

Date of the judgment: Wednesday, 13 February 2019
Versus: The State Secretary of Justice and Security
Type of procedure: Appeal
Area of law: Asylum
ECLI:NL:RVS:2019:377
ECLI:

201804801/1/V1.

Date of the judgment: 13 February 2019

ADMINISTRATIVE JURISDICTION DIVISION

Judgment on the appeal by:

1. The State Secretary of Justice and Security,
2. [the foreign alien],

against the judgment of the district court of The Hague, convened in Middelburg, of 31 May 2018 in case no. NL18.8450 in the proceedings between:

the foreign alien

and

the State Secretary.

Course of the proceedings

By decision of 1 May 2018, the State Secretary denied an application by the foreign national for an asylum residence permit for a definite period of time, to the extent important here.

By judgment of 31 May 2018, the district court dismissed the appeal lodged against it by the foreign national, reversed it and provided that the State Secretary shall take a new decision on the application subject to the considerations in the judgment.

The State Secretary lodged an appeal against this judgment.

The foreign national gave a written statement, lodged a provisional cross-appeal and submitted further documents.

The Administrative Jurisdiction Division heard the case simultaneously with two comparable cases, [ECLI:NL:RVS:2019:378](#) and [ECLI:NL:RVS:2019:379](#), on 29 October 2018. The foreign national, assisted by *meester* M.P.J.W.M. Govers, attorney in Tilburg, and the State Secretary, represented by *meester* M. van Asperen, attorney in The Hague, and *meester* R.A. Visser, appeared before the court.

Considerations

Introduction

1. It is not in dispute that the foreign national is a supporter of the Gülen Movement and was fired as a teacher by the Turkish authorities for that reason. This judgment sees to the position of supporters of the Gülen Movement in Turkey after the coup attempt of 15 July 2016.

1.1. In assessing the points at issue, the Administrative Jurisdiction Division addresses the general situation for Gülen Movement supporters in Turkey after the coup attempt. In this respect and given the news value of the judgment, the Administrative Jurisdiction Division in this assessment also includes documents the parties relied on only after the contested judgment. The documents included in these proceedings have been listed in the attached annexe, which is part of this judgment.

Contested judgment

2. The district court considered that the State Secretary, by referring to the course of the proceedings, gave insufficient grounds for his having fulfilled his duty to cooperate, as referred to in Article 4 (1) of the Qualification Directive (OJ 2011 L 337). It is clear from the information presented by foreign national that prosecution is taking place in Turkey arbitrarily, Gülen Movement supporters are wrongly treated as criminals and having an account with the Asya Bank, which holds true for the foreign national, is already sufficient to be regarded a terrorist. According to the district court, it is then not enough for the State Secretary to argue that the single reference to general sources does not make a well-founded fear of prosecution plausible. With the report 'Country policy and information note: Gülenism, Turkey' of 19 February 2018 of the UK Home Office presented by him, he also gave insufficient grounds for the foreign national's not being at risk of a treatment in violation of Article 3 ECHR upon his return to Turkey. The State Secretary must investigate if the foreign national is part of a group systematically exposed to a practice of inhuman treatments, according to the district court.

Ground for appeal

3. In his only ground for appeal, the State Secretary complains that the district court wrongly considered as specified under 2. According to the State Secretary, he did fulfil his duty to cooperate. It is clear from three sources that were presented, i.e. said report of the UK Home Office, the report 'Country Reports on Human Rights Practices for 2017: Turkey' of 20 April 2018 of the US State Department and the report 'Press Country Profile Turkey' of the ECHR, that Gülen Movement supporters as a group are not exposed to a practice of inhuman treatments. In addition, he gave sufficient grounds why the foreign national personally is not the negative focus of attention of the Turkish authorities, according to the State Secretary.

Duty to cooperate

3.1. The State Secretary enabled the foreign national to present his grounds for the asylum application in the follow-up interview and gave a well-founded reply in the intended decision. He also enabled the foreign national to present a point of view following the intended decision.

The State Secretary thus sufficiently cooperated with the foreign national. This is clear from the judgment of the Administrative Jurisdiction Division of 15 October 2014, [ECLI:NL:RVS:2014:3833](#). Therefore, the district court wrongly considered that the State Secretary by referring to said course of events in the decision, gave insufficient grounds for the point of view that he fulfilled his duty to cooperate.

3.2. The complaint was justified, but given the considerations specified hereinafter, the ground for appeal cannot lead to a reversal of the contested judgment.

Risk of treatment in violation of Article 3 ECHR

4. The district court also considered that, given the documents presented by the foreign national, the State Secretary gave insufficient grounds that as a Gülenist he does not run the risk of a treatment in violation of Article 3 ECHR upon return to Turkey.

. The Administrative Jurisdiction Division will therefore discuss the general situation of Gülen Movement supporters in Turkey and consider if there are clues for assuming that this group runs a real risk of a treatment in violation of Article 3 ECHR.

The position of the foreign national

4.1. The foreign national has taken the point of view that the situation for Gülen Movement supporters in Turkey after the coup attempt is very bad. In that respect, he refers to the mass dismissals with names on public lists.

He further points out the mass arrests. According to the foreign national, it is clear from the report 'A new generation of terrorism: an analysis of FETÖ' of November 2017 of the Turkish National Police Academy that already 300,000 Gülen Movement supporters had already been arrested then. In addition to that, it is clear from newspaper articles presented of 21 May and 22 June 2018 from the newspaper Daily Sabah that many more people will be arrested and convicted. In this context, the foreign national refers to the report of 21 June 2017 of the UN Special Rapporteur for the freedom of expression, from which it was alleged that Gülen Movement supporters are arrested arbitrarily and are held in pretrial custody for quite some time without charges and course of proceedings. In his written explanation, the foreign national furthermore referred to the report of March 2018 of the UN High Commissioner for Human Rights, from which it allegedly was clear that the number of violations of human rights has strongly increased, including torture and inhuman treatment during arrest, pretrial custody and detention. This has been confirmed in the report 'World Report: 2018; events of 2017' of 2017 of Human Rights Watch and the article 'Turkey beats up and tortures prisoners' of 25 July 2016 of Amnesty International, according to the foreign national.

The point of view of the State Secretary

4.2. The State Secretary has taken the point of view that for instance dismissal does not come under article 3 ECHR and that for instance beating up in detention does not take place systematically. According to the State Secretary, it is clear from the reports presented by him, that not everybody connected to the Gülen Movement is being prosecuted and detained.

Furthermore, it may be concluded from the available sources that the situation in Turkey for Gülen Movement supporters is hard to predict and that in many cases the arrest of suspected Gülen Movement supporters is a fact. This unpredictability is not sufficient to provide international protection to every Gülenist, according to the State Secretary.

Arrest and detention

4.3. The Administrative Jurisdiction Division first has to deal with the question whether Gülen Movement supporters in Turkey run a real risk of arrest and detention.

4.3.1. The report of the UK Home Office says that since July 2016 about 50,000 people have been arrested and 150,000 people have been fired. Said report of the US State Department says that according to the Turkish Ministry of Justice of 15 July 2017, 169,013 people have been subjected to some form of criminal investigation, of whom 55,665 have been arrested.

Said report of the High Commissioner for Human Rights says that according to the Turkish Ministry of the Interior 159,506 people were arrested late December 2017, of whom some 55,000 were detained. The article presented by the foreign national of 22 June 2018 says that it is expected that more arrests are to follow.

4.3.2. It is clear from these figures that a significant number of people was put in prison. Although the State Secretary rightly argued that it is not clear from these figures that every Gülenist is criminally prosecuted, the information presented by the foreign national and the State Secretary presents a complex and diffuse situation in Turkey. The State Secretary was unable to clarify this picture of the situation for

Gülen Movement supporters in Turkey. So the State Secretary did not remove the serious reasons presented by the foreign national for fearing that Gülen Movement supporters as a group run a real risk of being arrested. The State Secretary has not provided sufficient grounds that Gülen Movement supporters in Turkey are not systematically criminally prosecuted therefore and already for that reason do not also run the risk as a group of being treated in violation of article 3 ECHR.

4.4. The question also considered is whether Gülen Movement supporters in Turkey run a real risk during arrest and detention of being exposed to a treatment in violation of article 3 ECHR. Although an arbitrary and therefore unlawful arrest or detention in principle falls within the scope of article 5 ECHR, the circumstances under which this happens may violate article 3 ECHR.

4.4.1. From the documents presented by the foreign national, the picture arises that arrested and detained Gülen Movement supporters risk torture and inhuman treatment. It says for instance in said report of the High Commissioner for Human Rights that in the period after the coup attempt he documented all kinds of torture and inhuman treatment by police and other security people, including aggravated assault sexual violence, electric shocks and waterboarding. A large quantity of footage picturing suspects of the coup attempt being tortured is circulating widely in Turkish and social media. Turkey also took a lot of measures which increase the risk of torture and inhuman treatment, according to the High Commissioner for Human Rights. The report further refers to the report of 18 December 2017 of the UN Special Rapporteur against torture. It says among other things:

23. [...] that there seemed to be a serious disconnect between declared government policy and its implementation in practice. Most notably, despite persistent allegations of widespread torture and other forms of ill-treatment, made in relation [...] to the immediate aftermath of the failed coup of 15 July 2016 [...], formal investigations and prosecutions in respect of such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment.

[...]

26. According to numerous consistent allegations received by the Special Rapporteur, in the immediate aftermath of the failed coup, torture and other forms of ill-treatment were widespread, particularly at the time of arrest and during the subsequent detention in police or gendarmerie lock-ups as well as in improvised unofficial detention locations such as sports centres, stables and the corridors of courthouses.

Although it also says in this report that the situation considerably improved about two weeks after the coup attempt and most prisoners said they were no longer exposed to torture or inhuman treatment, the Special Rapporteur came back to that in his statement of 1 March 2018 for the 37th meeting of the Human Rights Council. According to the Special Rapporteur the number of reported cases of inhuman treatment is on the rise again. In said report of Human Rights Watch it further says that many cases of torture and inhuman treatment were reported all through 2017, including assault, assuming uncomfortable positions for a long time, threats of rape and influence of medical examinations. In said UK Home Office report presented by the State Secretary, three more statements are reported, also of torture and inhuman treatment. It follows from the report 'In custody. Police torture and abductions in Turkey' from October 2017 of Human Rights Watch that the number of reported cases in the media is an indication that torture and inhuman treatment has become a widespread problem and people suspected of ties with the Gülen Movement together with alleged PKK supporters run the biggest risk of torture. It further says in said report presented by the State Secretary of the US Ministry of the Interior that the non-governmental organisations Human Rights Association and Human Rights Foundation of Turkey received in the first eleven months in 2017 423 and 328 complaints respectively. It further says that Turkey blocks the publication of the findings of the European Committee for the Prevention of Torture and Inhuman Treatment or Punishment.

Finally, said sources are critical of the lack of countermeasures of the Turkish government, such as criminal investigation and prosecution of those who are guilty of torturing practices..

4.4.2. The information presented by the foreign national about the risk that Gülen Movement supporters are being exposed to a treatment in violation of article 3 ECHR during arrest and detention, or that the Turkish authorities do not take action against that, also on this point provides the picture of a complex and diffuse situation, about which the State Secretary was not able to provide clarity at the hearing. The point of

view of the State Secretary taken in the notice of appeal that Gülen Movement supporters are not exposed to a treatment in violation of article 3 ECHR during arrest and detention is therefore so far not based on an adequate assessment which is sufficiently supported by reliable and objective sources (compare the ECHR judgment of 23 March 2016, F.G. versus Sweden, ECLI:CE:ECHR:2016:0323JUD004361111, § 117). Already for that reason alone, the district court correctly considered that the State Secretary did not give sufficient reasons for his point of view that the foreign national did not give make it plausible that he runs a real and foreseeable risk of being exposed to a treatment in violation of article 3 ECHR. No further discussion is needed of what else the foreign national argued about his dismissal, left aside whether that meets the threshold for a successful appeal to article 3 ECHR..

The grounds fails.

Conclusion

5. The appeal of the State Secretary is unfounded. The foreign national's provisional cross-appeal ended with that. Given the considerations under 3.1, the contested judgment must be confirmed with improved grounds.

6. The State Secretary must be sentences to compensation for the costs of the proceedings in the manner specified hereinafter.

Judgment

The Administrative Jurisdiction Division of the Council of State:

- I. Confirms the contested judgment;
- II. sentences the State Secretary of Justice and Security to compensation of the costs of the proceedings incurred by the foreign national in connection with the appeal hearing up to the amount of EUR 1,024 (in words: one thousand and twenty four euros), entirely attributable to legal aid professionally provided by a thrd party.

Thus adopted by presiding judge *meester* N. Verheij, and members *meester* H. Troostwijk and *meester* G.M.H. Hoogvliet, in the presence of the registrar *meester* J.J. Schuurman.

sgd Verheij sgd Schuurman
Presiding judge registrar

Publicly pronounced on 13 February 2019

282-862.

ANNEXE

Documents included in the proceedings by the Administrative Jurisdiction Division:

1. article 'Turkey beats up and tortures prisoners' of 25 July 2016 of Amnesty International;
2. report 'A new generation of terrorism: an analysis of FETÖ' of November 2017 of the Turkish National Police Academy;
3. report 'World Report: 2018; events of 2017' of 2017 of Human Rights Watch;
4. report 'In custody. Police torture and abductions in Turkey' of October 2017 of Human Rights Watch;
5. report of 18 December 2017 of the UN Special Rapporteur against Torture;
6. report 'Country policy and information note: Gülenism, Turkey' of 19 February 2018 of the UK Home Office;
7. statement of 1 March 2018 of the UN Special Rapporteur against torture for the 37th meeting of the Human Rights Council;
8. report of March 2018 of the United Nations High Commissioner for Human Rights;
9. report 'Country Reports on Human Rights Practices for 2017: Turkey' of 20 April 2018 of the US State Department;
10. article '104 sentenced to life in prison in FETÖ's coup attempt trial' of 21 May 2018 of the newspaper Daily Sabah;
11. article '10 jailed for links to terrorist group behind 2016 coup attempt' of 22 June 2018 of the newspaper Daily Sabah;
12. 'Press Country Profile Turkey' ECHR report of July 2018.