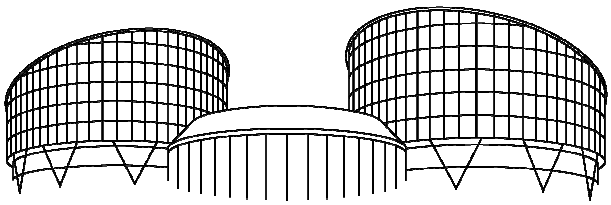

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43700/07
by Haroutioun HARUTIOENYAN and Others
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 1 September 2009 as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra, *judges*,
and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 5 October 2007,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Haroutioun Harutioenyan, Mr Khachig Harutioenyan and Ms Haikoesjik Harutioenyan are Armenian nationals who were born in 1954, 1981 and 1982 respectively. The first applicant is the father of the second and third applicants. They live in Musselkanaal and are represented before the Court by Ms P. Scholtes, a lawyer practising in The Hague.

The circumstances of the case

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

3. In May 1999, the applicants fled from Armenia to Russia. Allegedly unable to register formally with the authorities there, they managed through bribery of local policemen to reside illegally in Russia until 19 April 2002 when – after the first and second applicant had been briefly held in March 2002 in a police station in Krasnodar (Russia), where they had been ill-treated by policemen – the three applicants travelled to the Netherlands, where they arrived on 23 April 2002 and applied for asylum.

4. The first applicant stated that he had been an active member of an Armenian opposition political party. In the campaign for the Armenian presidential elections in May 1998, the first applicant had actively campaigned for an opposition candidate. After having started these activities in March 1998, he had received an anonymous telephone call in which he and his family were threatened if he did not cease his activities. About five days after this call, he had been attacked in the street by two unknown men. He had not filed a criminal complaint with the police, but had mentioned it to persons in the party office.

5. In the subsequent campaign for the Armenian parliamentary elections in May 1999, the first applicant had been one of the campaign leaders of an opposition candidate, due to which activity the first applicant had received fresh anonymous telephone threats. Furthermore, on an unspecified date at the end of April 1999, the first applicant's car had been vandalised by two unknown persons who had fled in a white car without licence plates. The first applicant had filed a criminal complaint about this incident at the Shahumian neighbourhood police station in Yerevan. The first applicant had continued with his political activities. On 4 or 5 May 1999, the first applicant had again received anonymous threats by telephone.

6. On 7 May 1999 at around 11.00 or 11.30 p.m., after the first applicant had come home from a political meeting where he had given a speech, the applicants' spouse/mother had gone to the upstairs bedroom where she had been shot and killed by a single shot fired through the bedroom window. The first applicant, who had been downstairs when the shot had been fired, and the second applicant had called an ambulance. The ambulance staff had alerted the police. Two days after his wife's funeral on 9 May 1999, the first applicant had received an anonymous telephone call. He had understood from that conversation that the perpetrator(s) had sought to kill him and not his wife and that he risked being killed if he continued with his political activities.

7. On 11 May 1999, in order to obtain information about the police inquiry into his wife' death, the first applicant had gone to a local police inspector who had treated him with indifference. He had then gone to the

Ministry of the Interior where he had been refused entry but at the door had spoken with an official who had been called. When the applicant had started to relate what had happened to him, this official had reacted in a very offhand manner.

8. In the course of a political meeting held on 15 May 1999, the applicant had seized the microphone and in a poignant manner had informed the audience about what had happened to his wife. After he had been accompanied home by the second applicant and a friend, the phone had rung. When the first applicant had picked up the phone, no one had answered. Later that night, after the second and third applicant had gone to sleep, the first applicant had heard the sound of breaking glass. When he had checked the cause, he had discovered that fire had broken out in his own bedroom and a guestroom. He and his children had fled outside and after about 20-30 minutes the fire brigade had arrived. The fire brigade had alerted the police, who had questioned the applicants about the origins of the fire and drawn up an official report on the fire. The first applicant was asked to sign a statement drawn up by the police. After having stayed for a couple of days with a friend, the applicants had left for Russia. Their identity and other official documents had gone missing in the fire in their home.

9. The asylum request filed by the second and third applicant was based on their father's account.

10. After an initial negative decision given on 2 May 2002 by the Deputy Minister of Justice (*Staatssecretaris van Justitie*) had been withdrawn on 29 May 2002, the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie*; the successor of the Deputy Minister) rejected the applicants' asylum request in three new, separate decisions given on 13 January 2003. The applicants filed an appeal with the Regional Court (*rechtbank*) of The Hague. A hearing was scheduled for 21 July 2004.

11. On 2 July 2004, the applicants were informed that the Minister had withdrawn her impugned decisions of 13 January 2003. Consequently, the applicants withdrew their appeal pending before the Regional Court of The Hague on 6 July 2004.

12. On 2 December 2004, the Minister requested the Medical Advice Bureau of the Ministry of Justice to examine the three applicants in order to see whether their state of health militated against expulsion. On 5 April 2005, the Medical Advice Bureau drew up and transmitted its advice in respect of each of the applicants to the Minister. It found that all three were suffering from mental health problems for which treatment was available in Armenia.

13. On 23 June 2005 the Minister informed the applicants of her intention (*voornemen*) to reject their respective asylum requests.

On 21 July 2005 June 2003 the applicants' lawyer submitted written comments (*zienswijze*) on this intended rejection.

14. In three separate decisions of 5 October 2005, the Minister rejected the applicants' asylum requests. As regards the first applicant, the Minister considered *inter alia* that – apart from the fact that his identity, nationality, and travel itinerary had not been substantiated with documents, which detracted from the credibility of his asylum account – it had not been established that the first applicant had attracted the negative attention of the Armenian authorities or persons in authority or that the events related in the first applicant's account could be linked to such authorities or persons. This allegation was solely based on personal assumptions and suspicions which did not tally with information set out in official country assessment reports (*ambtsberichten*) on Armenia drawn up on 15 August 2001 and 21 July 2004 by the Netherlands Ministry of Foreign Affairs, according to which HHS supporters did not encounter any obstacles in Armenia. The Minister therefore found that the first applicant's account lacked positive persuasiveness and credibility. The Minister further considered that the medical care in Armenia could not be considered to be of such a low standard that, for this reason, the first applicant's expulsion should be seen as entailing a real risk of a violation of Article 3 of the Convention. The Minister lastly found no reasons of a compelling humanitarian nature that would warrant the issuance of a residence permit. As the asylum requests of the other two applicants depended on their father's account, their asylum requests were also rejected by the Minister, who did not find that their removal to Armenia would entail a real risk of a violation of their rights under Article 3 of the Convention on account of their state of health.

15. On 31 October 2005 the applicants filed an appeal which was heard on 20 October 2006 before the Regional Court of The Hague sitting in Rotterdam.

16. In its judgment of 1 December 2006, the Regional Court of The Hague rejected the applicants' appeal. Although it accepted that the first applicant's account was coherent and detailed, the Regional Court was not convinced of the alleged impossibility for the applicants to obtain replacement identity documents during their three years' stay in Russia. It concluded that the applicants had not demonstrated that they – if expelled to Armenia – would be exposed to a real and personal risk of being subjected to treatment proscribed by Article 3 of the Convention. If need be, they could seek the protection of the Armenian authorities.

17. The Regional Court further found no compelling reasons of a humanitarian nature warranting the issuance of a residence permit to the applicants.

18. The applicants' subsequent appeal to the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van*

State) was dismissed on 29 May 2007. It upheld the impugned judgment of 1 December 2006. No further appeal lay against this ruling.

19. On 20 August 2009 the applicants requested the Court under Rule 39 of the Rules of Court to indicate to the Government not to expel them pending the proceedings before the Court. On 24 August 2009 the President of the Section decided not to issue the interim measure sought by the applicants.

COMPLAINTS

20. The applicants complain that, if they were expelled to Armenia, they would be exposed to a real risk of being subjected to treatment proscribed by Article 3 of the Convention on account of the first applicant's political activities, and his mental health problems (post-traumatic stress disorder caused by his traumatic experiences in Armenia) for which there is no adequate treatment in Armenia.

21. They further complain that, in respect of their complaint under Article 3 of the Convention, they did not have an effective remedy within the meaning of Article 13 of the Convention.

THE LAW

22. The applicants complained that, if they were expelled to Armenia, they would be exposed to a real risk of being subjected to treatment proscribed by Article 3 of the Convention which reads as follows:

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

23. The Court reiterates that as a matter of well-established international law, and subject to their treaty obligations, including those arising from the Convention, Contracting States have the right to control the entry, residence and removal of aliens and that, in addition, neither the Convention nor its Protocols confer the right to political asylum. However, expulsion 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 concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In such a case Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008-...; and *K.R.S. v. the United Kingdom* (dec.), no. 32733/08, ECHR 2008–..).

24. Moreover, according to the Court's constant case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case. Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (see, *inter alia*, *H.L.R. v. France*, 29 April 1997, § 40, *Reports of Judgments and Decisions* 1997-III; and *Salah Sheekh v. the Netherlands*, no. 1948/04, § 137, ECHR 2007-... (extracts)).

25. The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, Reports 1996-V, § 96; and *Saadi*, cited above, § 128). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005).

26. If the applicant has not yet been expelled when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Saadi*, cited above, § 133). A full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities (see *Salah Sheekh*, cited above, § 136). The Court notes in this connection that Armenia, as a Contracting State in respect of which the Convention entered into force on 26 April 2002, has undertaken to abide by its Convention obligations and to secure to everyone within its jurisdiction the rights and freedoms defined therein, including those guaranteed by Article 3, which requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment administered by private individuals (see *Pretty v. the United Kingdom*, no. 2346/02, § 51, ECHR 2002-III; and *Moldovan v. Romania (no. 2)*, nos. 41138/98 and 64320/01, §§ 98-100 with further references, ECHR 2005-VII (extracts)). In the absence of any proof to the contrary, it must be presumed that Armenia complies with that obligation in respect of all persons, including the applicants, within their jurisdiction.

27. As to the question whether it has been demonstrated that the applicants in the present case will run a real and personal risk, if expelled to Armenia, of suffering treatment prohibited by Article 3 of the Convention,

the Court notes that the Netherlands judicial authorities did not find it established that Armenian authorities or officials had been involved in the acts of violence directed against and related by the applicants. The Court has found no basis in the contents of the case-file warranting a different finding.

28. The Court notes in addition that the Armenian police were informed that the first applicant's car had been vandalised, that the applicants' spouse/mother had been shot and killed and that the applicants' home had been set on fire. It further notes that the Armenian police drew up official records of these events. In so far as the applicants allege that the Armenian authorities have failed to conduct a meaningful investigation into these incidents, the Court observes that this allegation has remained wholly unsubstantiated.

29. In these circumstances, the Court finds that it has not been established that there are substantial grounds for believing that any of the applicants would face a real risk of being subjected to treatment contrary to Article 3 of the Convention if returned to Armenia. The Court further attaches importance to the fact that the case concerns expulsion to a High Contracting Party to the European Convention on Human Rights, which has undertaken to secure the fundamental rights guaranteed under its provisions (see *Tomić v. the United Kingdom* (dec.), no. 17837/03, 14 October 2003).

30. As regards the first applicant's argument that his expulsion to Armenia would be in breach of his rights under Article 3 of the Convention given his mental and physical state of health, the Court reiterates the principles under this provision concerning the expulsion of aliens who are suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State (see *N. v. the United Kingdom* [GC], no. 26565/05, §§ 32-45, 27 May 2008). Although the Court accepts the seriousness of the first applicant's medical condition, it does not find that the circumstances of his situation are of such an exceptional nature that his expulsion would amount to treatment proscribed by Article 3 of the Convention.

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

32. The applicants further complained that they did not have an effective remedy within the meaning of Article 13 of the Convention in respect of their complaints under Article 3 of the Convention. Article 13 provides:

> "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."

33. The Court reiterates that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988,

Series A no. 131, § 52). The Court has rejected as manifestly ill-founded the applicants' complaints under Article 3. Accordingly, in respect of those complaints the applicants did not have an "arguable claim" for the purposes of Article 13 of the Convention.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President