



## Afghan asylum seeker's right to an effective remedy was respected in proceedings before the courts in the Netherlands

The case of [A.M. v. the Netherlands](#) (application no. 29094/09) concerned the complaint by an asylum seeker that his expulsion to Afghanistan would expose him to a real risk of torture or of inhuman or degrading treatment.

In today's **Chamber judgment**<sup>1</sup> in the case the European Court of Human Rights held, unanimously: that there had been **no violation of Article 13 (right to an effective remedy) taken together with Article 3 (prohibition of torture and of inhuman or degrading treatment)** of the European Convention on Human Rights;

and that there would be **no violation of Article 3** in the event of A.M.'s removal to Afghanistan.

The Court underlined that States were not required under Article 13 to set up in asylum cases a second level of appeal having a suspensive effect. The applicant, A.M., had had at his disposal a remedy for challenging the decision to deny him asylum which complied with the requirements of Article 13.

Furthermore, the Court came to the conclusion that A.M. had not demonstrated that he would be exposed to risks of ill-treatment in the event of his removal to Afghanistan on either individual grounds, on account of his belonging to the Hazara minority, or on account of the general situation in the country.

### Principal facts

The applicant, A.M., is an Afghan national who was born in 1966 and has been living in the Netherlands since 2003.

Mr A.M. entered the country in July 2003, having travelled there from Afghanistan via Pakistan, Iran and Germany, and subsequently applied for asylum. He stated that he feared persecution and ill-treatment in Afghanistan on account of his past activities as a member of the communist People's Democratic Party of Afghanistan (PDPA) and for having served as a volunteer in the Revolutionary Guard. Moreover, he risked being ill-treated by the mujahedeen party Jamiat-e Islami for having been involved with the rival party Hezb-e Wahdat. He stated that he had been detained in Afghanistan in 2002 and had been tortured in prison before having managed to escape after 45 days.

In October 2005 the Minister for Immigration and Integration denied A.M. asylum in application of Article 1F of the 1951 Refugee Convention. The Minister found in particular that A.M. had trivialised his work for Hezb-e Wahdat and had withheld important information. Notably, having worked for the Revolutionary Guard which had collaborated with the KhAD security service, he had known or should have known about KhAD's crimes against the civil population. The party Hezb-e Wahdat had also been guilty of violent crimes against the civil population. The Minister did not find it established

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

that A.M. would be exposed to treatment prohibited by Article 3 of the European Convention on Human Rights if returned to Afghanistan.

A.M.'s appeal against that decision was rejected by the Regional Court of The Hague. Although it would have been possible, A.M. did not file a further appeal with the Administrative Jurisdiction Division of the Council of State. In September 2007 the Deputy Minister of Justice further decided to impose an exclusion order on him. A.M.'s attempts to challenge this decision in administrative proceedings were also unsuccessful, the last decision being taken in February 2009 by the Regional Court of The Hague. Although it would have been possible, A.M. did not file a further appeal with the Administrative Jurisdiction Division either.

In June 2009 the European Court of Human Rights granted A.M.'s request for an interim measure (under Rule 39 of its Rules of Court), indicating to the Netherlands Government that he should not be expelled to Afghanistan until further notice.

## Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment) and Article 13 (right to an effective remedy), A.M. complained that he would be exposed to a real risk of torture or of inhuman or degrading treatment if removed to Afghanistan and that he did not have an effective remedy in the Netherlands in respect of that complaint.

The application was lodged with the European Court of Human Rights on 4 June 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,  
Helena **Jäderblom** (Sweden),  
Johannes **Silvis** (the Netherlands),  
Branko **Lubarda** (Serbia),  
Pere **Pastor Vilanova** (Andorra),  
Alena **Poláčková** (Slovakia),  
Georgios A. **Serghides** (Cyprus),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### [Article 13 in conjunction with Article 3](#)

The Court dismissed an objection by the Netherlands Government to the effect that A.M. had failed to exhaust the domestic remedies. The Court noted that a further appeal to the Administrative Jurisdiction Division would not have had an automatic suspensive effect, which was a requirement under its case-law under Article 13 taken together with Article 3 for a domestic remedy to be considered effective.

However, the Court observed that an appeal filed with the Regional Court of the Hague in asylum cases did have an automatic suspensive effect. Given that States were not required under Article 13 to set up a second level of appeal, the Court was satisfied that A.M., who had been able to appeal to the Regional Court of The Hague, had had at his disposal a remedy for challenging the Minister's decision to deny him asylum which complied with the requirements of Article 13. Apart from the proceedings having a suspensive effect, that court was empowered to rigorously examine any risks of treatment contrary to Article 3.

Accordingly there had been no violation of Article 13 in conjunction with Article 3.

### Article 3

As regards the alleged risks of ill-treatment in the event of A.M.'s removal to Afghanistan, the Court came to the conclusion that he had not demonstrated that he would be exposed to such risks on individual grounds.

The Court first observed that after the communist regime in Afghanistan had been overthrown by mujahedeen forces in 1992 A.M. had remained in the country, working for one mujahedeen faction, Hezb-e Wadat, until 1994 without encountering any problem from the authorities, any group or private persons on account of his past activities for the former communist regime. While according to his submissions he had lived in hiding following the retreat of the Hezb-e Wadat from Kabul in 1994 until the arrival of American troops in 2001, there was no indication in the case file that when travelling between hiding places he had encountered any problem with the Taliban or any other group.

Furthermore, the Court noted in particular that there was no indication that after his escape from detention the mujahedeen party Jamiat-e Islami had made any efforts to search for A.M. or that after his departure from Afghanistan he had attracted negative attention from any governmental or non-governmental body or any private individual in the country on account of his communist past or his activities for Hezb-e Wahdat. Moreover the United Nations High Commissioner for Refugees (UNHCR) did not include persons involved in the former communist regime and/or Hezb-e Wahdat in their potential risk profiles in respect of Afghanistan.

Before the courts in the Netherlands A.M. had also pointed out that he was of Hazara ethnic origin and had raised that he ran a risk of being subjected to ill-treatment on that account. On the basis of the materials before it, the Court did not consider that – while the general situation in Afghanistan for this minority might be far from ideal – there would be a real risk of treatment prohibited by Article 3 in the event that a person of Hazara origin were to be removed to Afghanistan.

Finally, as it had found in other recent cases, the Court did not consider that in Afghanistan there was a general situation of violence to the extent that there would be a real risk of ill-treatment simply by virtue of an individual being returned there.

Accordingly, A.M.'s expulsion to Afghanistan would not give rise to a violation of Article 3 of the Convention.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.