



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

THIRD SECTION

CASE OF RAMZY v. THE NETHERLANDS

(Application no. 25424/05)

JUDGMENT
(Striking out)

STRASBOURG

20 July 2010

FINAL

20/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ramzy v. the Netherlands,
The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 25424/05) 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 an Algerian national, Mr Mohammed Ramzy (“the applicant”), on 15 July 2005.

2. The applicant was represented by Mr M. Ferschtman and Mr M.F. Wijngaarden, both lawyers practising in Amsterdam, and Ms B.J.P.M. Ficq, a lawyer practising in Haarlem. The Dutch Government (“the Government”) were represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs.

3. The applicant alleged that, if expelled to Algeria, he would be exposed to a real risk of treatment contrary to Article 3 of the Convention. In addition, he alleged a violation of Article 13 of the Convention for not having had an effective remedy in respect of the exclusion order.

4. On 15 July 2005, the Acting President of the Chamber to which the case had been allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of the Netherlands, under Rule 39 of the Rules of Court, that the applicant should not be deported to Algeria until further notice. The Acting President further decided to give notice of the application to the respondent Government.

5. On 27 May 2008 – having noted the observations submitted by the respondent Government, the observations in reply submitted by the applicant, as well as the comments submitted by Governments of Lithuania, Portugal, Slovakia and the United Kingdom, and the comments submitted by the non-governmental organisations the AIRE Centre, Interights (also on

behalf of Amnesty International Ltd., the Association for the Prevention of Torture, Human Rights Watch, the International Commission of Jurists, and Redress), Justice and Liberty – the Court declared the application admissible.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1982 and, at the time of the introduction of the application, was detained in Ter Apel, the Netherlands.

A. The applicant's first and second asylum requests

7. On 30 January 1998, after having been apprehended by the Flushing brigade of the Royal Military Constabulary (*Koninklijke Marechaussee*) whilst he was attempting to leave for the United Kingdom in a lorry, the applicant applied for asylum in the Netherlands. During his interview by the Netherlands immigration authorities, the applicant stated that he had largely been brought up in an orphanage in Algeria, that he had never known his natural parents and that he had spent a short period with foster parents who gave him the name Ramzy. The applicant explained that he had left Algeria given the general unsettled and dangerous situation there. He had not been involved in any political activities against the Algerian authorities. He further claimed that, a long time before leaving Algeria, he had been approached by the Islamic fundamentalist movement FIS (*Front Islamique du Salut*). The applicant did not want to divulge any further details about this claim.

8. As the applicant did not hold any travel documents and had not immediately applied for asylum upon his arrival in the Netherlands, the Deputy Minister of Justice (*Staatssecretaris van Justitie*) rejected the applicant's asylum request on 7 October 1998. The applicant did not avail himself of the possibility to appeal this decision, which thus became final.

9. On 9 September 1999, the applicant filed a second asylum application, submitting that he could not return to Algeria because young people were being killed there, that he had no one in Algeria any more and that he wished to build a new life in the Netherlands. He further stated that he had never had any problems with the Algerian authorities.

10. On 14 September 1999, the Deputy Minister dismissed this second asylum request as a repeat application based on similar grounds to those relied upon in a previous asylum application that had been rejected in a final

decision. The applicant unsuccessfully challenged this decision in appeal proceedings. The final decision on the second asylum application was taken on 6 October 1999 by the Regional Court (*arrondissementsrechtbank*) of The Hague sitting in Zwolle. The applicant continued to reside illegally in the Netherlands.

B. Domestic intelligence reports

11. On 19 December 2001 and 22 April 2002, respectively, the Netherlands National Security Service (*Binnenlandse Veiligheidsdienst* – “BVD”) sent an official report (*ambtsbericht*) to the national public prosecutor responsible for combating terrorism (*landelijk officier van justitie terrorismebestrijding*), containing information about an Islamic extremist group active in the Netherlands and which was associated with Islamic terrorist organisations abroad. In the latter official report, the applicant was mentioned as forming a part of this group in the Netherlands.

12. In a subsequent official report of 24 April 2002, the Head of the BVD informed the national public prosecutor responsible for combating terrorism of the mobile telephone number that was being used by the applicant.

13. On 29 May 2002, pursuant to the 2002 Intelligence and Security Services Act (*Wet op de inlichtingen- en veiligheidsdiensten*), the BVD was succeeded by the General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst* – “AIVD”).

C. The criminal proceedings against the applicant

14. On 12 June 2002, the applicant was arrested in the Netherlands and detained on remand on suspicion of, *inter alia*, participation in (the activities of) a criminal organisation pursuing the aims of aiding and abetting the enemy in the conflict opposing, on the one hand, the United States of America, the United Kingdom and their allies – including the Netherlands – and, on the other, Afghanistan (under Taliban rule until January 2002) and/or the Taliban and their allies (Al-Qaeda and/or other pro-Taliban combatants) and which organisation was further involved in drug-trafficking, forgery of (travel) documents, providing third persons with forged (travel) documents, and trafficking in human beings.

15. The basis for the suspicions against the applicant as well as eleven co-accused was formed by official reports that had been drawn up by the BVD/AIVD, the content of telephone conversations that had been intercepted by the BVD/AIVD, and books, documents, video and audio tapes that had been found and seized in the course of searches carried out.

16. The applicant and eleven co-suspects were subsequently formally charged and summoned to appear before the Rotterdam Regional Court in order to stand trial.

17. In its judgment of 5 June 2003, following public trial proceedings that had attracted considerable media attention, the Rotterdam Regional Court acquitted the applicant of all charges, finding that these had not been legally and convincingly substantiated, and ordered the applicant's release from pre-trial detention.

18. The prosecution initially lodged an appeal against this judgment but withdrew it on 6 September 2005, before the trial proceedings on appeal had commenced.

D. The proceedings on the applicant's third asylum application, the decision to impose an exclusion order on him, and his placement in aliens' detention

19. Immediately after his release from pre-trial detention on 5 June 2003, the applicant was apprehended by the aliens' police (*vreemdelingenpolitie*) and placed in aliens' detention for expulsion purposes. On the same day, he filed a third application for asylum in the Netherlands.

20. On 24 June 2003, the applicant was informed of the intention (*voornemen*) of the Minister for Immigration and Integration (*Minister voor Vreemdelingenzaken en Integratie* – “the Minister”) – as well as the reasons for this intention – to reject his third asylum application.

21. On 21 July 2003, pursuant to Article 59 § 4 of the 2000 Aliens Act (*Vreemdelingenwet*), the applicant was released from aliens' detention as no decision had been taken by the Minister on his third asylum application within 42 days. The applicant was ordered to leave the Netherlands.

22. On 26 February 2004, using a forged Dutch passport, the applicant travelled by air from Cologne (Germany) to Istanbul (Turkey) where he applied for asylum. The Turkish authorities refused to take his asylum application into consideration and, on 27 February 2004, sent him back to Germany, where on 8 March 2004 he applied for asylum under the name stated in the forged passport and which he had not used previously.

23. On 14 May 2004, under the provisions of the Dublin Convention of 15 June 1990, the German authorities requested the Netherlands to accept responsibility for the applicant's asylum application. On 16 June 2004, the Netherlands authorities accepted that responsibility and, on 15 July 2004, the applicant was transferred to the Netherlands, where he was immediately placed in aliens' detention.

24. On 14 July 2004, the AIVD drew up an individual official report (*individueel ambtsbericht*) on the applicant, in which it was concluded that he continued to pose a threat to national security.

25. On 5 August 2004, he was notified of the Minister's fresh intention to reject his asylum application, on which the applicant filed comments in reply on 19 and 20 August 2004.

26. On 23 August 2004, following the AIVD official report of 14 July 2004, the applicant was interviewed by a senior official of the police in his place of residence in connection with a proposal to impose an exclusion order (*ongewenstverklaring*) on him. During this hearing, the applicant declared *inter alia* that for reasons of common knowledge about the situation there he did not wish to return to Algeria, that he knew that he could not stay in the Netherlands, that he had no reasons to remain in the Netherlands and that he had no objections to moving to an Islamic country.

27. On 25 August 2004, the Minister rejected the applicant's third asylum application. The applicant was further ordered to leave the Netherlands within 24 hours and informed that an appeal would not have suspensive effect as regards his expulsion from the Netherlands. On 26 August 2004, the applicant filed an appeal to the Regional Court of The Hague as well as a request for a provisional measure (*voorlopige voorziening*) in the form of an injunction on his expulsion pending the determination of his appeal.

28. By decision of 14 September 2004 and based mainly on the content of the official reports of 22 April 2002 and 14 July 2004, the Minister imposed an exclusion order on the applicant. The Minister held that the applicant posed a threat to national security and that imposing an exclusion order on him was in the interests of the Netherlands' international relations.

29. On 22 September 2004, the applicant filed an objection (*bezwaar*) against this decision with the Minister. He further requested the Regional Court of The Hague to extend the scope of his request for a provisional measure of 26 August 2004 in that the injunction sought would also cover the duration of the proceedings on his objection against the decision to impose an exclusion order on him.

30. On 2 November 2004, the provisional-measures judge (*voorzieningenrechter*) of the Regional Court of The Hague sitting in Haarlem granted the applicant's request for an injunction and ordered that he was not to be expelled pending the determination of his appeal of 26 August 2004 against the refusal to grant him asylum. The provisional-measures judge further suspended the Minister's decision of 14 September 2004 to impose an exclusion order on the applicant.

31. On 10 November 2004, the Minister filed an appeal against the ruling of 2 November 2004 – in so far as it related to the suspension of the decision of 14 September 2004 – with the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*), and requested the President of the Division, by way of an provisional measure, to lift the suspension of the decision of the decision of 14 September 2004.

32. On 16 November 2004, the applicant was heard before an official board of inquiry (*ambtelijke commissie*) on his objection of 22 September 2004 against the decision to impose an exclusion order on him.

33. On 19 November 2004, by way of a provisional measure as requested by the Minister on 10 November 2004, the President of the Administrative Jurisdiction Division lifted the suspension of the decision to impose an exclusion order on the applicant.

34. By judgment of 23 December 2004, following a hearing held on 2 December 2004, the Regional Court of The Hague sitting in Haarlem upheld the applicant's appeal of 26 August 2004, quashed the Minister's negative decision of 25 August 2004 on the applicant's third asylum application, and ordered the Minister to take a fresh decision on the matter.

35. On 20 January 2005, the Minister lodged an appeal against this ruling with the Administrative Jurisdiction Division.

36. In a decision of 11 February 2005, following a hearing on 6 January 2005, the Administrative Jurisdiction Division quashed the decision of 2 November 2004 of the provisional-measures judge in so far as it suspended the decision to impose an exclusion order on the applicant. It found that this part of the decision had been taken in breach of due process and fundamental principles of law. The Division agreed to examine the Minister's appeal, which it subsequently considered well-founded.

37. On 22 February 2005, the applicant filed a new request for a provisional measure with the Regional Court of The Hague, requesting a suspension of the Minister's decision of 14 September 2004 to impose an exclusion order. His request was rejected on 1 April 2005 by the provisional-measures judge of the Regional Court of The Hague sitting in Haarlem.

38. On 17 May 2005, the applicant lodged an appeal with the Regional Court of The Hague against the continuation of his placement in aliens' detention.

39. On 3 June 2005, the Regional Court of The Hague sitting in Groningen rejected the applicant's appeal of 17 May 2005. It held that the applicant's placement in aliens' detention continued to be justified in that there remained sufficient prospects for expulsion within a reasonable time.

40. On 6 July 2005, the Administrative Jurisdiction Division accepted the Minister's appeal of 20 January 2005, quashed the impugned judgment of 23 December 2004 and dismissed the applicant's appeal of 26 August 2004 against the negative decision on his third asylum application. No further appeal lay against this decision.

41. On 15 July 2005, the applicant lodged the present application with the Court. On the same date and at the applicant's request, the Acting President of the Third Section of the Court decided to indicate to the respondent Government under Rule 39 of the Rules of Court that the applicant should not be removed to Algeria until further notice.

42. On 21 July 2005, the applicant filed an appeal with the Regional Court of The Hague on grounds of the Minister's failure to determine in a timely manner his objection of 22 September 2004 against the decision to impose an exclusion order on him.

43. In a judgment given on 2 August 2005, following proceedings on a fresh appeal against the applicant's continued placement in aliens' detention, the Regional Court of The Hague concluded that the detention continued to be justified in that there remained sufficient prospects for his expulsion within a reasonable time.

44. On 31 August 2005, the Minister rejected the applicant's objection of 22 September 2004 against the decision to impose an exclusion order on him. Referring to the AIVD individual official report on the applicant of 14 July 2004, the Minister held that this decision had been taken on correct and sufficient grounds, as he posed a danger to national security and as this order was furthermore in the interest of international relations.

45. On 12 September 2005, the Regional Court of The Hague sitting in Amsterdam informed the applicant and the Netherlands State that it would consider the applicant's appeal of 21 July 2005 as an appeal against the Minister's decision of 31 August 2005. Already on 2 September 2005, the applicant had also requested the Regional Court to order a provisional measure to the effect that the exclusion order of 14 September 2004 be suspended.

46. On 5 September 2005, the applicant lodged an appeal with the Regional Court of The Hague against his continued placement in aliens' detention. In its judgment of 15 September 2005, the Regional Court of The Hague sitting in Leeuwarden – noting the time spent by the applicant in aliens' detention, the interim measure under Rule 39 of the Rules of Court indicated on 15 July 2005 and the uncertainty as to the date when the Court would examine the merits of the application lodged by the applicant – concluded that there were no prospects for the applicant's expulsion from the Netherlands within a reasonable time. Consequently, it accepted the applicant's appeal, ordered his release from aliens' detention and awarded him an amount of 2,660 euros (EUR) in compensation for the time he had spent in aliens' detention after 9 August 2005. The applicant was released on the same day.

47. On 17 October 2005, the provisional-measures judge of the Regional Court of The Hague sitting in Amsterdam suspended the exclusion order pending the determination of the applicant's appeal against the Minister's decision of 31 August 2005.

48. On 17 November 2005, a hearing on the applicant's appeal was held before the Regional Court of The Hague sitting in Amsterdam. On 22 December 2005 – the parties having consented to the appeal being determined also on the basis of that material – the Regional Court was given

access to the material underlying the AIVD individual official report of 14 July 2004 without that material being disclosed to the applicant.

49. In a judgment of 10 March 2006, the Regional Court of The Hague sitting in Amsterdam rejected the applicant's appeal against the Minister's decision of 31 August 2005.

50. On 18 September 2006 the Administrative Jurisdiction Division – which, in application of articles 8:29 and 8:45 of the General Administrative Law Act in conjunction with article 87 of the 2002 Intelligence and Security Services Act and with the applicant's permission, had also been given access to the undisclosed material underlying the official reports of 22 April 2002 and 14 July 2004 without that material being disclosed to the applicant – rejected the applicant's appeal against the Regional Court's judgment of 10 March 2006 and upheld the impugned judgment. No further appeal lay against this decision.

E. Proceedings on the Netherlands authorities' request to the Algerian authorities in the Netherlands to issue a laissez-passer to the applicant for expulsion purposes

51. On 9 August 2001, after apparently having noted that the applicant had not left the Netherlands voluntarily after the rejection of his second asylum application, the Netherlands aliens police (*vreemdelingenpolitie*) requested the Return Facilitation Unit (*Unit facilitering terugkeer* – “UFT”) of the Immigration and Naturalisation Department of the Ministry of Justice to request the Algerian consular authorities in the Netherlands to issue a laissez-passer in the name of Mohammed Ramzy for the purposes of the applicant's expulsion to Algeria. On 2 October 2001, the applicant was presented in person at the Algerian mission in the Netherlands and the latter indicated that the application for a laissez-passer would be examined.

52. On 20 October 2002, the applicant having been arrested in the Netherlands on 12 June 2002 in the meantime, the Algerian authorities informed the UFT that the applicant was not known in Algeria under the name Mohammed Ramzy.

53. On an unspecified date and in the light of new documents made available by the applicant, the UFT sent a second request for a laissez-passer in the name of Mohammed Ramzy to the Algerian authorities. After the applicant's presentation in person on 26 October 2004, the Algerian authorities agreed to investigate the new request. On 14 February 2005, the Algerian authorities informed the UFT again that no such person under the name of Mohammed Ramzy was known in Algeria. An informal meeting in May 2005 between officials of the Netherlands Ministry of Foreign Affairs and officials of the Algerian Embassy in the Netherlands did not alter the outcome of the request for a laissez-passer for the applicant.

54. By letter of 12 July 2005, the Netherlands authorities presented the applicant in writing to the Algerian authorities using another undisclosed identity based on a copy of a birth certificate. In accordance with the customary practice, the letter further stated that the person concerned had previously been presented under the name Ramzy. The Algerian authorities again agreed to investigate the request. On 26 September 2005, the Algerian authorities informed the UFT that the person concerned was known under this identity and was an Algerian national. They subsequently issued a laissez-passer in this name. To date, this laissez-passer has not been used by the Netherlands authorities.

F. The AIVD official report of 13 November 2006

55. On 13 November 2006 the AIVD drew up a new official report on the applicant, which reads:

“In the framework of the exercise of its statutory task, the General Intelligence and Security Service holds information from reliable sources from which it appears that Mohammed Ramzy alias ... alias, born on ... 1982 or on ... 1975 in... (Algeria) is staying or has stayed in Algeria after the issuance of the official report of 14 July 2004 with the reference 21xxxxx/01.”

56. This official report was submitted by the Government to the Court on 11 December 2006 and, at the Court's request, comments on this report were filed on behalf of the applicant on 30 January 2007 by his representatives.

G. Further relevant developments

57. On 27 May 2008, the Court declared the application admissible and, by letter of 3 June 2008, informed the parties that it was considering the possibility to take oral evidence from the applicant as well as from those persons on the basis of whose information the AIVD official report of 13 November 2006 had been drawn up.

58. On 14 October 2008, having considered the parties' response to its letter of 3 June 2008, the Court decide not to proceed to a fact-finding mission and invited the parties to submit any facts or circumstances not submitted previously which they found of relevance for the Court's examination of the case. The parties' respective responses to this letter were filed on 21 November 2008.

59. On 7 May 2009 the AIVD drew up a new official report on the applicant, which reads in its relevant part:

“In the framework of the exercise of its statutory task, the General Intelligence and Security Service holds information from reliable sources from which it appears that Mohammed Ramzy alias ... alias, born on ... 1982 or on ... 1975 in... (Algeria), after the issuance of the official report of 13 November 2006 with the reference

27xxxxx/01 ..., is staying in Algeria or has stayed there and has made a normal life for himself there. ...”

On 30 October 2009, the Government submitted this official report to the Court.

60. By letter of 19 November 2009, the Court informed the parties of its decision not to hold a hearing on the merits and invited them to submit any final observations on the merits of the case which they wished to bring to the Court's attention. In addition it requested the applicant's representatives to inform the Court whether the applicant had ever left the Netherlands since 15 July 2005 and factual information about the nature of their contacts with the applicant.

61. The applicant's representatives filed, *inter alia*, the factual information requested by the Court in their submissions of 19 January and 11 February 2010. On 5 March 2010, the Government filed comments on the factual information supplied by the applicant's representatives.

THE LAW

PRELIMINARY QUESTION

62. In their submissions of 19 January and 11 February 2010, the applicant's representatives informed the Court that they were unable to answer the question whether the applicant had ever left the Netherlands since 15 July 2005 as they were not aware of the applicant's whereabouts. The last contact one of them had had with the applicant had taken place in 2007 when the content of the AIVD official report had been read out and translated to the applicant in a telephone conversation. Fearing direct contact with the Netherlands authorities and the consequences of the exclusion order imposed on him, the applicant had maintained contact with his representatives mainly but not exclusively via a friend, who had requested to remain anonymous. The last time this friend had contacted the applicant's representatives to enquire about the state of proceedings was in May 2008. Having been authorised by the applicant to represent him in the proceedings before the Court, the applicant's representatives did not, however, see this as a reason to discontinue the proceedings before the Court.

63. The Government submitted that the information provided by the applicant's representatives as regards their contacts with the applicant can only lead to the conclusion that the application must be struck out of the Court's docket. The last direct contact between the applicant and his counsels, by telephone only, dated back to 2007 and the last indirect contact with an unspecified acquaintance occurred in May 2008. In the

Government's view, there are no convincing reasons for the applicant's failure to contact his representatives, directly or indirectly.

64. The Court is of the opinion that the applicant's failure to keep his representatives informed of his whereabouts or at least to provide them with a means to contact him must be taken as indicating that he has lost interest in pursuing his application. As regards the explanation that the applicant would fear expulsion to Algeria, the Court notes that on 15 July 2005 it has indicated to the Government of the Netherlands, under Rule 39 of the Rules of Court, that the applicant should not be deported to Algeria until further notice, and it has not appeared and it has not been argued that the Government would have disrespected this decision. Furthermore, although it is true that the applicant did authorise Mr Ferschtman, Mr Wijngaarden and Ms Ficq to represent him in the proceedings before the Court, it considers that this authority does not by itself justify pursuing the examination of the case. Given the impossibility of establishing any communication with the applicant, the Court considers that his three representatives cannot now meaningfully pursue the proceedings before it (see, *mutatis mutandis*, *Sevgi Erdoğan v. Turkey* (striking out), no. 28492/95, 29 April 2003 and *Ali v. Switzerland*, judgment of 5 August 1998, *Reports of Judgments and Decisions* 1998-V, p. 2149, § 32).

65. In these circumstances, the Court concludes that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, the Court finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of the application by virtue of that Article.

66. Accordingly, the case should be struck out of the list. The indication made to the Government under Rule 39 of the Rules of Court (see above § 4) will remain in force until the present judgment becomes final or until the Panel of the Grand Chamber of the Court accepts any request by one or both of the parties to refer the case to the Grand Chamber under Article 43 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President