

Vietnamese refugees from Czechoslovakia in the Netherlands in the 1990s



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¹ 'Vietnamezen weer terug op Schiphol', *Limburgsch dagblad* (3 February 1992).

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Abbreviations

| | |
|-------|---|
| CPA | Comprehensive Plan of Action |
| ECHR | European Convention on Human Rights |
| IND | Immigratie en- Naturalisatiedienst [Immigration and Naturalisation Service] |
| INLIA | Internationaal Netwerk van Lokale Initiatieven met Asielzoekers [International Network of Local Initiatives with Asylum Seekers] |
| NTOM | Nieuwe Toelatings- en opvangmodel [New admissions and Reception Policy] |
| OC | Onderzoek- en Opvangcentrum [research and reception centre] |
| ODP | Orderly departure Program |
| REK | Rechtseenheidkamer [chamber of legal unity] |
| ROA | Regeling Opvang Asielzoekers [arrangements for the reception of asylum seekers] |
| RVS | Raad van State [Council of State] |
| UNHCR | United Nations High Commissioner for Refugees |
| Vw | Vreemdelingenwet [Alien Act] |

Introduction

'Ik zoek geen welvaart, maar vrijheid' [I'm not searching for prosperity, but for freedom]²

During the Cold War, socialist countries all around the world helped each other in different ways by providing cheap labourers in exchange for money or educating the citizens of other countries. The aim was to strengthen socialism and ultimately build a socialist world order. One of the countries that provided many migrant workers to various socialist Eastern European countries during the Cold War was Vietnam. Vietnam had become a communist country after the end of the Vietnamese war in 1975. The migrant workers from Vietnam came to Eastern Europe after having been selected by the socialist Vietnamese government. Along with this selection came prestige.³ There were certain rules that the workers had to adhere to; for example, they had to send back a percentage of their wages to the Vietnamese government, and were not allowed to leave the country they were working in without permission from the Vietnamese government. After the fall of communism in the Eastern European countries, these migrant workers were expected to return to Vietnam, but a large portion of them did not want to return or even stay in Eastern Europe, and they therefore fled to other countries such as Germany or the Netherlands.

In 1991, after the Velvet Revolution, a group of approximately 451 Vietnamese migrant workers fled from Czechoslovakia to the Netherlands and applied for asylum there.⁴ They claimed to have fled from Czechoslovakia for several reasons. First, they felt threatened by the racial violence that broke out after the fall of the Iron Curtain. Second, they were afraid that they would be sent back to Vietnam. Some were afraid of being imprisoned in Vietnamese re-education camps, because they had protested with the Czechoslovakian people against one-party rule. Moreover, fleeing to the Netherlands created another difficulty for these workers. In terms of the Vietnamese constitution, it was illegal to flee from the Republic of Vietnam or travel to

² 'Geschrokken van onbegrip; Vietnamezen in hongerstaking voor vrijheid', *NRC Handelsblad* (13 December 1991).

³ Ibidem.

⁴ Letter from State Secretary of Justice, deportation of Vietnamese asylum seekers, 3 February 1992. <http://resolver.kb.nl/resolve?urn=sgd:mpeg21:19911992:0006716&role=pdf> (Retrieved on 10 April 2019).

another country without the permission of the Vietnamese government. This could be punishable by a prison sentence.⁵ The Dutch government, however, did not agree with their claim that they were political refugees; they regarded the workers as economic migrants.

Over a four-year period, the Dutch government tried to send the Vietnamese back to Czechoslovakia or Vietnam. However, Czechoslovakia did not want to take them, because it claimed that the Vietnamese had come to Czechoslovakia to work and were not refugees. As a result, upon arrival in Czechoslovakia, most of the Vietnamese were sent back to the Netherlands.⁶ The Dutch government opened diplomatic channels and tried to negotiate terms and conditions with the Vietnamese government to ensure the safety of the asylum seekers if they returned to Vietnam.⁷ Opposition in the Dutch parliament was fierce, and the Vietnamese themselves protested against their deportation to Vietnam with multiple hunger strikes, and some went into hiding with the help of several church groups.⁸ Ultimately, the Dutch government granted the Vietnamese asylum in 1995, after the *Rechtseenheidskamer* [chamber of legal unity] (REK) had issued a court order stating that the government had made one of the Vietnamese asylum seekers wait for too long in uncertainty about his fate. This constituted a legal precedent, which meant that the entire group was allowed to stay.⁹

In this thesis, I examine why the Dutch government failed to expel the Vietnamese. Building upon the theoretical literature on the gap hypothesis, I am particularly interested in identifying what role the courts, Dutch politics, and international relations played in this matter. The research question this thesis attempts to answer is the following: Why were the Vietnamese asylum seekers from Czechoslovakia allowed to stay in the Netherlands?

The first chapter of this thesis presents an overview of the situation regarding Vietnamese refugees in general from the late 1970s until the early 1990s. It also contains an analysis of political debates in the Netherlands in relation to this particular migrant group from Czechoslovakia and what eventually happened to them. The focus is on the reasons that the politicians put forward as to why they believed the Vietnamese should be allowed to stay or be deported and what they did to ensure this. The relationship between various ministers is also discussed. The second

⁵ ‘Geschrokken van onbegrip; Vietnamezen in hongerstaking voor vrijheid’, *NRC Handelsblad* (13 December 1991).

⁶ ‘Praag niet verplicht tot opvang Vietnamezen’, *Het Parool* (16 December 1991).

⁷ ‘Verdrag over terugkeer Vietnamezen op komst’, *De Volkskrant* (8 June 1994).

⁸ ‘Vietnamese asielzoekers gevrijwaard van vervolging’, *De Volkskrant* (7 May 1992).

⁹ ‘Vietnamezen mogen blijven’, *De Volkskrant* (20 September 1995).

chapter examines the negotiations between the Dutch government and the governments of Czechoslovakia and Vietnam. The third chapter examines the individual court cases and the role they played in what ultimately happened to the Vietnamese asylum seekers, and devotes particular attention to highlighting the reasons the courts used to substantiate their decisions.

Historiography

Since the fall of the Berlin wall in 1989, a number of studies have examined the case of socialist migrant workers who came from Vietnam to Eastern European countries to study and work. Alena Alamgir has demonstrated how the Vietnamese were subjected to racism in Czechoslovakia in the 1980s, and argued that this stemmed from certain elements of the state's official ideology.¹⁰ Alamgir also studied the Czechoslovakian government's treatment of pregnant Vietnamese women who were employed in the country in the 1980s.¹¹ Hermann Zeitlhofer has also written about Vietnamese emigration during the Communist era – 1948–1989 – and about the change in migration after 1989.¹²

There is more literature on the situation of Vietnamese labour migrants in Czechoslovakia. Unfortunately, this literature is available only in Czech, and since I do not speak this language, I cannot use this historiography. There is, however, a relatively substantial body of literature on the country that received the largest group of migrant workers from Vietnam, namely the German Democratic Republic (GDR, East Germany). Since the agreements between the GDR and Vietnam were almost identical to those between Czechoslovakia and Vietnam, one can assume that the treatment and living conditions of migrant workers in these two countries were fairly similar. It is therefore possible to use the literature about East Germany in lieu of written sources about the exact situation in Czechoslovakia. The book *Die 'Mortizburger' in Vietnam*, written by Mirjam Freytag describes the lives of Vietnamese students and workers in the GDR who came to the city of Mortizburg.¹³ Krüger-Potratz, Georg Hansen, and Dirk Jasper provide a more general overview of all foreign nationalities that were present in the GDR in *Anderssein*

¹⁰ Alamgir, Alena K., 'Race is elsewhere: state-socialist ideology and the racialisation of Vietnamese workers in Czechoslovakia', *Race and Class* 54:4 (2013) 67-85.

¹¹ Alamgir, Alena K., 'Recalcitrant Women: Internationalism and the Redefinition of Welfare Limits in the Czechoslovak-Vietnamese Labor Exchange Program', *Slavic Review* 73:1 (2014) 133-155.

¹² Zeitlhofer, H., 'Czechia and Slovakia' in: Klaus Bade, Leo Lucassen, Pieter Emmer and Jochem Oltmer eds., *The Encyclopedia of Migration and Minorities in Europe. From the 17th Century to the Present* (Cambridge 2011) 152-161.

¹³ Freytag, Mirjam., *Die 'Moritzburger in Vietnam' Lebenswege nach einem Schul- und Ausbildungsaufenthalt in der DDR- Vermitteln in interkulturellen Beziehungen* (Tubingen 1998).

gab es nicht, Ausländer und Minderheiten in der DDR.¹⁴ The bulk of the research relates to the Vietnamese, but other nationalities, such as Cubans and Mozambicans, are also discussed.

The situation of the Vietnamese who fled from Czechoslovakia to the Netherlands has not received any scientific attention thus far. The Dutch media, by contrast, covered the case of the Vietnamese closely as it developed in the early 1990s, as borne out by the many newspaper articles that were written about their asylum cases at the time. Tycho Walaardt's book *Geruisloos inwilligen: argumentatie en speelruimte in de Nederlandse asielprocedure, 1945-1994* gives an overview of how the Dutch government treated asylum seekers, their requests, and interventions from outsiders between 1945 and 1994. Walaardt uses the gap hypothesis in his book to review the various cases and adds a new dimension to this hypothesis, as discussed below.

There was already a sizeable group of Vietnamese in the Netherlands before the Vietnamese from Czechoslovakia came to the country. Most of them came to the Netherlands as boat refugees in the early 1980s. They had attempted to escape from Vietnam in the years after the communist victory in 1975 by boarding boats with a view to reaching other countries. Many of the boats they used were not capable of crossing the South China Sea, and therefore most of the refugees were picked up by merchant vessels. A number of merchant vessels were sailing under a Dutch flag or were owned by Dutch companies. This allowed the refugees to apply for asylum in the Netherlands, which was granted in most cases.¹⁵

Methodology

To answer my research question, this thesis uses debates in the Dutch parliament from 1991 to 1995 as a source. These debates provide an overview of the political situation regarding the Vietnamese asylum seekers. They demonstrate who was sympathetic to the case of the asylum seekers and who wanted to send them back to Czechoslovakia or Vietnam. More importantly, however, they illustrate why the politicians concerned held the views they did, and on what facts they based their decisions. In addition, newspaper articles from this period are also reviewed, as they provide further insight into how Dutch politicians and Dutch society viewed

¹⁴ Jasper, Dirk., 'Ausländerbeschäftigung in der DDR' in: Marianne Kruger-Potratz ed., *Anderssein gab es nicht. Ausländer und Minderheiten in der DDR* (Munster 1991) 151-173.

¹⁵ "Bootvluchtelingen." 25 May 2010. *Andere Tijden*. Retrieved on 18 December, 2019.

this particular migrant group. They also provide the opportunity to examine the criticism the Dutch government faced in the light of this situation, and whether the newspapers put forward any suggestions on how the Dutch government should handle the situation with regard to the Vietnamese asylum seekers. Finally, use is also made of letters and press releases from humanitarian organizations, since such material was used by the Dutch state and courts to make their case either that the Vietnamese were in fact refugees, or that they were not. Unfortunately, the Immigratie- en Naturalisatiedienst [Immigration and Naturalisation Service] (IND) denied my request to access their archives pertaining to the Vietnamese asylum seekers. This source could have added insights in how the policy makers dealt with this group.

Another source used was documentation from the national archive pertaining to the negotiations between the Netherlands and Czechoslovakia and Vietnam. These documents demonstrate the strategy the Dutch government had formulated to solve the problem of the Vietnamese asylum seekers. They also illustrate what the governments of Czechoslovakia and Vietnam thought of the situation, and assist in revealing whether they viewed it as a problem for the Netherlands, or as an international problem. The downside of using these archives is that they only show the Dutch side of the debate rather than the Vietnamese and Czechoslovakian side.

The third source used was court decisions relating to the cases of the Vietnamese asylum seekers against the Dutch government. A number of cases were dealt with by the regular courts in which the asylum seekers disputed the decision taken by the Dutch government, in addition to a couple of cases dealt with by the Council of State [Raad van State] and the final court decision by the REK, which ultimately allowed the Vietnamese to remain in the Netherlands. These court cases demonstrate a synergy between the Dutch government and the courts. They provide valuable information on why the Dutch government decided against granting the asylum seekers refugee status, why the asylum seekers regarded themselves as refugees, and what the decisions of the Dutch courts were. The downside to drawing on the court cases was that not all court decisions relating to Vietnamese could be found despite extensive efforts to locate these.

The sources listed above provide various Dutch perspectives on the Vietnamese case study (political, official and legal). What is missing is the voice of the Vietnamese themselves. I tried unsuccessfully to speak to some of the Vietnamese involved but because I could only locate a very small number willing to discuss their own experiences, this thesis became a study of Dutch attitudes to the Vietnamese because of the preponderance of related sources.

Theoretical framework

This thesis examines the Vietnamese refugees who came to the Netherlands from Czechoslovakia, how the Dutch government handled their situation, and the role that the Dutch court system played in this. It makes use of the gap hypothesis, which was first proposed by Cornelius, Martin, and Hollifield in 1994.¹⁶ This hypothesis states that there is a growing gap between the goals of governments' migration policies and the outcome of those policies. Their hypothesis contends that there are two main reasons for this gap in immigration policy: first, a gap is caused by humanitarian considerations and due to the recognition of individual rights, which means that immigrants can challenge government policies; and second, a gap is caused by inadequate application of the policies, which meant that it was impossible to halt illegal immigration.¹⁷ Christian Joppke added to the debate on the gap hypothesis in 1998 with his research on why liberal states accepted unwanted immigration, even if this was contrary to their policies. Joppke argues that this was due to the fact that these liberal European states were bound by legal constraints and moral obligations, as often contained in national constitutions and enforced by national courts.¹⁸

In her book *Losing control? Sovereignty in an Age of Globalization*, Saskia Sassen argues that international human rights had become increasingly powerful in Western European countries in the 1970s and 1980s. This led to an increase in court decisions having an effect on the implementation of human rights. In addition, she argues that national policy makers lost power to supranational institutions such as the European Union.¹⁹

Sassen and Joppke's argument that the courts had become more powerful has met with some criticism. One such criticism was made by Saskia Bonjour in 2011. In her article 'The Power and Morals of Policy Makers: Reassessing the Control Gap Debate', Bonjour discusses the gap hypothesis at length and identifies in the literature three main reasons for the gap. One of the reasons is that national policy makers lost power to courts or supranational organisations, as put forth by Sassen. Bonjour argues however that, in the case of the Netherlands, this is not

¹⁶ Cornelius, Wayne A., Martin, Philip L. and Hollifield, James F., 'Introduction. The ambivalent quest for immigration control', in: Cornelius, Wayne A., Martin, Philip L. and Hollifield, James F. (eds.), *Controlling Immigration. A global perspective* (Stanford 1994).

¹⁷ Joppke, Christian, 'Why Liberal States Accept Unwanted Immigration', *World Politics* 50:2 (1998) 266- 293.

¹⁸ Ibidem.

¹⁹ Sassen, Saskia, *Losing control?: sovereignty in an age of globalization* (New York 1996).

correct.²⁰

In his book *Geruisloos inwilligen* Tycho Walaardt provides a new explanation for the gap between migration policies and their outcome in the Netherlands. According to Walaardt, Dutch asylum policies were strict, as were the civil servants who decided over the fate of asylum seekers, and this strictness led to an impracticable asylum policy. This, in turn, resulted in an impasse. Asylum seekers who had exhausted all legal remedies did not always leave the country themselves or they could not be deported, as the policies dictated. In these cases, the only option that was left was to grant the request for a residence permit. It was made clear that these decisions were exceptions, to prevent being regarded as a precedent or becoming a pull factor for other migrants. In his book, Walaardt identifies three cases in which asylum seekers would be granted a residence permit. The first was on special humanitarian grounds, if asylum seekers were sick or vulnerable. The second case was when certain personal aspects made it unsafe for the asylum seekers to return to their country – for example, being Christian or gay. The third case was on the basis of a cost-benefit analysis, as Walaardt calls it. An asylum seeker could be useful in Dutch society because he or she could work in an industry where workers were needed.²¹

Another theory used in this thesis is that put forward by Gibney and Hansen. These authors identify two arguments in relation to the number of deportations carried out by liberal states. First, they highlight the argument that a transnational human rights regime has constrained the liberal state, which is in line with Jopkke's theory. Second, they argue that domestic institutions and the national policy process have limited the liberal state. Although countries want to deport more people, states find it extremely difficult to do so. One of the main reasons for this is the fact that the appeals process takes a considerable length of time, after which the asylum seekers are entitled to a residence permit.²²

This thesis focuses on the case of the Vietnamese asylum seekers who came from Czechoslovakia to the Netherlands between 1991 and 1995. When examining the roles of different actors, I use five main theories relevant to the gap hypothesis. The first theory is that of Christian

²⁰ Bonjour, Saskia, 'The Power and Morals of Policy Makers: Reassessing the Control Gap Debate', *International Migration Review* 45:1 (2011) 89-122.

²¹ Walaardt, Tycho, *Geruisloos inwilligen argumentatie en speelruimte in de Nederlandse asielprocedure, 1945-1994* (Hilversum, 2012).

²² Gibney, M.J and Hansen, R., 'Deportation and the liberal state: the forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom' (Geneva 2003).

Joppke, who believes the court systems became increasingly powerful in Western European countries during the 1970s and 1980s. Saskia Bonjour's theory – the second one that I use – holds that courts did not play a decisive role in unwanted immigration in the Netherlands, and contradicts Sassen's theory. The third theory is that of Tycho Walaardt which states that immigration policies were too strict, which in turn led to an impasse. After this impasse had been reached, the asylum seekers were allowed to remain in the country on special humanitarian grounds. The fourth and final theory is that of Gibney and Hansen on immigration numbers. They believe one of the reasons that states are unable to deport asylum seekers is that asylum application processes take too long

Chapter 1: Should they stay or should they go? Political debates about Vietnamese asylum seekers.

Vietnamese refugees

In this chapter, I will first give a short overview of the situation regarding Vietnamese migrants in the world from 1975 until 1989. Secondly, I will explain the three-year policy and the Dutch migration policies in the 1990s. Finally, I will examine the Dutch policies surrounding the case of the Vietnamese asylum seekers from Czechoslovakia.

The Netherlands had already taken in a sizable number of Vietnamese refugees in the 1970s and 1980s – approximately 7,000 between 1975 and 1989.²³ However, as increasing numbers of Vietnamese continued to flee from their country, other countries became less willing to grant them refugee status. Most of the Vietnamese who came to the Netherlands were invited by the Dutch government from internment camps in Thailand and Malaysia. As already mentioned, another part of the group was picked up by Dutch merchant vessels after they had set sail in small boats in the hope of reaching a different country. In total, 95% of the Vietnamese who fled escaped the country by boat.²⁴ According to a maritime agreement, the country that the ship was registered in, was also responsible for taking in the refugees.²⁵ Postel and Boekhoorn state that there were five different categories into which the Vietnamese refugees could be divided into until 1979. These different categories were based on their motives for fleeing the country. However, from 1980 onwards, the motives became less clear – partly due to the fact that political and economic factors overlapped in Vietnam as a result of the policies of the socialist government. People left because they did not want to live in a communist country.²⁶

The position in which Vietnamese refugees in South-East Asia found themselves between 1975 and 1995 has to be taken in to account, since it is highly likely that this influenced the decisions taken by Dutch politicians. Between 1975, the end of the Vietnamese War, and 1995, 839,228 Vietnamese fled from Vietnam to countries such as China, Hong Kong, Taiwan, South Korea, Malaysia, Indonesia, Thailand, the Philippines, Singapore, and Japan.²⁷ In addition, there were

²³ Postel, A.A. and Boekhoorn, P.F.M., *Een wereld van verschil, ervaringen van vluchtelingen in Nederland*. (Nijmegen, 1993).

²⁴ Ibidem.

²⁵ van der Hoeven, E. and de Kort H., *Over Vietnamezen in Nederland* ('s Gravenhage, 1983).

Freeman, James M., *Voices From the Camps: Vietnamese Children Seeking Asylum* (Washington, 2003).

²⁶ Postel, Boekhoorn, *Een wereld van verschil, ervaringen van vluchtelingen in Nederland*.

²⁷ Freeman, *Voices From the Camps*.

many refugees from Laos and Cambodia due to the unrest in those countries. In total, 1.5 million refugees from Indo-China arrived in other countries of first entry in this period.²⁸ At first, almost all Vietnamese asylum seekers were given refugee status and resettled in different countries. Countries of first entry did not expect that any of the refugees would settle in their countries, but would be resettled in other countries – a situation that was also described as ‘an open shore for an open door’.²⁹ In 1979, the UN organized an international conference on Indochinese refugees in Geneva. It was decided at this conference that worldwide resettlement pledges would be raised to 260,000. The Vietnamese government also agreed to try to halt the illegal departure of asylum seekers and instead promoted regulated departures from the country under the Orderly Departure Program (ODP).³⁰

Between 1980 and 1986, the arrival of asylum seekers in Southeast Asian countries started to decline, and more refugees were resettled than arrived per year. However, in 1987 and 1988, the number of asylum seekers from Vietnam started to rise again. This prompted the UN to organize another international conference, this time in Geneva in 1989. At this conference, the 70 countries that attended adopted a new approach which became known as the Comprehensive Plan of Action (CPA). The goal of the CPA was to stop the flow of people leaving Vietnam. First, this was to be achieved by preventing organized clandestine departures from Vietnam, while the government tried to promote legal migration under the ODP. Second, the countries of first entry would grant temporary refugee status to the asylum seekers. After they were granted this status, their asylum cases would be considered by the UN High Commissioner for Refugees (UNHCR), which would judge whether they would be granted permanent refugee status on the basis of the 1951 UN Refugee Convention and the 1967 Protocol. If the Vietnamese were granted permanent refugee status, they would be resettled in a third country such as the United States or Canada. If the UNHCR denied the Vietnamese refugee status, they had to return to Vietnam. In total, 115,600 asylum seekers were screened by the UNHCR. Roughly one third of them were granted permanent refugee status and resettled in third countries. The remaining two thirds were refused refugee status and told to return to Vietnam. Over half of

²⁸ Freeman, *Voices From the Camps*.

²⁹ Courtland, Robinson W., ‘The Comprehensive Plan of Action for Indochinese Refugees, 1989-1997: Sharing the Burden and Passing the Buck’, *Journal of Refugee Studies* 17:3 (2004) 319-333.

³⁰ Bari, Shamsul, ‘Refugee Status Determination under the Comprehensive Plan of Action (CPA): A Personal Assessment’, *International Journal of Refugee Law* 4.4 (1992): 487–513.

them, 45,000, refused to return.³¹ In 1995, Vietnam, the UNHCR, and the international community reached an agreement and started to forcefully repatriate the failed asylum seekers the following year.

Back in 1967, the first Vietnamese citizens entered Czechoslovakia to be trained there in specific skills that were deemed important for the Vietnamese economy, as was agreed between the governments of the two countries. The agreement stipulated that all but the cost of transportation would be covered by the Czechoslovakian government. In the early 1970s, this agreement was expanded so as to accommodate a further 5,000 Vietnamese in the 1970s. They were to spend part of their time in Czechoslovakia receiving vocational training and part of it working as qualified labourers. These agreements put a strain on the Czechoslovakian economy, since it was costing them more money than it brought in. In the earlier years, this was justified by the urgent need to develop the Vietnamese national economy to further benefit the spread of socialism. In the late 1980s, however, this changed. In November 1980, a new treaty was signed between Vietnam and Czechoslovakia which changed the reasons for the Vietnamese going to Czechoslovakia. This treaty placed more emphasis on working than training. This supplied the Czechoslovakian government with a steady force of cheap labourers, and gave the Vietnamese government a steady source of income, since the workers were forced to give a percentage of their wages to the Vietnamese government.³²

Driejaren-beleid [three-year policy]

In the 1990s, the Dutch government adopted a new policy regarding the admission and reception of asylum seekers. On 10 December 1991, the State Secretary of Justice, Aad Kosto, from the Partij van de Arbeid [Labour Party] (PVDA), who was tasked with managing asylum policy, informed the chiefs of police of the new policy – called the Nieuwe toelatings- en opvangmodel [New admissions and Reception Policy] (Ntom) – by letter. It was due to the rising number of asylum applications in the Netherlands, the long decision-making process, and the pressure this put on the Dutch reception capacity and facilities that the Dutch government formulated a new approach. As Kosto explained in his letter, asylum applications would be centralized in four

³¹ Freeman, *Voices From the Camps*.

³² M. Dennis, 'Die vietnamesischen Vertragsarbeiter und Vertragsarbeiterinnen in der DDR, 1980-1989' in Karin Weiss and Mike Dennis eds., *Erfolg in der Nische? Die Vietnamesen in der DDR und in Ostdeutschland* (Munster 2005) 15-51.

different regions throughout the country. It was to the chiefs of police of certain municipalities in these four regions that asylum seekers would have to apply for asylum. Furthermore, asylum seekers would be received in an Onderzoeks- en opvangcentrum [research and reception centre] (OC), where they would be medically examined and their statements would be taken by a civil servant from the Immigratie- en Naturalisatiedienst [Immigration and Naturalisation Service] (IND). After this, they could move on to an Asielzoekerscentrum [Asylum Centre] or an Regeling opvang asielzoekers-woning [arrangements for the reception of asylum seekers housing] (ROA- woning).³³

On 10 July 1992, the Dutch government adopted a new policy toward asylum applications which became known as the Driejaren-beleid [three-year policy]. This policy related to the decision to award asylum seekers a residence permit under certain circumstances. The government brought out two publications in which this policy was explained. The first instance of this was in the so called Steendijk Letter which was published in the Nieuwsbrief Asiel- en Vluchtelingenrecht [Newsletter asylum and refugee law] in 1994.³⁴

... in cases in which it is due solely to the effects of administrative policy that the person concerned has not been granted a final decision on his/her request for a long time after entry and is staying in the Netherlands with the knowledge of the authorities, the government assumes its responsibility and will allow them to remain. The cabinet envisages a maximum period of three years after the submission of the admission request.³⁵

The second time the three-year policy was mentioned by the Dutch government was in a letter that was sent to the Council of State by the government on 5 April 1994. The letter stated that the time period of three years for an asylum procedure was not sufficient for the granting of a residence permit. The policy applied only in cases where the effects of administrative policies meant that asylum seekers had not received a verdict on their application in due time,

³³ Grütters, C.A.F.M., *Asieldynamiek. Een systeemodynamische analyse van de Nederlandse asielprocedure in de periode 1980-2000* (Nijmegen 2003).

³⁴ Steendijk Letter in: NAV ((Nieuwsbrief Asiel- en Vluchtelingenrecht) 1994: 206, Vc 1994, A4/6.17.2.

³⁵ "... in die gevallen waarin het voornamelijk of wellicht uitsluitend op effecten van bestuurlijk beleid is terug te voeren dat betrokkene lange tijd na binnenkomst nog geen definitieve beslissing op zijn verzoek om toelating heeft verkregen en in Nederland verblijft met medeweten van de autoriteiten, zal de overheid haar verantwoordelijkheid nemen door in het verblijf te berusten. Het kabinet heeft hier een periode op het oog van uiterlijk drie jaren die verstreken zijn na indiening van het toelatingsverzoek."

while the Dutch government was aware that they resided in the Netherlands. It was not applicable if the person in question had not cooperated with his or her own deportation or if the country that the person was to be deported to had not cooperated with the Dutch government.

Dutch Asylum policies regarding the Vietnamese

The first mention of the situation regarding the Vietnamese refugees in the Dutch parliament was on 2 December 1991, when State Secretary Kosto responded to questions asked by a member of parliament, Sipkes from GroenLinks [GreenLeft] (GL). Sipkes mentioned that 200 Vietnamese had fled from countries such as Czechoslovakia to the Netherlands and gave the rise of racism in the former country as the primary reason for their departure. The second reason that Sipkes gave for the refugees having fled from Czechoslovakia to the Netherlands was their fear of prosecution in Vietnam. According to Sipkes, the Dutch government wanted to expel the refugees back to Vietnam because it believed that there was no fear of persecution. Sipkes wanted to know on what information the Dutch government had based this decision. She asked if it was true that the State Secretary had not been able to get confirmation that the Vietnamese would not be prosecuted upon their return to Vietnam. According to Sipkes, the German Ministry of Foreign Affairs was not expelling the Vietnamese because it believed it was possible that they would be prosecuted for fleeing from Vietnam. Sipkes wanted to know why the Dutch government did not adopt the same approach as the Germans. In addition, she asked why the State Secretary kept using the plural form of asylum seekers, and whether each case was still being approached on an individual basis. Finally, Sipkes wanted to know why the Dutch government was deporting the Vietnamese to Czechoslovakia if it believed that Vietnam was safe enough to return to.³⁶

According to Kosto, the Vietnamese could be deported to Czechoslovakia because the government in that country was fully capable of protecting the Vietnamese against racism. Moreover, Czechoslovakia was bound to the Convention Relating to the Status of Refugees, which it had signed on 17 October 1991.³⁷ He stated that the Vietnamese could choose to be sent back to either Czechoslovakia or Vietnam – or indeed to any other country, if that country was willing

³⁶ Handelingen Tweede Kamer, 2 December 1991.

³⁷ Rb. 's-Gravenhage (pres.) 7 January 1992, ECLI:NL:RBSGR:1992:AH3817.

to accept them. Kosto went on to explain why the Dutch government believed that the Vietnamese would be safe if they were to return to Vietnam. According to him, the UNHCR had provided the Dutch government with information about the return of other Vietnamese refugees to Vietnam. This information indicated that Vietnamese who had fled the country at some point and had subsequently returned, were not prosecuted by the Vietnamese government. Kosto stated that there were even some Vietnamese who had received refugee status in the Netherlands and who were able to return to pay a visit to Vietnam without any trouble. It was even possible that the refugee passport excluded Vietnam as a destination and that the refugees would still be able to enter the country with that passport. However, Kosto did state that it was possible that the Vietnamese government could prosecute the people who had fled from the country. The punishment, however, was limited to a maximum fine of US\$200. According to Kosto, there were no signs of persecution as outlined in the UN Refugee Convention.³⁸ After Sipkes' rebuttals, she mentioned that the information the Dutch government had received from the UNCHR pertained to the situation of Vietnamese who had returned from Hong Kong and not from Czechoslovakia. According to Sipkes, Amnesty International had appealed for the protection of Vietnamese refugees from Czechoslovakia, because the situation for this particular group was becoming worse in Vietnam. In addition, she asked the State Secretary for extra information about the fine that the Vietnamese could receive, because according to the German government and reports from Amnesty International, the refugees were not subject to a mere fine but to a prison sentence ranging from three months to twelve years.³⁹ According to Sipkes, the mere fact that a Vietnamese asylum seeker had been critical of the Vietnamese government and applied for asylum in a different country was enough reason to land them in jail with a multiple-year sentence.⁴⁰

Kosto refused to comment on the German situation and stated once again that the Dutch government did not see any grounds that prohibited them from deporting the refugees to Czechoslovakia or Vietnam.⁴¹ It was also mentioned in the debate that some of the Vietnamese refugees had gone on hunger strike to protest against their expulsion. Several members of parliament, such as Wiebenga (VVD), voiced their concern to Kosto that a hunger strike should not be used

³⁸ Handelingen Tweede Kamer, 2 December 1991.

³⁹ Amnesty International Report, 1991, <https://www.amnesty.org/download/Documents/POL1000011991ENGLISH.PDF> (London, 1991) (Retrieved on 23 May 2019).

Handelingen Tweede Kamer, 2 December 1991.

⁴⁰ Handelingen Tweede Kamer, 2 December 1991.

⁴¹ *Ibidem*.

as a means to change policy in a democratic country. Kosto agreed with this and stated that while he could not forbid anybody from going on hunger strike, it would never have any influence on the policies formulated by the Dutch government.⁴²

Sipkes' fellow party member, Beckers de Bruijn, stated that the head of the foreign affairs consular service in Prague and the head of immigration services in Czechoslovakia were not aware of the situation. She said that if the Vietnamese were to be deported to Czechoslovakia, their names would be sent to the Vietnamese embassy, which would place them on a blacklist. She asked Kosto what he could do to ensure the humane treatment of the Vietnamese in Prague if they were to be returned. Kosto responded by saying that this information was new to him, but that Czechoslovakia was bound by the UN Refugee Convention to ensure the humane treatment of the Vietnamese.⁴³

The report from Amnesty International that Sipkes referred to during her debate with the State Secretary on 2 December 1991 related to the period of January–December 1990. According to Amnesty International, leaving Vietnam without permission from the authorities was still a punishable crime under three different articles of the Vietnamese Criminal Code, namely articles 85, 88, and 89. These three articles were part of the 'crimes against national security' division. Article 85 was invoked when people fled from Vietnam with the intention of opposing the people's government.⁴⁴ The punishment for breaking art. 85 could be three to twelve years in prison.⁴⁵ Persons who were arrested for attempting to leave the country could be detained without trial.⁴⁶ Amnesty International reported that people who were accused of helping to facilitate the illegal departure of approximately 1,000 people were given prison sentences ranging from three to eighteen years. In 1990, there were no reported cases of people trying to flee the country, but the report did mention that one Vietnamese citizen, Lam Thi Tuyet and her five children, who had been detained since February 1989 without trial, were released in April 1990.⁴⁷

⁴² Handelingen Tweede Kamer, 2 December 1991.

⁴³ Ibidem.

⁴⁴ Amnesty International, 'Vietnam: renovation (doi moi), the law and human rights in the 1980s', in: D. Forbes, T.H. Hull, D.G. Marr and B. Brogan eds., *Doi Moi: Vietnam's Renovation, Policy, and Performance*, (Canberra, 1991) 206-214.

⁴⁵ Rb. 's-Gravenhage (pres.) 12 December 1991, ECLI:NL:RBSGR:1991:AH3816.

⁴⁶ Amnesty International, 'Vietnam: renovation (doi moi), the law and human rights in the 1980s', in: D. Forbes, T.H. Hull, D.G. Marr and B. Brogan eds., *Doi Moi: Vietnam's Renovation, Policy, and Performance*, (Canberra, 1991) 206-214.

⁴⁷ Amnesty International Report (London, 1991) (Retrieved on 23 May 2019).

Even though the Vietnamese asylum seekers who came to the Netherlands had not fled from Vietnam but from Czechoslovakia, they were still in danger of being prosecuted under the above-mentioned law. This was because the Vietnamese had been sent to Czechoslovakia by the Vietnamese government under a contract. By leaving Czechoslovakia without permission, they had broken their contract and were essentially leaving the control of the Vietnamese government.⁴⁸ Amnesty International had previously reported on the plight of the Vietnamese who had tried to leave the country without official permission. In its 1989 annual report, the organisation mentioned that at least 30 people had reportedly been detained without trial, but that the actual number was believed to be much higher. In August 1989, officials reported that the efforts to prevent illegal departures had intensified in that year. A total of 413 people were reported to have been convicted of leaving the country without permission in the first five months of 1989, receiving prison sentences of up to 12 years. Amnesty International also mentioned that one foreign press report contained a statement from an official from a local authority in a province, who claimed that the authorities were shooting people who attempted to leave the country without permission. Moreover, two people were executed for such attempts during the first half of 1989.⁴⁹

In the debate, it was evident that Kosto referred to the UN Refugee Convention as a way of trying to ensure that the Czechoslovakian government would protect the refugees. The Convention, signed in 1951, created a framework for the protection of refugees who were in danger of being persecuted for political reasons or because of their religion or race in the signatory countries. According to the Vietnamese asylum seekers from Czechoslovakia, if they were to return to Vietnam they would be in substantial danger of persecution for having fled the country earlier. One could argue that fleeing Vietnam could be regarded as a political act against the government of Vietnam. If this was the case, then the Vietnamese could claim refugee status on the basis of being persecuted for a political opinion. However, according to Kosto, this would not make them eligible for refugee status in the Netherlands because they came from Czechoslovakia, which would have to take them in according to the Dublin agreement drafted in 1990. This did not work, however, because Czechoslovakia was not a signatory to the Dublin agreement.⁵⁰ The refugees also claimed that they had fled from Czechoslovakia because they did not

⁴⁸ Handelingen Tweede Kamer, 2 December 1991.

⁴⁹ Amnesty International Report (London, 1990) (Retrieved on 23 May 2019).

⁵⁰ 'Tsjechoeslowakije weigert Vietnamese asielzoekers definitief. Kosto houdt vast aan uitzetting', *Limburgsch dagblad* (30 January 1992).

feel safe there due to the increase in racism after the fall of the Iron Curtain.⁵¹ According to Marek Čaněk and Pavel Čižinský, in the early 1990s the Czechoslovakian government did not change its policies toward migration and the support that migrants received. It was only in the second half of the 1990s that stricter immigration control started to be introduced. This was due to the fact that Czechoslovakia had entered an economic recession, unemployment rose, and the perception that foreigners were involved in crime and illegal activities.⁵² This perception, coupled with growing unemployment, could have accounted for the rise of racism towards foreigners in Czechoslovakia.

During het vragenuurtje⁵³ on 28 January 1992, D66 member Wolffensperger, who also spoke on behalf of GroenLinks, asked the Dutch government for more information regarding the situation of the Vietnamese. The reason he asked these questions was because recent judicial verdicts were not in line with the policies of the Dutch government. Wolffensperger specifically asked for information about the following: the outcome of the discussions between the Czechoslovakian and Dutch authorities, and between Dutch Foreign Minister van den Broek and his Czechoslovakian counterpart Dienstbierr, as well as the plan that van den Broek, Pronk, the Minister for Development Cooperation, and Kosto were reportedly working on, involving funds for development cooperation for the Vietnamese government in return for taking in the Vietnamese.⁵⁴

Before Kosto answered these questions from Wolffensperger, the State Secretary had deported four Vietnamese asylum seekers to Czechoslovakia on 31 January 1992. The authorities in Czechoslovakia did not accept these asylum seekers, and they returned to the Netherlands a couple of days later. This situation is discussed further in the second chapter. On 4 February 1992, the Dutch parliament asked for a debate with the State Secretary concerning this decision. In this debate, numerous parties (PvdA, D66, GL, VVD, SGP) stated that they did not agree with the decisions of the State Secretary, calling it a game of ping-pong and a test to see how the Czechoslovakian authorities would react. This prompted Wolffensperger and Sipkes to table

⁵¹ 'Vietnamezen in Praag voelen zich zondebok van skinheads', *NRC Handelsblad* (28 December 1991).

⁵² M. Čaněk, P. Čižinský 'The case of the Czech Republic' in: Giovanna Zincone, Rinus Penninx and Maren Borkert eds., *Migration Policymaking in Europe, The Dynamics of Actors and Contexts in Past and Present* (Amsterdam 2011) 327-346.

⁵³ A weekly procedure where members of parliament can ask questions to the Dutch government, comparable to the PMQs in the UK.

⁵⁴ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, " Questions from member of parliament Wolffensprenger".

a motion requiring the Dutch government to cease the deportation of the Vietnamese asylum seekers if the country that they were being deported to had not given reassurances that they would be accepted and protected against inhuman treatment, as per the 1951 UN Refugee Convention. This motion was passed by the Dutch Parliament.⁵⁵ Subsequently, Maarten van Traa (PvdA) asked the State Secretary whether this meant that he would put a hold on the deportation of the Vietnamese asylum seekers until he had debated with the Dutch parliament the reassurances from the Vietnamese authorities regarding the safety of the asylum seekers. Kosto replied to this question with a simple yes.⁵⁶

The plan between van den Broek, Pronk, and Kosto that Wolffensperger asked about did not apparently exist, but it did give Kosto an idea, as is evident from a personal letter that Kosto sent to Pronk on 31 January 1992. In this letter, Kosto asked Pronk whether they could have a short meeting to discuss the relationship between Kosto's deportation attempts and Pronk's idea about development cooperation for Vietnam. At the end of his letter, Kosto added that this idea had also been mentioned in the *NRC Handelsblad* the day before, and that the newspaper had not received the idea from him.⁵⁷ The article in the *NRC Handelsblad* was a news analysis and mentioned the fact that the Germans were drafting an agreement with the Vietnamese authorities that would see the German government reportedly pay a sum of DM10 million for the reassurance that the Vietnamese asylum seekers would not be mistreated upon arrival. The article questioned whether the Dutch government should not do the same and concluded that Pronk was not unwilling to consider this step. The paper based this on his remarks during the debate on his ministry's budget several months earlier, in which Pronk reportedly wanted to provide development aid to Vietnam because the country was developing very rapidly. However, Pronk was unable to do so because of a motion by CDA members Van Leijenhorst and De Hoop Scheffer,⁵⁸ passed in December 1990, which blocked any investments in the Mekong region, including Vietnam. However, it was not certain from this whether Pronk was a supporter of this plan. Although it was clear that he wanted to provide Vietnam with development aid to Vietnam, it was not clear whether he wanted to make such aid contingent upon the repatriation

⁵⁵ *Handelingen Tweede Kamer*, 4 February 1992.

⁵⁶ *Ibidem*.

⁵⁷ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Personal letter from Stas. Kosto to M Pronk".

⁵⁸ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Vietnam intensification of relation in response to the problems with denied asylum seekers".

of the Vietnamese asylum seekers.⁵⁹ It was, however, clear that certain members in the Dutch parliament were against this. Jaap De Hoop Scheffer (CDA) said that this was not even a point of discussion as far as the CDA was concerned. Terpstra (VVD) even stated that the situation had started to look like blackmail.⁶⁰

There were also attempts to assist the Vietnamese outside the Dutch parliament. One of the organisations involved in such attempts was the Actiecomite Vietnamese Asielzoekers [Action Committee Vietnamese Asylum Seekers]. The committee held a meeting with a number of civil servants from the Ministry of Justice on 24 December 1991,⁶¹ at which it put forward four requests. First, it asked for a new investigation into the situation in Eastern European countries and Vietnam by an independent commission. Second, it requested that a hold be put on the deportation of Vietnamese asylum seekers until this investigation had been completed. Furthermore, it asked Kosto to uphold the Dutch law in reviewing the applications of the Vietnamese in regard to the above-mentioned investigation. Finally, it asked for reassurances from the Dutch government that the latter would ensure the safety of the Vietnamese who had to leave the Netherlands.

Kosto responded to these requests in a letter to the committee's spokesperson Ms Bui on 2 January 1992. He stated that a new investigation was not needed, since the Czechoslovakian authorities would adhere to the UN Refugee Convention. This also meant that he would not stop the deportation of asylum seekers to Czechoslovakia. Furthermore, Kosto stated that all applications would, of course, be reviewed within the ambit of Dutch law and that the asylum seekers could ask for their cases to be reviewed by a judge if they wished to do so. Kosto concluded his letter by stating that the Czechoslovakian authorities guaranteed the safety of every resident, but that the Dutch government did not have any influence over the safety of the people if they were to be deported. Kosto also stated that he would implement the deportation policy for those Vietnamese who had exhausted every measure in the asylum policy and had their application denied.⁶²

⁵⁹ 'Minister kan voor Vietnam geldbuidel niet trekken', *NRC Handelsblad* (30 January 1992).

⁶⁰ 'CDA en VVD tegen voorwaarden Pronk voor steun aan Vietnam', *Trouw* (18 February 1992).

⁶¹ Letter from State Secretary of Justice, deportation of Vietnamese asylum seekers, 3 February 1992.

<http://resolver.kb.nl/resolve?urn=sgd:mpeg21:19911992:0006716&role=pdf> (Retrieved on 5 November 2019).

⁶² Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "letter Stas. Kosto to Ms. Bui"'.

On 25 October 1994, *De Telegraaf* ran an article on the return of the Vietnamese asylum seekers to Vietnam. The article mentioned that it would probably take longer than expected to send the Vietnamese asylum seekers back to Vietnam due to the strained bureaucracy in Hanoi. According to the article, the group of Vietnamese asylum seekers had shrunk from 500 to 350 due to the fact that 150 of them had returned to Vietnam of their own accord.⁶³

In 1995, the matter of the Vietnamese refugees was addressed once and for all, when the Rechtseenheidskamer (REK) decided on 1 June that one of the refugees had been left in uncertainty for too long by the Dutch government. As a result of this decision, all the Vietnamese were allowed to remain in the Netherlands by the then State Secretary for Justice Elizabeth Schmitz (PvdA).⁶⁴ The REK was a unique forum, as it was not regulated by law and had been created by the judiciary in 1994 after the revision of the *Vreemdelingenwet* [Aliens Act] (Vw). The revision of the Vw meant that the legal process regarding asylum applications had been concentrated in a single administrative procedure. This prohibited the possibility of appeal to a civil court. These decisions were met with protests, after which the REK was formed within the Court of The Hague, and tasked with presiding over the more difficult cases. In 2000, the REK ceased to exist after the implementation of the Vw 2000, which made provision for the possibility of appeal in immigration disputes. It is worth mentioning that not every judge recognized the decisions made by the REK.⁶⁵

After the REK had decided that this particular Vietnamese applicant was eligible for a residence permit on the basis of the three-year policy, some members of parliament wondered if this applied generally to the other Vietnamese asylum seekers, too. Two VVD members, Rijpstra and Korthals, asked parliamentary questions on the matter to the then Minister of Justice, Winnie Sorgdrager, on 27 June 1995. Ultimately, they wanted to know on what grounds the three-year policy was based and whether this policy would need reconsideration.⁶⁶

Sorgdrager answered these questions a couple of months later, on 19 September 1995. She stated there were approximately 300 Vietnamese in the Netherlands who had come from Czechoslovakia or other Eastern European countries. Their applications would be judged by the same

⁶³ ‘Terugkeer Vietnamezen stuit op bureaucratie’, *De Telegraaf* (25 October 1994).

⁶⁴ ‘Vietnamezen mogen van Schmitz toch in Nederland blijven’, *Trouw* (20 September 1995).

⁶⁵ C.Grütters., *Asiodynamiek, een systeemodynamische analyse van de Nederlandse asielpcedure in de periode 1980-2002*.

⁶⁶ Handelingen Tweede Kamer, questions from members of parliament Rijpstra en Korthals, 27 June 1995.

standards used in the court case to establish whether they were eligible for a permit under the three-year policy. Sorgdrager expected this to be the case in the majority of the applications. However, she emphasised that this verdict would not change anything for asylum seekers in general. She stated that the recent verdict by the REK in the case of a Chinese asylum seeker whose case was denied was regarded as proof of this. However, Sorgdrager did ultimately mention that the verdict could have consequences for other asylum seekers who were in the same situation as the Vietnamese asylum seekers.⁶⁷

The decision by the REK to grant the Vietnamese asylum seekers a permit on the basis of the three-year policy caused a relatively lively debate in the Dutch parliament concerning the policy. It was clear that a number of parliamentary members were afraid that the three-year policy would become a pull factor for other asylum seekers, particularly those from Vietnam. De Hoop Scheffer (CDA) was one such member. In a meeting on 6 December 1995, he stated that the plight of the Vietnamese had been created by the Vietnamese authorities because they were stalling the negotiations. However, this is an incorrect interpretation of the facts, as becomes clear in the discussion of the court case in Chapter 3.⁶⁸

Conclusion

This chapter has provided a brief overview of the situation regarding Vietnamese asylum seekers and Dutch asylum policies in general. More importantly, however, it has examined the debates in the Dutch parliament surrounding the Vietnamese asylum seekers from Czechoslovakia. From these debates, it is evident that the Dutch government regarded this group not as refugees, but as migrants with no valid claim to asylum, which is why – unsuccessful – attempts were made to deport the asylum seekers to Czechoslovakia or Vietnam. The inability of the Dutch government to deport the Vietnamese is supported by the theory of Gibney and Hansen that states want to deport more illegals, but are unable to do so.

A small group of members of parliament did regard the Vietnamese as refugees, and were ultimately able to secure a promise from State Secretary Kosto that he would not deport the asylum

⁶⁷ Handelingen Tweede Kamer, Questions from members of parliament with response from the government, 19 September 1995.

⁶⁸ Handelingen general consultation of the standing committee for Justice and the general committee for government spending, 6 December 1995.

seekers until he had received reassurances from the Vietnamese government about their safety. In the third chapter, it becomes evident that these reassurances played a crucial role in the case of the Vietnamese asylum seekers. The decision to grant the Vietnamese a residence permit under the three-year policy by the REK, sparked debates about this policy in the Dutch parliament. Some members of parliament were afraid that this policy could become a pull factor for other migrants and wanted to amend it.

The next chapter analyses the negotiations surrounding the deportation of the Vietnamese asylum seekers between the Dutch, Vietnamese, and Czechoslovakian authorities. This provides an insight into why these countries did not want to take the Vietnamese asylum seekers in.

Chapter 2: International negotiations

Negotiations with Czechoslovakian authorities

With a view to solving the problem with the Vietnamese asylum seekers, the Dutch state attempted to negotiate an agreement between Czechoslovakia and Vietnam so that the asylum seekers could be repatriated to one of these countries. In this chapter, these negotiations will be analysed.

On 3 February 1992, State Secretary Kosto sent a letter to the Dutch parliament, having received numerous questions about the plight of the Vietnamese refugees. In this letter, he provided further information about the situation regarding the Vietnamese refugees in the Netherlands, the court rulings, contacts with those defending the Vietnamese, the situation in Vietnam and in Czechoslovakia, contacts with the Czechoslovakian authorities, and recent developments. When Kosto described the situation in the Netherlands, he specifically mentioned that 299 of the total of 451 Vietnamese had presented a passport that was valid only for travel to and from Czechoslovakia and Vietnam. Valid work and/or residence permits were held by 202 of the asylum seekers. Thus far, 22 Vietnamese refugees had been sent back to Czechoslovakia, and 18 of them had been accepted. The four who were refused entry to Czechoslovakia had been sent back to the Netherlands within a couple of days. At the end of 1991, 436 Vietnamese were housed somewhere in the country under the so called *Regeling Opvang Asielzoekers* [arrangements for the reception of asylum seekers] (ROA). However, Kosto mentioned that 35 Vietnamese were housed in numerous churches throughout the country, so as to avoid forced expulsion by the Dutch government.⁶⁹

As for the situation in Czechoslovakia, the Dutch government had already been briefed by Kosto at the end of 1991 about the situation relating to Czechoslovakian labour migrants. Talks with the Czechoslovakian authorities had reaffirmed the situation, as did a paper written by a research commission at the instigation of the International Network of Local Initiatives with Asylum Seekers (INLIA). According to Kosto, this demonstrated that Czechoslovakia had met

⁶⁹ Letter from State Secretary of Justice, deportation of Vietnamese asylum seekers, 3 February 1992. <http://resolver.kb.nl/resolve?urn=sgd:mpeg21:19911992:0006716&role=pdf> (Retrieved on 5 November 2019).

all the requirements under the UN Refugee Convention and that the Vietnamese would be able to apply for asylum in Czechoslovakia.⁷⁰

Contacts between Czechoslovakia and the Netherlands had been ramped up on both a political and civil service level. Talks at the civil service level had taken place between the two countries on 13 January 1992, during which the Czechoslovakian government made it clear that the Vietnamese workers who had remained in Czechoslovakia on the basis of a bilateral work agreement, ended their work contract without the consent of their employers, and left the country willingly without an exit or return visa would only be allowed to return if they had a valid visa for entry into Czechoslovakia. The passports of the Vietnamese asylum seekers contained information from the Vietnamese government about the work agreement that the asylum seekers were a part of, which included the duration of their stay in Czechoslovakia. The Czechoslovakian government made it clear that this extra information did not give them any right to return to Czechoslovakia, since the Vietnamese had left the country. According to the Czechoslovakian authorities, the residence and work permits of the Vietnamese had become invalid after they left the country without permission. The Czechoslovakian authorities were not unwilling to take the Vietnamese workers in, but they would have had to apply for a visa themselves, without being forced to do so. Forced deportation was unacceptable to the Czechoslovakian authorities.⁷¹

The Dutch government countered the reasoning of the Czechoslovakian government by arguing that a country should take in an alien on the basis of international rules and mutual understanding, if this person had stayed in that country legally for a long period of time. The information about the work agreements reflected in the passports proved that the Vietnamese had stayed legally in Czechoslovakia for quite some time. The Dutch government stated that bilateral agreements, such as the work agreements between Vietnam and Czechoslovakia, would not interfere with the commitment to return. This meant that the Dutch government believed, without a doubt, that those asylum seekers who held a Vietnamese passport containing information that pointed in the direction of a valid work or residence permit, would be allowed to return to Czechoslovakia. A dialogue could be started to discuss the situation of the Vietnamese whose

⁷⁰ Letter from State Secretary of Justice, deportation of Vietnamese asylum seekers, 3 February 1992. <http://resolver.kb.nl/resolve?urn=sgd:mpeg21:19911992:0006716&role=pdf> (Retrieved on 5 November 2019).

⁷¹ *Ibidem*.

work or residence permit had become invalid or those who claimed they had lost their Vietnamese passport but who had remained in Czechoslovakia legally nonetheless.⁷²

During these talks, the Dutch government presented the Czechoslovakians with a list of 24 names of Vietnamese workers who had lived and worked in Czechoslovakia legally for years and who, according to the Dutch, were eligible for return to Czechoslovakia. Two weeks later, on 22 January 1992, the Dutch Minister of Foreign Affairs, Hans van den Broek, and his Czechoslovakian counterpart, Jiří Dienstbierr, held a meeting about the situation. During this conversation, the positions of both parties were discussed, but they were unable to come to an agreement. Six days later, on 28 January 1992, the Czechoslovakian authorities sent a message to the Dutch embassy in Prague in which they stated that they were willing to accept 23 of the 24 Vietnamese that were on the list presented by the Dutch government on 13 January. The Czechoslovakian government did stipulate certain conditions before these Vietnamese could be returned. They stated that one of the twenty-four would be allowed to return to Czechoslovakia because he had a Vietnamese service passport, but on the condition that his return was voluntary. The other 23 would be allowed to return if they were in possession of a valid visa for Czechoslovakia and if their return was voluntary. This visa could be obtained by the Vietnamese by personally applying for it at the Czechoslovakian embassy in The Hague.⁷³

The last subject that Kosto addressed in his letter related to developments surrounding the expulsion of the Vietnamese. Kosto started by stating, as he had said before, that in his opinion the Vietnamese were not refugees but asylum seekers who could not be allowed to stay in the Netherlands on humanitarian grounds. Vietnam and Czechoslovakia were the two destinations that the Netherlands considered suitable for expulsion. Kosto stated that on 31 January 1992, four Vietnamese whose asylum applications had been denied and who were in possession of a valid Vietnamese passport with a valid visa and work permit for Czechoslovakia, were escorted on to a plane and flown back to Czechoslovakia. Upon arrival at the airport in Prague, they were refused entry into the country and had to remain in the airport for two days before returning to the Netherlands. Kosto believed that the refusal of entry was unreasonable and gave three reasons why he thought this. The first reason was that the Vietnamese were in possession of

⁷² Letter from State Secretary of Justice, deportation of Vietnamese asylum seekers, 3 February 1992. <http://resolver.kb.nl/resolve?urn=sgd:mpeg21:19911992:0006716&role=pdf> (Retrieved on 5 November 2019).

⁷³ *Ibidem*.

valid travel documents for Czechoslovakia, including valid work permits. Second, the four Vietnamese refugees were not on the list of twenty-four Vietnamese that was presented to the Czechoslovakian authorities on 13 January 1992. Finally, Czechoslovakia had, until that point, allowed entry to 18 similar cases involving Vietnamese who were returned to Czechoslovakia involuntarily.⁷⁴

Kosto concluded his letter by saying that the state was investigating whether the Vietnamese asylum seekers whose application had been denied could be deported to Vietnam. The Dutch government had already opened diplomatic channels with Vietnamese authorities to discuss this matter.⁷⁵

The expulsion of the four Vietnamese refugees to Czechoslovakia and their denial of entry caused a stir in the Netherlands. Dutch newspapers covered the incident in detail and included the opinion of the INLIA foundation and the Dutch Council for Refugees, which stated that Kosto had used the four Vietnamese refugees as pawns to try to break the stalemate in the negotiations between the Netherlands and Czechoslovakia.⁷⁶ A spokesperson for the Dutch Ministry of Justice rebutted this claim by stating that, prior to this incident, Czechoslovakia had already allowed 18 Vietnamese to return since September 1991. The spokesperson added: ‘We have been discussing this matter for weeks; at some point, there is nothing more to discuss.’⁷⁷ It is strange to see that in Kosto’s letter of 3 February 1992, he mentioned that the Czechoslovakian authorities had stated numerous times that the Vietnamese refugees would be allowed to return to Czechoslovakia only if they had the proper documentation and were leaving the Netherlands. On the basis of this information that was clearly available to Kosto, it would be fair to say that he used the four Vietnamese refugees as guinea pigs to see what the Czechoslovakian authorities would do if they were presented with Vietnamese who did not have the right paperwork and were forcefully deported by the Dutch state.

On 12 May 1992, Kosto sent another letter to the Dutch parliament to update it on progress with the expulsion of the Vietnamese refugees. After the debate on 4 February 1992, Kosto

⁷⁴ Letter from State Secretary of Justice, deportation of Vietnamese asylum seekers, 3 February 1992.

<http://resolver.kb.nl/resolve?urn=sgd:mpeg21:19911992:0006716&role=pdf> (Retrieved on 12 December 2019).

⁷⁵ Ibidem.

⁷⁶ ‘Praag stuurt Vietnamezen weer terug’, *NRC Handelsblad* (3 February 1992).

⁷⁷ ‘We hebben vervolgens wekenlang overleg gevoerd, op een bepaald moment raak je uitgepraat.’
Praag stuurt Vietnamezen weer terug’, *NRC Handelsblad* (3 February 1992).

ordered the immigration services to help the Vietnamese acquire proper housing and not to put them in detention centres while awaiting their expulsion. This change in policy led to 30 Vietnamese leaving the churches in which they were hiding. As of May 1992, approximately 300 Vietnamese refugees who came from Czechoslovakia were still in the Netherlands. This was a significantly lower number than the 451 who had arrived in 1991. It was not clear where the other 150 Vietnamese had gone to, and this was not addressed by Kosto.⁷⁸ The Dutch state appealed against a court decision of 30 December 1991 which ruled that the Vietnamese asylum seeker who had started the court case could not be deported to Czechoslovakia or Vietnam, since this could lead to a breach of article 3 of the European Convention on Human Rights (ECHR). The high court ruled in favour of the government on 18 March 1992 that the asylum seeker in question had not provided sufficient evidence to fear a breach of article 3 of the ECHR if he returned to Czechoslovakia or Vietnam, and his refugee status was therefore denied.⁷⁹

Negotiations with the Vietnamese

The situation between Czechoslovakia and the Netherlands had not changed since February 1992. The asylum seekers still needed to apply for a visa in person in order to get into the country. However, progress was made with the contacts between the Dutch and Vietnamese governments.

The negotiations with the Vietnamese authorities commenced on 8 January 1992 in Prague, but the message was relayed to the Dutch ministry of foreign affairs on 26 February. During the first rounds of negotiations, the Vietnamese authorities in Prague had no information on their government's stance about article 89 of the Vietnamese criminal code, which made fleeing Vietnam illegal. Nevertheless, they did assure the Dutch government that the Vietnamese asylum seekers would not be prosecuted for fleeing to another country for economic reasons. However, this would however not be applicable to Vietnamese citizens who had been politically active against the Vietnamese government.⁸⁰ This statement by the Vietnamese authorities still left them with certain options to prosecute the Vietnamese asylum seekers for fleeing the country. The message that was conveyed back to the Dutch government by the Dutch embassy in

⁷⁸ Letter from State Secretary of Justice, deportation of Vietnamese asylum seekers, 12 May 1992. <https://resolver.kb.nl/resolve?urn=sgd%3Ampg21%3A19911992%3A0006719> (Retrieved on 9 December 2019).

⁷⁹ Ibidem.

⁸⁰ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Meeting in Prague on 8 January 1992".

Prague emphasized that the Vietnamese authorities had made it abundantly clear that Vietnam was a poor country that was experiencing many hardships.⁸¹ It seemed that the Vietnamese authorities wanted to press the Dutch state into giving them money for repatriating the Vietnamese asylum seekers, as other countries such as Germany had done.

As we have already seen in the first chapter, talks between Dutch ministers about funds for Vietnam had started on 31 January 1992. On 25 February 1992, Minister Pronk talked to the media about these funds. He stated that they could not be given to the Vietnamese asylum seekers themselves, since that would amount to a form of human trafficking; he would rather support the Vietnamese in a different way.⁸²

On 11 May 1992, the Dutch embassy in Bangkok relayed a message to the Dutch Ministry of Foreign Affairs, stating that the negotiations with Vietnam would be starting soon in Hanoi. They advised the ministry to prepare a financial plan so that this could be used in the negotiations. Furthermore, they advised that the Dutch government should emphasise that the problem with the Vietnamese asylum seekers was strictly a Dutch problem, but that the help of Vietnam was needed to resolve this problem. They should emphasise that the Netherlands had already done a lot for Vietnam in the past.⁸³

On 15 June 1992, a Dutch delegation consisting of van den Broek and Kosto met with their Vietnamese counterparts. Minister van den Broek asked for a response from his Vietnamese counterpart Manh Cam on the draft agreement that the Dutch ministry had put forward to Vietnam relating to the repatriation of the Vietnamese asylum seekers from Czechoslovakia. The Vietnamese minister replied that Hanoi was studying the agreement very seriously. However, he also said that the Netherlands should do everything it could to accept the asylum seekers themselves, especially if they had found work in the Netherlands. If accepting them in the Netherlands was out of the question, third-country options should be a serious consideration, with Czechoslovakia being the primary option.⁸⁴

⁸¹ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Meeting in Prague on 8 January 1992".

⁸² Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Interview Echo 25 February 1992 with M Pronk".

⁸³ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Message from Dutch embassy in Bangkok to MinBZ, 11 May 1992".

⁸⁴ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Memorandum BZ".

A month or two later, Pronk wrote a letter to Kosto advising him that he had allocated 3 million guilders to the EG/UNHCR project on 26 June 1992 for the reintegration of Vietnamese refugees from the camps in South East Asia.⁸⁵ This was a clear message to Kosto that he was trying to allocate funds to the Vietnamese to grease the wheels in the negotiations, something that was much needed, since the Vietnamese were reluctant to negotiate with the Dutch government.

On 27 November 1992, the strategy of the Dutch government in the negotiations with the Vietnamese was discussed further. In this discussion, it was made clear that it had made the Vietnamese authorities the following offer. The Dutch government would bear the cost of the deportation and initial housing for approximately 250 Vietnamese asylum seekers. This included a sum of money for every asylum seeker to give them a head start upon returning to Vietnamese society. This would amount to 891,000 guilders in total. The Vietnamese had responded positively to this offer but gave two conditions before they agreed to accept this. The first condition was that the Vietnamese asylum seekers could not be deported forcefully and had to leave the Netherlands on a voluntary basis. The second condition was that a sum of US\$1.5 to US\$2 million needed to be paid for the reintegration of the asylum seekers. The Dutch government was not willing to pay this kind of money.⁸⁶ The Netherlands had the option to send a negotiating team to Vietnam in the first months of 1993 to identify a solution to the problem with the asylum seekers. The main focus of this team was to emphasize to the Vietnamese authorities how much the Dutch government had done for Vietnam in the past few years. Second, they would have to clarify what the Vietnamese regarded as ‘voluntary’, because it was not clear what this meant. Would the Vietnamese authorities consider the deportation of an asylum seeker voluntary if he/she had accepted that there was no possibility other than to return to Vietnam?⁸⁷

The diplomatic talks aimed to gain Vietnam’s acquiescence to not implement article 89 (fleeing from the republic) in the case of the Vietnamese that were then in the Netherlands. The Vietnamese had informed the Dutch that those workers sent to Czechoslovakia on the basis of bilateral agreements and who later left Czechoslovakia on their own initiative and fled to the Netherlands were indeed guilty of contravening article 89 of the Criminal Code. However, the

⁸⁵ Nationaal Archief, ‘Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Personal letter from Stas. Kosto to M Pronk”.

⁸⁶ Nationaal Archief, ‘Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Strategic discussion MBZ”.

⁸⁷ Ibidem.

Vietnamese government guaranteed the safety and dignity of Vietnamese who returned. This included freedom from prosecution and discrimination. The Vietnamese government was against forced repatriation, but wanted to work with the Dutch and Czechoslovakian government to solve the problem. The money involved with the repatriation was to be paid to the asylum seekers, either by an international organisation or by the Netherlands itself. Kosto informed the Vietnamese that these costs should be paid by Vietnam or Czechoslovakia, in the light of the bilateral agreements that had brought the Vietnamese to Europe in the first place. However, since Kosto wanted to send the refugees back as soon as possible, he informed the Vietnamese government that the Netherlands would pay for the repatriation. Apart from these costs that the Vietnamese government did not want to pay, they also appealed to the international community to help with the reintegration of returnees, in view of Vietnam's prevailing socio-economic situation.⁸⁸

Kosto also mentioned that the Ministries of Foreign Affairs and of Justice were hosting talks with the International Organization for Migration (IOM) in the Netherlands and in Geneva. This organisation could help the Vietnamese with travel to Vietnam and with the returnees' reintegration into Vietnamese society by providing them with a monthly allowance of US\$100 for a period of nine months. All these costs would come out of the Ministry of Justice's budget for the returnee programme.

After this letter, the negotiations with the Vietnamese were in full swing and progress was made.

On 25 January 1994, Kosto informed the Dutch parliament that an agreement had been reached with the Vietnamese and that this agreement would be signed in March 1994. The agreement related to all Vietnamese guest workers from Central and Eastern Europe who had come to the Netherlands prior to 1 August 1993. The Vietnamese authorities had agreed to repatriate these asylum seekers, preferably on a voluntary basis, but involuntary deportation was not excluded. Kosto stated that one of the important parts of this agreement was the undertaking by the Vietnamese authorities to not prosecute any of the asylum seekers who would return for contravening article 89. Furthermore, Kosto added that a memorandum had been signed between the Dutch government and the Vietnamese authorities that protected the Vietnamese asylum seekers from prosecution for political acts committed while they were living in Czechoslovakia.

⁸⁸ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Strategic discussion MBZ".

The reintegration of the Vietnamese asylum seekers would be closely monitored by the UNHCR. This agreement did not include any financial obligations towards the Vietnamese government. It did however include the possibility of providing financial aid to individual refugees. According to Kosto, this was not a new phenomenon, as it had already been employed in the returnee policy that the Netherlands had been implementing for a number of years.⁸⁹

By working together with the IOM and the Vietnamese Ministry for Work, Disabled and Social Affairs, a programme was started to assist the refugees with integration into the job market and Vietnamese society. Part of this programme included a monthly allowance of US\$50 that the Vietnamese would receive for a period of twelve months. If they wanted to follow a vocational training programme, the Dutch government would finance this up to US\$100. On top of this, the Vietnamese returnees could receive US\$2,000 if they wanted to start their own company. This start-up money was also financed by the Dutch government.⁹⁰

On 6 June 1994, Vietnamese Minister of Foreign Affairs Kohima wrote a letter to the Dutch parliament stating that Vietnam would prefer bilateral negotiations with the IOM instead of trilateral negotiations. Twenty-four days later, the Dutch Ministry of Foreign Affairs wrote a message to the embassy in Hanoi stating that the Dutch would very much like to remain part of these discussions. The idea behind this was that if certain discussions were to arise from these negotiations, the Dutch state would know about it before the press or non-governmental organisations (NGOs).⁹¹ This demonstrates that the Dutch state was aware of the controversy attached to the subject. Given that Dutch funds were going to be allocated by the Vietnamese government, this may have provoked significant criticism from the Dutch parliament and media.

On the same date, 30 June 1992, another message reached the Dutch government. It was a request from the UNHCR Director of Asia asking the Dutch government to take in 20–30 difficult Vietnamese asylum seekers under the CPA. However, this was a problem, since the Dutch government had decided to stop taking in Vietnamese asylum seekers under the CPA; the UNCHR having stated that the CPA would be wound up at the end of 1995. There was some debate within the Dutch government as to whether it should honour this request, and ultimately it was

⁸⁹ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Letter from State Secretary of Justice, agreement with Vietnam regarding deportation of Vietnamese asylum seekers, 24 January 1994".

⁹⁰ Ibidem.

⁹¹ Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Letter to Hanoi from MBZ, 30 June 1994".

decided that it was best to do so. The argument that was used for this was that the Dutch needed help from the UNHCR with the monitoring of the reintegration of the Vietnamese asylum seekers from Czechoslovakia.⁹²

Conclusion

This chapter has examined the negotiations between the Dutch government and the Czechoslovakian and Vietnamese authorities. It has demonstrated that the Czechoslovakian authorities were not unwilling to take in the Vietnamese asylum seekers as long as they met a number of requirements; one of them being that the asylum seekers should be in possession of a valid visa and would return voluntarily. The Dutch government did not agree with this, but they were unable to broker an agreement. This, in turn, led the Dutch government to focus its attention on the negotiations with the Vietnamese authorities.

The Vietnamese authorities stipulated the same requirement as the Czechoslovakians, namely that the asylum seekers would have to apply for a valid visa. The negotiations with the Vietnamese authorities had two main goals: first, getting reassurances that the asylum seekers would not be prosecuted upon returning to Vietnam; and second, getting the Vietnamese authorities to accept the asylum seekers back into the country. It is evident that the Vietnamese authorities tried their best not to accept the asylum seekers. Ultimately, with the promise of financial help for taking the asylum seekers, the Dutch government was able to secure an agreement with the Vietnamese authorities in 1994.

As Joppke's theory stated, states were bound by legal constraints to do the right thing. In this case it meant that the Dutch government was unable to deport the Vietnamese asylum seekers unless their safety could be guaranteed in the form of an agreement. Gibney and Hansen stated as well that legal constraints was one of the reasons why states were unable to deport asylum seekers.

The next chapter examines the various court cases and analyses what arguments the courts used for and against granting the Vietnamese refugee status.

⁹² Nationaal Archief, 'Inventaris van persoonlijke archieven van enige bewindslieden van het Ministerie van Buitenlandse Zaken, 1952-1998 (2.05.81), inv.nr. 735, "Memo DAZ to M, regarding CPA, 30 June 1994".

Chapter 3: The judicial influence

Court cases

This chapter explains the three-year policy of the Dutch government, as well as the role of the REK. Furthermore, it discusses and analyses a series of six court cases relating to the Vietnamese asylum seekers. The court cases are from different periods in the 1990s and relate to different levels of courts. The analysis focuses on the differences and similarities in the decisions that were made by the various courts.

Rechtseenheidkamer

The REK was a unique feature of the Dutch judiciary system in the 1990s that deserves further explanation in the light of this research. The REK was established in 1994, together with new immigration laws, and was presided over by a member of the Regional Court of The Hague. The judges thought that, with the implementation of new immigration laws, a divergence would appear in the verdicts. The goal of the REK was to create unity among the verdicts in similar cases. The REK could only act on a case if it was referred to it by another court. However, this could however happen at the request of one of the parties. A majority of the judges who were specialized in alien cases recognized the decisions made by the REK. However, there were also several judges who did not uphold the verdicts of the REK. The Dutch government followed the verdicts of the REK, which made it a powerful player in the asylum cases.⁹³

Court cases

Up until the end of January 1992, there had been 80 court cases involving Vietnamese asylum seekers appealing against the Dutch government's decision to refuse them a residence permit. In 15 cases, the judges ordered that expulsion to Czechoslovakia would result in inhuman treatment of the refugees. In his letter of 3 February 1992, Kosto mentioned that the Dutch government had appealed to the high court in this matter and tried to overturn this decision.⁹⁴

⁹³ Walsum, S. K. van., *The Family and the Nation: Dutch Family Migration Policies in the Context of Changing Family Norms* (Newcastle upon Tyne, 2009).

⁹⁴ Letter from State Secretary of Justice, deportation of Vietnamese asylum seekers, 3 February 1992. <http://resolver.kb.nl/resolve?urn=sgd:mpeg21:19911992:0006716&role=pdf> (accessed on 12 December 2019).

This chapter discusses the available court cases and specifically examines the reasons the court used to grant or deny the Vietnamese asylum seekers certain rights. Moreover, the differences between the various cases are highlighted, and the main reasons that the courts applied are discussed thematically. Prior to this, a brief paragraph is dedicated to the story of the asylum seekers and how and when they came to Europe. I believe this is important because it illustrates some of the events the asylum seekers had to go through before reaching this stage.

The court cases are numbered as Case #1, Case #2, etc. The asylum seekers in the case are referred to as the plaintiffs or the defendants, based on who brought the case.

Description of the plaintiffs in the various cases.

The plaintiff in Case #1 is referred to only as T. T. was sent to Czechoslovakia by the Vietnamese government for a period of five years in 1986 to study and subsequently work in the country. Since T. could not identify himself with the communist ideology when his five-year period was over, he did not want to return to Vietnam. Therefore, when he had to leave Czechoslovakia, he fled to the Netherlands.

In Case #2 the two plaintiffs are referred to as K. and H. They came to the Netherlands from Czechoslovakia on 23 May 1991 and applied for a refugee permit on that day. Their application was denied on 1 August 1991, one day before the above-mentioned application of T. was denied.

Case #3.1 and Case #3.2 are two different cases, but involve the same people. Case #3.1 was brought by Pham and Le against the decision made by the Dutch government on their refugee application. After they had won this case, the Dutch state appealed the decision and started Case #3.2. The verdict of Case #3.2 provides information about both cases. Consequently, Pham and Le are referred to as the plaintiffs in both cases, even though technically they were the defendants in Case #3.2. Pham and Le were sent to Czechoslovakia to work in 1987 and 1988 respectively, after they had been selected by a Vietnamese commission. Before starting work in Czechoslovakia, Pham also received training there as a mechanic.

Case #4, Mr Nguyen's first appeal, is dated 23 September 1991. The appeal states that Mr. Nguyen first applied for refugee status in the Netherlands on 12 November 1990. The IND

[Immigration and Naturalisation Service] (Immigrate- en Naturalisatiedienst) interviewed Mr Nguyen on 9 April 1991, and four months later, in August, the State Secretary rejected his refugee application.

Mr Nguyen was sent to Czechoslovakia by the Vietnamese authorities for work purposes in July 1989. Mr. Nguyen never got around to working in Czechoslovakia and fled the country in November 1989, immediately before the start of the Velvet Revolution. From Czechoslovakia, he fled to the GDR first, where his sister lived and worked at the behest of the Vietnamese authorities. A year later, in September 1990, they both fled to the Netherlands.

Case #5 is a case that was also presided over by the CoS. The existence of this case and the decision of the CoS are known because they were mentioned in newspaper articles. However, the verdict in this case is not in the archive of the CoS, nor is it to be found anywhere else. The lawyer in this case could not be of any help either. Therefore, this case is discussed exclusively on the basis of information available from newspaper articles. One article was written in 1994 and stated that the plaintiff was sent to Czechoslovakia as a guest worker five years earlier, and it may therefore be deduced that he arrived in Czechoslovakia in 1989.

The plaintiff in Case #6 is referred to as A. A. came to the Netherlands on 17 July 1991 and applied for refugee status two days later. The IND denied the application on 23 October of the same year. A. appealed this decision and asked for a review of his case. In the meantime, he filed another lawsuit because he was afraid of deportation before his case was reviewed. The Dutch government sent him a letter on 23 November 1993 to state that there was no threat of deportation against him, and A. therefore dropped the case. On 21 September 1994, the Dutch government denied A's appeal to have his case reviewed. A. appealed this decision, which led to a lawsuit that commenced on 13 April 1995. Ultimately the case was referred to the REK.

A.'s story starts on 7 October 1988 when Vietnamese authorities sent A. to Czechoslovakia as a guest worker. During his time in Czechoslovakia, he joined the student organization Thoi Moi,⁹⁵ a pro-democracy organisation. He read the magazine this organization distributed, tried to convince some of his co-workers to join the organization, and helped with the organization

⁹⁵ Vietnamese for 'New Period'

of meetings. His supervisor had forbidden these meetings, but A. and his co-workers ignored him.

Refugee according to the UN Refugee Convention

Table 1: Verdicts of the courts

| Court Case reference | Refugees under the Geneva convention | Refugees under the ECHR | Not a refugee | Ill treatment in Vietnam | Ill treatment in Czechoslovakia | Three-year policy claim accepted | Three-year policy claim denied |
|----------------------|--------------------------------------|-------------------------|---------------|--------------------------|---------------------------------|----------------------------------|--------------------------------|
| Case #1 | | X | | X | X | | |
| Case #2 | | X | | | X | | |
| Case #3.1 | | X | | X | | | |
| Case #3.2 | | | X | | | | |
| Case #4 | | | X | | | | X |
| Case #5 | X | | | X | | | |
| Case #6 | | | X | | | X | |

When the Vietnamese applied for refugee status in the Netherlands, they did so under the rules of the 1951 UN Refugee Convention. These rules have already been discussed in the first chapter. When their applications were denied by the Dutch government, it was up to the courts to decide whether the government had interpreted and applied these rules correctly in each specific case. In all the verdicts that are available regarding these cases, the courts argued against the Vietnamese being regarded as refugees under the UN Refugee Convention. The reasons the court came to this decision were quite different, however.

In Case #1 the court substantiated its decision by claiming that according to Dutch jurisprudence, prosecution could mean persecution as used in the UN Refugee Convention if it was plausible that the punishment for the crime could be more severe based on political beliefs or that the party involved would be discriminated against. The court stated that since the plaintiff had never manifested any political behaviour against the Vietnamese government and had not given any reason why he would fear discriminatory treatment, he had no fear of being punished more severely than any other party who had broken the same law.⁹⁶

⁹⁶ Rb. 's-Gravenhage (pres.) 12 December 1991, ECLI:NL:RBSGR:1991:AH3816.

The court expected the Dutch government to undertake a thorough investigation into the risks of the Vietnamese authorities prosecuting the Vietnamese who fled from Eastern European countries to the Netherlands. The Dutch government had already put forward a point of view that was expressed by the UNHCR on 15 July 1991, namely that the Vietnamese authorities had stated that they did not care how the Vietnamese would return to Vietnam or how long they had overstayed in Eastern Europe. However, the court claimed that this was not sufficient, as the wording of this point of view was too vague and it allowed the Vietnamese to possibly prosecute the Vietnamese who had left Eastern Europe and applied for asylum in Western Europe. The Amnesty International Yearbook demonstrated that it could not be said that the Vietnamese had no legitimate fear of such prosecution. More importantly, the court argued that even though the punishment for fleeing from Vietnam itself was not that severe (3 months to 2 years in prison), it could not be ruled out that fleeing from the republic could be regarded as an act of resistance against the Vietnamese government, which was punishable under article 85 of the criminal code by three to twelve years in prison.⁹⁷

In Case #2, the court argued that the plaintiffs did not qualify as refugees for two reasons. First, in terms of the UNHCR statement of 15 July 1991, the Vietnamese government did not care how the Vietnamese would return or how long they had overstayed their visas in Eastern European countries. The court argued that the plaintiffs had not made it clear that they could fear heavy punishment or discriminatory treatment in Vietnam because of this.⁹⁸ It is remarkable to see that the court came to this conclusion, since the court in Case #1 used the same UNHCR statement to demonstrate that the plaintiffs could not be deported to Vietnam and should be allowed to stay according to article 3 of the ECHR, as is demonstrated in the next subsection.

The second reason the plaintiffs could not be granted refugee status was that, even if they were to be regarded as refugees, they had lived in Czechoslovakia for four years prior to coming to the Netherlands. Since this country had an active refugee act in place since 1 January 1991, which provided protection against non-refoulement, and since Czechoslovakia had signed the UN Refugee Convention on 17 October 1991 in which the same protection was offered, this

⁹⁷ Rb. 's-Gravenhage (pres.) 12 December 1991, ECLI:NL:RBSGR:1991:AH3816.

⁹⁸ Rb. 's-Gravenhage (pres.) 7 January 1992, ECLI:NL:RBSGR:1992:AH3817.

led to the court believing that the plaintiffs could remain in this country under normal circumstances.⁹⁹

In Case #3.1, the court had stated that the defendants were not refugees under the convention, and since no grievances had been offered, this matter would not be discussed further in Case #3.2. However, the court put forward reasons similar to some of those in previously mentioned cases in debating whether the defendants should be allowed to stay in the Netherlands under article 3 of the ECHR, which is discussed in the next subsection.¹⁰⁰

In Case #4, the court argued that the plaintiff did not meet the definition of refugee. The court debated whether leaving Czechoslovakia without permission could be regarded as fleeing from the republic by the Vietnamese authorities. Even so, the court saw no evidence for the plaintiffs' fear of being persecuted. The CoS stated that the plaintiffs' decision to flee from Czechoslovakia was not politically motivated. Since he was never politically active before his departure from Czechoslovakia, this was not the case. In addition, the CoS mentioned that the UNHCR statement of 15 July showed no evidence of other returning asylum seekers and guest workers being prosecuted or mistreated. The official statement of the Ministry of Foreign Affairs further corroborated this story by holding that no returning Vietnamese had been prosecuted for contravening articles 85 or 89. The plaintiff claimed that fleeing from his work obligations would be regarded by the Vietnamese authorities as fleeing from the republic. The CoS, however, did not believe this to be true.¹⁰¹

The plaintiff stated that he did not want to be conscripted into the Vietnamese army out of fear of being deployed in Cambodia. Since the plaintiff did not prove that he was personally obliged to join the army, the CoS did not regard this as a reason to grant him refugee status. The fact that the plaintiff had expressed the idea that he would dodge this possible obligation did not warrant the attainment of refugee status.

Case #5 is more difficult to analyse, since the official verdict was not in the archives. However, the newspaper articles that were written about this case do provide some information. On 30 July 1994, *Het Parool* wrote that the CoS had decided that the plaintiff was in fact a refugee.

⁹⁹ Rb. 's-Gravenhage (pres.) 7 January 1992, ECLI:NL:RBSGR:1992:AH3817.

¹⁰⁰ Hof 's-Gravenhage 18 March 1992, ECLI:NL:GHSGR:1992:AD1635.

¹⁰¹ RvS. 's-Gravenhage 21 July 1994, R02.92.0815 77/157.

The CoS stated that Kosto was guilty of maladministration since he had not taken a search warrant issued by the Vietnamese authorities for the plaintiff into account. This search warrant stated that the plaintiff was wanted for treason, which could lead to 35 years imprisonment.¹⁰² On 2 August 1994, *Het Parool* ran another article about the case. This article reported that it had become clear to the CoS that fleeing from the Republic of Vietnam to the Netherlands, a capitalist country, was regarded as treason by the Vietnamese authorities, and punishable by up to 35 years imprisonment. The plaintiff's lawyer in this case provided the following insight into the situation:

Those people were already under surveillance by the Vietnamese embassy in Czechoslovakia. If the civil servants in Czechoslovakia decided that they were traitors, that decision was passed on to the authorities in Vietnam. The authorities would then send documents such as warrants to family members. These warrants indicate that they would be arrested upon return to Vietnam.¹⁰³

This statement is very interesting since it shows that the Vietnamese asylum seekers were already being monitored by the Vietnamese embassy and branded as traitors before they fled to the Netherlands. This sheds new light on the other cases of the Vietnamese whose refugee applications had been denied. It demonstrates that the Vietnamese authorities were very much interested in the actions of the guest workers while they were in Czechoslovakia. Even if they were not branded as traitors before coming to the Netherlands, they would be once they travelled to a capitalist country such as the Netherlands.

Refugee under the European Convention on Human Rights

The Vietnamese asylum seekers did not exclusively use the UN Refugee Convention to apply for refugee status. They also claimed that they had the right to be protected under ECHR article 3, which states the following: 'No one shall be subjected to torture or to inhuman or degrading

¹⁰² 'Vietnamees zou 35 jaar cel wachten bij terugkeer', *Het Parool* (30 July 1994).

¹⁰³ "Die mensen zijn door de Vietnamese ambassade in Tsjechoslowakije al in de gaten gehouden. Als de ambtenaren daar beslisten dat het om landverraders ging, werd dat doorgegeven aan Hanoi. De autoriteiten in Vietnam stuurden vervolgens documenten zoals arrestatiebevelen naar familieleden, waarmee aangetoond kan worden dat ze bij terugkomst zullen worden opgepakt".

'Vietnamezen lopen risico bij terugkeer', *Het Parool* (2 August 1994).

treatment or punishment.’ The Vietnamese argued that if they were returned to Vietnam, they would be at risk of being tortured or being subjected to other types of inhuman treatment.

In Case #1, the court argued that the fact that punishment in Vietnam might be more severe than in the Netherlands or other European countries for a similar offence granted the plaintiff protection under article 3 of the ECHR. The court found that it was not possible to rule out inhuman or degrading treatment if the plaintiff were to be sent back to Vietnam, as the Dutch government desired. This was backed up by the conclusions in the above-mentioned Amnesty International Yearbook. Over and above the already mentioned torture and ill treatment of detainees, the court added that the Amnesty International Yearbook also mentioned that executions were not unheard of, and that it was possible to be detained without an indictment or a fair trial. Furthermore, the dire situation in Vietnam had attracted the attention of the international community for several years. This led to a number of countries, including the Netherlands, taking in boat refugees. Even though Hong Kong had recently begun to deport failed asylum seekers back to Vietnam, this process had involved extensive negotiations at a diplomatic level, and included the promise that the Vietnamese government would not prosecute those involved. The court noted that these developments were monitored closely by the international community.¹⁰⁴

In Case #2, the court considered the claim by the plaintiffs that they should be allowed to remain on the basis of article 3 of the ECHR. When the situation in Czechoslovakia was discussed, the court mentioned that the country had signed the ECHR treaty. However, in its reasoning the court stated that although it had been signed, it had not yet been ratified. The court argued that this did not mean that Czechoslovakia would not uphold the ECHR, but that it did not grant any certainty. This uncertainty was fuelled by statements made by various Czechoslovakian authorities. On the basis of this, Czechoslovakia was also ruled out as a viable option for deportation by the court.¹⁰⁵

In Case #3.1, the court had stated that deportation of the defendants to Czechoslovakia could result in a violation of article 3 of the ECHR and that the deportation attempts by the Dutch state should therefore cease. In Case #3.2, the court judged this completely differently, however. As in earlier cases, the court cited the statement by the UNHCR of 15 July 1991. The

¹⁰⁴ Rb. 's-Gravenhage (pres.) 12 December 1991, ECLI:NL:RBSGR:1991:AH3816.

¹⁰⁵ Rb. 's-Gravenhage (pres.) 7 January 1992, ECLI:NL:RBSGR:1992:AH3817.

court added that the way that the guest workers returned was no guarantee of potential negative measures against them. It followed the same reasoning as the court in Case #2, but took into account an official message from the Dutch Ministry of Foreign Affairs from 22 January 1992 which stated that since the changeover in Czechoslovakia, 20,000 guest workers from Vietnam had returned home and that the UNHCR had stated that none was known to have been subjected to any difficulties by the Vietnamese authorities. Furthermore, the UNHCR had received confirmation from the Vietnamese authorities that the guest workers who returned in an irregular way would not be subjected to discriminatory treatment. Finally, the message stated that the experience that had been gained with the repatriation of Vietnamese asylum seekers from South East Asia and Eastern Europe demonstrated no evidence of their being prosecuted for fleeing Vietnam under article 89. This information led the court to argue that, even though fleeing the country was a criminal offence, it was not used (any longer) on the returning guest workers, regardless of the country they returned from.¹⁰⁶ In Case # 1, the court argued that the wording in the UNHCR statement was too vague and that guest workers returning from Western European countries were not protected by this statement.¹⁰⁷ The same could be said for the message from the Dutch Ministry of Foreign Affairs. This message specifically mentioned the guest workers returning from Eastern Europe and refugees from Asia, but the asylum seekers from Western Europe were not mentioned.

In Case #4, the plaintiff had argued that the reports put forward by Amnesty International about the situation in Vietnam should warrant him protection under article 3 of the ECHR. The CoS did not accept this claim, as it had already established that Czechoslovakia and Vietnam were safe countries to return to when it answered the question whether the plaintiff was a refugee under the UN Refugee Convention. The CoS added, superfluously, that the Dutch state had suspended the deportation of the plaintiff while they were negotiating an agreeable return policy with the Vietnamese authorities, which would offer the plaintiff even more protection if he were to be returned.¹⁰⁸

In Case #6, the plaintiff argued that he would be punished for fleeing from if he were to return to Vietnam. In his view, this would be a violation of article 3 of the ECHR. The REK however did not come to the same conclusion. It argued that the plaintiff was never a member of a political

¹⁰⁶ Hof 's-Gravenhage 18 March 1992, ECLI:NL:GHSGR:1992:AD1635.

¹⁰⁷ Rb. 's-Gravenhage (pres.) 12 December 1991, ECLI:NL:RBSGR:1991:AH3816.

¹⁰⁸ RvS. 's-Gravenhage 21 July 1994, R02.92.0815 77/157.

party in Vietnam and that he never outed himself as an enemy of the Vietnamese government. This was further underlined by the fact that he was part of the privileged group that was chosen to work in Czechoslovakia. The REK stated that it would not take the plaintiff's political activities in Czechoslovakia into account, since there was no continuity of action, which would have been needed to qualify as a refugee. As the plaintiff was not politically active in Vietnam, the REK argued that he could not be tried for fleeing from Vietnam. On the basis of this information, the REK agreed with the Dutch government and denied the plaintiff the opportunity to have his case reviewed.¹⁰⁹

Czechoslovakia as an option

In Case #1, the court explicitly mentioned why it believed the plaintiff could not be sent back to Czechoslovakia. In its closing remarks, the court stated that it could not be ruled out that there were compelling reasons of a humanitarian nature that would have allowed T. to stay in the Netherlands. The Dutch government said that if deportation to Vietnam was not an option, deportation to Czechoslovakia might be possible, since this was the country of first entry and Czechoslovakia offered protection against non-refoulement. The court held that this was not the case. Even if Czechoslovakia were to accept T. or other Vietnamese asylum seekers, there was no certainty that the country could offer them protection. Czechoslovakia offered protection against non-refoulement under the UN Refugee Convention, but since T. was not recognized as a refugee under this convention, it could not protect him. Furthermore, Czechoslovakia was not a member of the Treaty of Rome, and therefore the ECHR was not in effect at this time.¹¹⁰

In Case #2, when it came to the question of Czechoslovakia being a suitable country to send the asylum seekers back to, the court argued that the plaintiffs had remained in Czechoslovakia for over four years. Since 1 January 1991, a refugee act had been in place that protected them against non-refoulement. In addition, Czechoslovakia had signed the ECHR on 17 October 1991, which also protected them against non-refoulement. The court argued that this was proof that the plaintiffs would be safe if they were to be sent to Czechoslovakia. The claim that they were not safe in this country due to discriminatory treatment was not valid, according to the

¹⁰⁹ REK. 's-Gravenhage 1 June 1995, AWB 95/1866 VRWET.

¹¹⁰ Rb. 's-Gravenhage (pres.) 12 December 1991, ECLI:NL:RBSGR:1991:AH3816.

court. They were not able to substantiate their claim, but even if they could make a credible claim, it would not be severe enough to let them remain in the Netherlands.¹¹¹ However, in this reasoning the court stated that although the ECHR had been signed, it had not yet been ratified. The court argued that this did not mean that Czechoslovakia would not uphold the ECHR, but that it did not grant any certainty. This uncertainty was fuelled by statements made by various Czechoslovakian authorities. It was on this basis that Czechoslovakia was also ruled out as a viable option for deportation.¹¹²

In Case #3.1, the court had stated that deportation to Czechoslovakia was not an option, because it was unclear whether this country would protect the Vietnamese against deportation to Vietnam. The court in Case #3.2 argued against this, however. It stated that Czechoslovakia had a refugee act in place and that this would offer them protection against non-refoulement. Moreover, due to the fact that the court had argued that Vietnam was an option for deportation, Czechoslovakia was also an option, even if deportation to Czechoslovakia meant deportation to Vietnam.¹¹³

In Case #4, the plaintiff stated that he regarded neither Czechoslovakia nor Germany as a viable option. He felt that he was the subject of discriminatory practices in both Germany and Czechoslovakia. Furthermore, he feared that deportation to one of these two countries would ultimately mean that he would be deported back to Vietnam. Over and above this, he added that it was not clear whether the German government would accept an asylum appeal by him. In its verdict, the CoS did not mention that Germany would be an option.¹¹⁴ This is peculiar, since Germany could be considered as the country of first entry if the plaintiff had fled from Czechoslovakia to Germany before traveling to the Netherlands. Moreover, in its verdict, the CoS did not mention whether deportation to Czechoslovakia was a viable option either.

Decision on the three-year policy

In Case #4, the plaintiff argued that he should have been allowed to stay in the Netherlands on the basis of the three-year policy. According to the plaintiff, he started his application on 12

¹¹¹ Rb. 's-Gravenhage (pres.) 7 January 1992, ECLI:NL:RBSGR:1992:AH3817.

¹¹² Ibidem.

¹¹³ Hof 's-Gravenhage 18 March 1992, ECLI:NL:GHSGR:1992:AD1635.

¹¹⁴ RvS. 's-Gravenhage 21 July 1994, R02.92.0815 77/157.

November 1990. This meant that he would have to receive a residence permit by 12 November 1993, since the Dutch state had not made a definitive decision on his application. The CoS argued, however, that the plaintiff did not qualify for a permit under the three-year policy, because the date of 12 November was not the date that counted. According to the CoS, the date of first application was not relevant in this case, but rather the date of the decision made by the Dutch government against which the plaintiff was appealing. This date was 14 February 1992. The CoS argued that it could not take the developments after this date into consideration because of the research that had to be done into the situation as it pertained at that time.¹¹⁵

The fact that the CoS denied the application for this reason is peculiar. The Dutch government had argued in the Steendijk Letter that three years would be counted from the date the asylum seeker made his admission request. The fact that the CoS denied his application on the basis of further research that had to be done should not have been relevant. It seems that the CoS did not have the time or the resources to research the three-year policy fully. Case #6 demonstrates that the discussions relating to the three-year policy were quite extensive and difficult.

In Case #6, the REK argued that three years after the plaintiff's application on 19 July 1991, he still had no definite decision on his application. Furthermore, the Dutch government had postponed the departure of the plaintiff, which meant that they knew he would remain in the Netherlands to await the verdict of his case. The REK then went on to judge whether this long decision process was due to administrative policy. It argued that the plaintiff was not to blame for the delay, since he never obstructed the process and cooperated fully with the Dutch authorities. It then turned its attention to the Vietnamese authorities. The REK found it plausible that there was an external obstacle that prohibited the deportation of the plaintiff. This obstacle was that Vietnam did not want to take in any of the Vietnamese asylum seekers without reaching an agreement on this with the Dutch government. This meant, as already explained, that the three-year policy would not have been applicable in this case. However, the REK considered whether the deportation of A. would have been possible if this obstacle had not been present.¹¹⁶

In order to answer this question, the REK examined the Tweede Kamer debates. The REK stated that in the debate between Kosto and the parliament on 4 February 1992, Kosto had promised that he would not deport any Vietnamese asylum seekers before he had researched

¹¹⁵ RvS. 's-Gravenhage 21 July 1994, R02.92.0815 77/157.

¹¹⁶ Rb. 's-Gravenhage (pres.) 12 December 1991, ECLI:NL:RBSGR:1991:AH3816.

the possibilities of sending them back to Vietnam and shared the results of this research with the members of parliament. In the same debate, members of parliament pressed Kosto to provide guarantees that the Vietnamese asylum seekers would not be prosecuted and that they would be protected against inhuman treatment. Kosto agreed to this. In the agreement between Vietnam and the Netherlands that was reached on 9 June 1994, the third article related to these assurances that Kosto had given the members of parliament. The REK argued that this was the reason the decision relating to the deportation of the Vietnamese took so long. Without the obstacle (the reluctance of the Vietnamese authorities to take in the asylum seekers), the Dutch parliament would still have asked for the reassurances that took Kosto at least two years to secure.¹¹⁷

The verdict of the REK was that the plaintiff could not have done anything about his situation and that the Dutch government was at fault. It granted him permission to remain in the Netherlands. This verdict set a precedent for the other Vietnamese asylum seekers in the Netherlands.

Conclusion

This chapter has presented an overview of seven court cases relating to the situation of the Vietnamese asylum seekers. It has demonstrated that different levels of court made different decisions, even when they were presented with exactly the same information. Some courts regarded the asylum seekers as refugees, either under the definition of the UN Refugee Convention or under article 3 of the ECHR. Other courts denied these claims, however. The fact that the courts were able to use the same information but arrive at different verdicts demonstrates that the outcome of an asylum case is based largely on the judge, and not on the information that is available to the judge.

Ultimately, the Vietnamese were allowed to remain in the Netherlands; not because they were refugees, but because the Dutch government had left them in uncertainty for too long. This three-year policy meant that the Vietnamese were granted a residence permit on the basis of a simple, red-tape, bureaucratic, rule and not under the UN Refugee Convention or the ECHR.

¹¹⁷ Rb. 's-Gravenhage (pres.) 12 December 1991, ECLI:NL:RBSGR:1991:AH3816.

After examining the court cases it has become clear that the courts played a vital role in the decision to grant the Vietnamese asylum seekers a residence permit. This outcome supports Sassen's theory that courts have become more powerful since the 1970s. More importantly, however, it directly contradicts Bonjour's criticism of Sassen's theory that in the Dutch case, the courts had not lost power to national policy makers. It also supports Joppke's and Gibney and Hansen's idea that states were bound to accept immigrants due to legal constraints. The theory by Gibney and Hansen that the decision process surrounding asylum is too long which eventually leads to a residence permit is also proven by this case. Finally, the decision of the REK supports Walaardt's theory that the residence permits were granted after an impasse was reached.

Conclusion

This thesis has set out to demonstrate why the Vietnamese asylum seekers who came from Czechoslovakia to the Netherlands in the 1990s were ultimately allowed to remain in the country. By examining the role of Dutch politics, international relations and the courts it has been made clear that these three factors all played a vital role. This was done by devoting special attention to the gap hypothesis and to several writers who developed this argument.

In the process, I have demonstrated that in the case of the Vietnamese asylum seekers there was a gap between the policies and the outcome of those policies.

The first chapter demonstrated that the Dutch government regarded the Vietnamese asylum seekers as economic migrants and wanted to deport them back to Czechoslovakia or to Vietnam. Furthermore, it showed how part of the opposition in the Dutch parliament was opposed to the policies of the Dutch government regarding this group. The Vietnamese asylum seekers were ultimately granted a residence permit under the three-year policy by the REK, a special court. Dutch politicians played a pivotal role in the ultimate decision by the REK. It was D66 party member Wolffensperger, Sipkes from GroenLinks and Van Traa from PvdA who asked State Secretary Kosto to get reassurances from his Vietnamese counterpart, who obliged them and did so. It were these reassurances that the REK mentioned as one of the reasons the negotiations with the Vietnamese had taken so long. The role Van Traa played in this is remarkable, since he was a member of the PvdA, a party that was active in the government. Kosto was a State Secretary for the PvdA, and it was therefore his own party member Van Traa who made the situation more difficult for him.

The difficulty that the Dutch government had with deporting the Vietnamese fits Gibney and Hansen's theory that states want to deport more people but find it increasingly difficult to do so. In this case, the Dutch government was unable to deport the asylum seekers because the Vietnamese and Czechoslovakian government would not accept them if they did not return voluntarily. These deportation attempts were made more difficult by the reassurances that the Dutch parliament demanded from Kosto and in line with the right-oriented constraints identified by Gibney and Hansen as well as Joppke.

Chapter 2 demonstrated how the negotiations between the Dutch government and the Czechoslovakian and Vietnamese authorities were tiresome. Neither country was willing to accept the

Vietnamese asylum seekers if they were to be returned forcefully and not in possession of a valid visa. This prompted the Dutch government to offer funds to the Vietnamese government to accept the asylum seekers. It appears that the Vietnamese authorities had pressured the Dutch government into giving them these funds before they would accept the asylum seekers. Some members of the Dutch parliament regarded this as blackmail, and I would argue that, to some extent, this was indeed the case. I see proof for this in the fact that the Vietnamese government was very reluctant to take the Vietnamese asylum seekers back in, and even made this abundantly clear to the Dutch authorities. When the Dutch government state offered the Vietnamese authorities funds for the asylum seekers, they demanded even more money.

Furthermore, this thesis has shown that the court rulings were diverse, despite the fact that the various courts were presented with the same information. This demonstrates that in asylum cases, the end result depends not so much on the rules that are enforced by the state, but more upon which judge presides over the case.

More interesting, however, is the reason why the Vietnamese asylum seekers were allowed to stay. This was not because of morality of the courts, but because of simple policy rules that the Dutch government had introduced itself. The same court that granted the Vietnamese permission to remain under this policy had decided that the plaintiff was not a refugee at all. Although the court stated that the Vietnamese authorities had stalled the negotiations, this did not matter, since the three-year policy could be applied only if it related to circumstances the government was in control of. Since Kosto promised to obtain the reassurances from the Vietnamese, he placed these negotiations under his control. If it had not been for the promise to obtain these reassurances, the Vietnamese asylum seekers could not have made a successful claim regarding the three-year policy. Although the court stated that the Vietnamese authorities had stalled the negotiations, this did not matter, since the three-year policy could only be applied if there were circumstances the government was in control of. Since Kosto promised to get the reassurances that Dutch parliament members asked for, he placed these negotiations under his control. If it had not have been for the promise to obtain these reassurances, the Vietnamese asylum seekers could not have made a successful claim to the three-year policy.

Saskia Sassen's theory that national policy makers had lost power to courts and supranational organisations and Saskia Bonjour's criticism of this are interesting if we take the role of the courts into account. The decision to grant the Vietnamese asylum seekers a residence permit

was eventually made by a court. In light of this, it seems that Sassen's theory is applicable and that Bonjour's theory is refuted. It is however worthwhile to point out that although the court made the decision and not the policy makers, the policy makers gave the court the power to do so by implementing the three-year policy.

If one takes Tycho Walaardt's theory into account that asylum seekers are eventually allowed to stay because an impasse was reached, it appears that the Vietnamese were offered a residence permit on special humanitarian grounds. However, it is interesting to note that Walaardt recognised that these decisions were labelled as extraordinary and unique. In this case however, the decision by the court was applicable to an entire group, which meant that more people would benefit from it.

In the light of this decision by the REK, Gibney and Hansen's theory is also relevant. They stated that one of the reasons deportation numbers were dwindling while states tried to deport more people from their national borders, was that asylum processes were too long. Consequently, asylum seekers were ultimately entitled to a residence permit, because the states took too long with their applications. This is essentially what happened in the case of the Vietnamese asylum seekers from Czechoslovakia; albeit that in this case it was not only the fact that the Dutch government had taken so long to come to its decision, because the three-year policy was not based exclusively on duration of time, but also on the inability of the state to deport people due to administrative policies.

Another interesting aspect identified in this thesis is that although CDA member Jaap de Hoop Scheffer was very critical of the three-year policy, I would argue that in this particular case he played a role in the granting of the residence permits. In 1990, de Hoop Scheffer and Van Leijenhorst had put forward a motion that blocked development cooperation for the Mekong region, which included Vietnam. As a result of this motion, the Minister for Development Cooperation, Jan Pronk, could not help Kosto immediately with the negotiations with the Vietnamese. It is plausible that if de Hoop Scheffer and Van Leijenhorst had not put forward his motion in 1990, the Dutch government might have granted development cooperation to the Vietnamese, which could have expedited the negotiations. This could have led to an earlier agreement, which would have meant that the Vietnamese asylum seekers would have been sent back to Vietnam before the three-year policy became applicable.

With this thesis, I would add a new reason for the gap between migration policies and the outcome of these policies. This reason is that politicians play a crucial role in these policies, but that they trip themselves up with their actions. In this thesis, this was shown firstly by the motion by de Hoop Scheffer and Van Leijenhorst, then by implementation of the three-year policy and finally by the promises of Kosto to the Dutch parliament. Without these factors, it is very much possible that the negotiations with the Vietnamese authorities would have been concluded sooner, but more importantly, the courts would not have been able to grant the Vietnamese asylum seekers a residence permit based upon the three-year policy. So, it was the politicians themselves who created certain policies that eventually worked to their disadvantage.

This thesis has focused primarily on the policies and the administrative aspects regarding this particular group. Missing from this thesis is the story of the Vietnamese asylum seekers themselves. Further research that makes use of interviews with the asylum seekers, with a view to ascertaining how they experienced this period themselves, might provide an interesting insight into the way the Vietnamese organized themselves and experienced the hunger strikes they engaged in.

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