

AS TO THE ADMISSIBILITY OF

Application No. 14209/88
by A. and others
against the Netherlands

The European Commission of Human Rights sitting in private
on 16 December 1988, the following members being present:

MM. C.A. NØRGAARD, President
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER Secretary to the Commission

Having regard to Article 25 of the Convention for the
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 August 1988
by A. and others against the Netherlands and registered on 12
September 1988 under file No. 14209/88;

Having regard to the report provided for in Rule 40 of the
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicants are 23 persons of Surinamese nationality who,
on the date of registration of this application were all staying in
the Netherlands. Their particulars are set out in the appendix. In
the procedure before the Commission they are represented by Mr. B.R.
ANGAD-GAUR, a lawyer practising in the Hague.

The facts as submitted by the applicants may be summarised as
follows:

Surinam became independent of the Netherlands in 1975. In accordance with the agreements concluded at the time between the two states, the applicants became citizens of Surinam.

In 1982 a military coup took place which overthrew the democratic civilian Government in Surinam. Soon thereafter a flow of political refugees commenced from Surinam to the Netherlands. In 1985 the resistance against the military Government grew into a civil war. With many others, the applicants fled Surinam at this time.

Due to the large influx of Surinamese, and the difficult situation in that country, the Netherlands Government decided in December 1986 not to apply the usual rules governing the granting of residence permits. Instead, all incoming Surinamese, including the applicants, were to be tolerated in the Netherlands until such time as the political situation in Surinam would have stabilised. Their requests for political asylum and residence permits were suspended for the time being. Only obviously serious cases were still examined and only in such cases were residence permits granted.

In February 1988, the Netherlands Government announced that they considered the situation in Surinam to have calmed down and that the country was on the way to the re-establishment of democracy. Therefore, from that moment on the unprocessed residence permit requests of the approximately 5.000 so-called "tolerated Surinamese" (gedoog-Surinamers) would be taken up and decided upon.

In consequence, beginning in June 1988, the applicants all individually received decisions that they did not comply with Dutch immigration regulations and that, therefore, they would have to leave the Netherlands. The applicants all duly applied for a review of this decision to the Minister of Justice. They all individually received written replies stating that their review requests would not be granted suspensive effect.

Thereupon, the applicants all individually instituted summary proceedings demanding suspensive effect for the duration of their appeal proceedings in the Netherlands.

On 10 June 1988, in the first such case, the President of the Regional Court (Arrondissementsrechtbank) of the Hague adjourned the case for further information by the parties. In his further submissions, the lawyer of the applicant concerned, inter alia, raised the point that the expulsion of the "tolerated Surinamese" constituted a collective expulsion, in violation of Article 4 of Protocol No. 4.

On 7 September 1988 the President decided that this applicant's appeals to remain in the Netherlands had no prospect of success. He, therefore, rejected the request to be allowed to remain in the country pending this applicant's appeals. Subsequent to that decision the applicant involved was sent back to Surinam.

THE COMPLAINT

The applicants complain that they are being sent back to Surinam by the Netherlands, in the execution of a policy of expelling all Surinamese who were tolerated in the Netherlands between late 1986 and February 1988. They allege that this expulsion is collective in character and that the standard-form decisions of expulsion with the applicants' name on them only give the appearance of individualised decisions. They invoke Article 4 of Protocol No. 4.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 26 August 1988 and registered on 12 September 1988.

A request for an indication in accordance with Rule 36 of the Commission's Rules of Procedure to the respondent Government that in the interest of the Parties and the proper conduct of the proceedings it was desirable that the applicants not be deported to Surinam until the Commission had had an opportunity to examine the application was provisionally refused by the President on 12 September 1988.

On 12 September 1988 the Rapporteur requested the respondent Government, in accordance with Rule 40 para. 2 (a) of the Commission's Rules of Procedure, to provide further information on the Government's policy in respect of tolerated Surinamese before 28 September 1988.

The Government's observations were received on 28 September 1988. These were communicated to the applicants who were invited to submit comments in reply before 31 October 1988.

The applicants' observations in reply were received on 28 October 1988.

INFORMATION BY THE PARTIES

The Government

The policy in the Netherlands concerning the granting of refugee status always involves an individual consideration of an applicant's case to be recognised as a political refugee or otherwise someone who can be granted a residence permit on the basis of the Aliens Act (Vreemdelingenwet).

The concept of collective expulsion does not exist under Dutch Aliens Legislation.

The toleration policy towards Surinamese asylum-seekers was begun on 5 December 1986 to cease sending people back to the civil war situation in Surinam. Subsequently, all requests by Surinamese for

residence permits were accorded a low priority, until in February 1988 it was considered that the situation in Surinam had become safe. Thereafter, the "regular" policy was reapplied, and the examination of requests for residence permits of Surinamese was again taken up.

Because, in the meantime, the group of tolerated Surinamese had grown to comprise several thousand people, inevitably many of them will be returning to Surinam at the same time, but that does not mean that their return is collective. Furthermore, in accordance with regular policy, each individual is first given ample opportunity to depart voluntarily. If he is unable to pay, he can receive financial assistance. Forced deportation is only used sparingly, and is individually reviewed before being carried out. Before a deportation, the Netherlands Embassy in Surinam is requested to inform the Government if there is any known risk to the person if deported to Surinam.

In the case of the applicants, they do not have a right to reside in the Netherlands under the Aliens Act. They have been informed of this individually. They have asked individually for a review. They have individually been informed that they may not remain in the Netherlands pending this review. They have individually instituted summary proceedings against their expulsion.

As is evident from the Commission's case law, deportation cannot be described as collective "where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group", which is always the case under Dutch policy on aliens (No. 7011/75, Dec. 3.10.75, Yearbook 19 p. 416, No. 7704/76, Dec. 11.3.77, unpublished, No. 7757/77, Dec. 3.3.78, unpublished).

Where the summary proceedings have not yet led to a decision, the respondent Government submit, there has not yet been an exhaustion of domestic remedies.

The applicants

The "tolerated Surinamese" are all former nationals of the Netherlands who lost that nationality without being consulted. They all speak Dutch, have family in the Netherlands and have been educated in the same educational tradition as that of the Netherlands. The toleration policy is a unique policy designed specifically for these people.

The applicants all have received standardised decisions that they must leave the Netherlands. They have all, in a new standard policy, not been allowed to remain pending their appeals. In nothing does it appear that their individual cases have been individually reviewed. No investigation has taken place into the current circumstances of the applicants, who have now developed family ties, have jobs or are going to school, and otherwise have assimilated

themselves into Dutch society. Nor has there been a proper examination into the dangers which individuals may face if returned to Surinam. The applicants are sent back purely on the basis of their situation at the time of their arrival in the Netherlands.

Furthermore, after the decision in summary proceedings of 7 September 1988 it is clear that this no longer constitutes an effective remedy to prevent expulsion. Now that the applicants are not allowed to await their final appeal before the Council of State, they will often either have no practical possibility to lodge this appeal where the applicant is already gone, or this appeal will no longer be effective because the applicant no longer has an interest.

THE LAW

The applicants have complained that after having been tolerated in the Netherlands under an official policy of toleration of Surinamese refugees, they are now being expelled. They have invoked Article 4 of Protocol No. 4 (P4-4), which provides as follows:

"Collective expulsion of aliens is prohibited".

The respondent Government have stated that the applicants are individually expelled. They have an individual right to review of the denial of a residence permit by the Minister of Justice and later, to a procedure before the Council of State, and they have all availed themselves of the right to a review. Furthermore, the Government contend that the applicants have all introduced individual summary proceedings against their expulsion, and that, as long as there has not yet been a decision in these proceedings, the applicants have not yet exhausted domestic remedies.

The applicants allege that their expulsion decisions only have the appearance of individual decisions. They contend that the individual review before the Council of State is illusory because they will have been expelled before they can institute it, or, at any rate, before their case comes up. Furthermore, they submit that the decision of 7 September 1988 in summary proceedings can be regarded as a test case and that, therefore, the other applicants do not have to exhaust this remedy as it has proven to be ineffective.

The Commission considers that it is not necessary to decide whether or not the applicants have all exhausted the domestic remedies available to them, because it finds the application manifestly ill-founded for the reasons set out below.

The Commission recalls its decision in Application No. 7011/75 (Dec. 3.10.75, Yearbook 19 p. 416, 454) wherein it defined collective expulsion as follows:

"...any measure of the competent authorities compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group".

The Commission notes that in the present case the examination of the applicants' requests for asylum was suspended by the Netherlands authorities between 5 December 1986 and February 1988. Thereafter, examination of these requests was taken up again. The applicants have all received decisions on their requests and have requested a review of these decisions by the Minister of Justice. In their review requests they have had the opportunity to present their objections to their expulsion. All the applicants have individually received a reply from the Minister of Justice denying them suspensive effect for their review requests. They have all instituted summary proceedings against their expulsion. Before the President of the Regional Court they have the opportunity to explain their objections to their expulsion in these proceedings. In the so-called test case of 7 September 1988, the President of the Regional Court examined that applicant's individual complaints. The Commission further notes that any unfavourable decision by the Minister of Justice regarding the review requests may be appealed to the Council of State by each applicant individually.

In these circumstances the Commission considers that the applicants' expulsions do not reveal the appearance of a collective expulsion within the meaning of Article 4 of Protocol No. 4 (P4-4).

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para.2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)

APPENDIX

&SParticulars of the applicants&-

Adjina ALIBAKS, born on 28.1.1942

Harripersad BANDHOE, born on 27.8.1962

Baldew Sarmah BIHARI, born on 27.12.1955

Bisoende CHAITOE, born on 7.11.1933

Oemar FATEHMOHAMMED, born on 28.8.1934

Radjinderkoemar GANGOE, born on 5.5.1965

Mohamedsherief CHAFOER, born on 30.5.1961

Yvonne Goyasreedevi GOELELA, born on 8.10.1963

Hendrik GOWRIE, born on 23.3.1950

Narinderdew JAGTOE, born on 5.8.1959

Rajendrekumar JHINKOE, born on 9.4.1961

Iwan Percy LETTERBOOM, born on 15.9.1940

Hein Adolf LODIK, born on 16.10.1956

Krishnepersad NIMAR, born on 8.2.1951

Soerin Indrechandre JAN ORI, born on 20.5.1968

Kasipersad RAMLAL, born on 1.4.1961

Soerishing RANSING, born on 12.6.1966

Lilawatie RATTANSINGH, born on 30.10.1961

Dielepkoemar SEWNANDAN, born on 14.3.1962

Jaswantsing SOEKRADJ, born on 27.9.1958

Hementkoemar SOMAI, born on 28.9.1960

Lloyd Etienne WIEGEL, born on 1.2.1962

Ivonne Chandrawattie SAHEBLAL, born on 7.9.1957