

ECtHR - Sultani v France, Application No. 45223/05

Country of Applicant:

Afghanistan

Date of Decision:

26-09-2007

Citation:

Application No. 45223/05

Court Name:

European Court of Human Rights - Second Section

Keywords:[Individual threat](#) [1][Personal circumstances of applicant](#) [2][Inhuman or degrading treatment or punishment](#) [3][Right to remain pending a decision \(Suspensive effect\)](#) [4]**Relevant Legislative Provisions:**

International Law

International Law > [1951 Refugee Convention](#) [5]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6]**Headnote:**

No violation of Articles 3 of the Convention and Article 4 of Protocol 4 should the Applicant be removed to Afghanistan. This assessment was made in light of the personal circumstances of the Applicant and the overall context in Afghanistan.

Facts:

The Applicant, an Afghan national, is a member of the Tajik ethnic group. His father was a Communist party representative in Afghanistan where, after the fall of the Communist regime, the involvement of a Tajik in such activities was regarded as high treason. In particular, the Applicant's family encountered hostility from a former warlord who went on to become a prominent local figure and who appropriated the family's possessions. The house of the Applicant's family was the target of a grenade attack in which the Applicant was wounded in the

head and thigh. The Applicant and his family left Afghanistan for Pakistan. The Applicant stated that he entered France at the end of 2002. He applied for asylum in March 2003. The French Office for the Protection of Refugees and Stateless Persons (OFPRA) rejected the application and its decision was upheld by the Refugee Appeals Board. In July 2004 the Applicant was directed to leave French territory. His family were returned from Pakistan to their village of origin but, according to the Applicant, were again forced into exile.

On 14 December 2005 the Applicant was arrested in Paris together with other Afghan nationals. He maintained that the French police had carried out targeted arrests based on the nationality of those arrested, with a view to organising a 'grouped flight' to deport them. The same day, an order was issued for the Applicant's removal to Afghanistan, together with an administrative detention order. He applied to the Paris Administrative Court to have these decisions set aside; his application was rejected on 17 December 2005. The Applicant appealed. On 16 December the authorities had adopted a decision refusing him leave to remain. On 19 December the Applicant lodged an application with the Court together with a request for application of Rule 39 of the Rules of Court. The following day, under Rule 39, the President of the relevant Chamber of the Court indicated to the French Government that it was desirable to refrain from deporting the Applicant to Afghanistan. A grouped flight left France for Afghanistan on 20 December, without the Applicant. The Applicant was released. On 5 January 2006 the Court extended the interim measure indicated under Rule 39 until further notice. The following day the Applicant was summoned by the French authorities to an interview aimed at examining his administrative situation with a view to enforcement of the removal measure. The Applicant lodged a second application for asylum which was rejected under an expedited procedure. He appealed to the Refugee Appeals Board. The judgment of the Administrative Court was upheld on appeal.

Decision & Reasoning:

Article 3

Exhaustion of domestic remedies: Neither the appeal against the judgment of the Administrative Court upholding the decisions to remove the Applicant nor the appeal to the Refugee Appeals Board had suspensive effect. Where an Applicant complained that his removal would expose him to treatment contrary to Article 3, appeals which did not have suspensive effect were not 'effective' within the meaning of Article 35 § 1 of the Convention. The preliminary objection was therefore dismissed.

Removal procedure: The Applicant's arguments had been examined in depth by the refugee agencies and the administrative courts. As to the risks he alleged if he were to be removed to Afghanistan, the Applicant had demonstrated only the existence of an overall situation of violence in that country, without demonstrating to what extent he personally faced a risk of repression.

The Court holds there would not be a violation of Article 3 if the deportation decision were to be enforced.

Article 4 of Protocol No. 4

The fact that the Applicant had not been deported on the collective flight of 20 December 2005 was due to the interim measure indicated by the Court on the basis of Rule 39 of its Rules of Court. The Government were therefore wrong to argue that the complaint under Article 4 of Protocol No. 4 had become devoid of purpose.

The Applicant had lodged two asylum applications with the French authorities, in which he had the

opportunity to set forth his arguments as to why he should not be deported to Afghanistan. The domestic authorities had taken account of the overall context in Afghanistan and of the Applicant's statements concerning his personal situation and the risks he would allegedly run if returned to his country of origin. Accordingly, the Applicant's individual circumstances had been examined and that had provided sufficient justification for his deportation.

The Court held that the deportation of the Applicant to Afghanistan would not violate Article 4 of Protocol 4 of the Convention.

Outcome:

No violations of Article 3 of the Convention and Article 4 of the Protocol 4

Observations/Comments:

The Court applied 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 before the Court not to remove the Applicant.

Case Law Cited:

ECtHR - *Sardinias Albo v Italy*, Application No. 56271/00

ECtHR - *Penafiel Salgado v Spain*, Application No. 65964/01

ECtHR - *Dalban v. Romania [GC]*, Application No. 28114/95

ECtHR - *Lüdi v. Switzerland*, Application No. 12433/86

ECtHR - *Khachiev and Akaïeva v Russia*, Applications No. 57942/00 and 57945/00

ECtHR - *Aksoy v Turkey*, Application No. 21987/93

[ECtHR - *Salah Sheekh v The Netherlands*, Application No. 1948/04](#), [7]

ECtHR - *Akdivar v Turkey*, Application No. 21893/93

ECtHR - *Labita v. Italy [GC]*, Application No. 26772/95

ECtHR - *Andric v Sweden*, Application No. 45917/99

ECtHR - *Amuur v. France*, Application No. 19776/92

ECtHR - *Conka v Belgium* (Application no. 51564/99)

ECtHR - *Cruz Varas & Others v Sweden* (Application no. 15576/89)

[ECtHR - *Maaouia v France*, Application no. 39652/98](#) [8]

Attachment(s):



Authentic Language:

French

State Party:

France

National / Other Legislative Provisions:

France - Ceseda (Code of the Entry and Stay of Foreigners and Asylum Law)

France - Decree no. 2004-814 of 14 August 2008 on the Office for the Protection of Refugees and Stateless Persons - Art 1

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A205

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A56

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A71

[5] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[6] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[7] <https://www.asylumlawdatabase.eu/en/content/ecthr-salah-sheekh-v-netherlands-application-no-194804-0>

[8] <https://www.asylumlawdatabase.eu/en/content/ecthr-maaouia-v-france-application-no-3965298>

[9]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20SULTANI%20v.%20FRAN>