

UNCHR POSITION ON PROF. SISON'S ASYLUM APPLICATION, 25 Feb. 1991 & 28 Oct. 1992

Note: This submission of the UNHCR to the Adviescommissie Vreemdelingenzaken [Advisory Commission on Aliens' Affairs] on 25 February 1991 was supplemented on 28 October 1992 as a submission to the Raad van State. This opinion ["zienswijze"] of the UNHCR, submitted by Mr. Job van der Veen, Head of UNHCR Sub-Office in The Netherlands, was conveyed with a cover letter to Mr. J.M. Sison on 2 November 1992. This opinion was cited by the Raad van State in its decision on 17 December 1992 that nullified the decision of the State Secretary of Justice which had claimed that Mr. Sison was to be classified under 1F exclusion clause of the Refugee Convention. The Raad van State recognized Mr. Sison as a political refugee with a well-grounded fear of persecution under 1A of the Refugee Convention.

This UNCHR position was confirmed by the UNHCR in a letter to the Raad van State dated 11 January 1995 signed by J.C. Consolato, Head of UNHCR L.O. in The Hague.. Again the Raad van State in its decision of 21 February 1995 cited this position of the UNHCR in nullifying once again the negative ruling of the State Secretary of Justice and once more recognizing and declaring Mr. Sison as a political refugee under 1A of the Refugee Convention, stating that the exclusion clause 1F of the Refugee Convention cannot be invoked against him. He was also declared as one who enjoys the protection of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (EVRM).

Please note also that the UNHCR is the body responsible for the supervision of the application of the Refugee Convention (cf. Article 35 of the 1951 Refugee Convention and Article II of the 1967 Protocol [of New York that amended it]).

(Unofficial translation from the Dutch original)

Opinion of the UNHCR for the Advisory Commission on Aliens' Affairs, 25 February 1991 (with additional notes dated 28 October 1992)

1. This opinion is based on the pieces [of information] in which the UNHCR has had access. The possibility that the opinion might be different if the UNHCR also had access to confidential pieces nos. 27 to 34 can of course not be ruled out.

Fear of persecution

2. The asylum seeker states in paragraphs I.1 - 1.8 in his "Request for reconsideration and amendment" of 9 August 1990, in a detailed and credible manner, that he fears for persecution.

Well-grounded reasons for the fear

3. The Dutch department of Amnesty International has given an opinion on the case in a letter dated 17 October 1990 addressed to the Ministry of Justice. On page 5 it is

stated that "legal (...) organizations are publicly (...) accused of being a cover for the illegal CPP and NPA". "The representatives and members of these organizations undergo the direct risk of losing their lives through these accusations". On page 8 it is stated that in November 1986 the first chairman of the People's Party was murdered and that seven leading members of this party since then have been threatened with death or have even survived acts of attempted murder.

4. From the pieces [of information] it comes out that the asylum seeker is the founder of the People's Party and that this party is a legal party. The campaign carried out against the asylum seeker in his country of origin, as described in pages 8 - 10 of the letter of Amnesty International, demonstrates sufficient consonance with the situation of other representatives and members of the People's Party and other legal organizations, described above in paragraph 3, that it can be established that the asylum seeker's fear - regrettably ["helaas"] - is well-grounded.

Protection by the authorities

5. The sad human rights situation in the asylum seeker's country of origin is extensively described by Amnesty International. At best, one can state that the authorities are not able to protect people like this asylum seeker. There are however also strong indications - also presented by Amnesty International - that parts of the government apparatus - the armed forces - are involved in the campaigns against people like the asylum seeker. It can therefore be concluded that the government is not able to effectively protect these people against persecution and even that the government most probably is co-responsible for this persecution.

Prosecution

6. Now that it has been established that the asylum seeker has well-grounded fear for persecution, it is no longer relevant that a case of prosecution - at any rate a judicial preliminary investigation ["gerechtelijk vooronderzoek"] - awaits him in his country of origin. Beyond what is needed, the UNHCR can refer to the recent report of the Main Office in London of Amnesty International, entitled "Unfair Trials" (copy is attached) from which it can be concluded that in cases against people who are suspected of being members of the CPP and/or the NPA:
 - lawyers are intimidated and in a number of cases even murdered (p. 8, paragraph 3.3)
 - witnesses refuse to come forward out of fear for reprisal by state intelligence services, while government programs to protect witnesses turn out to be of little effect ["weinig effectief"] (page 8, paragraph 3.3);
 - there are indications that the armed forces produce so-called "professional" witnesses (page 6, paragraph 2.2);
 - fabricated or planted evidence are said to be made use of (page 5, paragraph 2.1);
 - judges are threatened and even murdered and therefore there is doubt over the independence of the judicial authority (page 7, paragraph 3.2);
 - that even when the judge is independent, despite the above-stated points, for example, he acquits a suspect for lack of credible proof, this can lead to the "disappearance" of such acquitted person (page 5, paragraph 2.1).

Basis for Exclusion 1.F (b)

7. Article 1.F of the Refugee Convention stipulates that the Convention is not applicable (and that the concerned person is therefore not a refugee) if "there are serious reasons for considering that:
(...)
b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (...)"
8. The asylum seeker was the chairman of the Central Committee of the CPP from 1968 to 1977. From this function he could possibly be considered responsible for the activities of the NPA. If the NPA during this period is supposed to have committed crimes in the meaning of Article 1.F (b) of the Refugee Convention, the exclusion clause could have been applicable to the asylum seeker. The asylum seeker indeed was imprisoned for 9 years without any due process. Accordingly, he could have profited from a general amnesty. He asserts ("beweert") - and there are no strong indications that can be found in the accessible pieces [of information] that make the contrary assumable - that he after his release has no longer been a member or nor has he been linked ("verbonden") with the CPP and/or the NPA.
9. When someone has committed such a crime (or was directly responsible for the commission of such crime) so that the exclusion clause of Article 1.F (b) is applicable, then there is a presumption that this exclusion from the refugee status is continuing, even if the fear for persecution only emerges later. When a long time has passed, there is only a reason in exceptional cases to assume that the concerned person again is to be considered for recognition as a refugee. In cases in which the concerned person has profited from an amnesty there is indeed a presumption that the exclusion clause is no longer applicable, unless it can be demonstrated that the concerned person still tends towards criminal behavior. Regarding this, it can be noted that, for example in extradition law, crimes for which amnesty has been issued are not to be taken up in extradition procedures.
10. Considering * that the asylum seeker after his release in 1986 indeed has no longer been involved with the CPP and/or the NPA, the UNHCR is of the opinion that the exclusion clause of Article 1.F (b) is not, in any case no longer, applicable. It is therefore not necessary to check ("na te gaan") whether the NPA has committed crimes up to 1977 which would make the exclusion clause of Article 1.F (b) applicable, nor whether the asylum seeker because of chairmanship of the Central Committee of the CPP could be considered directly responsible for such crimes.
11. The contested decision states that there are serious suspicions that the asylum seeker is co-responsible for attacks of the NPA. It may be assumed that he is suspected by the State Secretary of Justice - despite his denial - of having been again linked (or still being so linked) to the CPP and/or the NPA after his release in 1986.
12. The exclusion reasons must be restrictively interpreted ("uitgelegd"). Exclusion cannot be supposed ("verondersteld") if the concerned person gives a plausible declaration that he is not linked to the crimes that could lead to exclusion, unless there is hard evidence ("harde bewijslast") for the contrary. In the pieces [of information] accessible to the UNHCR in the case of this asylum seeker, there are

two indications ("aanwijzingen") that he might actually be ("dat hij eventueel weer verbonden zou kunnen zijn") linked again to the CPP and/or the NPA:

- his chairmanship of the Central Committee until 1977;
- the accusation of the armed forces in his country of origin, themselves accused of human rights violations.

DURING THE HEARING OF THE ACV [Advisory Commission for Aliens Affairs] TWO OTHER ELEMENTS CAME UP WHICH COULD BE INTERPRETED AS INDICATIONS THAT THE CONCERNED COULD BE CONSIDERED LINKED AGAIN WITH THE CPP AND/OR THE NPA:

- CITATIONS IN THE PRESS WHICH HAVE BEEN DECLARED AS PARTLY INCORRECT, IN WHICH IT IS SAID TO APPEAR THAT [HE HAS] SYMPATHY FOR (THE AIMS/ACTIVITIES OF) THE CPP AND OR THE NPA. ["DOOR BETROKKE ALS GEDEELTELIJK ONJUIST BESTEMPELDE CITATEN IN DE PERS, WAARUIT SYMPATHIE VOOR (DE DOELSTELLINGEN/AKTIVITEITEN VAN) DE CPP EN/OF DE NPA ZOU BLIJKEN:
- HIS PUBLIC PRONOUNCEMENTS IN MEETINGS ORGANIZED BY A DUTCH ASSOCIATION LINKED WITH THE CPP .*) ["ZIJN PUBLIEKELIJK SPREKEN OP DOOR EEN MET DE CPP VERBONDEN NEDERLANDSE VERENIGING GEORGANISEERDE BIJEENKOMSTEN."]

These indications are, both individually and collectively, not sufficient for assuming linkage to the CPP and/or the NPA, with as possible consequence the applicability of - for the asylum seeker - very far-reaching consequences of exclusion grounds of Article 1.F (b)

13. If, based on the confidential pieces, indeed it would be established that the asylum seeker has linked himself again with the CPP and/or the NPA, still the UNHCR refers to the following. Article 1.F (b) stipulates that only someone who "has committed" a definite crime is excluded. Membership in a movement that has committed such crimes is accordingly not in itself sufficient to lead to exclusion.

*) The passages in capital letters constitute the additional comments dated 28 October 1992

The concerned person can indeed be excluded if there are serious indications for assuming that he has been directly responsible for or has actively been involved in these crimes. Especially considering someone who during the period when these crimes were committed was outside the country, direct responsibility for or active involvement in crimes can only be assumed on the basis of very concrete indications. For an interpretation of the "serious non-political crime" mentioned in Article 1.F (b), I refer for convenience's sake to paragraphs 131 to 161 and 175 to 180 of the Handbook on Procedures and Criteria for Determining of Refugee Status.

The Hague, 22 February 1991 and 28 October 1992
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