



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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 61350/00
by Tharmapalan THAMPIBILLAI
against the Netherlands

The European Court of Human Rights (Second Section), sitting on
9 July 2002 as a Chamber composed of

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 30 August 2000,

Having regard to the interim measure indicated to the respondent
Government under Rule 39 of the Rules of Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Tharmapalan Thampibillai, is a Sri Lankan national, who was born in 1973 and currently resides in Oosterbeek, the Netherlands. He was initially represented before the Court by Mr R. Heringa, then by Mr J.H.S. Vogel, and finally by Ms D.G. Metselaar, lawyers practising in Alkmaar. The respondent Government were represented by their Agent Mr R. Böcker of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

On 9 January 1995 the applicant arrived in the Netherlands, where, on 10 January 1995, he applied for asylum or, alternatively, a residence permit for compelling reasons of a humanitarian nature (*klemmende redenen van humanitaire aard*). In support of his claim for asylum he submitted the following.

He belonged to the Tamil population group and came from a farming family in the town of Vavuniya in the north of Sri Lanka, bordering on the area controlled by the Liberation Tigers of Tamil Eelam (“LTTE”), a Tamil terrorist organisation, engaged in an armed struggle for independence. LTTE members would often visit Tamils living in the area in order to obtain food. The Sri Lankan army was therefore quick to suspect local farmers of supporting the LTTE.

In August 1990 the applicant’s father was shot dead on his land by the Sri Lankan army because they suspected him of providing material assistance to the LTTE. The day after his father’s killing, the applicant’s mother sent him to the town of Jaffna, which was under LTTE control at the time, where he stayed for two months with his uncle. Following the death of his father, the applicant’s brother became a fighter with the LTTE and neither the applicant nor his mother have heard from him since.

On 12 January 1991 the applicant was arrested in his home by the Sri Lankan army and detained in Joseph military camp for two weeks. Every other day he was questioned about the whereabouts of his brother. The soldiers told him that his father had been an LTTE member and he, the applicant, must know other LTTE members. During these interrogations soldiers beat him with their fists and with sticks. He was also hung from the ceiling by his thumbs. Upon the arrival of new detainees, the applicant had to identify LTTE members among them.

After two weeks, he was released on condition that he report to the camp daily. The ill-treatment to which he had been subjected had resulted in internal injuries requiring hospital treatment for two weeks.

Every time he reported to the camp he was ill-treated, and often questioned. Sometimes he was made to accompany soldiers driving through Vavuniya so that he could point out LTTE members. After a month of reporting to the camp daily, he was told to report on a weekly basis. However, a daily reporting duty was once again imposed on him from May 1993 when a large number of LTTE members was said to have arrived in Vavuniya; the soldiers said that the applicant's brother might be among them and the applicant was to point him out to them. According to the soldiers, his brother was an important LTTE member who was responsible for many bomb attacks.

Because the applicant could no longer cope either physically or mentally with the daily reporting duty, the interrogations, the ill-treatment and having to identify LTTE members, he decided to leave the country. In addition, he knew of other persons who had a similar reporting duty who had disappeared. He feared the same thing could happen to him.

On 19 May 1994 the applicant travelled to Colombo by train with his mother. During this trip, he was in possession of an identity card which his mother subsequently took back with her to Vavuniya. On 20 May 1994 the applicant, using a passport bearing his name, flew to Singapore and then, the next day, on to Moscow. He travelled from Moscow to the Netherlands in a van on 5 January 1995. His passport had been taken from him by an intermediary in Moscow.

Whilst in Moscow he received two letters from his mother stating that she had been arrested and detained for two days by the army, and that the army were searching for him because he had failed to report. The applicant did not keep these letters.

On 11 May 1995 the State Secretary of Justice (*Staatssecretaris van Justitie*) rejected the applicant's requests, considering that it had not been established that the applicant had shown himself to be an opponent of the regime in Sri Lanka or that he was known as such by the authorities. Given that his arrest in 1991 had obviously not constituted a reason for him to leave the country immediately, and that he had been able to leave Sri Lanka unhindered through the normal channels, it could not be said that at the time of departure he had been in such a dangerous situation that he could not have been expected to remain in his country of origin. The applicant was also notified that he would not be allowed to remain in the Netherlands when any objection (*bezwaar*) he might submit was being considered.

The applicant lodged an objection on 9 June 1995 and also requested an interim measure (*voorlopige voorziening*) from the Regional Court (*arrondissementsrechtbank*) of The Hague sitting in Zwolle. The request for an interim measure was declared inadmissible by the President of the Regional Court on 16 August 1995 because no grounds had been submitted for the objection. The objection itself was rejected by the State Secretary for Justice on 8 August 1996 for the same reason. The State Secretary held in

addition that, even if grounds for the objection had been submitted, merely invoking the general situation in Sri Lanka was insufficient to justify the conclusion that the applicant would be subjected to either persecution or treatment contrary to Article 3 of the Convention if returned to that country.

On 18 September 1996 the applicant appealed to the Regional Court of The Hague sitting in Amsterdam. Finding that the State Secretary had been correct in rejecting the applicant's objection, the Regional Court dismissed the appeal by a final decision of 27 June 1997.

The applicant did not, however, leave the Netherlands and neither was he forcibly expelled. On 29 September 1997 he lodged a new request for a residence permit for compelling reasons of a humanitarian nature. This request was rejected by the State Secretary for Justice on 30 October 1997 who considered that, even though recent developments in Sri Lanka continued to give cause for concern, the general situation there had not changed to such an extent that it required the Dutch Government to amend their policy relating to Tamil asylum seekers. The applicant had failed to show that concrete reasons, related to facts and circumstances affecting him personally, existed which could justify the conclusion that he would be exposed to a real risk of treatment contrary to Article 3 of the Convention if returned to Sri Lanka. The State Secretary further informed the applicant that he would not be allowed to remain in the Netherlands pending the examination of any objection he might wish to lodge.

On 27 November 1997 the applicant submitted an objection to the State Secretary and on 26 January 1998 he requested an interim measure from the Regional Court of The Hague sitting in Amsterdam in order to prevent his expulsion. On 4 March 1998 the President of the Regional Court granted the interim measure, considering that the applicant belonged to one or more of the so-called "categories at risk": categories of people who run the risk of being detained in Colombo for more than 48 hours pursuant to the Emergency Regulations in force.

The applicant was given the opportunity to comment on his application for a residence permit before an official committee (*ambtelijke commissie*) on 13 May 1998.

The applicant's objection was rejected by the State Secretary for Justice on 2 December 1998. Given that the applicant's claim for asylum had already been finally and conclusively rejected, and that he had failed to adduce any new facts or circumstances but had only made references to the general situation in Sri Lanka, the State Secretary considered that the request for a residence permit was no more than an attempt to frustrate his departure from the Netherlands. In any event, the fact that the applicant had not left Sri Lanka until 1994 even though the problems he had allegedly suffered stemmed from alleged events in 1991 and 1992, militated against the assumption that he would currently run a real risk of treatment contrary to Article 3 of the Convention.

The State Secretary further informed the applicant that any appeal lodged by him would be dealt with expeditiously, and the applicant's departure from the Netherlands would be deferred pending such an appeal.

The applicant lodged an appeal with the Regional Court of The Hague sitting in Amsterdam on 23 December 1998. He argued that the information from the Ministry of Foreign Affairs, used by the State Secretary for the determination of asylum claims of Tamils from Sri Lanka, was seriously lacking. Referring to information from Amnesty International, the applicant submitted that the group of persons who ran the risk of being detained for more than a week and tortured during that time was far greater than assumed by the Ministry of Foreign Affairs. Moreover, the Ministry's official report (*ambtsbericht*) of 6 November 1998 itself stated that if a detainee was held for more than one week, during which time he was questioned about LTTE involvement, there was a great likelihood that the detainee would be ill-treated. In addition, according to the same official report, a Tamil with a relative known to be an LTTE member ran the risk of being detained for more than a week.

At the hearing of his appeal before the Regional Court on 11 January 2000, the applicant further submitted that he ran an extra risk of detention now that an amendment to the Immigrants and Emigrants Act had entered into force, given that he had left Sri Lanka on an unofficial passport.

The Regional Court rejected the appeal by judgment of 22 February 2000, a copy of which was sent to his representative on 21 March 2000. It considered that where Sri Lankan Tamils belonging to one of the categories at risk were concerned, it should in general be readily accepted that a real risk of treatment in breach of Article 3 existed. Nevertheless, not every Tamil belonging to one of the categories at risk ran a real risk of treatment contrary to Article 3. The likelihood of such Tamils being apprehended for checks on a more or less regular basis upon their return to Colombo as a result of the security situation in Sri Lanka was in itself insufficient to conclude that unacceptable risks existed, even if the persons concerned encountered a certain heavy-handedness in the process. As regards the applicant, the Regional Court saw no reason to come to a different assessment from that made on the applicant's request for asylum. The applicant's argument that the Sri Lankan authorities held a file on him was only an assumption and had not been shown to be plausible. Even though the Regional Court considered it likely that persons returning would be interviewed by the Sri Lankan authorities at Colombo airport in order to establish whether or not they had left the country through illegal channels, this did not lead to a considerably increased risk of treatment in breach of Article 3. Neither was it contrary to Article 3 to prosecute and sentence persons who had contravened the Immigrants and Emigrants Act. In any event, the applicant had stated that his uncle had obtained a passport for him from the Immigration Office in Colombo and it was therefore unlikely that

the applicant had left Sri Lanka on a passport which the authorities of that country knew to be false.

On 12 September 2000, i.e. following the introduction of the present application to the Court, the applicant lodged a new request for asylum. This was refused on 16 September 2000. His objection against that decision, as well as his request for an interim measure, were rejected by the President of the Regional Court of The Hague sitting in Zwolle on 4 October 2000. In this decision the President based himself on information contained in official reports from the Ministry of Foreign Affairs of 28 July and 22 August 2000, the accuracy of which, according to the President, had not been sufficiently disproved by the applicant. The President concluded that the security situation in Colombo for rejected Tamil asylum seekers was not such that they had to fear treatment contrary to Article 3. The President further referred to a letter of UNHCR of 22 June 2000 in which the latter organisation stated its opinion that the expulsion of rejected Tamil asylum seekers was acceptable as long as they were in possession of identity documents issued by the Sri Lankan authorities. The President noted that the applicant would be provided with an identity document by the Sri Lankan Embassy which he could use, even after its expiry, until such time as a new national identity card was issued to him.

B. Relevant domestic law and practice

1. Entitlement to refugee status or residence permits on humanitarian grounds

Under Article 15 § 1 of the Aliens Act 1965 (*vreemdelingenwet*, hereinafter “the Act”), in force at the relevant time, aliens coming from a country where they have a well-founded reason to fear persecution on account of their religious or political conviction, or of belonging to a particular race or a particular social group, may be admitted by the Minister of Justice as refugees.

The expression “refugee” in this provision is construed to have the same meaning as in Article 1 of the Convention relating to the Status of Refugees of 28 July 1951 (decision of the Judicial Division of the *Raad van State* of 16 October 1980, *Rechtspraak Vreemdelingenrecht* – Immigration Law Reports – 1981, no. 1).

Aliens, other than refugees, wishing to reside in the Netherlands for any length of time have to hold a residence permit (Article 9 of the Act). Such a permit is to be requested from, and granted by, the Minister of Justice (Article 11 § 1 of the Act).

Given the situation obtaining in the Netherlands with regard to population size and employment, government policy is aimed at restricting the number of aliens admitted to the Netherlands. In general, aliens are only granted admission for residence purposes if:

(a) the Netherlands are obliged under international law to do so, as in the case of citizens of the European Union or Benelux member States and refugees covered by the above-mentioned Geneva Convention; or

(b) this serves the “essential interests of the Netherlands”, e.g. economic or cultural interests; or

(c) there are “compelling reasons of a humanitarian nature”.

An alien not, or no longer, qualifying for admission to the Netherlands may be expelled (Article 22 § 1 of the Act). However, aliens claiming that their removal from the Netherlands will compel them to travel to a country where they have reason to fear persecution on one of the grounds set out in Article 15 § 1 (see above) could not be expelled except by a specific order of the Minister of Justice (Article 22 § 2).

2. *Legal remedies*

An objection (*bezwaar*) against the refusal to grant refugee status or a residence permit lay to the State Secretary of Justice (Articles 6:4 and 7:1 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*), Article 29 of the Aliens Act). An appeal against the rejection of an objection lay to the Administrative Law Section of the Regional Court of The Hague (Article 8:1 of the General Administrative Law Act; Article 33a of the Aliens Act). No further appeal was allowed (Article 33e of the Act).

The Regional Court gives its decision either in writing or orally (Article 8:66 of the General Administrative Law Act). Within two weeks of the date of the judgment the registrar sends the parties a copy of the judgment, or of the record of the oral judgment, free of charge (Article 8:79 of the General Administrative Law Act).

C. **Conditions in Sri Lanka**

For the past 19 years, the Government of Sri Lanka have been fighting the LTTE, a terrorist organisation engaged in an armed struggle for an independent Tamil homeland in the north and east of the country. The conflict has claimed more than 64,000 lives.

In February 2002, with Norwegian mediation, a ceasefire agreement was signed, and formal peace talks – the first since 1995 – are expected to take place in Thailand later this year.

The applicant as well as the respondent Government have provided the Court with information on the situation in Sri Lanka and the Dutch policy on asylum seekers from that country (see 1. below). The Court has further taken note of the publications summarised under 2. below.

1. Dutch policy on asylum seekers of Sri Lankan nationality

At the time of the decision on the applicant's objection (2 December 1998), as well as in the period leading up to the introduction of the present application, Dutch policy was based on country reports issued by the Ministry of Foreign Affairs on 24 March and 6 November 1998.

To assess whether a person ran a real risk of being treated in a manner contrary to the provisions of Article 3 of the Convention, the following factors were taken into account:

- All young Tamils in Colombo who speak little Sinhalese and whose documents reveal that they were born in the north run the risk of being taken to a police station for questioning following an identity check. Most are released within 48 to 72 hours once their identity has been established and they have explained their reasons for being in the city.

- People who have recently come to Colombo from a war zone and have no identity documents or "valid" reason for being in Colombo, run the risk of being held for longer than 48 to 72 hours so that further enquiries can be made. People who fail to register on arrival also lay themselves open to suspicion.

- Tamils suspected of LTTE activities on the basis of police files or information from other sources run the risk of being held for more than a week. This also applies to people whom the authorities believe could provide information on the LTTE, such as people known to have a relative who is an LTTE member.

- People can be detained for 3, 12 or 18 months under the Emergency Regulations or the Prevention of Terrorism Act if there is firm evidence that they are involved with the LTTE. Such evidence includes arms caches or suspect documents.

Persons held for longer than 48 to 72 hours for further questioning may be treated roughly (beatings). Where the person concerned is held for more than a week, and questioned about LTTE involvement, the risk of ill-treatment is considerable.

If, upon release, a person is required to report to the authorities, this does not mean that they are automatically regarded as being in the category of serious suspects. A duty to report indicates that the authorities are not completely certain of the innocence of the person concerned and wish to keep an eye on him/her.

Exceeding a particular period of residence in Colombo does not automatically lead the authorities to suspect that the person concerned is involved with the LTTE. A specified period of residence is often exceeded without this giving rise to any problems.

The mere fact that a Tamil belongs to one or more of the above categories of persons who in theory run the risk of longer detention does not necessarily mean that there is a real risk of their being subjected to treatment prohibited by Article 3 of the Convention. According to the

country report of 6 November 1998, it can be assumed that, in any event, no such risk exists in the case of Tamils who fall into the first two categories.

The applicant submitted a judgment of 18 June 1999 of the President of the Regional Court of The Hague sitting in Haarlem (*Jurisprudentie Vreemdelingenrecht* 1999, no. 187) concerning a Tamil asylum seeker. An official of the Ministry of Foreign Affairs had been present at the hearing in the case. The President held that it was clear from the statements made by this official that the random checks carried out on the roads between the war areas and Colombo were superficial, that the Ministry of Foreign Affairs did not know the extent to which photographs were compared during checks at the airport and that it was in particular unaware how extensive the database of descriptions held by the Sri Lankans authorities was or how it was accessed. Under these circumstances, the President considered that it could not be inferred from the fact that the asylum seeker in question had not been stopped at the airport that the authorities, upon his return, would not during customary identity checks happen upon certain facts leading them to suspect him of LTTE involvement.

A country report of 30 September 1999 stated that an amendment to the Immigrants and Emigrants Act had entered into force on 28 July 1998 pursuant to which the penalty for using forged travel documents was increased. According to the report, at the time of a person's return to Sri Lanka there is generally insufficient evidence of use having been made of forged documents for the outward journey.

This country report also contained information on the procedure followed by police in respect of persons apprehended at the airport or in the course of a round-up. The list of names of the arrested persons is passed to the National Intelligence Bureau to see if any of the names feature in the database held by the Bureau. All persons suspected of violating the Prevention of Terrorism Act or the Emergency Regulations are included in the files of wanted persons. However, the police do not in all cases have information concerning that person. Information is only available if the person concerned had either been arrested previously or been informed on by another detainee.

The Dutch policy in force at the time of the most recent decision of the State Secretary of Justice (16 September 2000), was based on the country reports of 28 July and 22 August 2000. These reports indicated that Tamils fleeing the war could find an alternative place of residence in Government-controlled areas, including Colombo. Tamils are subject to frequent identity checks in Government-controlled areas, especially on or around public holidays, after attacks and if the military position of Government troops deteriorates. Tamils who cannot identify themselves on the spot or who are believed to come from the north or east of Sri Lanka may be arrested. Most are released within 48 to 72 hours, after their identity and background have

been checked. As to the factors which may occasion a longer detention, the report of 28 July 2000 referred to that of 6 November 1998.

The report of 28 July 2000 also referred to a letter of 18 April 2000 from Amnesty International's Dutch section. According to this letter, few reports of torture had been received from persons detained for identity checks. The letter went on to say that persons suspected of ties with the LTTE, however, run the risk of being subjected to torture. The report stated that this corresponds to the findings contained in the country report of 6 November 1998.

2. Relevant reports

The US Department of State "Country Reports on Human Rights Practices for 2001" stated in respect of Sri Lanka:

"Torture remained a problem and prison conditions remained poor. Arbitrary arrests (including short-term mass arrests and detentions) continued, often accompanied by failure of the security forces to comply with legal protections. In most cases, there was no investigation or prosecution, giving the appearance of impunity for those responsible for human rights violations. ...

Despite legal prohibitions, the security forces and police continue to torture and mistreat persons in police custody and prisons, particularly Tamils suspected of supporting the LTTE. ...

Large-scale arrests of Tamils continued during the year. ... Most detentions lasted a maximum of several days although some extended to several months."

In a letter of 15 April 2002 to a solicitor in London, UNHCR noted:

"Although steps towards peace have been taken in Sri Lanka recently, it is still premature to advocate that the situation has reached a satisfactory level of safety to warrant the return of all unsuccessful asylum applicants to Sri Lanka. In this regard, UNHCR has been aware that returning Tamils are potentially open to risk of serious harm similar to those generally encountered by young male Tamils in certain circumstances. This risk may be triggered by suspicions (on the part of the security forces) founded on various factual elements relating to the individual concerned, including the lack of identity documents, the lack of proper authorisation for residence and travel, the fact that the individual concerned is a young Tamil male from an 'uncleared' area or the fact that the person has close family members who are or have been involved with the LTTE. ... While every case should be assessed on its own merits, UNHCR would reiterate its view that special care must be taken in relation to the return of failed asylum seekers to Sri Lanka."

A report by the Sri Lanka Project of the Refugee Council in the United Kingdom entitled “Sri Lanka: Human Rights and Return of Refugees”, dated December 2001, stated:

“A large number of returnees have been arrested on arrival or taken into custody while staying in Colombo. ... The risk of returned asylum seekers deported from abroad being arrested in Colombo and other southern areas, remains. The security forces constantly raid lodges where returned asylum seekers reside. They carry out search operations almost daily in Colombo and other southern areas, particularly at nights.”

COMPLAINTS

The applicant complains under Article 3 of the Convention that his expulsion to Sri Lanka would expose him to a real risk of torture or inhuman or degrading treatment.

THE LAW

The applicant complains that his expulsion to Sri Lanka would expose him to a real risk of being subjected to treatment contrary to Article 3 of the Convention, which provides as follows:

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

A. Observance of the six month rule

The Government argue that the final decision within the meaning of Article 35 § 1 of the Convention was the judgment of the Regional Court of The Hague sitting in Amsterdam which was given in public on 22 February 2000. Although a copy of the judgment was sent to the applicant on 21 March 2000, the Government consider it unlikely that the applicant would not have learned of the Regional Court’s judgment on, or soon after, 22 February 2000 given that this judgment put an end to the deferment of the applicant’s departure and was thus of great relevance to him. The six-month period prescribed by Article 35 § 1 had thus started to run on 22 February 2000. Since the applicant had only introduced his complaints to the Court on 30 August 2000, the application had been submitted out of time.

The applicant submits in reply that he had not been informed of the Regional Court's decision prior to receipt of the transcript of the judgment, sent to him on 21 March 2000.

The Court refers to its case law according to which the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment in cases where the applicant is entitled, pursuant to domestic law, to be served *ex officio* with a written copy of the final domestic decision, irrespective of whether that judgment was previously delivered orally (see the *Worm v. Austria* judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33; *Drosopoulos v. Greece* (dec.), no. 40442/98, 7.12.2000, unreported).

The Court notes that Article 8:79 of the General Administrative Law Act provides for a copy of a judgment to be transmitted to the parties. In the present case the judgment of the Regional Court was sent to the applicant on 21 March 2000. By making an application to the Court on 30 August 2000, the applicant satisfied the requirement of Article 35 § 1 in this regard.

The Court therefore dismisses the Government's objection.

B. Merits

The Government argue that it has not been demonstrated that the applicant is known to the Sri Lankan authorities as an opponent of the regime or that he is regarded with suspicion by those authorities. In this context they note that although the applicant stated that his brother worked for the LTTE, he himself was not an active member of that organisation. The killing of his father by the Sri Lankan army in 1991 because he was suspected of assisting the LTTE, did not adequately justify the applicant's fear of inhuman treatment. In addition, the applicant did not decide to leave his country of origin as a direct result of this event or of his arrest in the same year. Instead, he left Sri Lanka in 1994.

The Government emphasise that after his alleged arrest in 1991, the applicant was released after only two weeks, on condition that he reported to the camp regularly. No warrant for his arrest has been issued. Like his departure from Sri Lanka, the applicant's trip from the north to the south of the country apparently proceeded in accordance with the law and without impediment. It was therefore unlikely that the applicant's personal particulars had been passed on to the Sri Lankan security services.

The Government admit that the applicant would probably be subjected to identity checks if he returned to Sri Lanka, and to more frequent identity checks if he stayed in Colombo. However, they believe that it has not been shown that, if arrested, the applicant would run a greater risk than other young Tamils with limited Sinhalese who were born in the north. The mere fact that the applicant belonged to that group did not constitute a risk that he would be subjected to treatment contrary to Article 3 of the Convention.

The applicant maintains that, if returned to Sri Lanka, he would run a real risk of being subjected to treatment contrary to the provisions of Article 3 of the Convention.

The direct reason for his flight had been his inability to tolerate any longer the constant ill-treatment and intimidation to which he was subjected when reporting daily (or for part of the time, weekly) to the army. Referring to case-law of the President of the Regional Court of The Hague sitting in Haarlem, the applicant argues that the fact that he had encountered no problems when travelling from Vavuniya to Colombo or when he left Sri Lanka by no means implied that he ran no risk if he were returned to that country.

There are two reasons why the Sri Lankan authorities were likely to have a file on him. First, because of his brother's membership of the LTTE. If a person has relatives who are active in the LTTE, not only would the authorities consider that person a means by which to get their hands on the family member whom they were seeking, or to obtain information on the LTTE; they would also very quickly suspect this Tamil to be himself involved in the LTTE. Dutch policy recognised this risk, since it acknowledged that Tamils known to have a relative who is an LTTE member run the risk of being held in detention for an extended period. This policy also acknowledged that such detention entailed a significant risk of being subjected to torture. The applicant therefore fails to understand how this policy could be reconciled with the Government's view that he ran no real risk of being exposed to treatment proscribed by Article 3. This is particularly true given that his brother's LTTE membership has already led to his detention, interrogation and torture during two weeks in 1991, and to ill-treatment each time he complied with the order to report to the authorities.

The second reason why it was most probable that the Sri Lankan authorities had a file on him lay in the fact that people who had in the past been arrested are included in the database of the National Intelligence Bureau. As described in the country report of 30 September 1999, after routine arrest, the names of those arrested are checked with the National Intelligence Bureau which indicates whether such persons appear in their database.

In the light of the above, the applicant submits that there is every chance that he would be held in detention for a long time and that during his detention he would be subjected to torture.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

S. DOLLÉ
Registrar

J.-P. COSTA
President