisoner instead; thus the applicant had managed to flee to Peshawar, Pakistan on 22 October 1997. After his arrival there, he learned that his brother had been killed. In the period from 1992 to 1997, the applicant himself had not been bothered by any of the groups who had been looking for him because he had been living in hiding. The applicant also stated that he had learned that the KhAD/WAD had been responsible for having tortured people but he had never seen or done this himself.

30. On 25 March 1998 the Deputy Minister of Justice rejected the applicant's asylum claim for being manifestly unfounded (*kennelijke ongegrondheid*). The applicant challenged that decision in administrative appeal proceedings in which the final – for the applicant negative – decision was taken on 20 July 2000 by the Regional Court of The Hague, sitting in Amsterdam.

31. However, the Deputy Minister of Justice did grant the applicant and his family on 25 March 1998 a conditional residence permit (*voorwaardelijke vergunning tot verblijf*) which was valid for one year from 22 November 1997 on the basis of a temporary categorical protection policy (*categoriaal beschermingsbeleid*) in respect of Afghanistan.

32. On 22 November 2000, the situation in Afghanistan not having sufficiently improved, the applicant's conditional residence permit was converted into an unrestricted residence permit (*vergunning tot verblijf zonder beperkingen*). Subsequently, with the entry into force of the Aliens Act 2000 on 1 April 2001, the permit held by the applicant was transformed into an indefinite residence permit for the purpose of asylum (v*erblijfsvergunning asiel voor onbepaalde tijd*).

33. On 21 February 2003 the applicant was informed that a special 1F unit of the Immigration and Naturalisation Service had reviewed his case, that it had been decided to undertake a further investigation and that a supplementary interview would be held with him. Supplementary interviews were held with the applicant on 4 and 16 April 2003. A written record of these interviews was drawn up and on 28 May 2003 a lawyer submitted corrections and additions on the applicant's behalf.

34. On 6 November 2003 the Minister for Immigration and Integration notified the applicant of her intention to revoke his asylum-based residence permit under Article 1F of the 1951 Refugee Convention. Noting that the applicant had worked between 1981 and 1992 as an officer for the KhAD/WAD, his asylum statement had been considered in the light of an official report, drawn up on 29 February 2000 by the Netherlands Ministry of Foreign Affairs on the security services in communist Afghanistan (see paragraph 10 above).

35. The Minister then proceeded to an elaborate analysis of the applicant's individual responsibility under Article 1F of the 1951 Refugee Convention based on the prescribed and so-called "knowing and personal participation" test. The Minister noted *inter alia* that – on his lawyer's advice – the applicant had decided to give no statement during the supplementary interviews about his activities for the KhAD/WAD. However the applicant did belong to a group of persons in respect of whom Article 1F was generally applied and he had not demonstrated that in his case a significant exception should be made. The Minister concluded that Article 1F was to be applied in the applicant's case. The Minister took into account the applicant's promotions in the KhAD/WAD and found that the applicant had known or should have known that the KhAD/WAD had been involved in the systematic commission on a large scale of serious crimes referred to in Article 1F. On 25 April 2004 the applicant submitted written comments on the Minister's intended decision.

36. On 19 April 2005 the Minister notified the applicant of her supplementary intention (*aanvullend voornemen*) to revoke his residence permit under Article 1F. The applicant submitted written comments on the Minister's supplementary intended decision on 23 May and 15 June 2005.

37. On 30 March 2006 the Minister further notified the applicant of her intention also to impose an exclusion order on him. The applicant submitted written comments on this intended decision on 19 April 2006.

38. On 11 May 2006 the Minister revoked the applicant's residence permit and, in addition, imposed an exclusion order. On 12 May 2006 the applicant lodged an appeal against the revocation of his residence permit and an accompanying application for a provisional measure with the Regional Court of The Hague. On 6 June 2006, the applicant lodged an objection with the Minister to the decision to impose an exclusion order.

39. On 3 October 2006 the Regional Court of The Hague, sitting in Dordrecht, declared inadmissible the applicant's appeal against the revocation of his residence permit. It held that, as long as an exclusion order was imposed on him, the applicant had no legal interest in a determination of the merits of his appeal. It took into account that, in the proceedings on the imposed exclusion order, the applicant's arguments based on Article 3 of the Convention could be entertained. Although possible, the applicant apparently did not lodge a further appeal with the Administrative Jurisdiction Division against the ruling of 3 October 2006. Also on 3 October 2006, a provisional-measures judge of the Regional Court of The Hague, sitting in Dordrecht, declared inadmissible the applicant's application for a provisional measure.

40. The applicant's objection to the decision to impose an exclusion order was dismissed by the Minister on 29 January 2007. The applicant's appeal to the Regional Court was withdrawn on 7 May 2007 after he had been informed that the impugned decision had been withdrawn and that a fresh decision would be taken.

41. In a fresh decision taken on 10 December 2007, after the applicant had been heard on his objection before an official board of enquiry, the Deputy Minister of Justice rejected the applicant's objection to the decision to impose an exclusion order. In so far as the applicant had invoked Article 3 of the Convention, the Deputy Minister held that the applicant had failed to demonstrate that he would be exposed to a real and personal risk of being subjected to treatment contrary to Article 3 of the Convention if expelled to Afghanistan. According to an official report of the Ministry of Foreign Affairs of 31 January 2007 (DPV/AM-424/06/902099) not all former members of the PDPA and people who had worked for the KhAD/WAD ran such a risk. Many of them were working for the present Government of Afghanistan, including the security service. The applicant had failed to establish that specific groups, such as the Taliban or mujahideen, had been looking for him, or that he would be exposed to an Article 3 risk on account of him being of Tajik ethnicity.

42. As regards Article 8 of the Convention, the Deputy Minister noted that the applicant was living in the Netherlands together with his spouse and their five children who in the meantime had obtained Netherlands nationality. Consequently, there was "family life" within the meaning of Article 8. However, taking into account the criteria formulated in the cases of *Boultif v. Switzerland* (no. 54273/00, ECHR 2001-IX) and *Üner v. the Netherlands* ([GC], no. 46410/99, ECHR 2006-XII), the Deputy Minister found that public interest considerations (public order, national security, prevention of crime and protection of the rights and freedoms of others) outweighed the applicant's personal interests in enjoying family life in the Netherlands. On this point, the Deputy Minister considered that it was unlikely that the applicant's spouse had not known about the applicant's

work for the KhAD/WAD whose brutal working methods were known to large parts of the Afghan population. The Deputy Minister also found no objective obstacles to them exercising their right to family life in Afghanistan, taking into account that the applicant's wife and children had not been admitted to the Netherlands as refugees fearing persecution on the basis of their individual circumstances but entered instead under a temporary categorical protection policy. Furthermore, like the applicant, the applicant's spouse came from Afghanistan, spoke the local language and was familiar with Afghan society. The Deputy Minister found no reason why she could not follow the applicant to Afghanistan or why their family life could not be carried on in a third country.

43. On 12 December 2007 the applicant lodged an appeal and an accompanying application for a provisional measure with the Regional Court of The Hague. On 26 September 2008, following a hearing held on 29 August 2008, the provisional-measures judge of the Regional Court of The Hague, sitting in Dordrecht, rejected the applicant's application for a provisional measure.

44. On an unspecified date the applicant was placed in immigration detention and his removal to Afghanistan was scheduled for 25 May 2009.

45. On 22 May 2009 the President of the Section to which the case had been allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be expelled to Afghanistan for the duration of the proceedings before the Court.

46. In its judgment of 27 April 2010, following a hearing held on 9 February 2010, the Regional Court of The Hague, sitting in Dordrecht, allowed the applicant's appeal, annulled the impugned decision of 10 December 2007 and returned the case to the Deputy Minister for a fresh decision on the applicant's objection. On 25 May 2010, both the Deputy Minister and the applicant lodged further appeals with the Administrative Jurisdiction Division.

47. In its ruling of 8 November 2010, the Administrative Jurisdiction Division rejected the applicant's further appeal on summary grounds, holding:

> "What has been raised in the [applicant's] grievances ... does not provide grounds for annulling the impugned ruling. Under section 91(2) of the Aliens Act 2000, no further reasoning is called for, since the arguments submitted do not raise questions which require determination in the interest of case-law consistency, legal development or legal protection in the general sense."

48. The Administrative Jurisdiction Division allowed the further appeal lodged by the Deputy Minister, quashed the judgment of 27 April 2010 and rejected for being unfounded the applicant's appeal of 12 December 2007. It stated, in particular, that it agreed with the reasoning given by the Deputy Minister for rejecting the applicant's arguments under Article 8.

49. No further appeal lay against that decision.

3. Application no. 33314/09

50. The applicant is an Afghan national, who was born in 1954. He has been residing in the Netherlands since 1999. He was represented before the Court by Mr H. Teunissen, a lawyer practising in Venlo.

51. On 11 November 1999 the applicant applied for asylum in the Netherlands, claiming to fear persecution within the meaning of the 1951 Refugee Convention. His spouse and their three children (born in 1989, 1991 and 1993) had already arrived in the Netherlands and applied for asylum on 3 November 1999. On 14 March 2003, the applicant's spouse and their three children were granted a residence permit under the then section 29(1)(c) of the Aliens Act 2000, on the basis of a special protection policy for a specific category of asylum-seekers from Afghanistan.

52. In his interviews with the Netherlands immigration authorities, the applicant claimed to fear persecution within the meaning of the 1951 Refugee Convention from the side of the Taliban, who had detained him for about one year and about whose crimes he had written a book. He further feared persecution on account of his communist past. He stated that he had been a member of the PDPA since 1976 or 1977 and joined the Parcham faction, that – after having done his military service – he had studied from 1974 to 1980 at the Leningrad Polytechnic Institute in the former Soviet Union, that he had worked successively as secretary of the provincial committee of B. province, as deputy head of the central council of the Association of Agrarians in Kabul, and as Deputy District Governor of one of the districts in B. province. Between 1987 and mid-1994, he had worked in the private sector as – being a supporter of Babrak Karmal – he had preferred not to work for President Najibullah. From 1994 until September or October 1998 he had been commander of a militia brigade of about 2,000-3,000 troops under the command of the Mazar-e Sharif garrison. He had been captured by the Taliban during a surprise attack in September 1998. He had remained in Taliban detention until 20 October 1999 when he had been released after the intervention of an influential uncle. On 26 October 1999, he had left Mazar-e Sharif for Turkmenistan from where he had travelled by air – via the United Arab Emirates – to the Netherlands.

53. On 14 March 2003 the Minister for Immigration and Integration notified the applicant of his intention to deny the applicant asylum under Article 1F of the 1951 Refugee Convention. Noting that the applicant's career path had included the important posts of secretary of the provincial committee of B. province and Deputy District Governor of a district in the same province, his asylum statement had been considered in the light of an official report on Afghanistan issued on 16 September 1999 by the Netherlands Minister of Foreign Affairs (DPC/AM 63314) as well as a person-specific official report (*individueel ambtsbericht*) (DPC/AM 663248) not concerning the applicant but containing information about the provincial committees and secretaries to these committees. According to

this information, provincial secretaries were of an equal rank to a governor and were the most important party functionaries of the PDPA at provincial level. They were responsible for all party decisions in a province, including recruiting members, propaganda, intelligence activities within and outside the party, recruiting members for paramilitary activities and contacts with the KhAD/WAD. In the period of 1978-92, provincial party secretaries played an active role in suppressing freedom of expression and in detecting and arresting political opponents and having them tortured and executed. Furthermore, according to another person-specific official report (DPC/AM 669362) not concerning the applicant himself, deputy governors had to lend support in the detection of political and military opponents of the communist regime, such as by supplying information to the KhAD/WAD.

54. Following a lengthy analysis of the applicant's individual responsibility under Article 1F of the 1951 Refugee Convention, based on the prescribed "knowing and personal participation" test, the Minister concluded that Article 1F was to be applied in the applicant's case. On 11 April 2003 the applicant's lawyer submitted written comments on the Minister's intended decision.

55. In his decision of 12 May 2003 the Minister denied the applicant asylum under Article 1F. The Minister did not deviate, in the relevant part, from his conclusions in the notice of intent of 14 March 2003 and maintained them on all points. The applicant's comments were dismissed as not warranting another finding. However, as regards Article 3 of the Convention the Minister accepted that it could not be excluded – in view of the positions the applicant had held during the communist regime – 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. For this reason, he would not be expelled for the time being. The applicant was, nevertheless, because Article 1F had been held against him, not eligible for a residence permit.

56. On 9 June 2003 the applicant lodged an appeal against that decision with the Regional Court of The Hague. In its judgment of 24 November 2004, the Regional Court of the Hague, sitting in Maastricht, allowed the appeal and annulled the impugned decision. Although it agreed with the Minister's decision to hold Article 1F of the 1951 Refugee Convention against the applicant, it also held – referring to a ruling given on 2 June 2004 by the Administrative Jurisdiction Division and noting that the Minister had acknowledged the existence of an Article 3 risk for the applicant in Afghanistan – that the Minister should also have examined whether the applicant had established that Article 3 of the Convention constituted a sustained obstacle to his expulsion to Afghanistan. Consequently, the Minister's examination had been incomplete.

57. The applicant's further appeal to the Administrative Jurisdiction Division, which mainly concerned his denial of having been a Deputy

District Governor, was rejected on 6 June 2005. The Division upheld the impugned judgment of 24 November 2004, ruling that a fresh decision had to be taken on the applicant's asylum claim.

58. On 8 September 2005 the applicant's spouse and their three children were granted Netherlands nationality.

59. On 12 March 2008, after a supplementary interview had been held with the applicant on 6 December 2005, the Deputy Minister of Justice notified the applicant of her renewed intention – having explained why she did not believe the applicant's new submissions to the effect that he had never been a Deputy District Governor – to deny him asylum under Article 1F of the 1951 Refugee Convention. As regards Article 3, the Deputy Minister found – having taken into account a paragraph about ex-communists in an official country assessment report on Afghanistan released on 31 January 2007 by the Ministry of Foreign Affairs (DPV/AM-424/06/902099) – that the applicant had not demonstrated the existence of a risk of treatment in violation of Article 3 in case of his return to Afghanistan from the side of two particular mujahideen commanders who had confiscated houses and land belonging to the applicant, or from the side of mujahideen groups or the Taliban. The Deputy Minister concluded that there was no longer an Article 3 obstacle to the applicant's removal to Afghanistan. In so far as the applicant had relied on Article 8 of the Convention on the basis of his family life with his spouse in the Netherlands, the Deputy Minister held that as asylum proceedings offered no scope for such arguments these arguments could not be entertained in the present asylum proceedings.

60. On 10 and 11 April 2008 the applicant's lawyer submitted written comments on the Deputy Minister's intended decision.

61. On 13 June 2008 the Deputy Minister denied the applicant asylum under Article 1F. The Deputy Minister maintained her findings on all points and – reiterating, *inter alia*, that this had been found established in the Regional Court's judgment of 24 November 2004 which had become final when the Administrative Jurisdiction Division had upheld that ruling on 6 June 2005 – rejected the applicant's claim that he had never been a Deputy District Governor. As to the applicant's reliance on Article 3, the Deputy Minister held that, although the general human-rights situation remained a matter of concern, it was not such that any removal there would necessarily breach Article 3 of the Convention. The Deputy Minister further found that the applicant had not demonstrated that, on the basis of his personal circumstances, he would risk treatment proscribed by Article 3 in Afghanistan. The Deputy Minister also held that the applicant should raise his arguments based on Article 8 of the Convention in an application for a residence permit based on his family life with his spouse and his children.

62. The applicant's appeal against that decision was rejected on 13 November 2008 by the Regional Court of The Hague, sitting in Roermond. It upheld the impugned decision.

63. The applicant's further appeal was rejected on 27 May 2009 by the Administrative Jurisdiction Division on summary grounds. No further appeal lay against that ruling.

64. On an unspecified date the applicant was placed in immigration detention and his removal to Afghanistan was scheduled for 27 June 2009.

65. On 24 June 2009 the President of the Section to which the case had been allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be expelled to Afghanistan pending the proceedings before the Court.

66. On 21 February 2014 the Deputy Minister of Justice notified the applicant of his intention to also impose an entry ban (*inreisverbod* – see *K. v. the Netherlands* (dec.), no. 33403/11, § 24, 25 September 2012) on the applicant. On 10 June 2014, following a hearing held on 23 April 2014, the Deputy Minister imposed an entry ban on the applicant. An appeal by the applicant against that decision was rejected on 29 January 2015 by the Regional Court of The Hague. Although possible, the applicant did not lodge a further appeal against this judgment with the Administrative Jurisdiction Division.

4. Application no. 53926/09

67. The applicant is an Afghan national who was born in 1969. He has been residing in the Netherlands since 1998. He was represented before the Court by Mr J. Walls, a lawyer practising in Breda.

68. On 13 March 1998 the applicant as well as his spouse and their two daughters (born in 1992 and 1993) applied for asylum in the Netherlands. The applicant claimed to fear persecution within the meaning of the 1951 Refugee Convention.

69. In his interviews with the Netherlands immigration authorities, the applicant stated that he had worked from 1987 to 1992 for the State-security directorate of the KhAD/WAD in Kabul. He had been regularly promoted and his final rank had been 1st lieutenant. His task had been the detection of drugs and weapons trafficking. He had transmitted information to higher officers who had taken further measures. He had also been responsible for combatting the smuggling of explosives. He had taken arrested smugglers to the directorate. He did not know what happened subsequently to these people.

70. In June 1992 he had moved to Mazar-e Sharif where he had worked in the administration of the same police department where his brother was already working at that time. After the arrival of the Taliban in the area in May 1997, his brother had disappeared and had been replaced by a member of the Taliban. The applicant had gone into hiding in Mazar-e Sharif until he

had left on 6 February 1998. Whilst he had been in hiding, armed men had entered the home of his wife and their two children and enquired about the applicant's whereabouts. Via Jalalabad, Pakistan and Peshawar, the applicant and his family had fled to Karachi, Pakistan from where they had travelled by air to the Netherlands. The applicant stated that he had fled because he had feared for his life on account of his work and that of his brother.

71. On 22 August 2000 the Deputy Minister of Justice rejected the applicant's asylum claim under Article 1F of the 1951 Refugee Convention. After having examined the applicant's asylum statement in the light of an official report, drawn up on 29 February 2000 by the Netherlands Ministry of Foreign Affairs, on "Security Services in Communist Afghanistan (1978-92), AGSA, KAM, KhAD and WAD" (see paragraph 10 above), the Deputy Minister proceeded to an elaborate analysis of the applicant's individual responsibility under Article 1F of the 1951 Refugee Convention, based on the prescribed "knowing and personal participation" test, and concluded that Article 1F was to be applied in the applicant's case. In reaching this conclusion, the Deputy Minister took into account, *inter alia*, the applicant's voluntary choice to join the KhAD/WAD, his career in this service and the nature of his work. The Deputy Minister considered that the systematic and large-scale commission of serious human-rights violations by the KhAD/WAD had been common knowledge well before the applicant had joined this service and that therefore he could not have been ignorant of those acts as had been averred by him. The Deputy Minister further rejected the applicant's arguments under Article 3 of the Convention.

72. On 4 October 2000 the applicant lodged an objection to that decision. On 9 January 2003 he was heard on his objection before an official board of enquiry. On 17 June 2003 the Minister for Immigration and Integration rejected the objection, having found nothing in the applicant's submissions warranting another conclusion than the one set out in the impugned decision. However, as it could not be ruled out that the applicant, given his work in Afghanistan, would run a real risk of treatment contrary to Article 3 of the Convention if he were expelled to Afghanistan, the Deputy Minister further indicated that for the time being the applicant would not be removed to that State. However, this did not render him eligible for a non-asylum-based residence permit, including a residence permit on account of the duration of the proceedings on his asylum claim (*tijdsverloop in de asielprocedure*) as the application of Article 1F constituted a contraindication.

73. By a decision of 23 June 2003 the applicant's spouse was granted an asylum-based residence permit and their four daughters (two of whom had been born after the applicant's arrival in the Netherlands, in 1999 and 2002) were granted dependent residence permits. No information has been

submitted as to whether that decision was based on the individual asylum statement of the applicant's spouse or under a particular protection policy.

74. On 9 July 2003 the applicant lodged an appeal with the Regional Court of The Hague against the decision concerning his asylum claim and an objection with the Minister against the decision that he was not eligible for a non-asylum-based residence permit. On 19 January 2004 the Minister rejected the objection. On 13 February 2004 the applicant also lodged an appeal against the latter decision with the Regional Court of The Hague.

75. In its judgment of 23 May 2005, the Regional Court of The Hague, sitting in Alkmaar, allowed the appeals and annulled the two impugned decisions. Although it agreed with the Minister's decision and pertaining reasoning to apply Article 1F of the 1951 Refugee Convention in the applicant's case, it also held – referring to two rulings given on 2 June 2004 by the Administrative Jurisdiction Division (nos. 20030887/1 and 200308845/1) and noting that the Minister had acknowledged the existence of an Article 3 risk for the applicant in Afghanistan – that the Minister should also have examined whether the applicant had established that Article 3 of the Convention constituted a sustained obstacle to his expulsion to Afghanistan. It further found that the Minister had unjustly based the decision concerning the non-asylum-based residence permit on section 3.77 of the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*). Consequently, the Minister's examination had been incomplete. Accordingly it annulled the decisions of 17 June 2003 and 19 January 2004 and ordered the Minister to take fresh decisions within six weeks.

76. In a fresh decision taken on 30 August 2005 the Minister rejected the applicant's objections of 4 October 2000 and 9 July 2003. Referring to the reasons given in the judgment of 23 May 2005, the Minister again rejected the applicant's asylum claim regarding Article 1F. As regards Article 3 of the Convention, the Minister found that that it could not be concluded from the applicant's asylum statement – viewed against the background of the current political and social situation in Afghanistan – that there existed a real and foreseeable risk that if returned to Afghanistan the applicant would be subjected to treatment in breach of Article 3 of the Convention. The Minister considered, *inter alia*, that the applicant had not encountered any tangible problems in Kabul or Mazar-e Sharif during the reign of the mujahideen. The Minister further considered that while the problems which had caused the applicant to flee Afghanistan had only begun after the arrival of the Taliban in Mazar-e Sharif, the Taliban were no longer in a position of power in Afghanistan. The Minister further found that, on the basis of the decision to apply Article 1F to his case, the applicant was not eligible for a non-asylum-based residence permit on the basis of the so-called three-year policy (*driejarenbeleid*) set out in paragraphs C2/9.3 and B1/2.24 of the Aliens Act Implementation Guidelines 2000 (*Vreemdelingencirculaire 2000*). Under this three-year policy a residence permit could be granted if an

application for such a permit had not been determined within a period of three years for reasons not imputable to the petitioner and provided that there were no contraindications such as, for instance, the application of Article 1F.

77. On 27 September 2005 the applicant lodged an appeal with the Regional Court of The Hague. In its judgment of 18 April 2006, the Regional Court of The Hague rejected the appeal in so far as it was directed against the decision to deny the applicant asylum under Article 1F and the finding that there was no Article 3 obstacle to the applicant's removal to Afghanistan. However, to the extent that the appeal was directed against the decision that the applicant was not eligible for a non-asylum-based residence permit, it found that the Minister had unjustly failed to hear the applicant on his objection. Accordingly, it annulled this part of the decision of 30 August 2005 and ordered the Minister to take a fresh decision on the applicant's objection of 9 July 2003.

78. On 13 October 2006, after the applicant had been heard on 9 July 2006 before an official board of enquiry in respect of his objection of 9 July 2003, the Minister rejected this objection. On the same day, the Minister notified the applicant of her intention to impose an exclusion order on him. The applicant did not avail himself of the possibility to file written comments on this intention. On 17 October 2006 the applicant lodged an appeal with the Regional Court of The Hague against the Minister's decision to reject his objection of 9 July 2003.

79. By a decision of 17 January 2007 the Minister imposed an exclusion order on the applicant. On 1 February 2007 the applicant lodged an objection to that decision with the Minister. As this objection did not have suspensive effect, the applicant also lodged on 1 February 2007 an application for a provisional measure with the Regional Court of The Hague. On 27 April 2007 the Regional Court of The Hague rejected the applicant's application for a provisional measure, finding, *inter alia*, that Article 3 did not prevent the applicant's removal to Afghanistan.

80. On 23 July 2007 the Regional Court of The Hague declared inadmissible the applicant's appeal of 17 October 2006 against the Minister's decision to reject his objection of 9 July 2003.

81. On 30 July 2008 the Deputy Minister of Justice rejected the applicant's objection of 1 February 2007 to the decision to impose an exclusion order. The Deputy Minister rejected the applicant's arguments under Article 3 for being unsubstantiated and with reference to the considerations and the conclusion on this point in the previous rulings given in the applicant's case. As regards the applicant's arguments under Article 8 of the Convention, the Deputy Minister considered, taking into account the criteria formulated in the cases of *Üner* (cited above) and *Sezen v. the Netherlands* (no. 50252/99, § 43, 31 January 2006), that Article 8 did not prevent the applicant's removal to Afghanistan either. On this point, the

Deputy Minister found, *inter alia*, that the applicant had substantial links with Afghanistan, where he had been born and raised and where he had lived for more than twenty-eight years, and that there was no appearance of an objective obstacle to carrying on the family life at issue in Afghanistan or in another country.

82. The applicant lodged an appeal against that decision with the Regional Court of The Hague. On 16 October 2009 the Regional Court allowed the appeal but also held that its legal consequences were still to stand. On 7 November 2009 the applicant lodged a further appeal. On 28 June 2010, pending these further appeal proceedings, the applicant was informed that the impugned decision of 30 July 2008 had been withdrawn and that a fresh decision would be taken on his objection of 1 February 2007.

83. In the meantime, on 21 April 2009, the applicant had lodged a fresh application for asylum on the basis of alleged newly emerged facts and circumstances. He had been interviewed on this application the same day. This fresh application had been rejected by the Deputy Minister of Justice on 27 April 2009. The applicant had lodged an appeal the next day, but had withdrawn it on 6 May 2009 for reasons undisclosed.

84. On 5 October 2009 the applicant's wife and their four daughters were granted Netherlands nationality.

85. Furthermore, on 15 October 2009 the applicant informed the Court that his removal had been scheduled for 19 October 2009 and applied for an interim measure under Rule 39 of the Rules of Court. On 16 October 2009 the Acting President of the Section to which the case had been allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be expelled to Afghanistan for the duration of the proceedings before the Court.

86. On 18 January 2011 a son was born to the applicant and his spouse.

87. On 25 January 2011, after the applicant had been heard on 11 January 2011 before an official board of inquiry, the Minister for Immigration, Integration and Asylum Policy took a fresh decision on the applicant's objection of 1 February 2007 and again rejected it. With reference to the findings in respect of this provision made in four decisions and three judgments given previously in the applicant's case, the Minister rejected the applicant's arguments under Article 3 of the Convention, holding that it had not been demonstrated that the applicant, if returned to Afghanistan, would risk treatment in violation of Article 3.

88. In respect of the applicant's arguments under Article 8 of the Convention, the Minister reiterated that Article 1F had been applied in respect of the applicant and that he thus represented a danger to public order. It should therefore be determined whether the interference with the applicant's rights under Article 8 § 1 was necessary and justified in a democratic society. For this purpose the general interest was to be weighed

against the applicant's personal interest in staying in the Netherlands to enjoy his family life with his spouse and their children. The Minister concluded that the interference at issue, that is to say the imposition of the exclusion order, was justified under the terms of Article 8 § 2 of the Convention in that it was provided for in domestic law provisions and was necessary for the protection of public order and the prevention of crime. As regards the competing interests, the Minister – taking into account the guiding principles as formulated in the Court's judgments in the cases of *Boultif* (cited above) and *Üner* (cited above) – held that public interest considerations in excluding the applicant from the Netherlands outweighed the applicant's personal interests in being enabled to carry on his family life in the Netherlands. He noted that the applicant had been born and raised in Afghanistan and had lived there for twenty-eight years. This supposed the existence of ties with Afghanistan and thus the possibility to build up a life there again. Even if the applicant did not have a social network at present in Afghanistan, it would be easy for him to build up such a network after his return there. The Minister further considered that, even assuming that there would be an objective obstacle to the applicant's spouse and their children enjoying their family life with the applicant in Afghanistan, it did not appear that it there would be an objective obstacle to him carrying on this family life in a third country. It had appeared from the hearing held on 11 January 2011 that the applicant had done nothing to explore that possibility. The applicant's spouse and children were free to visit the applicant abroad or to settle with him in another country. The Minister therefore concluded that Article 8 did not prevent the applicant's expulsion from the Netherlands.

89. An appeal by the applicant against this fresh decision was allowed on 3 November 2011 by the Regional Court of The Hague. It annulled the decision and ordered the Minister to take a fresh decision. A further appeal by the latter to the Administrative Jurisdiction Division was allowed on 21 January 2013. The court quashed the impugned judgment of 3 November 2011 and rejected the applicant's appeal against the decision of 25 January 2011. No further appeal lay against that decision.

B. Relevant domestic law and practice

90. 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* (cited above, §§ 16-32).

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

reunification (*nareisvergunning* – see *Gereghiher Geremedhin v. the Netherlands* (dec.), no. 45558/09, §§ 30-31, 23 August 2016) – but should be raised in, for instance, 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 in 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 proceedings on an entry ban (see, on the entry ban, *A.K.C. v. the Netherlands* (dec.), no. 36953/09, §§ 14-15, 30 August 2016).

92. 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 was found to be applicable have been summarised in *A.A.Q. v. the Netherlands*, cited above, §§ 37-52.

93. 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 materials

94. 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."

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

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

97. 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 Guidelines. As in the latter 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, but again state that, as regards Article 1F of the 1951 Refugee Convention, careful consideration needs to be given in particular to, *inter alia*, former members of the armed forces and the intelligence/security apparatus, including the 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.

98. In January 2016 the European Asylum Support Office ("the EASO") released the country of origin information report "Afghanistan Update Security Situation". This report, covering the period between 1 November 2014 and 31 October 2015, is an update of a previous report released by EASO in January 2015. It provides, *inter alia*, 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, *inter alia*:

> "The general security situation in Afghanistan is mainly determined by the following four factors: The main factor is the conflict between the Afghan National Security Forces (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 ...
>
> Between 15 February and 31 July 2015, the UN recorded 11,129 security-related incidents relevant to the work, mobility and safety of civilian actors, a number consistent with the records for the same reporting period in 2014. Nevertheless, according to the UN, during the summer of 2015, the conflict grew in intensity and geographical scope, with a spike in high-profile attacks in Kabul. In July 2015, USAID reported that security conditions had worsened across Afghanistan due to increased Taliban attacks and renewed fighting."

99. The United Nations Office for the Coordination of Humanitarian Affairs ("the OCHA") reported in *Humanitarian Bulletin Afghanistan* 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."

100. The report of 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."

101. 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 6 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."

COMPLAINTS

102. The applicants in all four cases complained under Article 3 of the Convention that, if expelled to Afghanistan, they would be exposed to a real risk of being subjected to treatment prohibited by Article 3 of the Convention on account of their work during the communist regime in that State as well as owing to the deteriorating general security situation there.

103. The applicant in case no. 33314/09 also complained, under Article 6 of the Convention, that Article 1F had been applied in his case although no criminal proceedings had ever been taken against him in the Netherlands.

104. The applicants in cases nos. 26268/09, 33314/09 and 53926/09 further complained that the Netherlands authorities, in denying them residence on the basis of Article 1F of the 1951 Refugee Convention, had violated their right to respect for his private and family life, as guaranteed by Article 8 of the Convention, as their spouses and children had been admitted to and were living in the Netherlands and as they could not be expected to return to Afghanistan.

105. The applicants in cases nos. 26268/09 and 53926/09 lastly complained that, in respect of their complaints under Article 3 and/or Article 8, they did not have an effective remedy within the meaning of Article 13 of the Convention.

THE LAW

A. Joinder of the cases

106. The Court considers that the applications should be joined, given their related factual and legal background (Rule 42 § 1 of the Rules of Court).

B. Article 3

107. All four applicants complained under Article 3 of the Convention that, if expelled to Afghanistan, they would be exposed to a real risk of being subjected to treatment prohibited by Article 3 of the Convention on

account of their work during the communist regime in that State as well as due to the deteriorating general security situation there.

Article 3 provides as follows:

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

108. The Court reiterates the relevant principles in the Court's case-law under Article 3 of the Convention (see *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 106-07, ECHR 2016, with further references).

109. The Court notes that, in respect of the applicant in case no. 15993/09 and as regards the decision to withdraw his status as a refugee under the 1951 Refugee Convention, there is no indication in the case file that he lodged a further appeal with the Administrative Jurisdiction Division against the judgment given on 30 October 2007 by the Regional Court of The Hague. The Court further notes that, as regards the decision to impose an exclusion order on the same applicant, his arguments under Article 3 were not taken into account in the appeal proceedings before the Regional Court of The Hague for having been raised too late, and his further appeal to the Administrative Jurisdiction Division was rejected for failure to pay the prescribed court fees in a timely manner. The Court lastly notes that, in respect of the proceedings in which the same applicant challenged his effective removal to Afghanistan, there is no indication in the case file that the applicant has lodged a further appeal with the Administrative Jurisdiction Division.

110. The question may therefore arise whether the applicant in application no. 15993/09 has duly exhausted domestic remedies as required under Article 35 § 1 of the Convention. However, the Court does not find it necessary to determine this point as his complaint under Article 3 is in any event inadmissible for the reasons given below.

111. In respect of the grievance under Article 3 raised by all applicants in the cases at hand, 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. Account should be taken, as indicated in Article 31 § 3 (c) of the 1969 Vienna Convention on the Law of Treaties, of "any relevant rules of international law applicable in the relations between the parties", and in particular the rules concerning the international protection of human rights (see *Marguš v. Croatia* [GC], no. 4455/10, § 129 with further references, ECHR 2014 (extracts); and *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 134, ECHR 2016).

112. It also reaffirms that a right to political asylum and a right to a residence permit are not, as such, guaranteed by the Convention and that, under the terms of 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).

113. As regards the individual features of the risk of ill-treatment claimed by the applicants, the Court notes that when the communist regime in Afghanistan was overthrown by mujahideen forces in 1992 the applicant in case no. 15993/09 – a colonel in the KhAD/WAD – did not flee Afghanistan but went into hiding until 5 January 1995 when he was arrested by mujahideen militia forces. He was held captive until 27 September 1996 when he had been able to escape after the mujahideen fled the approaching Taliban. He then fled to Pakistan and later to the Netherlands.

114. The applicant in case no. 26268/09 – a lieutenant-colonel in the KhAD/WAD – also did not flee Afghanistan when the mujahideen seized power in 1992 but went into hiding until 22 October 1997 when, fearing the Taliban, he eventually fled to Pakistan and later to the Netherlands.

115. The applicant in case no. 33314/09 – a highly placed executive official of the PDPA – also did not flee Afghanistan in 1992. At that time he was working in the private sector. In 1994 he became commander of a militia brigade of about 2,000-3,000 troops under the command of the Mazar-e Sharif garrison. In September 1998 he was captured by the Taliban, who detained him until 20 October 1999 when he was released after the intervention of an influential uncle. On 26 October 1999 he left Afghanistan for Turkmenistan from where he travelled to the Netherlands.

116. Also the applicant in case no. 53926/09 – a 1st lieutenant in the KhAD/WAD – did not flee Afghanistan in 1992 but instead moved to Mazar-e Sharif where he worked in the administration of the traffic police department until February 1998 when – after having lived in hiding from when the Taliban seized control in May 1997 – he fled via Pakistan to the Netherlands.

117. It thus appears that none of the applicants sought to flee Afghanistan in 1992 when or directly after the communist regime was defeated by mujahideen forces but stayed in the country. They only fled Afghanistan after the Taliban had taken power there.

118. The Court has found no indication that, since their departure from Afghanistan, any of the four applicants has attracted negative attention from any governmental or non-governmental body or any private individual in Afghanistan on account of their 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.

119. In view of the above, the Court does not find that it has been demonstrated that, on individual grounds, the applicants will be exposed to a real risk of being subjected to treatment contrary to Article 3.

120. 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 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 view of the evidence now before it, the Court has found no reason to hold otherwise in the instant cases.

121. The Court therefore finds that the applicants have failed to adduce evidence capable of demonstrating that there are substantial grounds for believing that they would be exposed to a real and personal risk of being subjected to treatment contrary to Article 3 of the Convention if removed to Afghanistan.

122. 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.

C. Article 6

123. The applicant in case no. 33314/09 also complained, under Article 6 of the Convention, that Article 1F had been applied in his case although no criminal proceedings had ever been taken against him in the Netherlands.

In its relevant part, Article 6 provides:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. ..."

124. The Court reiterates its well-established, constant case-law that proceedings and decisions concerning the entry, stay and removal of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him or her within the meaning of Article 6 § 1 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X; *Szabó v. Sweden* (dec.), no. 8578/03, ECHR 2006-VIII; *Tatar v. Switzerland*, no. 65692/12, § 61, 14 April 2015; and *A.A. v. Austria* (dec.), no. 44944/15, § 19, 17 May 2016).

125. Accordingly, the complaint under Article 6 must be rejected under Article 35 § 3 (a) and § 4 of the Convention for being incompatible *ratione materiae* with the provisions of the Convention.

D. Article 8

126. The applicants in cases nos. 26268/09, 33314/09 and 53926/09 further complained that the Netherlands authorities, in denying them residence on the basis of Article 1F of the 1951 Refugee Convention, had violated their right to respect for their private and family life, as guaranteed by Article 8 of the Convention, as their spouses and children had been admitted to and were living in the Netherlands and could not be expected to return to Afghanistan.

127. 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."

128. The Court reiterates that where an applicant has failed to comply with formal requirements under domestic law in submitting his or her Convention grievances, either in form or substance, before the domestic authorities, his or her application to the Court should in principle be declared inadmissible for failure to exhaust domestic remedies (see *Vučković*, cited above).

129. The Court notes that under domestic law Article 8 complaints cannot be entertained in asylum proceedings unless they concern an application for a residence permit for refugee-family reunification, but that they can be raised in proceedings on the imposition of an exclusion order or entry ban.

130. The Court observes that the applicant in case no. 33314/09 did challenge the entry ban imposed on him in appeal proceedings before the Regional Court of The Hague but, although it was possible, did not lodge a further appeal to the Administrative Jurisdiction Division and he has not given any reasons for his decision not to do so.

131. In these circumstances, it follows that the complaint under Article 8 of the Convention raised by the applicant in case no. 33314/09 must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention (see *A.M. v. the Netherlands*, no. 29094/09, §§ 94-95, 5 July 2016).

132. As regards the complaint under Article 8 raised by the applicants in cases nos. 26268/09 and 53926/09, the Court accepts that these applicants' relationships with their respective spouses and children constitute "family life" for the purposes of Article 8 and that the decisions to apply Article 1F of the 1951 Refugee Convention and to impose an exclusion order on them affected that family life.

133. As regards these applicants' family life with their adult children, 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 the 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).

134. On the basis of the content of the case file, the Court cannot find that, apart from the normal emotional ties, there are further elements of dependency between the applicants in case nos. 26268/09 and 53926/09 and their adult children bringing their relationships in the protective sphere of Article 8 of the Convention.

135. As to these applicants' family lives with their spouses and, in case no. 53926/99, children who are still minors, the Court emphasises once more 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 111 above).

136. 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 in its territory. Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to 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. v. the Netherlands*, cited above, § 66, with further references).

137. The Court accepts that the decisions to apply Article 1F and to impose an exclusion order on the two applicants concerned constituted an interference with their 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.

138. The Court is satisfied that the decisions at issue were taken in accordance with domestic law and pursued legitimate aims set out in the second paragraph of Article 8, in particular "for the prevention of disorder" and "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".

139. 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, ECHR 2003-X).

140. 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. v. the Netherlands*, cited above, §§ 46 and 71). In this context, the Court has noted the findings of the domestic authorities (see paragraphs 42, 48, 88 and 89 above).

141. As to the question of whether it is possible for the applicants to exercise their right to family life with their spouses and minor children outside the Netherlands, the Court notes that the spouses and children have all been granted Netherlands nationality. Furthermore, having found no objective insurmountable obstacle to so doing, the Court does not find it demonstrated that it would be impossible for the two applicants concerned to carry on their family life outside of the Netherlands (compare and contrast, *Naibzay v. the Netherlands* (dec.), no. 68564/12, 4 June 2013, and *A.K.C. v. the Netherlands* (dec.), no. 36953/09, 30 August 2016).

142. Having regard to the above considerations and the particular features of the case at hand, the Court finds that, in withdrawing or denying a residence permit under Article 1F, and in imposing an exclusion order on the two applicants concerned, the Netherlands authorities have struck a fair balance between the competing interests at issue.

143. It follows from the above that the complaint under Article 8 of the Convention raised by the applicants in cases nos. 26268/09 and 53926/09 is manifestly ill‑founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

E. Article 13

144. The applicants in cases nos. 26268/09 and 53926/09 lastly complained, under Article 13 of the Convention, that they did not have an effective remedy in respect of their complaints under Article 3 and/or Article 8 of the Convention.

145. Article 13 provides as follows:

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

146. The Court reiterates the general principles and its recent findings in respect of Article 13 of the Convention taken together with Articles 3 and 8 of the Convention in respect of proceedings concerning residence permits and exclusion orders before the Regional Court and the Administrative Jurisdiction Division of the Council of State (see *A.M. v. the Netherlands*, cited above, §§ 61-71).

147. Even assuming that the applicants would have an arguable claim for the purposes of Article 13, they had the possibility to challenge the decisions taken in their cases in appeal proceedings which the Court has accepted as being effective for the purposes of Article 13 (see *A.A.Q. v. the Netherlands*, cited above, §§ 76-78). It has found no reason in the applicants' submissions warranting a different finding.

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

149. 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,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 8 June 2017.

Stephen Phillips
Registrar

Helena Jäderblom
President

APPENDIX

No	Application No	Lodged on	Applicant Year of birth Country of current residence	Represented by
1.	15993/09	25/03/2009	**M.M.** 1950 the Netherlands	P. SCHÜLLER
2.	26268/09	19/05/2009	**A.R.** 1955 the Netherlands	M. DE BOER
3.	33314/09	24/06/2009	**Z.L.** 1954 the Netherlands	H. TEUNISSEN
4.	53926/09	10/10/2009	**G.G.S.** 1969 the Netherlands	J. WALLS