



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

FORMER FIRST SECTION

CASE OF K.K.C. v. THE NETHERLANDS

(Application no. 58964/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

21 December 2001

In the case of K.K.C. v. the Netherlands,

The European Court of Human Rights (Former First Section), sitting as a Chamber composed of:

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEŒ,
Mr C. BİRSAN,
Mr J. CASADEVALL,
Mr B. ZUPANČIČ, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 December 2001,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 58964/00) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national of Chechen origin, Mr K.K.C. ("the applicant"), on 7 June 2000.

2. The applicant was represented before the Court by Mr M. Wijngaarden, a lawyer practising in Amsterdam. The Dutch Government ("the Government") were represented by their Agent, Ms J. Schukking, of the Ministry of Foreign Affairs. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).]

3. The applicant complained that his expulsion to Russia would expose him to a real risk of being subjected to treatment contrary to Article 3 of the Convention.

4. On 3 July 2001, after obtaining the parties' observations, the Court declared the application admissible.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within former Section I.

6. On 5 November 2001, the Russian Government informed the Court that they wished to avail themselves of their right under Article 36 § 1 of the Convention to intervene as a third party in the proceedings before the Court.

7. On 7 November 2001, the President granted the request of the United Nations High Commissioner for Refugees (UNHCR) for leave to intervene as a third party in the proceedings (Article 36 § 2 of the Convention). The comments of the UNHCR were received on 20 November 2001.

8. On 26 November 2001, the respondent Government informed the Court of the terms of a friendly settlement that they had proposed to the applicant. On 28 November 2001, the applicant informed the Court that he accepted the terms of the settlement proposed by the Government. On the same date the Court received a formal declaration, signed by the representatives of both parties, setting out the terms of the friendly settlement of the case.

9. On 3 December 2001, the Court received comments by the Russian Government relating to the merits of the application.

THE FACTS

10. The applicant claims that in October 1994, when serving in the so-called “Chechen army”, he was arrested, detained and accused of treason for having refused to carry out an order to open fire on Chechen opposition forces, and that, during the night of 25 to 26 November 1994 when opposition forces attacked Grozny, he escaped from detention. After this had been detected, a search for him was ordered in the course of which “Chechen army” officials came to his mother's house several times between 26 November and 11 December 1994.

11. On 11 December 1994, Russian troops arrived in Chechnya. During the subsequent armed conflict between the Russian and Chechen forces, the applicant claims to have remained in hiding in Chechnya.

12. On 7 February 1997, the applicant was able to leave Chechnya and travelled to the Netherlands where, on 15 February 1997, he applied for asylum or, alternatively, a residence permit for compelling reasons of a humanitarian nature.

13. On 19 August 1997, the Netherlands State Secretary of Justice (*Staatssecretaris van Justitie*) rejected the applicant's requests. The applicant filed an objection (*bezwaarschrift*) with the State Secretary.

14. On 12 September 1997, the Zwolle Magistrate (*politierechter*) convicted the applicant of theft committed on 25 May 1997 and imposed a fine of 20 Netherlands guilders (NLG) or, alternatively, one day imprisonment. On 15 January 1998, the Amsterdam Magistrate convicted the applicant of theft committed on 9 November 1997 and imposed a fine of NLG 480 or, alternatively, nine days' imprisonment. On 27 March 1998, the Arnhem Magistrate convicted the applicant of theft committed on 31 July 1997 and imposed a fine of NLG 100 or, alternatively, two days' imprisonment.

15. On 28 October 1998, the State Secretary rejected the applicant's objection (*bezwaarschrift*) against the decision taken on

19 September 1997. The applicant filed an appeal against this decision with the Hague Regional Court (*Arrondissementsrechtbank*).

16. On 3 May 1999, the Almelo Magistrate convicted the applicant of theft committed on 16 October 1998 and sentenced him to two weeks' imprisonment. On 5 July 1999, the Almelo Magistrate convicted the applicant of theft committed on 6 May 1999 and sentenced him to two weeks' imprisonment.

17. On 20 October 1999, the Hague Regional Court sitting in Zwolle rejected the applicant's appeal against the State Secretary's decision of 28 October 1998. It found it not unlikely that the applicant has held a function in the "Chechen army" when Chechnya declared itself independent from Russia and that it could not be excluded *prima facie* that he had reasons to fear the Chechens for having refused to execute an official order. However, considering that Chechnya is part of the Russian Federation and noting the contents of the official report (*ambtsbericht*) of 15 August 1996 from the Netherlands Ministry of Foreign Affairs (*Ministerie van Buitenlandse Zaken*), according to which Russian citizens can settle freely anywhere in the Russian Federation, the Regional Court held that the applicant could avoid problems from the Chechen side by settling elsewhere in the Russian Federation. It found the applicant's arguments to the contrary to be insufficient.

18. The Regional Court doubted the veracity of the applicant's claim that he had been involved in the capture of a Russian army colonel and, on this ground, feared persecution from the side of the Russian authorities. It noted that the applicant had only mentioned the capture of this colonel after, in the decision of 19 August 1997, it was held that he had an alternative settlement possibility within the Russian Federation. It also did not find it established that there was a risk that the applicant would be arrested by the Russian authorities with a view to handing him over to the Chechens or that the latter would trace him in the Russian Federation. The Regional Court finally held that, although persons of Chechen origin might experience discrimination in the Russian Federation, it was not established that the applicant's life elsewhere in the Russian Federation would be untenable. The Regional Court concluded that, in these circumstances, it had not been established that the applicant, if expelled to Russia, would face a real and personal risk of being subjected to treatment in violation of Article 3 of the Convention.

19. On 13 December 1999, the applicant was ordered to leave the Netherlands before 15 December 1999.

20. On 30 March 2000, the State Secretary rejected a second request for asylum filed by the applicant on the basis of new facts and circumstances. On the same day, the applicant filed an objection against this decision and, in order to prevent his expulsion, applied for an injunction with the President of the Hague Regional Court.

21. On 14 April 2000, a hearing took place before the Hague Regional Court. In the proceedings before the Hague Regional Court the applicant relied on a letter of 3 April 2000 in which the State Secretary of Justice informed the Lower House (*Tweede Kamer*) of Parliament that, given the unclear situation in Chechnya and pending an improvement of the situation of displaced Chechen persons within the Russian Federation, persons of Chechen origin not holding a permit of residency for another area within the Russian Federation would not be expelled.

22. On 19 April 2000, the Acting President of the Hague Regional Court rejected the applicant's request for an injunction and, under Article 33 b of the Aliens Act (*Vreemdelingenwet*), also rejected the applicant's objection.

23. The Acting President noted that the applicant's new submissions concerned the general situation in Chechnya and did not specifically relate to the applicant's personal situation. Although the Acting President agreed that the general situation in Chechnya had deteriorated, this did not imply that the applicant, having regard to the statements forming the basis of his first asylum request, should now be regarded as being eligible for asylum or a residence permit on other grounds.

24. Insofar as the applicant relied on the State Secretary's letter of 3 April 2000 to the Lower House, the Acting President accepted that, given the applicant's criminal antecedents, his departure from the Netherlands could not be deferred. On this point the Acting President held that, in accordance with Section A4/4.3.2. of the 1994 Aliens Act Implementation Guidelines (*Vreemdelingencirculaire*), the State Secretary was under no obligation to balance the interests involved by making an assessment of the offence concerned and that no special circumstances had appeared on the grounds of which the State Secretary should have used his inherent competence to deviate from established policy rules. The President further considered that this policy decision could not be interpreted as an automatic indication that the aliens concerned, if expelled, would be exposed to treatment prohibited by Article 3 of the Convention. The Acting President concluded that it had not been established that the applicant, if forcibly returned to his country of origin, would be persecuted or run a real risk of being subjected to treatment contrary to Article 3 of the Convention.

25. On 30 June 2000 an order was issued for the expulsion of the applicant, who had gone into hiding in the meantime.

THE LAW

26. On 28 November 2001 the Court received the following declaration signed by the Agent of the respondent Government and the applicant's representative:

“The Government of the Netherlands and the applicant, Mr K.K.C., have now reached the following settlement, on the basis of respect for human rights as defined in the Convention, in order to terminate the proceedings before the European Court of Human Rights on the following terms:

(a) The Government of the Netherlands will grant Mr K.K.C., with reference to the present settlement, a Netherlands residence permit without restrictions;

(b) In addition, the Government of the Netherlands will pay to the applicant the sum of € 1,400.– VAT included, for legal costs incurred in the proceedings before the European Court of Human Rights. It will be payable immediately after the notification of the decision taken by the Court pursuant to Article 39 of the European Convention on Human Rights.

(c) Mr K.K.C. declares that, subject to the fulfilment of what is stated under (b), he has no further claims against the State of the Netherlands based on the facts of the application filed by him.

Both the Government of the Netherlands and Mr K.K.C. undertake to inform the Court forthwith of the fulfilment of the conditions stated under (a) and (b).

The Government of the Netherlands declares that the above settlement can in no way be interpreted as a recognition on its behalf that a violation of the provisions of the Convention, invoked by the applicant, would occur if he were to be deported to Russia.

The present settlement will constitute the final resolution of the case. The Government and the applicant further undertake not to request the referral of the case to the Grand Chamber under Article 43 § 1 of the Convention .”

27. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

28. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 21 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President