



International Migration and Refugee Law Moot Court

VU Amsterdam

Migration Law Clinic

2019

Case

Yago Alvares Moreno

Vs

The Minister of Home Affairs of Caraiba



Introduction to the case

On 7 September 2018, the Venezuelan musician Yago Alvares Moreno arrives by airplane on Caraiba, as a member of a *Nueva Canción* band, which mainly plays songs of Alí Primera. The band is to play during a regional music festival two days later. All the members of the band had previously obtained a temporary visa to visit Caraiba for a period of two weeks. After the festival, Mr. Alvares Moreno does not return to Venezuela. Four weeks after the end of the festival, he applies for asylum in Paradaiso, on Caraiba.

Information about Caraiba

Caraiba is a small island in the Caribbean Sea on a distance of 50 km from the Venezuelan Coast. The island has 200.000 inhabitants. Around 30% of the population on the island is unemployed.

The State of Caraiba ratified the Refugee Convention, the ICCPR and the UN Convention against Torture. Thousands of immigrants from Venezuela have tried to reach Caraiba by boat or by airplane during the past few years, fleeing the bad political, economic, and political situation in their home country. In October 2018, weekly 30 asylum seekers from Venezuela arrived in Caraiba. This has caused many problems for the Caraiban government. On the island, there are no reception centres. Asylum seekers are often detained in detention centres under difficult conditions.

Caraiba has an Immigration Service, which examines asylum applications. If an asylum application is rejected, an appeal can be lodged before the Caraiban Administrative Court of First Instance. This court is allowed to take into account new country of origin information or (documentary) evidence. The judgment of the Administrative Court of First Instance can be appealed on points of law before the High Administrative Court of Caraiba.

The handling of the request in Caraiba

Four weeks after the festival Mr. Alvares Moreno goes to a police station in Paradaiso, the main town of Caraiba to inform the authorities that he wished to lodge an asylum claim in Caraiba. He speaks to two officers, one at the reception desk, and one whom he is guided to meet in a separate office beyond the reception area. Both officers are in plainclothes, but armed with pistols. Mr. Alvares Moreno shows the first officer his documents and indicates that he wants to seek asylum. The officer responds in Spanish that "that does not exist here." Then Mr. Alvares Moreno talks to the second police officer. He states that his life would be in danger when he would have to return to Venezuela. Moreover, his wife and children, who are still living in Venezuela, are at risk of being harassed and detained. One of the children is ill and urgently needs medicines. Therefore, he wants his family to join him. The police officer refers Mr. Alvarez to the officers of the Immigration Service, who immediately place him in detention. He is interviewed on 20 December 2018.

Interview of Yago Alvares Moreno

Surname	: Alvares Moreno
First name(s)	: Yago
Date of birth	: 4 April 1985
Country of birth	: Venezuela
Place of birth	: Maracaibo
Former place of residence	: Maracaibo
Sex	: M
Marital status	: Married
Nationality	: Venezuelan
Religion	: Catholic
Profession	: Fisherman
Education	: Primary education
Date of departure country of origin	: 7 September 2018
Date of entrance Caraiba	: 7 September 2018
Date and place asylum application	: 19 October 2018
Date and place interview	: 20 December 2018
Legal assistance	: Not available

Family Members

Isabel Pérez Romero	: wife
Date of birth	: 6 May 1986
Place of residence	: Valencia (Venezuela)
Juan Alvares Moreno	: son
Date of birth	: 9 August 2012
Place of residence	: Valencia (Venezuela)
Elvio Alvares Moreno	: son
Date of birth	: 30 June 2014
Place of residence	: Valencia (Venezuela)
Margarita Moreno Jiménez	: mother
Date of birth	: 23 October 1964
Place of residence	: Valencia (Venezuela)

In the light of the asylum application submitted by Mr. Alvarez Moreno. I, Christy Pinedo, officer of the Immigration Service have started an examination into his reasons for requesting international protection.

In this report, I have written my introduction, remarks and questions in italic.

1.1 Explanation procedure and preliminary questions

Before starting this interview, I have checked the personal details of Mr. Alvarez Moreno. I introduced myself and explained that we are going to have a conversation about his asylum claim.

Do you understand what I have just explained to you?

Yes

I have explained that the interview's purpose is to understand why Mr. Alvarez Moreno has left his country of origin. I also explained the place of the interview in the asylum procedure. Amongst others on the basis of the interview, a decision will be taken on his asylum application.

There is an interpreter present at this interview in the Spanish language. Do you understand what the interpreter is saying?

Yes

I explained that all the statements made by Mr. Alvarez Moreno during the interview will be kept confidential. Also, the authorities of Venezuela will never be informed about the fact that he has submitted an asylum application in Caraiiba. No information from his case file will be given to third parties without his permission.

I indicated to Mr. Alvarez Moreno that it is important to speak the truth and that he should not withhold any information concerning his application. Furthermore, I indicated that it is important to make credible and consistent statements about his reasons for asking international protection and the lack of documents, which are relevant in that regard. Full cooperation is important, because the asylum application can be rejected if the questions are not fully answered.

Do you feel physically and mentally capable of doing this interview now?

Yes.

If there are questions during the interview, which you find difficult to answer, could you indicate this to me?

Yes.

If you need a break, can you indicate this to me?

Yes.

Do you have any questions about what I have told you so far?

No.

1.2 Documents

Do you have documents, which can substantiate your identity and/or nationality?

I only have my passport.

Do you have documents, which substantiate your statements about how you arrived on Caraiba?
Yes, a digital airplane ticket and boarding card.

Do you have any documents, which substantiate the reasons why you ask for international protection?

Yes, I have a copy of a document, proving that my wife reported a crime to the police. I also have several videos of the protests in Venezuela.

How did you get these documents?

My wife reported the crime at the police station and gave me the document. I made the videos myself.

2. Reasons for the asylum claim

You now get the opportunity to tell me in your own words what the direct reasons are why you left your country of origin. I would like to ask you to tell your story as much as possible in chronological order and to mention names, places and dates if you can.

I left my country of origin because of all the injustices that occur, hunger, my own health and that of my children and all the corruption in my country. I could not earn enough money for my family anymore, because the lake of Maracaibo is full of oil. Last year we felt forced to protest on the streets. Many people protested against the government of Maduro, students, professionals and fishermen like me. We protested in Maracaibo, but also a few times in Caracas. During the peaceful protests, the national police of the government shot us. Many young people died. During the protests, I made videos with my mobile phone. Several weeks after the protests, I put them online and added some sentences, indicating that what the authorities were doing was illegal. I tried to make sure that the authorities could not trace the videos back to my computer.

During a protest on 13 April 2017 I was shot in my leg by an officer of the national police. The Red Cross took care of my wounds. On the same day four other young people died. A week later, I took part in protests again. I did not care that I was injured. The police shot me again. This is illegal, because according to our constitution people have the right to protest against the government. I was hit in the shoulder, leg and back. Fortunately, the bullets left my body without destroying any vital organs.

On 16 May 2017 in the evening, a black car arrived at my home. Several masked men came out of the car. They grabbed me and my wife, tied our hands and put a bag over our heads. We were taken to another place, where they started to beat us. They asked about the computer and wanted our money. Apparently, they discovered that I put videos of the protests online. The next morning we were released. When we got home, the whole house was a chaos. All our valuable things were gone: my computer, money, some jewellery, the TV, my phone. This was done by criminal groups (*colectivos*), who work together with the police and the government. There were still a few videos of the protests on my phone and on my computer.

My wife went to the police to report the crime. I was too afraid to go. After that, we moved to Valencia (Venezuela) with the children and stayed with friends. I started a small grocery shop. In July 2017, my wife decided to leave the country, in order to find the required medicines for my eldest son. He suffers from diabetes and is very ill. My wife applied for asylum in the Dominican Republic and was granted asylum. I wanted to send my son to the Dominican Republic together with my mother. My mother is also ill, she has breast cancer. In December 2017, I took my mother and son to the airport in Valencia. However, the CICPC did not allow them to leave the country, because they found out that my wife had been granted asylum in the Dominican Republic. The CICPC is the national police and is very corrupt. They took all the money, which I had with me to pay for the journey. Moreover, they arrested and detained me, my son (then 5 years old) and my mother. After three days, they released us again, after I signed a form, on which I had to declare to refrain from taking part in protests and trying to leave the country again without permission.

After that, I closed my shop, because the police knew where I was. My son did not go to school anymore out of fear. My wife came back from the Dominican Republic, in order to bring medicines for our son. We moved from one friend's house to another, hiding for the police. In this period, I attended a few big protests in Caracas.

In September 2018, I got the chance to go to Caraiba with my band for the festival. Despite of all what happened to me, I continued to play music with my friends. It kept me alive and we were very good at it. We have played at the festival several times before, in 2015 and 2016. I took the opportunity to leave the country.

I did not leave for economic reasons, I fear for my life and that of my family. I have a home in Venezuela, a car and a boat. I left Venezuela, because they can kill me any time. My mother has cancer, my son has diabetes, I want to work hard in Caraiba and buy medicines to send to my family.

This was stated by Mr. Alvares Moreno .

Did you tell me everything, which is important for the reason or reasons for leaving your country?
Yes

3. Further questions

You indicated what the reasons for you to leave the country were. What was the direct reason to leave your country?

Fear for my life, because of the protests and the *colectivos*. The police had all my details.

Can you invoke the protection of the higher authorities in your country?

No, there is no higher authority.

What would happen to you when you will be send back?

I will be killed.

Whom do you fear?

The government and the *colectivos*.

You told me that you took part in the protests against the Maduro Government. Could you tell me what you did during these protests?

We had banners and musical instruments. I went together with my friends, who play flute, guitar and trumpet. We protested peacefully.

What was your role during these protests?

I had a leading role, protested, screamed, and showed the government that we didn't like their policies.

How did you know about these protests?

Via social media, (Facebook) people were called to protest. Opposition groups sent around invitations.

You stated that you were shot during the protests and that you were still protesting. How could you protest if you were injured?

The first time I was shot, the bullet hit my left leg and came out on the other side. The bullet did not hit the bone. I cleaned the wound and a week later, I could protest again.

Of which protests did you make videos?

The protests in Maracaibo and Caracas.

Who made the videos you submitted to us?

I did.

Why did you make videos of these protests?

It is always good to make videos, in order to encourage other people to protest and to inform everyone about the inhuman treatment by the national police.

What did you do with the images you made?

I published them on social media (Instagram). I have a lot more images, which show that the police hits women. When the *colectivos* robbed my house, they have taken everything.

Did you immediately post these videos online?

The images stolen from my computer were videos showing inhuman treatment by the authorities and I could not post them immediately, because the military disturbed the recording. They could also hack my computer. It was very dangerous for me. If I would record for example a murder by the police and would share this immediately, the government would intercept this and would trace me using a hacker.

Why did you publish these videos online?

In order to protest.

The police was shooting during the protests. Besides you, were other people targeted during these protests?

Yes, four young men standing close to me were killed.

So, if I understand correctly you were hit by random bullets? The police did not aim at you personally, because other people were also randomly hit?

Yes

Can you tell us what happened on the night of 16 May 2017?

Around 1 am, my wife and I were sleeping, when we heard loud knocking on our door. When I opened the door, four masked men attacked me and went to the bedroom to take my wife. They had a black Toyota without a license plate. They forced us in the car, bound our hands and put a bag over our heads. They threatened us and took us. They asked for money. The next day they released us. They took my computer, memory card, money, documents and phone. From that moment, my fear began.

Who were these masked men?

The colectivos.

How did you know it were colectivos?

Because the way in which they abducted us, is the way in which these paramilitaries operate.

What did they wear?

Black clothes, bulletproof vests, balaclavas and large guns.

What did they want from you?

They wanted to kill me. They wanted information from my computer, to threaten me. They told me that they did not want to see me protest anymore.

Why do you think the abductors were linked to the government?

Because they could freely drive their car, wearing balaclavas.

Is it right that they took your computer, because someone gave them information about you?

Yes

Do you have any idea how this happened?

I suspect that during the protests there were government spies present. Maybe someone was standing next to me, who informed the authorities. It is confusing, someone must have done something.

You were released. Did they say anything to you, when you were released?

They badly hit me, threatened me, and told me that if they would see me on the street again, they would kill me and my family.

You told me that you were abducted and your house was robbed by men linked to the government.

Can you explain to me why your wife reported the crime to the same authorities as those you fear?

Colectivos are not linked to the CICPC. The colectivos do the dirty jobs for the government, but do not belong to the CICPC. It is very different, for that reason I knew that this were paramilitaries. I did

not see fear that something would happen to my wife. I could not go. The colectivos took all my personal documents.

What did the police do with the report?

They stamped it and gave a copy to my wife

Did they contact your wife later on to investigate things?

No, they did ask where I was.

Your wife went to the Dominican Republic. Why did you not decide to go with her?

My sons were very small. In the Dominican Republic, Venezuela has a bad name. If we would all arrive together, they would have sent us back to Venezuela. Therefore, we decided to let her go first.

Your wife returned to Venezuela to bring medicines for your son. How is he doing now?

He used all medicines that my wife brought with her. He is very ill.

Do I understand correctly that after the incident on 16 May 2017 and the events at the airport in December 2017, you did not have any more personal problems with the authorities?

No, not from that moment. Two weeks ago, neighbours have seen the same car close to my home. The drivers forced the door, entered the house, and stole many things. They were looking for me again. My wife called me to tell me this.

What have you done between the music festival and the moment you applied for asylum?

I stayed in a hostel, visited some touristic places, the beach, some restaurants.

4. Final remarks

Are you satisfied about this interview?

Yes

Do you have any remarks about me?

No

I explained the next steps in the procedure. Do you have any questions about the procedure?

No

Report made on 20 December 2018

Republic of Caraiba

Ministry of Home Affairs

Decision on the asylum application of Yago Alvares Moreno

10 January 2019

This decision concerns the application for international protection submitted on the basis of Article 35 of the Aliens Act of the Republic of Caraiba.

Surname : Alvares Moreno
First name(s) : Yago
Date of birth : 4 April 1985
Nationality : Venezuelan

1. Decision

The application for international protection submitted on the basis of Article 35 of the Aliens Act of the Republic of Caraiba is **rejected**.

The reasons for this decision will be set out in section 3 of this decision.

2. Procedure

Mr. Alvarez Moreno arrived on Caraiba on 7 September 2018 with a temporary visa. He applied for international protection on 19 October 2018. The interview took place on 20 December 2018 in the Spanish language.

The whole content of the case file was included in the examination. The examination was based on:

- The applicant's statements;
- The documentation submitted by the applicant;
- Country of origin information;
- Other information relating to the applicant's statement.

3. Reasons for the decision

First, it should be noted that the burden of proof is on the applicant. He must speak the truth and substantiate his application with all available evidence. He needs to give a satisfactory explanation if certain evidence is lacking.

The applicant's asylum account contains the following elements:

1. The identity, nationality and origin of the applicant
2. The participation of the applicant in the protests
3. The abduction of the applicant and his wife and robbery of their home on 16 May 2017
4. The arrest and following detention at the airport in December 2017

With regard to the credibility of the applicant's asylum account, we make the following remarks.

The applicant has stated that he is Yago Alvares Moreno, born on 4 April 1985 in Maracaibo, Venezuela and has Venezuelan nationality. In the light of the fact that the applicant has submitted an authentic passport and considering his statements, his identity, nationality and his place of former residence (Maracaibo) are deemed credible.

It is also deemed credible that the applicant took part in protests in Maracaibo and Caracas in May 2017. He has submitted videos of the protests in Maracaibo, which shows that the police throws smoke bombs at the protesters.

The applicant stated that on 16 May 2017 he and his wife were abducted and held by the *colectivos* and that their house was robbed, because of the fact that the applicant placed videos of the protests online. The *colectivos* wanted the computer and money. It is deemed credible that the applicant and his wife were abducted and held and that their house was robbed. However, the applicant's suspicions that this incident had to do with his participation in the protests and the fact that he published videos online is not credible. The applicant did not make plausible who the masked men were. Moreover, these men not only took the applicant's computer, but also money and jewellery. This does not point in the direction of a targeted action of a group linked to the Venezuelan government. The applicant also did not experience further problems from the side of the authorities after this incident. Moreover, if the applicant refrains from participating in protests against the government after his return to Venezuela, he will not be at risk of persecution.

With regard to the events at the Valencia airport in December 2017, the Minister considers that it has not been made plausible that the applicant's son and mother were not allowed to leave the country because the applicant's wife applied for asylum in the Dominican Republic.

The applicant waited six weeks after he arrived in Caraiba before he applied for asylum, which does not indicate that he was in real danger. It is more probable that he decided to apply for asylum in order to be able to send medicines to Venezuela for his ill son and mother, and to be able to bring them to Caraiba too in the future. The fact that the applicant's wife returned from the Dominican Republic indicates that the applicant and his family are not in danger in Venezuela.

Refugee status

The applicant cannot be considered a refugee in the meaning of the UN Convention relating to the status of refugees of 1951.

The general situation in Venezuela is characterized by an economic and political crisis, which also affects the human rights situation. However, the situation is not sufficiently serious to consider each Venezuelan national a refugee. Therefore, the applicant has to make plausible that he has personal reasons, which justify his fear for persecution.

The applicant stated that he does not have a fear for persecution on the grounds of his religion, nationality or ethnic origin. It does not appear that the applicant belongs to a social group.

The applicant's participation in the protests and the fact that he shared videos of the protests online is insufficient to conclude that he is a refugee. The violent acts by the police during these protests were not targeted at the applicant, but struck random participants. The fact that the applicant got hurt is regrettable, but is more a result of the general situation in Venezuela at the moment. The applicant's statement that he has a well-founded fear for persecution from the side of the authorities and the *colectivos* is not deemed credible. It is considered that if the applicant does not take part in the protests upon return, he will not be at risk of persecution.

For these reasons it should be concluded that the applicant does not have a well-founded fear of persecution on the basis of his political opinion.

Article 3 Convention against Torture, Article 7 International Covenant on Civil and Political Rights

The applicant's claim with regard to Art. 3 of the Convention against Torture and Art. 7 International Covenant on Civil and Political Rights should also be rejected.

The existence of a pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.

The applicant has not made plausible that he belongs to a group, which is specifically targeted by the Venezuelan authorities. Also, the applicant has not made plausible that he runs a real risk of torture or inhuman or degrading treatment on the basis of his personal circumstances (see the argumentation mentioned above under 'refugee status').

4. Legal consequences

The applicant is not legally present in Caraiba. If the applicant does not leave Caraiba voluntarily, he will be expelled to Venezuela.

5. Legal remedies

An appeal against this decision can be lodged before 4 March 2019. The appeal should be sent to:

The administrative court of first instance
Plaza de Justicia
Paradiso
Caraiba
(migrationmoot.rch@vu.nl)