CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

Application no. 28846/04
by Galina BORTNIKOVA
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 15 June 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 3 August 2004,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the parties' submissions,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Galina Bortnikova, is a citizen of Kazakhstan who was born in 1954 and currently lives in the Netherlands. The Netherlands Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, of the Netherlands Ministry of Foreign Affairs.

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

On 11 February 2002, the applicant applied for asylum in the Netherlands. She claimed that, on 1 February 2002 and in her capacity as a

customs official at Almaty airport, she had discovered in the cargo space of an airplane scheduled to leave for the United Arab Emirates three undeclared boxes. The man, who had brought these boxes on board and who was to accompany them, held an identity card of the Committee for National Security (KNB; the Kazakhstan security and intelligence agency). This man stated that he was acting on instructions of Mr Rakhat Aliev, the son-in-law of the President of Kazakhstan.

Together with a colleague Mr A.G., the applicant opened the boxes which turned out to contain weapons and parts of weapons. As, contrary to customs regulations, there were no customs clearance documents accompanying this shipment, the applicant and her colleague removed the boxes from the airplane and took them to the customs area, together with the man who had brought the boxes on board. The applicant subsequently drew up official records, as required in case of a finding of smuggled goods, including a statement given by Mr K.O. whom she had subsequently handed over to the head of the customs department dealing with smuggle.

On 2 February 2002, the applicant found out that Mr A.G. had been killed and that his wife had been taken seriously injured to hospital. She further heard from her superior's secretary on that day that she and Mr A.G. were being searched for; officials of the KNB and the transport police had come by and asked whether the applicant had any other documents in connection with the smuggled goods. On 3 February 2002, the applicant learned from a neighbour that the two doors giving access to the applicant's apartment had been forced open. The applicant then decided to flee Kazakhstan.

On 19 August 2002, the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie*) rejected the applicant's asylum request. The applicant's appeal against this decision was rejected on 17 November 2003 by the Regional Court (*arrondissementsrechtbank*) of The Hague. The applicant's subsequent appeal to the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*) was dismissed on 10 February 2004.

On 17 May 2004, Mr H., a Netherlands national whom the applicant had married in the Netherlands in the meantime, requested the Minister for Immigration and Integration to grant the applicant either asylum or a regular residence permit.

In their letter of 1 February 2006, after having been given notice of the application and invited to submit written observations on the admissibility and merits of the case, the respondent Government informed the Court that the applicant had been granted a residence permit on 21 October 2004 and requested the Court to strike the application out of the list of cases pending before the Court. On 12 April 2006, the applicant's representative, who had been requested to submit comments on the Government's request, informed the Court that she no longer acted on behalf of the applicant.

By letter of 20 April 2006, sent to the applicant by registered mail, the Court requested the applicant to submit comments on the Government's request. On 12 May 2006, the applicant informed the Court that she did not wish to pursue the application.

COMPLAINTS

The applicant originally complained that her expulsion from the Netherlands to Kazakhstan would be in violation of Article 3 of the Convention and that, as regards this complaint, she did not have an effective within the meaning of Article 13 of the Convention.

THE LAW

The applicant complained principally of the refusal to allow her to reside in the Netherlands and of a lack of an effective remedy.

The Court notes that the applicant has been granted a residence permit and that she does not wish to pursue the application. In these circumstances, and having regard to Article 37 § 1 (a) and (b) of the Convention, the Court is of the opinion that it is no longer justified to continue the examination of the case. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued. Accordingly, the Court considers that the application to the case of Article 29 § 3 of the Convention should be discontinued.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President