



DEPARTMENT OF STATE INSTRUCTION

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NO.: A-124 May 24, 1961

SUBJECT: Artukovic Case.

TO: The American Embassy, BELGRADE

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In view of the nature of the case involving Andrija Artukovic and its long-standing and adverse effect on United States-Yugoslav relations, the Department is interested in exploring the possibility of resolving the case by deportation if possible. In this connection, the continuing concern of the Yugoslav Government regarding Artukovic was again indicated in a letter dated April 14, 1961 received by the Legal Adviser of the Department, Mr. Chayes, from the Minister of the Yugoslav Embassy, Ante Drndic.

The Department has discussed the case with officials of the Deportation Section of the Immigration and Naturalization Service. As will be recalled, the Immigration and Naturalization Service ruled in April of 1953 that Artukovic is subject to deportation because of fraud in connection with his entry into the country. While the case was being processed, the Yugoslav Government requested extradition and the case went to the court on that basis. The Immigration and Naturalization Service stayed the deportation order pending outcome of the court action. After protracted litigation, a court in California eventually ruled that the charges on which extradition was requested were political in nature and hence denied the request. In May 1959 a regional office of the Immigration and Naturalization Service granted a further stay of the deportation order under section 243(h) of the Immigration and Nationality Act. This section provides:

"The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason."

The Immigration and Naturalization Service decision was apparently based on the conclusion that, since the crimes for which extradition

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S/S CR

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FOR COORDINATION WITH State

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was requested were deemed "political" by the court, if Artukovic were deported to Yugoslavia he would be "subject to physical persecution".

The stay granted in May 1959 is still in force, but it appears that it would be possible to have the case re-opened on the basis of some indication that the factual situation was different than that on which the conclusion in 1959 was based. It would be necessary in other words for the Immigration and Naturalization Service to have some basis for concluding that Artukovic would not "be subject to physical persecution if he were deported." With regard to the term "physical persecution", a recent court decision is instructive. The case in question was Blazina v. Bouchard which was decided on February 2, 1961 by the Circuit Court of Appeals for the Third Circuit (286 F.2d 507). This was an action against the District Director of the Immigration and Naturalization Service to restrain deportation on the ground that the alien would suffer physical persecution if deported to Yugoslavia because of his Roman Catholic faith, his belief in capitalism and a democratic form of government, and his open disavowal of Communistic ideology.

The Circuit Court in reversing the District Court held that the decision as to whether or not an alien would be physically persecuted upon return to his native country was committed by statute solely to the judgment of the Attorney General, and where he considered the application for stay of deportation to be in conformity with regulations and where the alien had been granted procedural due process, the District Court had no right to exercise its independent judgment. The Circuit Court in stressing that an application for relief may not be denied arbitrarily or capriciously, interpreted the words "physical persecution" as follows:

"A foreign government's anti-religious policy would not be 'physical persecution' authorizing a stay of deportation. 'Physical persecution' the likelihood of which authorizes a stay of deportation means confinement, torture or death inflicted on account of race, religion or political viewpoint, but not imprisonment for jumping ship."

"Criminal sanctions that are reconcilable with generally recognized concepts of justice are not 'physical persecution' within the meaning of section 243(h) of the Immigration and Nationality Act."

Accordingly, in order to permit the Department to plan what further action may be possible in this case, the Embassy is requested to transmit to the Department its considered opinion on this question: "If Andrija Artukovic were deported from the United States to Yugoslavia would he, in the opinion of the Embassy, be subject to physical persecution apart from his liability to legal prosecution by Yugoslav authorities for alleged crimes committed during World War II?"

It is requested that the present instruction be brought to the personal attention of the Ambassador.

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