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

THIRD SECTION

DECISION

Application no. 70602/14
J.G.
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 5 July 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 29 October 2014,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr J.G., is an Afghan national, who was born in 1985. He is currently living in the Netherlands. The Acting President decided that the applicant's identity should not be disclosed to the public (Rule 47 § 4). He is represented before the Court by Ms Y. Coenders, a lawyer practising in Oss.

A. The circumstances of the case

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

3. The applicant was born in Ghazni and is of Hazara ethnicity. Like the majority of the population in Afghanistan, he was a Muslim. He entered the Netherlands on 18 September 2003 and lodged a first asylum application on 18 October 2003, submitting, *inter alia*, that he had fled his village of origin following a dispute between his family and a local warlord over landownership, in the course of which his father and brother had fallen victim to vendetta killings and the applicant's life had been threatened. It appears that that asylum application and a consecutive second asylum application lodged in August 2006 ended unsuccessfully for the applicant, with the relevant authorities considering that the applicant's statements about the killing of his father and brother lacked credibility. Stating that these first two asylum proceedings are unrelated to the present application, the applicant has not submitted any further documents in this regard other than copies of reports from his first two interviews with the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*). It nevertheless appears from the other documents in the file that the first asylum request was rejected on 31 March 2004 and that the appeal against that decision was upheld on 22 September 2004. The request was once more rejected on 13 June 2005, and the subsequent appeal dismissed on 27 March 2006. The second asylum application was rejected on 18 August 2006 and the appeal against that decision was dismissed on 6 September 2006. It further appears that, although possible, no further appeal was lodged in the proceedings on either the first or the second asylum request.

1. Third set of asylum proceedings

4. On 1 April 2008 the applicant lodged a fresh asylum application. Interviews were held with him by the Immigration and Naturalisation Service on 1 April and 4 June 2008. The applicant submitted – in addition to his previous submissions regarding the local warlord in his village of origin – that he had converted to Christianity during his stay in the Netherlands and that, as a consequence, he ran an additional real and individual risk of treatment contrary to Article 3 if he were to return to Afghanistan. In support of his claim, the applicant submitted a baptism certificate dated 23 December 2007 issued by the Kores Church in Apeldoorn. He further submitted, *inter alia*, that his first encounter with the Christian religion had been in a reception centre for asylum-seekers. He had visited a church for the first time out of curiosity in the last months of 2003 together with some Christian Afghans. While staying in different facilities, the applicant had gradually started to gain more Christian acquaintances; they had brought him a Bible and other reading material about the Christian religion, not only

in Dutch but also in Dari and Pashto. The Bible had helped him particularly when he had been placed in immigration detention. He considered that love was the essence of the Christian religion, and in his daily life he tried to abide by the rules set out by Jesus, for example to love people and to treat them well.

5. On 5 September 2008 the Deputy Minister of Justice (*Staatssecretaris van Justitie*) notified the applicant of her intention (*voornemen*) to reject his asylum application as she found his conversion to Christianity not credible. The Deputy Minister noted that it appeared from the applicant's submissions that he had already been interested in Christianity in 2003, an interest which had grown in the course of the ensuing years and in particular through his contacts with another Afghan convert between 2005 and the middle of 2006. Yet he had nevertheless failed to mention such interest in the course of the proceedings on either his first asylum application or his second, and in those latter proceedings he had been registered as a Muslim – albeit a non-practising one – without the applicant giving any indication of his interest in a different religion. It also did not appear from the file relating to the applicant's immigration detention that he had developed an interest in Christianity and neither had he made any mention of such in meetings with the Departure and Repatriation Service (*Dienst Terugkeer en Vertrek*) of the Ministry of Security and Justice.

6. In his comments (*zienswijze*) on the Deputy Minister's intended refusal of his asylum application, the applicant submitted, *inter alia*, that he had replied "no" when he was asked in the interview pursuant to his second asylum application whether he was a practising Muslim. As he had not yet been baptised at that time, he had felt unable to say that he was a Christian. Moreover, when he had tried to explain to the officer of the Departure and Repatriation Service for what reasons he was unable to return to Afghanistan, he had been told that that Service was not concerned with such issues.

7. The Deputy Minister was not persuaded by the applicant's comments and rejected the asylum request on 15 October 2008. In addition to the fact that the applicant's alleged conversion was not believed, the Deputy Minister further considered that the alleged problems in the applicant's village of origin had already been found to lack credibility in the previous asylum proceedings, while neither the applicant's ethnicity nor the general security situation in Afghanistan gave rise to an assumption that he would be at risk of any treatment contrary to Article 3 if he were to return to that country (taking into account that Hazaras constituted the majority of the population of Ghazni where the applicant hailed from).

8. The applicant lodged an appeal against the Deputy Minister's decision. In these proceedings, the Deputy Minister submitted, *inter alia*, that she considered it remarkable that the applicant, while he had been held in immigration detention, had made no mention of his interest in

Christianity or of the problems which might arise as a result if he were expelled, yet he had been baptised three days after his release from detention. The Deputy Minister considered it likely that the applicant had let himself be baptised for effect only and found it implausible that he had genuinely converted.

9. Following a hearing on 17 September 2009, which was held in the presence of the applicant and counsel, the Regional Court (*rechtbank*) of The Hague dismissed the applicant's appeal on 15 December 2009. It held that, pursuant to the case-law of the Administrative Jurisdiction Division of the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*, hereinafter "the Division"), it could only review the impugned decision if the applicant had based his latest request for asylum on newly emerged facts or altered circumstances or if a relevant change in the law had occurred. The Regional Court agreed with the Deputy Minister's finding that, notwithstanding the baptism certificate and an affidavit of the officiating minister (*voorganger*) of the Kores Church (to the effect that the applicant was an active member of that church), which had been submitted by the applicant, he had failed to demonstrate convincingly that he had converted to Christianity. This being the case, the alleged conversion could not be seen as constituting a newly emerged fact or altered circumstance. The Regional Court further held that the applicant had also not submitted any other arguments or documents on the basis of which the rejection of his earlier asylum application ought to be reconsidered.

10. A further appeal lodged by the applicant was dismissed by the Division on 22 October 2010 on summary grounds.

2. Fourth set of asylum proceedings

11. On 17 February 2011 the applicant lodged yet another asylum application, about which he was interviewed by the Immigration and Naturalisation Service on 21 February 2011. He submitted – in addition to his previous submissions – that his Christian beliefs had intensified, that he had been attending church services and Bible lessons and that he had converted others. He further submitted, *inter alia*, a certificate of attendance of a Bible studies course and a new affidavit of the officiating minister of the Kores Church dated 26 December 2010, stating that the applicant was a member of that church who attended its services, and affidavits of four Afghans stating that they had been converted by the applicant. Furthermore, he claimed that he had received threats from other Afghans in the Netherlands and in Afghanistan via telephone after he had told his mother, a nephew and others about his conversion and had tried to convert them. Lastly, the applicant referred to the deteriorating general security situation in Afghanistan.

12. On 2 May 2011, the Minister for Immigration, Integration and Asylum Policy (*Minister voor Vreemdelingenzaken en Integratie*; the

successor to the Deputy Minister of Justice as regards immigration matters) rejected the asylum request, considering that the documents submitted by the applicant could not be regarded as evidence of the applicant's true conversion and holding that the applicant was (still) unable to provide an insight into the motivational process that had led to his alleged conversion. The assertion that his conversion had become known in Afghanistan was dismissed, as the Minister found the applicant's statements in this regard inconsistent. Lastly, the Minister noted as a negative against the applicant that although he had had the opportunity to submit this information already during his previous asylum proceedings, he had failed to do so. As the applicant had thus still not made a plausible case for believing that his conversion was genuine, the Minister concluded that he was not eligible for asylum. Concerning the security situation in Afghanistan, particularly in the applicant's home town of Ghazni, the Minister considered that although this might have deteriorated, it had not reached a level in which an Article 3 risk was to be assumed on account of a person's mere presence in that place. The applicant lodged an appeal against the Minister's decision.

13. At a hearing held before the Regional Court on 23 August 2012 in the presence of the applicant and counsel, two members of the Kores Church called as witnesses for the applicant testified about the latter's church activities. On 4 July 2014 the Regional Court dismissed the applicant's appeal, concurring with the Minister that his submissions did not repair the lack of credibility and lack of insight given regarding the motivational process around his alleged conversion, which had been observed in the previous asylum proceedings. The Regional Court concluded that the applicant had neither submitted any newly emerged facts or altered circumstances nor such exceptional circumstances relating to Article 3 of the Convention that it would be justified to proceed to a review of the impugned decision.

14. The applicant lodged a further appeal with the Division.

15. On 7 October 2014, the applicant was placed in immigration detention for removal purposes. Additionally, on that same day, a return decision (*terugkeerbesluit*) was taken and an entry ban (*inreisverbod*) of two years was imposed on the applicant by the Deputy Minister of Security and Justice (*Staatssecretaris van Veiligheid en Justitie*; the successor to the Minister for Immigration, Integration and Asylum Policy as regards immigration matters).

B. Events after the lodging of the application

16. The application was lodged with the Court on 29 October 2014 and subsequently, on 4 November 2014, the applicant asked the Court to issue an interim measure under Rule 39 of the Rules of the Court staying his

removal until his further appeal with the Division and his application with the Court had been decided upon.

17. On 5 November 2014, the Acting President of the Section decided to reject the request for an interim measure.

18. According to a letter received by the Registry on 12 March 2015, the further appeal by the applicant (see paragraph 14 above) was dismissed by the Division on 5 November 2014.

Fifth set of asylum proceedings

19. From a letter of the Deputy Minister of Security and Justice, dated 14 January 2015 and addressed to Mr J.S. Voordewind, a member of the Christian Union (*ChristenUnie*) lower house parliamentary party (*Tweede Kamerfractie*), it appears that the latter had, on 17 November 2014, asked the Deputy Minister to reconsider the applicant's asylum request. Mr Voordewind had apparently noted that the applicant had started attending a different church one and a half years ago, namely the Hope for North (*Hoop voor Noord*) church in Amsterdam, and that that church did not readily issue statements on request when it concerned asylum-seekers; however, it had been happy to do so for the applicant who had been very active in that church. Furthermore, Mr Voordewind had seemingly expressed his disagreement with the finding (in the latest decision rejecting the applicant's asylum request) that the applicant had not submitted any new facts or circumstances, urging that further research or a counter appraisal of the credibility of the applicant's conversion should be performed in the given circumstances. The Deputy Minister replied in that letter that he saw no circumstances which gave rise to a need for a reconsideration of the refusal of the applicant's asylum request, but that the applicant would be invited to lodge a fresh asylum request.

20. On 2 February 2015 the applicant lodged a fifth asylum request and an interview was held with him that same day. The applicant submitted, *inter alia*, that he had been a Christian and an active member of a church for seven consecutive years now, that all of his family members in Afghanistan knew about his conversion, and that his Christian belief had intensified even more since he had been attending the Hope for North church. In support of this claim, the applicant submitted an affidavit of the officiating minister and deacon (*diaken*) of the Hope for North church of 24 July 2014, attesting, *inter alia*, to the fact that the applicant had been an active member of that church since July 2013, attending church services every week; that they were convinced of the applicant's sincere Christian belief; that their church was familiar with the fact that asylum-seekers might abuse it in order to obtain a residence permit; and that they were therefore very careful in giving statements.

21. The applicant further submitted a "Report Concerning the Credibility of Conversion" (*Rapport Inzake Geloofwaardigheid Bekering*), dated

29 November 2014 and drawn up in Dutch by Professor J.W. van S. of the Free University (*Vrije Universiteit*) of Amsterdam, a theology professor and a psychologist of religion. This report contains an assessment of the credibility of the applicant's conversion to Christianity and commences with a general part in which definitions, different stages and types of conversion are described, followed by an elaboration of the analysis and classification of the credibility of conversion, all with references to other scientific reports. The second part of the report comprises an analysis of the applicant's conversion based on his case file, that is to say all the records of interviews held with the applicant and all the decisions taken by the administrative and judicial authorities in the course of the proceedings concerning the applicant's third and fourth asylum requests. The analysis entails an assessment of those documents based on eight questions through which the type of conversion is classified and the symptoms of different stages are compared for consistency to the assessed type; the departure from the previous religion and the motivations for conversion are compared to the way in which that process has been expressed and three dimensions (affection, cognisance, behaviour) of conversion are assessed for consistency. The conclusion of this report, in so far as relevant, reads as follows:

> "Based on the criteria concerning internal and external consistency, I find [the applicant]'s conversion credible. It appears to concern an active conversion (as opposed to a passive conversion) in which a change of religious beliefs occurs after a change in behaviour instigated by a crisis during which the convert experiences a lack of purpose. The different stages of the so-called 'RAMBO model' (pertaining to an active convert) are clearly recognisable. The motivations are consistent with the way they are expressed and the three dimensions of conversion are clearly visible and consistent with the religion he has converted to."

22. Lastly, the applicant submitted an affidavit of 26 January 2015 from the preacher of the Rotterdam detention centre for asylum-seekers, attesting, *inter alia*, that the applicant was a Christian, that he had converted other asylum-seekers and that he attended church every Sunday including going to Bible-study groups.

23. By decision of 23 February 2015 the Deputy Minister rejected the asylum request, considering that there were no newly emerged facts or circumstances. The Deputy Minister took the view that since the documents submitted by the applicant (the abovementioned report on credibility as well as the affidavits) had been drawn up at the applicant's request they could not be regarded as legally relevant new facts. With regard to Professor Van S.'s credibility report, the Deputy Minister considered that it could have been drawn up and submitted in previous asylum proceedings, which the applicant had failed to do without giving reasons as to why this had not been possible. Moreover, the fact that the report had been based on documents and that no assessment in person had been carried out

discredited, in the Deputy Minister's view, the value of the report. Lastly, the Deputy Minister observed that the report presupposed the alleged vendetta killings of the applicant's father and brother as a basis for the crisis experienced by the applicant, but that that account of events had been found to lack credence in the proceedings in the applicant's first application for asylum.

24. On 10 March 2015 the Repatriation and Departure Service of the Ministry of Security and Justice informed the applicant's lawyer that a charter flight to Kabul, Afghanistan, had been arranged for the applicant's removal, scheduled for 23 March 2015.

25. The applicant lodged an appeal against the Deputy Minister's rejection with the Regional Court, accompanied by a request for a provisional measure (*voorlopige voorziening*) in order to stay his removal pending appeal. When filing his grounds of appeal, the applicant supplemented the above-mentioned documents which he had submitted in support of his fifth asylum request with a report entitled "Assessment of Conversion" (*Toetsing Bekering*) of 25 February 2015 and drawn up by Dr M.V. of the Gift Foundation (*Stichting Gave*), an interdenominational organisation supporting churches in their contacts with refugees and asylum seekers. That report concluded that in view of, *inter alia*, Professor Van S.'s report (see paragraph 21 above) strong reasons for a reconsideration of the applicant's asylum application existed.

26. A hearing took place before the provisional-measures judge (*voorzieningenrechter*) of the Regional Court of The Hague, sitting in Haarlem, on 16 March 2015, in the presence of the applicant and counsel.

27. On 17 March 2015 the applicant asked the Court for the second time to issue an interim measure under Rule 39.

28. On 19 March 2015 the provisional-measures judge of the Regional Court dismissed the applicant's appeal and rejected the request for a provisional measure. Noting that the impugned decision of the Deputy Minister was substantially similar to the decisions on the applicant's earlier asylum applications, the provisional-measures judge set out the applicable framework for his review as follows:

> "4.1 It follows from the *ne bis in idem* principle that, if after an earlier negative decision a substantially similar decision is taken, it is at the outset to be assumed that the administrative court is not allowed to review the latter decision as if it were a first rejection. That decision, its reasoning and the manner in which it came about can only be reviewed by the administrative court if the alien adduced newly emerged facts or altered circumstances in the administrative stage, or if it follows from the alien's submissions that a change in the law, relevant to his situation, has occurred. It is only when exceptional facts and circumstances within the meaning of paragraph 45 of the European Court of Human Rights' judgment of 19 February 1998 (*Bahaddar v. the Netherlands* [*Reports of Judgments and Decisions* 1998-I]) pertain, relating to the individual case, that the above does not apply.

> 4.2 The provisional-measures judge will examine *ex officio* whether the request is based on newly emerged facts or altered circumstances. These include facts and circumstances which have occurred after the previous decision was taken or which could not have been adduced prior to the taking of that decision, as well as documents supporting already previously adduced facts or circumstances which it was not possible to submit prior to the earlier decision. Such newly emerged facts or altered circumstances will not, however, justify a new judicial examination if it is from the outset excluded that that which has been adduced or submitted is incapable of detracting from the earlier decision."

The provisional-measures judge proceeded to uphold the Deputy Minister's point of view that the applicant had failed to establish the existence of newly emerged facts or altered circumstances. He considered, *inter alia*, that the report of 25 February 2015 from the Gift Foundation was of too general a nature. With regard to the applicant's alleged intensified beliefs and activities in his church, it was considered that this argument had already been submitted in previous asylum applications and that the applicant had failed to repair the lack of insight given regarding the motivational process leading to his alleged conversion. As regards Professor Van S.'s report, the provisional-measures judge observed that the Deputy Minister had conceded during the hearing before that judge that the applicant could not have submitted said report at an earlier stage. However, the availability of the report did not affect the fact that it was for the applicant himself to relate convincingly about the motives for and the process of his conversion – and the applicant had failed to do so. The provisional-measures judge further held that even though considerable weight fell to be accorded to a report drawn up by Professor Van S. that focused on the individual asylum-seeker, this did not in every situation entail that a decision in which the Deputy Minister reached a different conclusion was by definition untenable. It was considered relevant in the case at hand that the Deputy Minister had challenged the report in a germane and well-reasoned manner, and the provisional-measures judge concurred with the Deputy Minister's criticism. Thus, it was indicated in the report that the death of the applicant's father and brother could have caused the crisis or disorientation that constitute one of the stages of a conversion. However, it did not appear that account had been taken in the report of the fact that this part of the applicant's asylum statement had already been disbelieved in the earlier proceedings. Moreover, no confirmation could be found in the report of the applicant's claim that Professor Van S. included in her assessment the question to what extent certain statements were brief and vague and what weight fell to be accorded to them. While Professor Van S. mentioned the period between 2003 and 2007 and the applicant's statements surrounding that period in her report, no attention had been given to the vague and contradictory statements which the Deputy Minister had examined in the earlier proceedings. For this reason the provisional-measures judge concluded that it was from the outset excluded that the

report by Professor Van S. could detract from the decisions that had been taken on the applicant's previous asylum requests.

29. On 20 March 2015 the Acting President of the Section decided, under Rule 39, to indicate to the Netherlands Government that it was desirable, in the interest of the parties and of the proper conduct of the proceedings before the Court, not to expel the applicant to Afghanistan for the duration of the proceedings before the Court.

30. On 17 April 2015, the applicant informed the Court that he had lodged a further appeal with the Division against the Regional Court's decision of 19 March 2015.

31. On 28 September 2015 the applicant submitted to the Division a reply which his lawyer had received from Professor Van S. to a question from the lawyer relating to the Deputy Minister's criticism that Professor Van S. had partly based her conclusion of the sincerity of the applicant's conversion on events which had been disbelieved. Professor Van S. stated that her report also mentioned that the crisis which had immediately preceded the applicant's conversion had taken place while the applicant had been in immigration detention as set out in the report of the interview held with him in 2008 (see paragraph 4 above). The crisis-stage of the conversion could therefore be considered reliable even without the death of the applicant's father and brother. This letter of 28 September 2015 was returned to the lawyer; as the Division had concluded its preliminary examination prior to receipt of the letter, it could not be added to the file.

32. On 30 September 2015 the Division dismissed the applicant's further appeal on summary reasoning. No further appeal lay against that decision.

33. On 27 January 2016 the applicant submitted to the Court a report of a meeting that had taken place on 8 December 2015 between himself and two members of the so-called Plaisier Commission. This commission, set up in 2013, consists of a number of theologians from various Protestant churches. It carries out independent assessments of the conversion of asylum-seekers at the request of lawyers. Following their meeting with the applicant, the two members of the Commission concluded that they had no reason to doubt the sincerity of the applicant's faith.

34. The applicant further submitted two statements, dated 29 October and 27 November 2015, respectively, from ministers attached to a Christian Reformed Church in Hoogeveen, where the applicant was living at that time. The two authors attested to the applicant's attendance of church services and his involvement in other church activities as well as to the sincerity of his Christian beliefs.

COMPLAINTS

35. The applicant complained under Article 2 of the Convention that there were substantial grounds for believing that he would be subjected to the death penalty if he were expelled to Afghanistan.

36. The applicant also complained, under Article 3 of the Convention, that there were substantial grounds for believing that he would be subjected to treatment prohibited by that provision if he were expelled to Afghanistan.

THE LAW

37. The applicant complained that owing to his conversion from Islam to Christianity in the Netherlands it would be in breach of Articles 2 and 3 of the Convention to expel him to Afghanistan. Those provisions read as follows:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3

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

38. At the outset the Court observes that in the context of expulsion, where there are substantial grounds to believe that the person in question, if expelled, would face a real risk of capital punishment, torture, or inhuman or degrading treatment or punishment in the destination country, both Articles 2 and 3 imply that the Contracting State must not expel that person. The Court will therefore examine the two Articles together (see, among other authorities, *mutatis mutandis*, *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 314, ECHR 2014 (extracts); *T.A. v. Sweden*, no. 48866/10, § 37, 19 December 2013; *K.A.B. v. Sweden*, no. 886/11, § 67, 5 September 2013; *Kaboulov v. Ukraine*, no. 41015/04, § 99, 19 November 2009; and *F.H. v. Sweden*, no. 32621/06, § 72, 20 January 2009).

A. General principles

39. The Court reiterates the general principles regarding the assessment of applications for asylum under Articles 2 and 3 of the Convention as recently set out in the judgment in the case of *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-118, 23 March 2016, with further references). Most importantly, the machinery of complaint to the Court being subsidiary to national systems safeguarding human rights, the Court does not itself examine the actual asylum applications. Its main concern is whether effective guarantees exist that protect the applicant against *refoulement*, be it direct or indirect, to the country from which he or she has fled. Moreover, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts – as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned.

40. The judgment in *F.G. v. Sweden* also contains an overview of the State's procedural duties in the examination of applications for asylum (*F.G. v. Sweden*, cited above, §§ 119-127). Of particular relevance to the present case are the Court's following considerations:

> "123. In respect of *sur place* activities the Court has acknowledged that it is generally very difficult to assess whether a person is genuinely interested in the activity in question, be it a political cause or a religion, or whether the person has only become involved in it in order to create post-flight grounds (see, for example *A.A. v. Switzerland*, no. 58802/12, § 41, 7 January 2014). That reasoning is in line with the UNCHR Guidelines on International Protection regarding Religion-Based Refugee Claims of 28 April 2004, which state 'that particular credibility concerns tend to arise in relation to *sur place* claims and that a rigorous and in-depth examination of the circumstances and genuineness of the conversion will be necessary ... So-called "self-serving" activities do not create a well-founded fear of persecution on a Convention ground in the claimant's country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned' (see paragraph 52 above). See also the Court's finding in, for example, *Ali Muradi and Selma Alieva v. Sweden* ((dec.), no. 11243/13, §§ 44-45, 25 June 2013) to this effect."

B. Application of the general principles to the present case

41. In the present case, the Netherlands authorities were confronted with a *sur place* conversion. Thus, the domestic authorities initially had to assess whether the applicant's conversion was genuine and had attained a certain level of cogency, seriousness, cohesion and importance (see *F.G. v. Sweden*, cited above, § 144, with further references), before assessing whether the

applicant would be at risk of treatment contrary to Articles 2 and/or 3 of the Convention upon his return to Afghanistan.

42. The Court considers at the outset that, clearly, no reproach can be made of the domestic authorities for not including the applicant's alleged conversion in their assessment of his first two asylum applications as he had not made them aware at that time of his interest in Christianity and of an intention to convert (see, in contrast, *F.G. v. Sweden*, cited above, § 156), despite the process of his alleged conversion to a large extent coinciding with the proceedings on those two applications (see paragraphs 3-5 above).

43. The Court notes that the immigration authorities interviewed the applicant in person in the course of the three asylum applications that were based on his alleged conversion (see paragraphs 4, 11 and 20 above). Taking account of the fact that, prior to his third application for asylum, the applicant had not made any mention of a growing interest in Christianity and any risks ensuing from that interest if he were returned to Afghanistan, and considering that he had not provided an insight into the internal process motivating him to convert, those authorities did not believe that the applicant had genuinely converted.

44. The Court further observes that the applicant was able to challenge the decisions rejecting his asylum applications in appeal and further appeal proceedings and that the applicant was represented by counsel throughout those proceedings. It also notes that hearings were held in the appeal proceedings before the Regional Court (see paragraphs 8, 13 and 26 above).

45. It is true that the judicial review by the Regional Court of the applicant's asylum applications which he based on his alleged conversion was limited to the question whether he had submitted "newly emerged facts or altered circumstances". Having found that no such facts or circumstances had been submitted, the Regional Court concluded that it was not justified to proceed to a new examination of the merits of the case, which had already been assessed in the proceedings on the applicant's first asylum request. In this connection, the Court reiterates that it has previously seen no objection to the examination of a repeat asylum application being restricted to an assessment of the question whether new grounds have been submitted necessitating a different decision from the one taken on the original asylum request, provided that a proper examination has been carried out of the entirety of an asylum-seeker's claims put forward in support of that original request (see *Sultani v. France*, no. 45223/05, § 65, ECHR 2007-IV (extracts)). The Court has no reason to doubt the thoroughness of the assessment conducted of the applicant's initial asylum application – the applicant has raised no complaints about it and did not consider it necessary to provide the Court with copies of the decisions and judgments pertaining to that application (see paragraph 3 above).

46. Most importantly, the Court observes that both the examinations at the administrative level and the judicial reviews carried out of the asylum

applications based on the applicant's alleged conversion to Christianity addressed the issue of whether that conversion was genuine. To this end, account was taken of the statements made by the applicant as well as of the documents submitted by him. A case in point is the consideration that was given by the provisional-measures judge of the Regional Court to the report drawn up by Professor Van S.: it was only by taking cognisance of the contents of that report that the judge was able to conclude that those contents were unable to detract from the decisions that had been taken on the applicant's previous asylum requests (see paragraph 28 above). It was precisely because they concluded that the applicant's conversion was not genuine, that the domestic authorities considered that there was, accordingly, no need for them to revisit the decision taken on the applicant's original asylum application.

47. The Court sees no grounds to depart from the conclusions drawn by the administrative and judicial authorities concerning the credibility of the applicant's alleged conversion, conclusions which were reached following a sufficiently thorough examination of all the relevant and available information. It further cannot find any indications that the proceedings before those authorities lacked effective guarantees to protect the applicant against *refoulement* or that they were otherwise flawed. It also considers that the applicant has not made any submissions about circumstances or provided any supporting documents to lead the Court to depart from the domestic authorities' conclusions.

48. In the light of the above, the Court considers that the applicant has failed to show that his return to Afghanistan would expose him to a real risk of being subjected to treatment contrary to Articles 2 and/or 3 of the Convention on account of his alleged conversion.

49. It follows that the application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

50. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 July 2016.

Stephen Phillips
Registrar

Luis López Guerra
President