

EUROPEAN COURT OF HUMAN RIGHTS
FIRST SECTION
ATT. MRS AGNES VAN STEYN
COUNCIL OF EUROPE F-67075
STRASBOURG CEDEX FAX: 00
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**RE: YOUR LETTER OF 8 NOVEMBER 2001 /APPLICATION NO.
43157/98 SISON V. THE NETHERLANDS**

Nieuwegein, 29 November 2001

Dear mrs Van Steyn,

In good order I received your above-mentioned letter, for which I thank you very much. In reply I inform you of the following.

With all due respect I have to disagree with the assessment as it is contained in your letter of November 8^h 2001. I am aware of the fact that the European Convention does not as such grant the right of an alien to reside in a particular country. However, I humbly submit that Mr. Sison did not claim the right to reside in the Netherlands as an alien. Rather, Mr. Sison requests to be admitted as a refugee and to be granted a permit to stay, now that it has been established beyond doubt that there is no possibility to expel him.

As I already argued in Application no. 43157/98, it would detract from an effective protection of human rights in situations like this to distinguish between the right not be expelled on the one hand and the right to be admitted on the other hand. For, if a person may not be expelled -because there is no other country where he or she can go and because he or she upon return to the country of origin would run the real risk of being submitted to a treatment in violation of Article 3 of the European Convention-, but at the same time the person concerned is not admitted as a refugee and is refused a permit to stay, that person legally becomes a non-person. It needs little explaining that the creation of such a legal vacuum with respect to a human being has far-reaching consequences for the person concerned both psychologically and otherwise, for instance in the field of social security and the possibility to work.

As I equally pointed out in the above-mentioned application, it constitutes an established policy of the Netherlands to admit a foreigner as a refugee, if a situation occurs of founded fear for persecution while no other country is prepared to admit him or her, and similarly it constitutes an established policy to grant a foreigner a permit to stay without limitations, if he or

she upon return to the country of origin runs the real risk of being submitted to a treatment in violation of Article 3 of the European Convention.

As far as the reason underlying these policies is concerned I cannot but conclude that they are precisely aimed at preventing the inhuman situation whereby somebody is legally degraded to a non-person. forced to live in a legal vacuum.

Against the background of such sound general policies I fall understand why the Dutch authorities insist on making an exception with respect to Mr. Sison by placing him in the position of a non-person. In my view, placing somebody in such a position itself amounts to a violation of Article 3 of the European Convention.

In summary, it constitutes the core claim of Application no.431 57/98 that in the circumstances his case Mr. Sison has to be admitted as a refugee and to be granted a permit to stay, irrespective of the opinions the Dutch authorities concerned may hold about the person and/or the political activities of Mr. Sison, particularly also because in the circumstances of Mr. Sison's case the absolute character of Article 3 of the European Convention militates against any balancing of interests of the Contracting Party against those of the applicant.

I respectfully request the European Court of Human Rights to take the foregoing into account in making its decision on the admissibility of the present case.

Yours sincerely, with kind regards,

Pro F. Dr. Fried van Hoof: