RULING
OF THE CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION
of November 21, 2002 No 15-II

As regards the case concerning checking on compliance with the RF Constitution of Article 9, sub-clause 1, Clause 3 and para.1, Clause 6 of the RF Federal Law "On Forced Migrants" in connection with a complaint filed by Mr M.A. Mkrtychan

In the name of the Russian Federation

The Constitutional Court of the RF

Composed of:
Chairperson – S.M. Kazantsev
Judges – M.V. Bagalay, Y.M. Danilov, V.D. Zorkin, V. Luchin, L. Zharkova, G. Gilin, N. Seleznev, O. Khokhryakova

Attending: V.V. Lazarev, State Duma permanent representative in the RF Constitutional Court; M.G. Shartse, representative of the Federation Council of Federation; M.A. Mityukov, plenipotentiary representative of the RF President in the Constitutional Court,

Having regard to Article 125 (Part 4) of the RF Constitution; Clause 3, Part 1, Article 3, Part 3 and 4; Article 22, Part 2, Clause 3; Articles 74, 86, 96, 97 and 99 of the Federal Constitutional Law "On the RF Constitutional Court",

Has considered at an open court session a case concerning checking on compliance with the RF Constitution of Article 9, sub-clause 1, Clause 3 and para.1, Clause 6 of the RF Federal Law "On Forced Migrants" of February 19, 1993 (the Federal Law edition of December 20, 1995).

The case in question is based on a complaint filed by Mr. M.A. Mkrtychan as regards the violation of his constitutional rights as per Article 9 of the RF Law "On Forced Migrants" and resultant ambiguity related to the compliance of the disputed legal provisions with the RF Constitution.

Having heard a report by Judge V.O. Luchin, clarifications made by representatives of the party that has issued the disputed legal act, conclusions made by legal expert L.V. Andrichenko, an address delivered by M. Barshchevsky, plenipotentiary representative of the RF Government in the Constitutional Court and statements by attending officials, including M.N. Malinovsky from the General Prosecutor's Office, S.B. Yagodin from the Office of the RF Commissioner for Human Rights, M.A. Leskov from the Commission for Human Rights under the RF President, and having studied the submitted documents and other materials, the RF Constitutional Court has established the following:

1. In February 1996, the Russian migration authorities granted forced migrant status to Russian citizen M.A. Mkrtychan, who left his habitual place of residence in the city of Grozny in 1995. In June 1998, pursuant to Article 7, Clause 4, sub-clause 1 of the RF Law "On Forced

Migrants" and Resolution of the RF Government of April 30, 1997, No.510 "The procedure of compensatory payments for destroyed housing and/or property to persons who were affected by the crisis in the Chechen Republic and will never return to live there", M.A. Mkrtychan was paid compensation for his destroyed housing and property.

On November 2, 1999, M.A. Mkrtychan was sentenced to a year of imprisonment by the Sarotov Regional Krasnoarmeysky City Court for committing a crime under Article 213, part 2, para. "b" of the RF Criminal Code. On March 20, 2000, in keeping with Article 9, Clause 3, sub-clause 1 of the RF Law "on Forced Migrants", the Saratov regional MS terminated his forced migrant status. The same court in its decision of May 26, 2000 and referring to, i.a., Article 9, Clause 6, para 1 of the same Law, ruled in favour of the suit filed by the Krasnoarmeysky TAC, Saratov region, on M.A. Mkrtychan's eviction from his living premises in the centre. The cassation and supervising instance of the Saratov Regional Court upheld the first instance decision. The applicant's appeals against the a/m court decisions filed with the RF Supreme Court were dismissed. Besides, in its decision of November 28, 2000, the Saratov City Frunze district court dismissed his suit on the invalidation of the decision issued by the Saratov Regional Migration Service Commission on March 20, 2000, while the RF Supreme Court dismissed the cassation appeal against these decisions. In its definition, the panel of judges dealing with civil cases of the Saratov Regional Court upheld the decisions of the Saratov City Frunze district court.

In his complaint submitted to the RF Constitutional Court, M.A. Mkrtychan disputes the compliance with the RF Constitution of Article 9 of the RF Law "On Forced Migrants", according to which a federal or territorial branch of the MS has the right to withdraw forced migrant status if the person in question has been convicted by an effective court sentence for a crime committed in the RF territory (Clause 3, sub-clause 1). In the event of withdrawal of forced migrant status, the person in question is obliged to vacate the living premises that he was assigned from the housing fund meant for temporary accommodation of forced migrants (Clause 6, sub-clause 1).

The applicant claims that conviction of a person holding forced migrant status by an effective court sentence should not entail the withdrawal of forced migrant status and, consequently, cessation of his right to use the living premises that he was entitled to occupy when being a recognised forced migrant, which constitutes violation of the rights and freedoms as per Articles 2, 17, 18, 19 (Part 2), 21, 27 (Part 1), 35 (Part 3), 38 (Part 1), 39 (Part 1), 40, 45 and 55 of the RF Constitution.

2. A law-governed state should only be recognised as such providing it ensures security of its citizens, protection of their rights and legitimate interest, efficient reinstatement of their rights. Therefore, in the Russian Federation, which is a law-governed state, a man, his rights and freedoms are of supreme value, and it is an obligation of the State to recognize, observe and protect them. Human rights and
freedoms in the RF are recognised and guaranteed according to universally recognised principles and norms of international law and in keeping with the RF Constitution. They determine the essence, contents and application of laws, their observance is guaranteed by means of due administration of justice. Government protection of human rights and freedoms in the RF is ensured on the basis of a principle of legal equality (Articles 1,2, 17, 18, 19 and 45 of the RF Constitution). Article 45 (Part 1), 55 (Part 1), 71 (Clause "в"), 72 (Clause "б", Part 1) and 76 (Parts 1 and 2) of the RF Constitution imply that the State has an obligation to

observe and protect not only the rights and freedoms set forth in the RF Constitution, but other secondary rights and their relevant safeguards secured on the basis of the federal law.

It follows from the above-mentioned that the Russian Federation bears the constitutional obligation to ensure conditions for restoration of citizens' abused rights through additional economic, social and legal measures in the situation of extraordinary developments arising in connection with, i.a., violations of legal security, which the state was unable to cope with in due time, and forcing residents of the Russian Federation to leave the places of their permanent residence. Consequently, such citizens have the right to count on special protection measures determined by legal nature of the obligation in question.

3. In accordance with Article 1 of the RF Law "On forced migrants", a forced migrant is a citizen of the RF who was forced to leave his/her place of residence owing to violence committed against him/her or members of his/her family or persecution in other forms or owing to well-founded fear of persecution for reasons of race or nationality, religion, language, membership of a particular social group or political opinion that brought about hostile campaigns targeted against individual persons or groups of persons and rampant violations of public order.

In view of the above, such a person is in need of additional government support to restore his/her abused rights. Therefore, the RF Law "On Forced Migrants", when determining the status of forced migrants, envisages economic, social and legal safeguards to protect their rights and legitimate interests in the RF territory, including the right to housing and employment, social security and medical assistance (see preamble, Articles 1,4, 5, 6, 7 and 8). Conferring forced migrant status on a person leads to the establishment of special legal relationship between the person in question and the state, arising from the need to assist in the settlement of forced migrant at a new place of residence and provide compensation for his/her lost housing and other property.

Forced migrant status is granted for five years; however, in the presence of circumstances impeding his/her settlement at a new place of residence, the status validity is extended by migration authorities for another year upon receiving a relevant application filed by a forced migrant (Article 5, Clause 4 of the RF Law "On Forced Migrants"). It means that this status is of a special, targeted character and is issued for a fixed period. As the state starts honouring its obligation as regards the rehabilitation of a forced migrant's abused constitutional rights, the number of additional rights and safeguards arising from his/her status gradually decreases. Forced migrant status will be terminated upon expiration of its fixed validity term and in the absence of grounds for its extension. When determining forced migrant status, the grounds for its issuance and withdrawal, as well as its contents and the procedure for implementation of appropriate economic, social and other safeguards, a federal legislator, by implication of Article 15 (Part 2), 17 (Part 3), 71 (Points «в» and "o") and 72 (Part 1, Clause "k") of the RF Constitution, has a right to take measures of legal liability for violation of the legislation on forced migrants, including the abuse of rights resultant from the availability of the status in question. As such measures and possible related forced migrant status withdrawal constitute restrictions of rights and freedoms of RF citizens and their government protection, such restrictions – by virtue of Articles 17 (Part 3) and 55 (Part 3) of the RF Constitution – can be envisaged in a federal law only to the extent required to protect the foundations of the constitutional order, public morales and health, rights and legitimate interests of other persons and ensure the country's defence and state security.

By implication of Article 9, Clause 3, sub-clause 1 of the RF Law "On Forced Migrants", withdrawal of forced migrant status in the event of its holder's conviction of offence means that the state would unilaterally renounce the earlier official recognition of a forced migrant and, consequently, refuse to honour the obligations, arising from such status and related to the settlement of the forced migrant in question and provision of assistance in reinstitution of his/her rights and legitimate interests. Thus, the person in question would be deprived of special government support, rights and guarantees that can be implemented within the framework of forced migrant status.

The Criminal Code does not envisage withdrawal of forced migrant status in connection with the person's conviction of offence, that is on the basis of his/her criminal record. It is enforced in a decision issued by the migration authority, that is, applied in administrative rather than criminal proceedings. Actually, withdrawal of forced migrant status is sort of an additional liability measure used in the event of a person being convicted for a committed offence. In the meantime, in accordance with general principles of criminal liability and its constitutional and legal criteria (Part 1, Article 46; Articles 49, 50 and 55 Part 3; Article 71, Clause "o", Articles 118, Part 1 and 2; Articles 126 of the RF Constitution), defined more concretely in the RF Criminal Code (Articles 1-8, 43-45, 60), a person can be convicted for an offence providing the conviction is envisaged in the criminal law, only by an effective court sentence and in accordance with the requirements for fairness and in proportion to the committed offence. It is inadmissible to link criminal conviction with such legal consequences that actually constitute additional punishment, thus going beyond the framework of sanctions set forth in the RF Criminal Code.

Therefore, the sanction envisaged in Article 9, Clause 3, sub-clause 1 of the RF Law "On Forced Migrants" does not conform to general principles of criminal liability, constitutional and legal criteria of fairness and adequacy. It constitutes excessive restriction of forced migrants' rights and also violates – with reference to this group of persons – the principles of legal equality and guaranteed government protection of human rights and freedoms in the RF and, consequently, does not conform to Articles 2, 19 (Parts 1 and 2), 45 (Part 1) and 55 (Part 3) of the RF Constitution.

This does not exclude the possibility for a legislator to foresee a situation when forced migrant status and resultant rights and safeguards can not be realised and are withdrawn providing the retention of the status is incompatible with the nature of the committed offence and prescribed sanction.

4. The RF Law "On Forced Migrants", when specifying - with reference to forced migrants - obligations of the state regarding the restoration of their violated right to housing, envisages a set of measures to provide these persons with housing. However, the Law links the execution by forced migrants of relevant rights with certain conditions. E.g., under Article 6, Clause 3, the right to be accommodated on the living premises from the housing fund meant for accommodation of forced migrants is lost upon assignment (acquisition) of different living quarters.

As it was established by the Krasnoarmeysky City Court, Saratov region (decision of May 26, 2000), the applicant, having received in 1998 compensatory payment for his ruined housing and missing property in Grozny, purchased new housing, thus exercising his right to housing; therefore, he had to vacate the living premises that he occupied at the Krasnoarmeysky TAC, Saratov region, as per Article 6, Clause 3 of the RF Law "On Forced Migrants".

Therefore, there are no grounds to believe that the applicant's right to housing, set forth in Article 40 (Part 1) of the RF Constitution, was violated - as he claims – by general jurisdiction courts applying to his case Article 9, Clause 6, para.1, of the RF Law "On Forced Migrants". Consequently, this particular part of the complaint can not be recognised as admissible, while the relevant legal proceedings are subject to termination in keeping with Article 43, Clause 2, Part 1 and Articles 68, 96 and 97 of the Federal Constitutional Law "On the RF Constitutional Court".

Proceeding from the above and being guided by Article 71, Parts 1 and 2; Articles 72, 74, 75, 79 and 100 of the Federal Constitutional Law "On the RF Constitutional Court", the RF Constitutional Court has ruled as follows:

1. Article 9, Clause 3, sub-Clause 1 of the RF Law "On Forced Migrants", under which a federal or territorial migration service agency has the right to withdraw forced migrant status if the person in question has been convicted by an effective court sentence for committing a crime, shall be recognised as being in contravention of Articles 2, 19 (Parts 1 and 2), 45 (Part 1) and 55 (Part 3) of the RF Constitution.

2. In accordance with Article 68 of the Federal Constitutional Law "On the RF Constitutional Court", legal proceedings with regard to the case concerning checking on compliance with the RF Constitution of Article 9, Clause 6, para.1 of the RF Federal Law "On Forced Migrants" shall be terminated, as the applicant's complaint as regards this particular part does not meet the admissibility requirement envisaged in the Federal Constitutional Law "On the RF Constitutional Court".

3. This Ruling shall be final and not subject of appeal. It shall come into force immediately following its announcement; it shall have direct effect and shall not require any confirmation from other agencies or officials.

4. Decisions taken on M.A. Mkrtychan's case with regard to those parts that are based on Article 9, Clause 3, sub-Clause 1 of the RF Law "On Forced Migrants", which has been recognised under this Ruling as running contrary to the RF Constitution, shall be subject to revision according to the duly established procedure unless there are no other impediments to the above.

5. According to Article 78 of the Federal Constitutional Law "On the RF Constitutional Court", this Ruling shall be published without any delay in the "Collection of Legislative Acts of the RF" and the "Rossiyskaya Gazeta". This Ruling shall also be published in the Bulletin of the RF Constitutional Court.

RF Constitutional Court
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