



7 Szaz 5/2003

**JUDGEMENT
IN THE NAME OF THE SLOVAK REPUBLIC**

The Regional Court in Bratislava decided in the proceeding presided by the Judge Ivetta Marusakova, J.D. at the hearing held on 8th April 2003

as follows

in the legal matter of the petitioner Gjon Shtufi, born 21st August 1979 in Prizrene, citizen of Yugoslavia, temporarily residing at the address of Nikola Allakaja of Zilinska 2, Bratislava against the respondent the **Migration Office of the Ministry of Interior of the Slovak Republic of Pivonkova 6, Bratislava** regarding the revision of legitimacy of decision and procedure of the administrative authority:

The Regional Court in Bratislava **c o n f i r m s** the contested decision of the defendant No.: MU-4250/PO-Z/2002 dated 12th November 2002.

The court **d o e s n o t** grant compensation of legal charges for the proceeding.

Rationale:

According to the §8, letter a) of the Law No. 283/95 Coll. as amended by the Law No. 309/2000 Coll. on Refugees, the respondent – the administrative authority (further only “the respondent) – rejected the application for asylum of the petitioner in the decision No.: MU-4250/PO-Z/2002.

The petitioner in disagreement with the decision of the respondent, by which he was not granted the refugee status according to the §8, letter a) of the Law No. 283/95 Coll. as amended by the Law No. 309/2000 on Refugees, contested the decision of the respondent No.: MU-4250/PO-Z/2002 dated 12th November 2002 within the period stipulated by law by filing the appeal on 2nd January 2003 and the supplementary submission on 21st March 2003. The petitioner requests the court to cancel the aforementioned decision of the defendant No.: MU-4250/PO-Z/2002 dated 12th November 2002, and to return it for further proceeding in accordance with §250j, sec. 1 of the Civic Court Rule. The petitioner also stated that the respondent evaluated the issue of the fact insufficiently, and in light of the legal aspect, incorrectly assessed the matter.

The petitioner further stated that partly the respondent made an insufficient evaluation of all the circumstances and facts provided in the application for granting of refugee status and also that the respondent did not proceed in accordance with law in the procedure itself. The petitioner stated that he does not agree with the allegation made by the respondent in the decision, that he left the Kosovo, his country of origin, as a result of unfavorable economic situation.

In his appeal the petitioner further stated, that he has been an ordinary member of the Democratic Union of Kosovo party (further only "LDK") since 1998 and his activities included inviting individual members to the meetings of the party and also promoting the party by displaying posters and distributing pamphlets in the small town of Shpenadi and its vicinity in the region of Prizren. The petitioner states that it was because of these activities, that he was repeatedly attacked by the followers of the opposition political party, the Democratic Party of Kosovo (further only "PDK"). Specifically, he was verbally and physically attacked on number of occasions by the very members of the PDK party, whereby the situation came to climax in summer of 2001 when he was brutally beaten by PDK party activists as a result of which, he dropped into unconsciousness and had to be hospitalized for ten days. He stated that he is convinced that he fulfils conditions set for granting of asylum since he has a fear, that if he returns Kosovo, he will be repeatedly threatened and physically attacked by the political opponents, the members of the PDK party, where at the same time he is of the opinion that such a conduct of the PDK party member is also tolerated by the local and state authorities, including the police. In his appeal, the petitioner also stated, that another event that left him shocked and convinced him that Kosovo is not a safe place, was the death of his teacher, who was found murdered in 2002. This person was active an member of the LDK and even despite a fact that the police initiated an investigation, the causation nor the offender were never revealed. He stated that, as many other people, he is of the same opinion that it was the followers of the PDK party who committed the murder.

In his appeal, the petitioner stated that it is not true that he wanted to apply for asylum in Austria, on the contrary, he wanted to apply for asylum in Slovakia and that he boarded the train to Austria by mistake. He stated that this information was as a result of misunderstanding (misinterpretation), because as he does not speak Slovak, the respondent invited for the interview an interpreter whose command of Albanian was not good. He personally did not understand some questions in the way interpreted by the interpreter and therefore could not provide due answers to these questions.

The petitioner further stated in his appeal, that he is of the opinion that he fulfils the conditions set for granting of asylum and that the respondent did not settled with this fact and that respondent came to the conclusion cited in the aforementioned decision on the basis of particular considerations.

At the hearing taking place on 8th April 2003, the petitioner declared, that he applied for political asylum in the Slovak Republic on the bases of his particular feeling that he is persecuted in Kosovo for his beliefs, specifically because he was a member of

LDK party and was persecuted because he was damaging the posters of the PDK party, announcements about PDK party meetings and thereby made impossible for the PDK party members to receive information about the meetings of the party. He stated that he was physically attacked more than ten times by the members of PDK party who threatened to kill him if he does not stop his activities. He stated that he reported the physical attack to the police who told him that it shall be dealt with, but nothing happened. He provided the court the copy of medical examination report that he undergone as a result of physical attack and injuries incurred thereof. The petitioner stated that he has been a member of LDK party since 1999 and that he was responsible for delivering announcements and mail of LDK party and was doing everything to underline and strengthen the position of LDK party. He provided the court a copy of his LDK membership card No. 060598 and stated that the it was issued to him by the chairman of LDK, Dr. Ibrahim Rugova. He stated that his father sent him the membership card directly from Kosovo and that up until now he did not present nor provide it to anyone, because he was not requested to do so. He received the membership card later, because at the beginning these were provided only to the leading members of the party, not to the ordinary members and therefore he could not have any membership card on him at the time he was apprehended at the border.

At the hearing, the petitioner said that he was not employed anywhere and did not receive any social benefits at the time of his departure from Kosovo nor before. He left his place of residence in Shpenadi in the region of Prizrene on 13th August 2002 and went to Slovakia as he was advised also by his father who told him to apply for asylum in the Slovak Republic. The petitioner stated that he wants to amend and change his testimonies of 15th August 2002 and 8th November 2002, where he had stated that he wanted to apply for asylum in Austria and that he had boarded the train to Vienna by mistake and that he was in possession of the train ticket to Vienna, because he bought it from an unknown person on the board of the train. He stated that he genuinely wanted to apply for asylum in Slovakia and did not want to go to Austria and that he boarded the train to Vienna by mistake.

The petitioner further stated at the hearing that at the current, he is not interested in the situation prevailing in Kosovo, nevertheless he knows that LDK is now a government party chaired by Dr. Ibrahim Rugova and he also knows that Dr. Ibrahim Rugova is a president. He stated that despite the democratic elections in Kosovo, tension is still present there. He fears not only the PDK party members, but also people from his own party.

The respondent stated in its written statement in reaction to the appeal of the petitioner, that the petitioner did not prove legitimacy of his fear of persecution in the country of origin. On the basis of this, it may therefore be established that the in the case the petitioner the conditions for granting of asylum in accordance with the Law No. 480/2002 Coll. on Asylum were not fulfilled.

The respondent stated at the hearing conducted on 8th April 2003, that it requests the court to confirm the decision of the respondent No. MU-4250/PO-Z/2002 of 12th

November 2002 in which it rejects the petitioner's application for asylum on the territory of the Slovak Republic. The respondent stated that the decision was issued on the basis of fact finding and also on the basis of the petitioner's testimonies. It further states that the decision respondent not grant the refugee status to the petitioner was issued especially because the petitioner did not fulfil the conditions set by the law No. 283/95 Coll. as amended by the Law No. 309/2000, by the Law on Refugees and also because the petitioner did not fulfil the conditions set by the 1951 Geneva Convention. The respondent stated, that it does not consider the facts declared by the petitioner at the hearing, particularly regarding the membership of LDK party, his activities in the LDK party, circumstances regarding the membership card, circumstance about the attack, injury and hospitalization and also the arrival to the territory of the Slovak Republic as legally relevant. The respondent considers all these circumstances and facts to be purposely built and tendentious, since the petitioner has had the opportunity to communicate them during his testimony on 8th November 2002 and probably did not want to do so as he said only what is recorded in the interview record, the contents of which were read and interpreted to him and the petitioner declared that he agrees with this testimony which he confirmed by a signature. The respondent stated, that since the petitioner presented different facts and different evidence at the hearing, it is considered by the respondent as purposely built and therefore the respondent proposes that the court confirms its decision not to grant the petitioner refugee status on the territory of the Slovak Republic.

According to the regulation of §54, sec. 1 of the Law No. 480/2002 on Asylum, the procedure regarding the granting of refugee status commenced before the 1st January 2003 is considered to be a procedure on granting of asylum and shall be completed in accordance with this law.

According to the regulation of §21, sec. 1 of the Law No. 480/2002 on Asylum, the Regional Court is competent to decide regarding an appeal as per the sections 1 to 5 of the cited law.

According to the regulation of §11, sec. 1 of the Civic Court Rule (further only "CCR"), the materially and legally competent court shall conduct the proceeding. The competency is determined on the basis of the circumstances prevailing at the time of commencement of the procedure and lasts until the end of the procedure.

According to the regulation of §246, sec. 1 of the CCR, regional courts are materially competent in regard to the examination of the decision and procedure, if the law does not provide otherwise. According to the special regulation, the Regional Court in Bratislava is competent for territorial districts of Regional Courts in Bratislava, Trnava, Trencin and Nitra.

According to the regulation of §7 of the Law No. 283/95 Coll. on Refugees as amended, the ministry shall grant refugee status to an alien who owing to well-founded fear of being persecuted in the state of his nationality for reasons of race, religion, nationality, membership of particular social group or political opinion is unable or

unwilling to return to this state. The same applies also to a person without nationality who is outside the country of his/her last habitual residence.

According to the regulation of §8, letter a) of the Law No. 283/95 Coll. on Refugees as amended, the ministry shall not grant refugee status to an alien who does not fulfil the conditions set by the §7 of the cited law.

According to the regulation of §15, sec. 1 of the Law No. 283/95 Coll. on Refugees, an appeal can be lodged at the ministry contesting a decision of the administrative authority made in the procedure on granting of refugee status within 15 days from the date of the delivery of the given decision.

According to the regulation of §250i, sec. 1 of the CCR, the situation prevailing at the time of issuing of the decision is considered decisive for the court.

According to the regulation of §251, sec. 3 of the CCR, the court shall, during the examination of legitimacy of the decision, pay regard only to those inconsistencies of the procedure carried out by the administrative authorities, which influence the legitimacy of the contested decision.

According to the regulation of §250q, sec. 2 of the CCR, that court makes a decision on the appeal in the form of judgment, either confirming the examined decision or canceling and returning same for further proceeding.

According to the regulation of §250s, sec. 1 of the CCR the appeal is admissible against the decision of the court confirming the decision of the administrative.

The contents of the file No.: MU-4250/PO-Z/2002 presented by the respondent, the Migration Office of the Ministry of Interior of the Slovak Republic containing the decision on the application of the petitioner shows the following:

- a) The petitioner stated in his testimony conducted on 17th August 2002 that he left Prizren on 13th August 2002 on the basis of contact with the trafficker who was supposed to take him to Austria for payment of 1000EUR fee. The petitioner further stated that he was transported on a track, which he alighted at the railway station where he bought a train ticket to Vienna. In his testimony the petitioner stated that he left Kosovo because of economic reasons and also the political reasons as he was active in political demonstrations.
- b) The petitioner stated in his testimony conducted on 8th November 2002, that he left Kosovo on 13th August 2002 because he was without a job, because of economic reasons. He also stated that he was an ordinary member of LDK party and his role was to call meetings, distribute pamphlets, damage advertisements of other political parties in opposition to LDK. He also stated that he had problems, especially with people from PDK party, who were mostly elderly attacking him verbally and blaming him for agitating for LDK party. These people proposed to him to join them and the

PDK party. The petitioner stated that he was physically attacked approximately 15 times when he was caught damaging the posters of other opposition parties. Mostly, it concerned attacks by ordinary people not the state authorities, he did not have problems with the police. In his testimony the petitioner also stated that he left Kosovo Shpenadi on 13th August 2002 upon payment of 1000 EUR on a track heading to Hungary and from there to Slovakia. He entered Slovakia illegally on 15th August 2002. He said that the police caught him on the border crossing while on a train heading from Bratislava to Vienna and that he wanted to apply for asylum in Austria as he thought that he would be better off in Austria.

The presented file of the respondent further shows that the petitioner was placed in the reception camp in Adamov – Gbely and currently resides at the address of Nikola Allakaj of Zilinska 2, Bratislava on the basis permit for long-term stay outside of this facility.

The presented file of the respondent No. MU-4250/PO-Z/2002 of 12th November 2002, shows that the petitioner was not granted refugee status because he did not fulfil conditions for granting of refugee status, the well-founded fear of persecution for reason of race, nationality, religion, membership of a particular social group or political opinion as stipulated by the 1951 Geneva Convention Relating to Status of Refugees and the Law No. 283/1995 Coll. as amended by the Law No. 309/2000 Coll. on Refugees was not demonstrated in his case.

The decision shows, that the petitioner did not claim persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, on the contrary, he stated that upon illegal crossing to the territory of the Slovak Republic he applied for granting of refugee status for economic and political reasons, whereby the main reason was an economic one. In regards to the political reasons, he stated that he experienced problems on account of his membership of LDK party, he was verbally and physically attacked by members and sympathizers of the PDK party, however, he did not experience any problems with the state authorities, nor the police.

The court evaluated all listed facts and came to the conclusion, that in the procedure on application it was not determined and demonstrated that the petitioner was persecuted in his country of origin for reason of race, nationality, religion, membership of a particular social group or political opinion, and therefore, the court is of the opinion that he did not fulfil prerequisites required by the law for granting of asylum, respectively at the time of issue of the decision by the respondent administrative authority, for granting of refugee status on the territory of the Slovak Republic. The court is of the opinion that the petitioner did not fulfil the reason for granting of asylum as established by the Article 1A of the 1951 Geneva Convention relating to the Status of Refugees and also by the Article 53 of the Constitution of the Slovak Republic.

The court draws particularly on the following facts:

1. The petitioner was an ordinary member of the Democratic Union of Kosovo (LDK), whereby LDK is the first winner in the communal elections in south Serbian province of Kosovo. International observers guaranteed the course of these first democratic elections. Dr. Ibrahim Rugova further remains in the position of Chairman of LDK. The newly established Kosovo Parliament elected Dr. Ibrahim Rugova as the president of this south Serbian province, whereby the election of the first Kosovo President was accepted not only by Belgrade, but also by the international community, which is an important step toward independence of this south Serbian province. Albanians themselves perceive the President, Dr. Ibrahim Rugova, as very distinct and moral authority.
2. Important is also the fact stated by the petitioner in his testimonies on 17th August 2002 and 18th November 2002 that he did not work, was without a job that all the time he, did not receive any social benefits at the place of his permanent residence in the town Shpenadi of Prizrene region, but especially the fact that he himself claims that he left Kosovo because of economic reasons.
3. Another important fact is that the petitioner stated in his testimonies on 17th August 2002 and 18th November 2002 that he wanted to go to Austria in order to apply for asylum because he would be better off there. The petitioner did not convince the court in credible manner that this was only a mistake resulting from lack of communication or incorrect interpretation.

The court considers the claim of the petitioner regarding the injury, membership of the LDK party, later on supported by the copy of the medical certificate and copy of the membership card in LDK party to be tendentious, not convincing and purpose-built since the petitioner stated in the testimonies itself that he never experienced any problems with the state authorities and the police, but only with elderly people.

Therefore, the court considers the conclusion of the respondent – the administrative authority - that the petitioner does not fulfil the conditions stipulated in the regulation of §7 of the Law No. 283/95 Coll. as amended by the Law No. 309/2000 Coll. on Refugees to be correct and legitimate and taking into consideration also the contents of the presented files, the statement of the petitioner and the respondent, therefore confirmed the examined decision in accordance with the regulation of §250q, sec. 2 of the CCR.

According to the regulation of §4, sec. 2, letter o) of the Law No. 71/92 Coll. on Legal Charges as amended, aliens who are undergoing procedure for granting of refugee status are also exempted from the payment of the fee.

In the aforementioned case, the petitioner was not successful. However, as the petitioner is a payer in this proceeding, who is at the same time exempted from payment of legal charges, he has not incurred any obligation to pay legal charge for lodging of an appeal.

As the petitioner did not provide any new and legally relevant facts that might have influenced a change of the original decision, the Regional Court, as the body materially and locally competent for examination of legitimacy and procedure of the administrative authority, confirmed the examined contested decision with the view to the reasons provided in the appeal in accordance with the regulation of §249q, sec. 2 of the CCR and came to the conclusion, that the appeal is not legitimate and that the examined decision has to be confirmed according to the regulation of §250, sec. 2 of the CCO and therefore decided as provided in the predication part of this judgment and confirmed the decision respondent – the administrative authority – as being in accordance with the law.

Instruction: Appeal against this decision can be lodged in writing in two identical copies at the Regional Court in Bratislava within 15 days of the delivery of decision (§250s, sec. 1 of the CCR).

In Bratislava, on the 8th April 2003



Ivetta Marusakova, J. D.
Judge

Responsible for correctness of the copy:
Jana Habanova (signature)

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