



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

FIRST SECTION

CASE OF ASPICHI DEHWARI v. THE NETHERLANDS

(Application no. 37014/97)

JUDGMENT

STRASBOURG

27 April 2000

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In the case of Aspichi Dehwari v. the Netherlands,

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

Mrs E. PALM, *President*,

Mr J. CASADEVALL,

Mr L. FERRARI BRAVO,

Mr R. TÜRMEŖ,

Mr B. ZUPANČIČ,

Mrs W. THOMASSEN,

Mr T. PANȦIRU, *judges*,

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

Having deliberated in private on 4 April 2000,

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

PROCEDURE

1. The case was referred to the Court by an Iranian national, Mr Mahammad Rahim Aspichi Dehwari ("the applicant") on 12 February 1999, by the European Commission of Human Rights ("the Commission") on 23 March 1999 and by the Government of the Kingdom of the Netherlands ("the Government") on 7 April 1999 within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (37014/97) against the Netherlands lodged with the Commission under former Article 25 by Mr Aspichi Dehwari on 18 June 1997. The applicant, who was granted legal aid, was represented by Ms M. Jansen-Takes, a lawyer practising in Utrecht, the Netherlands. The Government of the Netherlands ("the Government") were represented by their Agent, Mr R. Böcker, of the Netherlands Ministry of Foreign Affairs.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby the Netherlands had recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the applicant would be a victim of a violation of the rights guaranteed by Articles 2 and 3 of the Convention and Article 1 of Protocol No. 6 to the Convention if he was expelled to Iran.

2. On 31 March 1999 the Panel of the Grand Chamber decided, pursuant to Article 5 § 4 of Protocol No. 11 to the Convention and Rules 100 § 1 and 24 § 6 of the Rules of Court, that the application would be examined by one of the Sections. It was, thereupon, assigned to the First Section.

3. The Chamber constituted with the Section included *ex officio* Mrs W. Thomassen, the judge elected in respect of the Netherlands (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court) and Mrs E. Palm, President of the Section (Rule 26 § 1 (a)). The other

members designated by the latter to complete the Chamber were Mr J. Casadevall, Mr L. Ferrari Bravo, Mr R. Türmen, Mr B. Zupančič and Mr T. Panțîru.

4. In accordance with Rule 59 § 3, the President of the Chamber invited the parties to submit memorials on the issues in the application. The Registrar received the applicant's and Government's memorials on 25 June 1999 and on 26 July 1999 respectively.

5. The President of the Chamber and subsequently the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to expel the applicant pending the Court's decision.

6. On 9 November 1999 the Agent of the Government informed the Section Registrar that pursuant to a regulation recently entered into force the applicant was eligible for a residence permit for the Netherlands should he apply for one.

7. On 10 November 1999 the President of the Section cancelled the hearing scheduled for 16 November 1999.

8. By letter of 11 January 2000 the applicant's representative informed the Section Registrar that the applicant had been granted a residence permit without restriction (*vergunning tot verblijf zonder beperking*) for the Netherlands and that as a result he did not wish to pursue his application.

9. By letter of 13 March 2000 the Agent of the Government informed the Section Registrar that the parties had reached agreement as to the payment of the costs incurred by the applicant in the proceedings before the Commission and the Court. A letter from the applicant's representative confirming this agreement was received on 27 March 2000.

AS TO THE FACTS

10. The applicant arrived in the Netherlands on 19 January 1995 and requested asylum or, alternatively, a residence permit for compelling reasons of a humanitarian nature. In support of his request he submitted that he had been active as a political opponent of the Iranian regime since 1977. Initially, while studying at the university of Zahedan, he had been involved with organisations fighting for the rights of the Baluchi minority. In 1980 he had also become involved with the illegal, communist *Sazmaneh Cherkhaye Feda'iyeh Khalq-e-Iran* (Iranian People's Fedayeen Organisation, hereinafter: Fedayeen). Following an attack by Government forces on the university in 1980 the applicant had been arrested and detained for a month during which time he had been ill-treated and subjected to a simulated execution. Upon his release he had not been allowed to return to the university.

11. The applicant had subsequently become the leader of an area committee for the “Minority” faction (*Aghaliyyat*) of the Fedayeen following the split of this organisation. In August 1981 he had been arrested on suspicion of communist activities and kept in detention on remand for two years, *inter alia*, in the Evin prison in Teheran. Despite being subjected to ill-treatment (beatings, *falakka*, being suspended from the arms), he had denied the accusations against him. As a condition of his release he had been made to sign a declaration to the effect that he would refrain from future political activities.

12. In 1986, while working in a factory in Teheran, the applicant had resumed his political activities. He had become the leader of a cell consisting of himself and three colleagues from the factory. At weekly meetings at the cell members’ houses it would be decided when and where pamphlets should be distributed. The members of the cell also collected addresses of colleagues whom they considered likely candidates to join the Fedayeen organisation. When engaged in their political activities, the cell members used pseudonyms for safety reasons.

13. The applicant had been arrested in September 1991 after he had organised a strike and occupation of the factory. He had been detained for one month during which time he had been beaten and forced to stand upright for long periods of time. His release had been brought about by his employer who, after the workers at the factory had threatened to go on strike again, had drawn up a declaration to the effect that the applicant was indispensable at the factory.

14. On 23 November 1994 two of the applicant’s cell members had been arrested whilst distributing pamphlets. Fearing that, under torture, the arrested men were likely to ‘betray’ the applicant who would subsequently, in view of his past, constitute a danger for all concerned, his contact person within the Fedayeen had arranged for him to flee the country.

15. The applicant’s request for asylum or, alternatively, a residence permit was rejected by the Dutch authorities, as was his objection against that refusal and his subsequent appeal. The final decision was taken on 5 February 1997 by the Regional Court of The Hague sitting in Amsterdam. This court considered that the applicant had failed to substantiate his assertion that he feared persecution in Iran. In this respect the Regional Court noted that the applicant had made contradictory statements in the course of the proceedings as to whether or not he knew the real names of the arrested cell members. In the opinion of the Regional Court, no circumstances had been disclosed indicating that the applicant, if expelled, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention.

AS TO THE LAW

16. The Court observes that having been granted a residence permit the applicant no longer wishes to pursue his application (see paragraph 8 above). It would nevertheless be open to the Court, having regard to its responsibilities under Article 37 § 1 *in fine* of the Convention, to continue its examination of the case if respect for human rights so required. However, that is not so in the present case.

17. In this connection, the Court points out that in several previous cases it has had occasion to rule on the responsibility under the Convention of a Contracting State where the complaint was that there existed substantial grounds for believing that the person concerned would, if expelled or extradited, face a real risk of being subjected to inhuman or degrading treatment in the country of destination (see the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, pp. 35-36, §§ 90-91; the *Cruz Varas and Others v. Sweden* judgment of 20 March 1991, Series A no. 201, p. 28, § 69; the *Vilvarajah and Others v. the United Kingdom* judgment of 30 October 1991, Series A no. 215, p. 36 §§ 107-08; and the *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1859, §§ 95-97). In so doing, the Court has specified the nature and extent of the Contracting States' obligations under the Convention in that regard.

18. Consequently, the case should be struck out of the Court's list of cases in accordance with Article 37 § 1 (a) of the Convention.

19. In the light of the agreement reached by the parties as to the costs incurred by the applicant in the proceedings before the Commission and the present proceedings (see paragraph 9 above) the Court perceives no cause to make an award of costs within the meaning of Rule 44 § 3 of the Rules of Court.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list;

Done in English, and notified in writing on 27 April 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President