CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39858/04
by Anna JELTSUJEVA
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 1 June 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 12 November 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Anna Jeltsujeva, is a Russian national who was born in 1984 and currently lives in Harlingen. She was represented before the Court by Mr H.J.M. Nijholt, a lawyer practising in Emmen.

A. The circumstances of the case

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

On 13 December 2000, following previous incidents in which stones with hostile notes had been thrown through windows and fires lit before the front door, the applicant's parental home in Gudermes (Chechnya) – where her father was working as the assistant of the Minister of the Gudermes Baptist Church – was raided by a number of masked men, who shouted to the applicant and her parents that they should disappear. The applicant left her parental home as soon as she could. After having spent the evening in the house of a friend, a foreign missionary named David who was the Minister of the Gudermes Baptist Church, she returned to her home at about midnight. She found the house ransacked and a large blood stain in the room where she had last seen her father. The following day, the applicant and David travelled to Moscow where the applicant stayed until 3 January 2001 with another missionary named Bill, whereas David returned to Gudermes, where he made enquiries about the applicant's parents without obtaining any results.

On 4 January 2001, the applicant left Russia via Moscow airport and travelled by air to the Netherlands, where on 5 January 2001 she applied for asylum at the Zevenaar asylum seekers centre.

On 12 January 2001, the applicant was interviewed by a Netherlands immigration official in order to establish her identity, nationality and travel itinerary. The applicant stated that she was born in Gudermes, and that she had gone to school between September 1991 and May 1999 in Rostov (Russia) where she and her parents had then been living. She and her parents had moved to Gudermes in May 1999. She further stated that Bill had made all arrangements for, and had accompanied her on the journey to, the Netherlands. Once in the Netherlands, Bill had taken her to Zevenaar where, according to him, she would find help. The applicant initially stated that she had held a birth certificate but that this document had been taken from her by those who had brought her to Zevenaar. She subsequently stated that this document had been made by the "travel agent". She also declared that she had never held a passport or other identity document.

On 22 May 2001, a second interview was held with the applicant on her reasons for applying for asylum. She stated, *inter alia*, that she was a native Russian speaker and did not speak Chechen, that she and her family had moved to Rostov when she was a little child not yet attending school, and that she and her parents had returned to Gudermes in 1999 because her father had wished to establish a church there. After having attended school in Gudermes for one week, she had not wanted to go back to school as she had been bullied and assaulted by other pupils because she was not a Muslim. She further declared that she had seen her birth certificate for the last time in her parental home in Gudermes and that, to her knowledge, her parents had not had any problems with the Russian authorities.

According to the conclusions of a medical age verification test carried out on 17 August 2001 and commissioned by the Netherlands immigration

authorities as the applicant did not hold any identity documents, the applicant was in fact 20 or 21 years old and not 16 as submitted by her.

On 22 February 2002, the Deputy Minister of Justice (*Staatssecretaris van Justitie*) rejected the applicant's asylum request, holding that no credence could be attached to the applicant's asylum account and that, in any event, it had not been established that the applicant had a well-founded fear of persecution or that it would not be possible for her to settle elsewhere in her country of origin. The applicant filed an appeal against this decision with the Regional Court (*arrondissementsrechtbank*) of The Hague.

On 5 February 2004, following a hearing held on 5 June 2003, the Regional Court of The Hague sitting in Assen rejected the applicant's appeal. It rejected the applicant's argument that she could not be held responsible for not having any identity or travel documents. In so far as the applicant challenged the results of the age verification test, which had been taken into account by the Deputy Minister in the assessment of the credibility of her account, the Regional Court found – referring to the findings in a ruling given on 23 October 2003 by the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*) – that the procedure by which the Deputy Minister had obtained the medical opinion about the applicant's age fell short of the requirements of due care to be respected in administrative proceedings. Consequently, this opinion could not have been taken into account in the assessment of the credibility of the applicant's asylum account. However, it further found that the other elements taken into account by the Deputy Minister in this respect, namely various inconsistencies in the applicant's account, were sufficient for carrying the conclusion that no credence could be attached to the applicant's asylum account. The applicant further argued that a return to her country of origin would entail undue hardship on account of the general unsettled situation there. On this point the Regional Court noted that the Administrative Jurisdiction Division, in two rulings given on 4 November 2003 and 18 December 2003, had accepted as reasonable the position taken by the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie* – the successor to the Deputy Minister of Justice) on the basis of official reports (*ambtsberichten*) on the situation in the Northern Caucasus in Russia drawn up on, respectively, 30 March 2001, 5 April 2002 and 14 May 2003 by the Netherlands Ministry of Foreign Affairs (*Ministerie van Buitenlandse Zaken*) that there was no categorical emergency situation in the sense that in the entire Russian Federation there was a risk for the life and limb of persons of Chechen origin and that, on this basis, the Administrative Jurisdiction Division had further accepted the Minister's decision not to introduce a policy of class protection based on country of origin (*categoriale bescherming*) in respect of asylum seekers of Chechen origin. On the basis of the findings in these

two rulings, the Regional Court concluded that the situation in the applicant's country of origin was not such that her expulsion to Russia would entail undue hardship on account of the general situation there.

The applicant's subsequent appeal to the Administrative Jurisdiction Division was dismissed on 17 June 2004. It upheld the ruling of 5 February 2004 of the Regional Court, holding:

> "The grievances raised do not provide grounds for quashing the impugned ruling (*kan niet tot vernietiging van de aangevallen uitspraak leiden*). Having regard to Article 91 of the 2000 Aliens Act (*Vreemdelingenwet*), no further reasoning is called for, since the arguments submitted do not raise questions requiring determination in the interest of legal unity, legal development or legal protection in the general sense."

No further appeal lay against this decision.

B. Relevant domestic law and practice

1. Asylum proceedings

On the basis of section 29 of the Aliens Act 2000 (*Vreemdelingenwet 2000*), in force at the relevant time, an alien is eligible for a residence permit for the purposes of asylum if, *inter alia*,

(a) he or she is a refugee within the meaning of the Convention relating to the Status of Refugees of 28 July 1951, or

(b) he or she has established that he or she has well-founded reasons to assume that he or she will run a real risk of being subjected to torture or other cruel or degrading treatment or punishment if expelled to the country of origin.

2. Netherlands policy on asylum seekers of Chechen origin

To help in the assessment of asylum applications and the establishment of whether it is safe to return rejected asylum seekers, the Minister of Foreign Affairs regularly publishes official country assessment reports (*ambtsberichten*) on the situation in asylum seekers' countries of origin. In drawing up these reports, the Minister uses published sources and reports by non-governmental organisations as well as reports by Netherlands diplomatic missions.

The decision of 23 May 2001 rejecting the applicant's request for asylum was based on information contained in the country reports of, respectively 30 March 2001, 5 April 2002 and 14 May 2003, on the basis of which the Administrative Jurisdiction Division accepted in two rulings given in 2003 the decision of the Minister for Immigration and Integration not to introduce a policy of class protection based on country of origin (*categoriale bescherming*) in respect of asylum seekers of Chechen origin. Consequently, an asylum request filed by a person hailing from Chechnya is determined on an individual basis.

According to the most recent official country report on the Northern Caucasus region, drawn up on 14 January 2005 by the Netherlands Ministry of Foreign Affairs, Chechens having fled Chechnya since 1999 can in practice not obtain a permanent residence registration in other parts of the Russian Federation and Chechens encounter numerous problems as a result of discrimination both on the part of the authorities (including law enforcement and judicial authorities) and that of the general population. This applies to all parts of the Russian Federation, albeit not everywhere to a same degree. In particular, unregistered Chechens can encounter problems in the exercise of their economic and social rights. The discrimination against Chechens is greatest in Moscow, Stavropol Krai and Krasnodar Krai, where the highest local authorities (such as Mayor Lyuzhkov of Moscow) display an explicitly negative attitude towards Chechens as a result of which the rights of Chechens are not always respected. Chechens also encounter a lot of discrimination in Saint Petersburg and Cheboksary. It frequently occurs in these regions that public officials discriminate against Chechens, mostly by stalling and insisting on a multitude of bureaucratic formalities. However, where an objection or appeal is filed, such abuses are mostly corrected by the municipal or judicial authorities. In the Siberian areas of Saratov, Nizhny Novgorod, Volgograd, Novgorod, Tjumen and Nizhnevartovsk, the position of Chechens is relatively good. For a long period, a Chechen community has been living in Tjumen and Nizhnevartovsk. However, on account of the arctic climate, these are not popular places of residence.

C. Relevant international materials

The "Paper on the Situation of Asylum-Seekers from the Russian Federation in the context of the situation in Chechnya", issued in February 2003 by the United Nations High Commissioner for Refugees (UNHCR) concludes:

> "77. Legislative mechanisms and related assistance that would facilitate the settlement of IDPs (internally displaced persons) beyond Chechnya and Ingushetia are not available. Forced migrant status can only be obtained, in practice, on the basis of an individual fear of persecution by Islamic fundamentalists and is therefore not available to the majority of IDPs. Compensation for lost property is not yet available for IDPs who fled Chechnya.
>
> 78. Chechen IDPs from the current conflict have had virtually no access or possibility to sojourn legally in Kabardino-Balkaria and Karachai-Cherkessia. In the Republics of North Ossetia-Alania, Stavropol Krai and Krasnodar Krai, the low number of Chechen IDPs can be explained both by restrictive regulations and practice preventing the sojourn of the concerned persons, as well as by the reluctance of the IDPs themselves to venture into regions where the authorities and local residents hold a hostile attitude towards them.

79. In other administrative districts of the Russian Federation, the combination of local restrictive regulations on freedom of movement and freedom of choice of place of sojourn/residence, anti-Chechen feelings among the public, and concerns among local authorities to contain ethnic tensions and to prevent terrorist acts, deprives Chechen IDPs of a genuine internal relocation alternative.

80. As opposed to persons holding residence registration, there is currently no assurance in practice that a person holding registration at the place of sojourn will be issued an extension of such registration or that, in case of travel or stay abroad, such registration will be extended upon return at the place of sojourn.

81. It has been reported by some local NGOs defending the rights of forced migrants that ethnic Russian IDPs are not always well received by the local population and local authorities in their areas of destination. Many of them have reported difficulties in obtaining issuance or renewal of sojourn registration. However, there is no indication of widespread police harassment, as is the case in many regions for Chechen IDPs. In those regions that condition sojourn registration upon the presence in that territory of close relatives, ethnic Russian IDPs may be able to rely upon the presence of family members displaced during the previous 1994-96 conflict."

On 22 October 2004, the UNHCR issued the "UNHCR Position Regarding Asylum-Seekers and Refugees from the Chechen Republic, Russian Federation". This document states:

"1. Since the February 2003 UNHCR "Paper on the Situation of Asylum-Seekers from the Russian Federation in the context of the situation in Chechnya", some positive developments have taken place in the Chechen Republic, Russian Federation (hereinafter "Chechnya"). These include the adoption of a Constitution, the organization of presidential elections, a number of amnesty declarations and the introduction of compensation mechanisms for lost housing and property. Despite this, the overall situation in Chechnya still raises grounds for serious concern due to targeted persecution, including arbitrary detentions, widespread violence, insecurity and violations of human rights, as well as ongoing hostilities significantly affecting the civilian population and leading to continued forced displacement. Moreover, Chechen militants have claimed responsibility for an increasing number of attacks outside Chechnya, including the assault on law enforcement structures in the Republic of Ingushetia, in June 2004, and the horrific attack in Beslan, North Ossetia-Alania, in September 2004, which lead to the death of over 430 civilians in one week alone, including over 100 children. ...

3. The UN security assessment maintains Chechnya at Phase V, preventing the United Nations (including UNHCR) from establishing a presence in Chechnya. As a result, UNHCR cannot effectively monitor the situation of internally displaced persons or refugees who return to Chechnya. Some limited presence of national staff is currently under discussion.

4. Considering this situation and the lack of a genuine internal flight alternative within the Russian Federation for Chechens, UNHCR maintains the position that:

Chechens whose place of permanent residence was the Chechen Republic prior to their seeking asylum abroad should be considered in need of international protection, as they either:

a) have a well-founded fear of persecution and would therefore qualify as refugees under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; and/or

b) have left Chechnya owing to serious and indiscriminate threats to life, physical safety or freedom resulting from generalized violence or events seriously disturbing public order."

According to the United States of America Department of State Annual Report on International Religious Freedom for 2005 in respect of Russia, which covers the period from 1 July 2004 to 30 June 2005, religious matters are not a source of social tension for most citizens, although many citizens firmly believe that at least nominal adherence to the Russian Orthodox Church (ROC) is at the heart of the national identity. However, there are manifestations of hostility toward Roman Catholics and other non-Orthodox denominations. Instances of religiously motivated violence continue, although it often was difficult to determine whether xenophobic, religious, or ethnic prejudices were the primary motivation behind violent attacks. Conservative activists claiming ties to the ROC disseminated negative publications and staged demonstrations throughout the country against Roman Catholics, Protestants, Jehovah's Witnesses, and other religions considered non-traditional. By most estimates, Protestants constitute the third largest group of believers in the Russian Federation. Representative offices of foreign religious organisations are required to register with state authorities, and they are barred from conducting services and other religious activities unless they have acquired the status of a group or organisation. In practice, many foreign religious representative offices have opened without registering or have been accredited to a registered religious organisation. Representatives of minority religions have expressed the view that some Government officials, particularly in the security services, believe that minority religions – especially Muslims, but also Roman Catholics, some Protestant denominations and other groups – constitute security threats that require greater monitoring and possibly greater control. In 2004, Smolensk and Kursk Oblast authorities adopted laws restricting missionary activity. The Kursk law was based on a 2001 law that was passed in neighbouring Belgorod. Under these laws, foreigners visiting the region are forbidden to engage in missionary activity or to preach unless specifically allowed to do so according to their visas. Foreign religious and other workers have been deterred or prohibited from entering war zones in the North Caucasus, and information about religious activity in the area therefore is less available and reliable than for other regions.

The USA Department of State report further mentions a number of incidents involving Baptist communities, including the firebombing of a Baptist Church on 30 April 2005 in Chelyabinsk following an allegedly pejorative coverage in a news broadcast on a local television channel in which Baptists were presented as a "totalitarian sect"; an unexplained explosion in January 2004 in a building belonging to a congregation of unregistered Baptists in Tula; picketing and distribution of anti-Protestant pamphlets by a youth group founded by the missionary department of

Yekaterinburg's Russian Orthodox Diocese during Sunday services at Protestant churches in Yekaterinburg.

COMPLAINTS

The applicant complained that she, if expelled to Russia, will be exposed to a real risk of treatment contrary to Article 3, either outside Chechnya for being a person of Chechen origin or in Chechnya for being a Christian. She further complained that her expulsion to Russia, where in all likelihood she will be forced to return to Chechnya or to settle in Ingushetia, would be in violation of her right to security as guaranteed by Article 5 of the Convention given the general situation there. The applicant also complained under Article 6 of the Convention that the Administrative Jurisdiction Division failed to give sufficient reasons for its decision on her appeal. She lastly complained under Article 17 of the Convention in conjunction with Article 6 that the results of her age verification examination were initially taken into account in the assessment of the credibility of her account whereas the Regional Court failed to examine all arguments raised by the applicant in respect of this examination and searched for other facts in order to conclude that her account was not credible.

THE LAW

1. The applicant complained that she, if returned to Russia, risks treatment in breach of Article 3 either for being of Chechen origin of for being a Christian. Article 3 of the Convention reads as follows:

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

The Court reiterates at the outset that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real and personal risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to expel the person in question to that country (see, among other authorities, *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1853,

§§ 73-74; and *H.L.R. v. France*, judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 757, §§ 33-34).

The Court observes that the applicant has submitted no evidence to substantiate either her claims about having been harassed in Chechnya on account of her religion or the events of 13 December 2000. The Court further has found no reason for holding that it cannot be expected from the applicant to settle elsewhere in the Russian Federation than in Chechnya, also bearing in mind that it has not been argued and that it has not appeared that the applicant has in any way attracted the negative attention of the Russian authorities or that, during the period she was living in Rostov, she encountered any difficulties from the side of the authorities or the local population on account of her Chechen origin or religion.

The Court has also found no indication in the case-file that the applicant's personal position would be any worse than the generality of other persons hailing from Chechnya who are currently residing elsewhere in the Russian Federation after having left Chechnya on account of the violent and unsettled situation there. Although the Court accepts that the general living conditions in the Russian Federation of this category of internally displaced persons may be far from ideal, it cannot find that these conditions must be regarded as being so harrowing in the entire territory of the Russian Federation that they must be considered as having attained the minimum level of severity required for treatment to fall within the scope of Article 3 of the Convention (see *Said v. the Netherlands*, no. 2345/02, § 47, ECHR 2005-...). The Court further has found no reasons for holding that the applicant, on account of her religion, would be exposed to a real and personal risk of treatment in breach of Article 3 in the Russian Federation.

In the above context, the Court also attaches importance to the fact that the case concerns expulsion to another High Contracting Party to the Convention, which has undertaken to secure the fundamental rights guaranteed under its provisions (see *Tomic v. the United Kingdom*, (dec.), no. 17837/03, 14 October 2003; and *Hukić v. Sweden* (dec.), no. 17416/05, 27 September 2005).

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

2. As regards the applicant's reliance on Article 5 of the Convention, which provision prohibits unlawful detention and secures certain rights to detained persons, in relation to her expulsion to Russia, this complaint is misconceived in that it has not been argued and it has not appeared that the applicant would be subjected to any deprivation of her liberty within the meaning of that provision by the authorities of the Russian Federation.

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

3. In so far as the applicant complained under Article 6 of the Convention of a lack of sufficient reasoning in the decision given in her

case by the Administrative Jurisdiction Division on 17 June 2004, the Court reiterates that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge within the meaning of Article 6 § 1 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X).

Consequently, this part of the application must be rejected for being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3.

4. The Court lastly considers that the facts of the case do not disclose any appearance of a violation of Article 17 of the Convention.

It follows that also this part of the application must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President