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

THIRD SECTION

CASE OF SULTANI v. FRANCE

(Application no. 45223/05)

JUDGMENT
[Extracts]

STRASBOURG

20 September 2007

FINAL

20/12/2007

In the case of Sultani v. France,

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

Boštjan M. Zupančič, *President*,
Corneliu Bîrsan,
Jean-Paul Costa,
Elisabet Fura-Sandström,
Alvina Gyulumyan,
Egbert Myjer,
Isabelle Berro-Lefèvre, *judges*,
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 30 August 2007,

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

PROCEDURE

1. The case originated in an application (no. 45223/05) against the French Republic lodged with the Court under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Afghan national, Mr Mohammad Sultani ("the applicant"), on 19 December 2005.

2. The applicant was represented by Mr E. Hamot of the Paris Bar. The French Government ("the Government") were represented by their Agent, Ms E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicant alleged, *inter alia*, a violation of Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention, in view of the risks he would run if he were returned to Afghanistan and of the conditions of his deportation.

4. On 20 December 2005 the President of the Chamber to which the case had been assigned 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 to refrain from deporting the applicant pending the Court's decision. On 5 January 2006 the Court decided to extend the interim measure indicated under Rule 39 until further notice.

5. On 22 May 2006 the Court decided to communicate the application to the Government and to give it priority (Rule 41). In accordance with Article 29 § 3 of the Convention, it decided that the admissibility and merits of the case would be examined at the same time.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1985 and lives in Paris.

8. The applicant comes from the Afghan province of Baghlan and is a member of the Tajik ethnic group. His family were land-owning farmers. His father was a member of the communist party and was a party representative in Ghuri. After the fall of the communist regime of Mohamad Najibullah, this political involvement by a Tajik was regarded as high treason. In particular, the applicant's family faced hostility from a former warlord who had gone on to become a prominent local figure, Arab Nourak. The latter, a Pashtun and a former member of Jamiat-e Islami (an Islamic political party), appropriated the family's possessions in 1992. At the end of 1992 a grenade was thrown into the applicant's family home, and he sustained injuries to the head and thigh. The applicant claimed to have scars on his body as a result of that event. His father allegedly received a knee injury. The case file included a medical certificate drawn up on 7 April 2006 by a doctor at the Medical Committee for Exiles at the Bicêtre Hospital, Paris, who concluded:

> "... Mr Sultani informs me that he is from the Baghlan region. Following a conflict between his father and a local chief, a grenade was thrown at the family home. Mr Sultani states that he sustained injuries to the head and left thigh.
>
> In the course of the examination, several scars on the left parietal area of the scalp and a scar covering about a third of the outer left thigh were found.
>
> ...
>
> The findings of the clinical examination are compatible with the patient's statements."

9. The applicant and his family left Afghanistan for Pakistan, staying first in Sorkhab, then in Quetta.

10. The applicant claimed that he arrived in France in December 2002. On 25 March 2003 he applied for asylum. By a decision of 6 August 2003, the French Office for the Protection of Refugees and Stateless Persons ("the OFPRA") refused his application on the following grounds:

> "The applicant, who was questioned at the Office, referred to land disputes between his father and a local commander and stated that he had been obliged to leave his country of origin in 1991 or 1992. He initially lived in a camp on the Afghan-Pakistani border for several years before settling with his family in Quetta.
>
> Even supposing they were substantiated, and given the grounds having occasioned them, the time that has elapsed and the political changes that have since occurred in Afghanistan, the circumstances described cannot, however, justify the applicant's

refusal to return and to claim protection from the current authorities in his country of origin."

11. That decision was upheld on 13 May 2004 by the Refugee Appeals Board. On 5 July 2004 the applicant was directed to leave French territory.

12. In December 2004 the applicant's family was repatriated from Pakistan to their village of origin. They again encountered hostility from Arab Nourak who, supported by the new governor of Baghlan Province (also a member of a radical Islamic party and, like Mr Nourak, an ethnic Pashtun), refused to return their land. According to the applicant, his family were again obliged to seek refuge in the Pakistani town of Quetta. The applicant alleged that he had heard nothing from his relatives since that time.

13. In the light of those events, the applicant alleged that he had intended to lodge a fresh application for asylum in France, but that he had been waiting to obtain further news from his family.

14. On 21 September 2005 the applicant was arrested at the Square de Verdun in Paris, a place where Afghan nationals newly arrived in France frequently gathered. He was released on that occasion.

15. On 14 December 2005 he was again arrested at the same location with other Afghan nationals. He alleged that the French police had carried out targeted arrests based on the nationality of those concerned, with a view to organising a "grouped flight" to deport them.

16. On the same day he was made the subject of a prefectoral removal order, of a decision stipulating the country of destination and of an administrative detention order.

17. The applicant applied to the Paris Administrative Court to have set aside the prefectoral order of 14 December 2005 and the separate decision naming Afghanistan as the country of destination. By a judgment of 17 December 2005, the judge appointed by the President of the Administrative Court dismissed the applicant's request. The applicant appealed to the Paris Administrative Court of Appeal.

18. On 16 December 2005, during a hearing with the liberties and detention judge at the Paris *tribunal de grande instance*, the applicant stated: "I do not wish to return to my country of origin because I am afraid for my life. I have new information to include in my request for political asylum. I would like to see a doctor."

19. In an order issued on the same date, the liberties and detention judge ordered that the administrative detention be extended by fifteen days, until 5 p.m. on 31 December 2005. The judge also noted:

"the detainee raised complaints of a medical nature... and requested political asylum;

...

We order that the detainee be examined by a doctor from the forensic medicine unit at the Hôtel Dieu Hospital in order to determine whether his state of health is compatible with the detention and expulsion order."

20. On 19 December 2005 the applicant and three other Afghan nationals (G., S. and D.) lodged an application with the Court, together with a request for application of Rule 39 of the Rules of Court.

21. On 20 December 2005 the Paris Police Commissioner's Office informed the applicant that he had been refused leave to remain, in a document dated 16 December 2005 and worded as follows:

"You were arrested on 14 December 2005 and found to be in contravention of the legislation on aliens; you have now requested that your application for asylum be re-examined.

This request, submitted out of time and in support of your [continued] detention, is clearly intended to circumvent an order for removal from French territory.

In consequence, and in accordance with Articles L. 742-3, L. 742-6 of the Code on the conditions of entry and residence of aliens and the right of asylum, I refuse to grant you leave to remain. ...

The re-examination of your request for refugee status will therefore be given priority treatment by the French Office for the Protection of Refugees and Stateless Persons under Articles L. 313-3, L. 313-5, L. 313-6, L. 313-7, L. 313-8, L. 313-9, L. 313-10 of the above-mentioned Code.

Finally, an administrative measure of expulsion by prefectoral order may be taken in application of Articles L. 511-1 and L. 512-1 of the above-mentioned Code; however, this may not be enforced prior to the Office's decision (Article L. 741-5 of the above-mentioned Code)."

22. On the same date the acting President of the Second Section decided to indicate to the French Government, under Rule 39 of the Rules of Court, that it was desirable to refrain from deporting the applicant to Afghanistan. He also invited the Government to keep the Court informed of the applicant's situation with regard to the proceedings on his asylum application and the medical examination ordered by the liberties and detention judge. In reply, the Government indicated that the applicant had been released from the Vincennes Administrative Detention Centre on 21 December 2005 and was free to circulate on French territory.

23. On 20 December 2005 a grouped flight left France for Afghanistan.

24. On 5 January 2006 the Court decided to extend the interim measure indicated under Rule 39 until further notice.

25. On 6 January 2006 the prefecture summoned the applicant to an interview, scheduled for 13 January, to examine his administrative situation with a view to enforcement of the removal measure.

26. On 9 January 2006 the OFPRA registered a second asylum application from the applicant. On 10 January 2006 the Director General of the OFPRA refused it on the following grounds:

> "In support of his application,
>
> Mr Noor Mohammad SULTANI
>
> Refers to the general situation in Afghanistan.
>
> In itself, however, this evidence is not sufficient to substantiate the fears of persecution or the existence of serious threats within the meaning of Articles L. 711-1 and L. 721-1 of the Code on the conditions of entry and residence of aliens and the right of asylum. Accordingly, it is not admissible.
>
> He submits a statement from an association for refugees.
>
> This, however, is a new item of evidence which refers to events that were previously argued. Accordingly, it is not admissible.
>
> He further claims that his family has again been persecuted by the henchmen of Arab Nourak, an influential local military leader in the Baghlan region, since their return to the Afghan territory. It is claimed that a cousin is currently being detained.
>
> However, the applicant's statements, which are brief and vague, are not supported by any credible or decisive evidence capable of proving that the alleged facts are true and that his fears are well-founded."

27. On 10 February 2006 the applicant appealed against that decision to the Refugee Appeals Board.

28. On 22 March and 11 May 2006 the applicant submitted the additional information requested by the Court and confirmed that he wished to pursue the application.

29. On 4 July 2006 the Paris Administrative Court of Appeal dismissed the applicant's appeal against the Paris Administrative Court's judgment of 17 December 2005. It found, *inter alia*:

> "*On the lawfulness of the removal order:*
>
> ... Firstly, contrary to what is alleged by Mr Sultani, the expulsion order dated 14 December 2005, which sets out the considerations of law and of fact on which it is based, is supported by sufficient grounds; the prefect, who indicated that the appellant's situation had been scrutinised, particularly with regard to his right to family life, examined the appellant's personal situation;
>
> Secondly, the disputed removal order, the sole purpose of which is the removal from the territory of Mr Sultani, is not collective in nature; in any event, it does not therefore contravene the requirements of Article 4 of Protocol No. 4 to the European Convention on Human Rights ... which prohibits collective expulsions; nor can Mr Sultani validly rely either on the provisions of Article 6 of the Convention ..., which are not applicable to appeal judgments against removal orders, or on the provisions of Article 1 of Protocol No. 7 to the said Convention, published by decree

of 24 January 1989, which are applicable only to aliens residing lawfully on the territory of a State;

On the lawfulness of the additional decision naming the country of destination:

Mr Sultani's request for political asylum has been ... refused by decisions of the French Office for the Protection of Refugees and Stateless Persons and the Refugee Appeals Board; his second request for asylum, submitted on 9 January 2006, was rejected by a new decision by the Office on 10 January 2006; although Mr Sultani refers to the risk that he would run in the event of a return to Afghanistan, given the situation of civil war that exists in that country, that circumstance is not in itself capable of substantiating the risks alleged by the appellant in the event of return to his country of origin; he has not submitted any evidence concerning his personal situation which would make it possible to consider as substantiated [his argument] that there are circumstances which would constitute a legal impediment to expulsion to his country of origin; ..."

...

THE LAW

...

II. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 4 TO THE CONVENTION

69. The applicant complained of a violation of Article 4 of Protocol No. 4 to the Convention, which provides:

"Collective expulsion of aliens is prohibited."

70. The Government contested this view.

...

B. The merits

1. The parties' submissions

(a) The Government

72. According to the Government, the complaint under Article 4 of Protocol No. 4 was devoid of purpose in so far as the applicant was still on French territory when he submitted the complaint.

73. The Government further claimed that the use by the French authorities of specific flights to transport a number of aliens to their countries of origin was based on practical considerations and could not be

analysed as a practice of collective expulsion within the meaning of that provision. The introduction of such flights had been made necessary by the difficulty, and even impossibility, of obtaining seats on scheduled flights towards certain destinations, especially to countries to which there were few scheduled services from French airports.

74. The Government emphasised the legislative guarantees and the supervision exercised by the administrative courts over decisions to expel illegal immigrants, which were always examined on the basis of detailed individual circumstances, and particularly in the light of the alleged risks of a violation of Article 3 in the event of return to the country of origin. Thus, the administrative courts would have no choice but to set aside expulsion orders based on nationality or ethnic origin.

75. The Government considered that in the instant case the French authorities had complied with the Court's case-law (they referred to *Andric v. Sweden* (dec.), no. 45917/99, 23 February 1999, and *Čonka* [*v. Belgium*, no. 51564/99, ECHR 2002-I]) since no official statement announcing an intention on the part of the French authorities to conduct collective expulsions had preceded the introduction of reserved flights to Afghanistan and the applicant's request had been responded to in an individualised and personal decision. When he was arrested on 21 September, and again on 14 December 2005, he was notified of a removal order issued against him on 14 December 2005, which concerned him personally and was a consequence of the direction to leave French territory issued to him on 5 July 2004, that is, more than a year previously.

76. Finally, the Government drew attention to the scale of the margin of appreciation enjoyed by the States in organising operations to expel aliens who were unlawfully present on French territory.

(b) The applicant

77. The applicant submitted that in a large number of cases "grouped flights" were an expedient enabling the Government to return aliens to countries in which the major airlines no longer wished to land for security reasons. He noted that direct flights no longer existed to Somalia, Ethiopia and Afghanistan. In this connection, he stated that the Ministry of Foreign Affairs advised French nationals against travelling to Afghanistan. He also noted that since the "joint return operations" had proved excessively onerous, the police were governed by profitability objectives and were subject to considerable pressure when preparing such flights.

78. Contrary to what was argued by the Government, there was no effective individual and personalised examination of the risks in the event of return to the country of origin and French law provided no effective means of preventing the administrative authorities from carrying out collective expulsions. In this connection, the applicant emphasised the practical difficulties faced by a foreigner seeking to describe a risk of ill-treatment in

the event of his or her removal from French territory. Furthermore, the administrative courts did not carry out a genuine individualised check of the lawfulness of the expulsion orders, since they merely validated the negative decisions issued by the OFPRA or the Refugee Appeals Board ... Finally, the administrative courts used the claim that an individualised removal order was issued in respect of every foreigner as a pretext for systematically dismissing arguments alleging a violation of Article 4 of Protocol No. 4. The individual decision, which was purely formal in nature, thus prevented acknowledgment of the collective nature of the removal.

79. In support of his allegations concerning the collective nature of the impugned expulsion order, the applicant submitted several witness statements asserting that the police had arrested a group of Afghans on 14 December 2005. On that occasion, the police officers had allegedly carried out a "selection" by asking the people in the Square de Verdun to specify their nationality, and then arresting only those who were Afghan.

80. The applicant further emphasised the importance of the circumstances preceding the "grouped flight" of 20 December 2005. He claimed that the flight in question had been planned: the Minister of the Interior had announced that it was imminent. Thus, as early as 27 July 2005, one day after a first Anglo-French "charter" flight expelling forty illegal Afghan immigrants, the Minister of the Interior had indicated that other flights were planned. The applicant annexed to his observations an article published on the website of *Le Monde* newspaper on 6 December 2005, quoting remarks made by the Minister of the Interior to the National Assembly: "The Prime Minister and I are currently negotiating grouped flights with Iraq, Afghanistan and Somalia, in agreement with our English friends" in order to "return to their countries those people who believe that England is a new Eldorado and who end up in the Pale of Calais with no hope of finding either accommodation or employment."

2. The Court's assessment

81. The Court draws attention to its case-law, whereby collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien in the group. Thus, the fact that a number of aliens are subject to similar decisions does not in itself lead to the conclusion that there is a collective expulsion if each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis (see *Andric*, cited above).

82. The Court further points out that, in order for a decision or measure favourable to the applicant to be sufficient to deprive him of his status as a victim, the national authorities must have acknowledged, either expressly or

in substance, and then afforded redress for, the breach of the Convention (see, among many other authorities, *Lüdi v. Switzerland*, 15 June 1992, § 34, Series A no. 238; *Amuur v. France*, 25 June 1996, § 36, *Reports* [*of Judgments and Decisions*] 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Labita v. Italy* [GC], no. 26772/95, § 142, ECHR 2000-IV). It is clear that these conditions were not fulfilled in the instant case, since it appears that the reason the applicant was not expelled on the collective flight of 20 December 2005 was because of the interim measure adopted by the Court on the basis of Rule 39 of its Rules of Court. The Government are therefore mistaken in alleging that the complaint under Article 4 of Protocol No. 4 has become devoid of purpose.

83. With regard to the nature of the examination conducted by the national authorities, the Court notes that, in the instant case, the applicant submitted two asylum requests to the French authorities, including one subsequent to the removal order issued against him. Those requests enabled him to set out the arguments against his expulsion to Afghanistan before the OFPRA and, in the context of the first request, the Refugee Appeals Board. In their decisions rejecting those requests, and particularly the request of 10 January 2006, the domestic authorities took account not only of the overall context in Afghanistan, but also of the applicant's statements concerning his personal situation and the risks he would allegedly run in the event of a return to his country of origin. Accordingly, the Court notes that the applicant's situation was indeed examined individually and provided sufficient grounds for the contested expulsion (contrast, *Čonka*, cited above).

84. In those circumstances, the Court considers that the applicant's deportation from French territory would not amount to a violation of Article 4 of Protocol No. 4.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

...

3. *Holds* that there would not be a violation of Article 4 of Protocol No. 4 to the Convention if the decision to deport the applicant to Afghanistan were to be put into effect.

Done in French, and notified in writing on 20 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Registrar	Boštjan M. Zupančič President