Judgement of the Raad van State, 17 December 1992

Raad van State
No. R02.90.4934

AFDELING RECHTSPRAAK

Uitspraak in het geschil tussen:

J.M. Sison, of Philippine nationality (appellant),
represented by mr T. Boekman, lawyer in Haarlem

and

The State Secretary of Justice (defendant),
represented by mr K.O. Bravenboer, official of the ministry

By decree of 13 July 1990, defendant rejected the request of appellant to be admitted as refugee and be granted a permit for residence.

The decision is attached to this ruling.

By letter of 6 August 1990, received by defendant on 11 August 1990, appellant submitted to defendant a request for reconsideration.

No decision was taken on this request within the three-month period laid down in article 34, second paragraph of the Aliens Law, so that this request, in compliance with this paragraph, must be considered to have been rejected.

Opposing this fictive rejection, appellant submitted to the justice section of the Council of State, an appeal through a letter dated 6 December 1990, received by the Council of State on 10 December 1990, on grounds stated in the Aliens Law.

The letter of appeal is attached to this ruling.

Defendant as requested submitted a written defense dated 11 July 1991.

The case was taken up in a public session of the Section on 29 October 1992 during which appellant and defendant, through oral presentation by their representatives, further explained their positions. The Minister for Foreign Affairs, represented by mr. A.R. Westerlink, official of the ministry, and the Representative of the High Commissioner for Refugees in the Netherlands, represented by mr. J.H. van der Veen, were also heard.

In the law:

I. Regarding the appeal of the defendant in so far as this is directed against the fictive rejection of his request for reconsideration of the refusal to recognize him as a refugee.

In article 1(F) of the Treaty of Geneva concerning t he states of refugees of 28 July 1951, as amended by the Protocol of New York of 31 January 1967, from now on called: the Treaty, it is stated that the provisions of the Treaty are not applicable to a person whom there are serious reasons to suppose that;

a. he has committed serious offense against peace, a crime of war or a serious offense against humanity, as defined by the international agreements created to lay down rules concerning these offenses;

b. he has committed serious, nonpolitical offense outside the land of refuge, before he was admitted to the country as a refugee;

c. he is guilty of actions that are contrary to the aims and principles of the United Nations.

In the written defense--which can be considered as containing the justification for the disputed decisions--defendant states that the same reasons underlie the present decision as contained in the advice of the Advisory Commission for Aliens Affairs of 25 February 1991. Consequently defendant bases itself primarily on the judgment that the appellant has not proven well-founded fear of persecution in the sense of the Treaty.

Corollarily defendant considers that appellant, on the basis of the provision in Article 1(f), opening and sub c, of the Treaty, deserves no consideration of admission.

Defendant, in the above mentioned justification, failed to recognize that in applying the Treaty, in connection with the serious character of the actions referred to in Article 1(F), it is in the first place necessary to consider if, in view of that provision, the other provisions of the Treaty are applicable.

The section in this failure of defendant does not see in this case substantial ground for nullification, now that defendant in its letter of defense also has gone into the mentioned article 1(F), opening and sub c of the Treaty, the other provisions of that Treaty are not applicable to the appellant.

With a view to this the Section considers as follows:

Article 1(F), opening and sub c of Treaty, should, as ground of exclusion, be explained restrictively.

In view of the character and contents of the aims and principles of the United Nations, as they have been worded in the preamble and in articles 1 and 2 of the Charter of the United Nations, article 1(F), opening and sub c of the Treaty, primarily has in view persons who as organ of the state have made themselves guilty of deeds of persecution or other public deeds which have endangered peace, whereas to deeds of other persons it is only applicable, if glaring violations of human rights are concerned, in so far as they do not already fall under article 1(F), opening and sub c of the Treaty.

Defendant has insufficiently pointed out which supposed deeds of appellant have led defendant to his judgment with regard to article 1(F), opening and sub c of the Treaty, on what dates those deeds have taken place and what meaning defendant in this connection attaches to the conferment of amnesty in 1986.

The section also points out the fact that the papers handed to the Council of State, in connection with Article 77, third paragraph of the law, do not give sufficient clarity to this point. Now that this lack of clarity, in view of the confidential character of the papers, cannot be done away with by hearing both sides, the information given in the confidential documents, in so far as they are not clear, cannot be explained to the disadvantage of the appellant.

With a view to the preceding, the Section is of the opinion that the disputed decision, as to this part, is contrary to the general sense of justice of a proper government, that a decision must be supported by the underlying motives knowable by the person concerned.

So this decision must so far be nullified on the ground of what is mentioned in Article 8, first paragraph, sub d of the law: "Administrative Jurisdiction of Government Decrees".

In case defendant should in a review of the matter, no longer hold the point of view that the basis for exclusion of article 1(F), opening and sub c of the Treaty, would be applicable to the appellant, the Section marks the following:

Pursuant to Article 1(F), sub 2 of the Treaty, as far as it is relevant to the application of the Treaty holds as "refugee" every person, who out of well-grounded fear of persecution, because of race, religion, nationality, being a member of a certain social group, or because of his political views, finds himself outside the country of this nationality, and who cannot invoke the protection of that country, or will not call for it out of abovementioned fear.

In compliance with Article 15, first paragraph of the Aliens Law, foreigners, who come from a country where they have well-founded reason to fear persecution because of their religion or political conviction or their nationality, or because of their belonging to a certain race or certain social group, can be admitted as refugees.

In the second part of this article it is decreed that admission cannot be refused, except for important reasons derived from general interest, if the foreigner by this refusal should be forced to go immediately to a country as intended in the first paragraph.

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Appellant has pointed out that he has well-founded reasons to fear persecution.

To this appellant has mentioned the following:

He is one of the founders of the Communist Party of the Philippines (CPP) and has been chairman of the Central Committee of that party from 1968 to 1977.

The aforementioned relation with the CPP was one of the reasons why appellant was arrested in November 1977 and sentenced to 10 years imprisonment. [N.B.: Appellant was never sentenced, he was arbitrarily detained.] During his detention, he was seriously ill-treated. On 5 March 1986, ten days after President Marcos was deposed and had left the country, appellant was set free. In 1986 appellant was concerned with the founding of the People's Party. In August 1986, however, he declined a nomination as present of this party, because he had occupied himself with intellectual and literary activities.

He is unjustly accused by the Philippine authorities of having again become Chairman of the Central Committee of the CPP, has connections with the New People's Army (NPA) and carries out all kinds of subversive activities.

In connection with this a charge was brought against him, on 14 September 1988, because of violation of Republic Act 1700 (also called Anti-Subversion Law). On 16 September 1988 his passport was declared invalid. If he has to return to the Philippines, he will be arrested and murdered. According to appellant, an honest trial will be out of the question.

As it appears from the written defense, defendant is of the view that appellant is not a refugee and therefore cannot be admitted as a refugee into the Netherlands.

For this purpose, defendant has pointed to the advice given on this matter by the Advisory Commission for Aliens Affairs. This Commission has, among other things, considered the following:

"Indeed, it is acceptable that appellant, in case he returns to the Philippines, would have to face prosecution and punishment because of relationship with and activities for the CPP and the NPA, of which he is suspected of having, but it has not become acceptable that such prosecution and punishment could be marked as persecution in the sense of t he aforementioned regulations of the Treaty.

The Committee grounds this judgment on the fact, that it has by no means become acceptable that the suspicion of relations with and activities for organization later than 1977, which have been denied by the appellant, is without any foundation. Public statements of appellant after his release in 1986, together with the contents of documents handed to the Committee on the part of the Secretary of State of Justice, point, according to the opinion of the Commission, far more to the contrary.

Further, the Commission considers that it is generally known--appellant has not even contradicted it--that the aforementioned organizations aim at overthrowing the regime of the Philippines, to put a communistic regime in its place and that they do not deny that they use violence.

Under the aforementioned circumstances, it cannot be said that possible prosecution by Criminal Law and punishment of the appellant, because of connection with and activities for above organizations are, for that reason, to be marked as persecution in just said sense.

Further, it is not acceptable that appellant, besides for what is normally considered prosecution by criminal law and possible punishment, will also be in for discriminatory prosecution and, as the case may be, disproportionate heavy

punishment, because the prosecution, casu quo punishing body, is of the opinion that appellant has committed the offenses out of political motives.

In this connection, it is observed that appellant has not made it acceptable that, whatever may be true of violations of human rights in the Philippines, he of all people will be kept from an honest lawsuit.

Also because of his being (internationally) known, it may be assumed that in his case an honest trial is sufficiently guaranteed and that the authorities will offer sufficient protection to the foreigner against arbitrary actions of vigilante and similar groups. In so far as appellant bases his arguments on the supposition that he will be prosecuted by criminal law again for facts for which he had already been in prison for a considerable time, until he was given amnesty (N.B.: incorrect, Sison was not never given amnesty), this does not lead to another result, already, because out of documents, also known to appellant, it appears that the renewed interest of the Philippine authorities has been roused by utterance and behavior if the foreigner dating from his release in March 1986."

During the session the Minister of Foreign Affairs endorsed the opinion of the defendant.

Representative in the Netherlands of the UN High Commissioner for Refugees, has brought forward among other things, the following:

As introduction, he remarked that his view is based on the documents which have been seen by the representative in the Netherlands of the High Commissioner of the United Nations for Refugees. The possibility that his view might change, if representative would inspect the confidential papers coexisting on this matter, may, as a matter of fact, not be excluded, thus says the representative.

With a view to the justness of the fear and the protection by authorities, the opinion of the Representative in the Netherlands of the UN High Commissioner for Refugees is as follows:

"The Dutch Department of Amnesty International has, in a letter of 17 October 1990, directed to the Ministry of Justice, given an opinion on this matter. On page 5, it is stated that 'legal(..) organizations are publicly (...) accused of being a disguise for the illegal CPP and NPA." 'The representatives and members of these organizations are, by these accusations, exposed to immediate danger of life.' On page 8, it is said that in November 1986, the first president of this Party has been murdered and that seven prominent members of this Party have since then been threatened to be killed , or have escaped murderous attacks. Out of the papers, it is clear that appellant is the founder of the People's Party and that this Party is a legal party. The campaign conducted against the seeker for asylum in his native country, as described in pages 8 to 10 inclusive of the letter of Amnesty International, shows sufficient resemblance with the situation of others, as referred to above in paragraph 3, representatives and members of the People's Party and other legal organizations, that may be ascertained that asylumseeker's fear is--alas--well-founded.

The deplorable human rights situation the refugee's country of origin has been extensively described by Amnesty International. At its best, it may be stated that the authorities are not able to protect the people like this asylum-seeker. However, there are also strong indications--also pointed to by Amnesty International--that units of

government agencies --the army--are connected with campaigns against people like the asylumseeker. Therefore, the conclusion can be made that the Government is not able to protect these people effectively from persecution and that, most probably, the Government is even among those responsible for the persecution.

According to the opinion of the Section, that defendant, in its letter of defense, brought forward insufficient grounds for the judgment that appellant at the time disputed decision was promulgated, had no serious reason to fear persecution in the Philippines.

As has also been admitted by defendant, appellant, in the days of the disputed decision in the Philippines was possibly in for prosecution by criminal law and punishment in the Philippines in connection with his supposed relation with and activities for the CPP and NPA.

The Section judges that, also in view of the opinion of the Representative in the Netherlands of the UN High Commissioner for Refugees, defendant has made it insufficiently acceptable, that appellant, besides the prosecution by criminal law and punishment, which may be marked as normal, he will also be in for discriminatory persecution or disproportionately heavy punishment, because the prosecution/penal body is of the opinion that appellant has committed offenses for political motives.

That, the appellant being internationally known, should offer sufficient guarantee for an honest trial and sufficient protection from Philippine authorities, the Section considers by no means convincing.

II. As regards the appellant's appeal in so far as it is directed against the fictitious rejection of his request for reconsideration of the refusal to grant him a residence permit

Since this part of the disputed decision can only then be properly judged, when it has become known which decision finally has been taken to appellant's request for admission as refugee and on what grounds that decision is based, the Section sees in the nullification of the refusal to admit appellant as refugee sufficient cause --on the same ground--to pass to the nullification of the refusal to render appellant a permit to reside.

Decision:

The Raad van State, Afdeling rechtspraak:

Considering the Law administrative jurisprudence government decisions, the Aliens Law and the Law on the Raad van State;

Handing justice in the name of the Queen:

Destroys the decision consequent to article 34, second paragraph, of the Aliens Law, to reject the request for reconsideration by the appellant.

So decided in Den Haag on 17 December 1992,
by mr. P. van Dijk, chairman, dr. J.C.K.W. Bartel, member, and mr. L. Dorhout, member i.b.d., in the presence of mr. L.A. Zegwaards, official of State.

w.g. Zegwaard	w.g. van Dijk
office of State.	chairman.

Read in public, in agreement with article 100, first paragraph, of the Law on the Raad van State.