

DECISION
in the name of the Russian Federation

On March 16, 2004 the Presnya District Court of Moscow with Presiding Judge T.A. Pechenina and Secretary V.V. Khachumova, after examining in an open session Civil Case #2-808/omplaint04 containing a c from an Iraqi national Said Khairalla Rishak against a decision by the Migration Office of Moscow GUV D dated September 19, 2003 refusing to grant him temporary asylum in the Russian Federation,

FOUND AS FOLLOWS:

The plaintiff had filed the said complaint with the court stating that the Migration Office of Moscow GUV D, on September 19, 2003, had refused to grant him temporary asylum in Russia. He thought that the refusal had violated his rights and asked the court to dismiss it as unlawful, repeal the earlier decision, and oblige the party concerned to grant him temporary asylum in Russia.

In support of his complaint, the plaintiff stated that he may not return to Iraq for fear of being persecuted for political reasons since he had been a member of the Communist Party since 1969 and was currently a member of the illegal People's Democratic Movement. Furthermore, he was a doctor of history, a member of the Arab Writers Union, and a member of the International Union of Journalists. He had been opposed to Saddam Husein's dictatorship and the ruling Baas Party, and was now opposed to American policies.

In the courtroom, he asked his demands to be supported in full and added that he was asking for temporary asylum for another reason – his return being impossible even technically because Iraq did not have the proper administration, including border control and immigration services, which made it difficult for Iraqis to cross their country's border.

The opposing party in the person of O.N. Lomova, acting on a power of attorney, asked the court to reject his complaint and provided written comments on it.

After hearing out the plaintiffs, their representative T.V. Zababurina, who had been allowed to join in by a protocol determination of the court, and the representative of the opposing party, and after studying the merits of the case, the court decided that the complaint must be granted for the following reasons.

Based on the oral explanations and the written documents, the court had found that the plaintiff, a national of Iraq, had left the country of his nationality and arrived in Russia. He applied to the migration service to be recognized as a refugee in Russia.

On June 7, 2001 the Territorial Agency of the Ministry for Federation Affairs in Moscow refused to recognize him as a refugee in Russia by invoking Article 1.1 of the Federal Law on Refugees and claiming that there were no hard and fast facts proving that he was outside the country of his nationality owing to well founded fears of being persecuted or that he might be persecuted if he returned home.

He appealed against the decision at the Moskvoretski District Court of Moscow and the Moscow City Court but his complaints were dismissed.

Therefore, the plaintiff does not have a case to be recognized as a refugee in Russia.

In accordance with Article 12.2.2 of the Federal Law on Refugees, temporary asylum may be granted to a foreign national or a stateless person, if there is no cause to recognize them as refugees for reasons envisaged in the said law but because of humanitarian reasons they may not be deported from Russia.

Under Paragraph 7 of the Procedure of Granting Temporary Asylum in the Russian Federation approved by the Russian Government's Decision of April 9, 2001 (#274), a decision to grant temporary asylum is taken if there are reasons to recognize a person as a refugee based on the evaluation of the information about such person and his family arriving with him, including the manner in which they arrived in Russia, or if there are humanitarian reasons that necessitate that

temporary asylum be granted to such person in Russia (e.g. condition of his health) until such reasons or the person's legal status change.

In light of the above provisions, the plaintiff applied to the Migration Office of Moscow GUV D for temporary asylum in Russia. On September 19, 2003 the Migration Office refused to grant him temporary asylum in Russia.

The court found that this Migration Office decision was unlawful and unjustified because when it had been made, no account was taken of the humanitarian reasons that prevented him from leaving Russia for the country of his nationality.

The court established that the plaintiff had been a member of the illegal Iraqi Communist Party since 1969. He had worked as an independent journalist and was a member of the Arab Writers Union and the International Union of Journalists. In 1999 in Moscow, together with other Arab writers and journalists, he founded an International Union of Arab Writers and Journalists in Russia, which the Ministry of Justice registered as a public organization. The plaintiff was secretary of this organization. At the moment, he was a member of the People's Democratic Movement, a party in opposition. Throughout his political career, he had opposed Iraq's military campaigns, Saddam Hussein's dictatorship, the ruling Baas Party, and current American policies. Resolution #844 of Iraq's Revolutionary Command Council and national criminal law envisage harsh penalties, including capital punishment, for persons affiliated with political parties other than the ruling Baas Party, for Baas members who have concealed their kinship with members of other political parties, for persons who illegally leave Iraq, for persons who took part in the war against Iraq, for persons who participated in the international conference without the consent of Iraq's government, and for persons who are opposed to Iraq's military campaigns.

In this situation, the court found the plaintiff's being outside the country of his nationality to be quite justified, and his fears of being persecuted for his political activities to be well founded and objective, both past and present. The court found these circumstances to constitute a humanitarian reason to grant him temporary asylum in Russia.

Furthermore, the UNHCR has concluded with regard to asylum seekers from Iraq that the current situation in Iraq remains extremely unstable and volatile. There have been recurring security problems, and no rule of law has been established in many parts of the country. Local authorities in Iraq and the provisional administration to which UN Security Council Resolution #1483 handed over governance functions have confirmed that an early and involuntary return of Iraqis from foreign countries would confound the security situation and might place their lives under threat. The views of the provisional administration are largely driven by security considerations. It objects to repatriation starting before the proper administrative structures are put into place, including customs, border control and immigration services. Movements across the Iraqi border will be limited until such an administrative structure is established. Therefore, Iraqis are unable to return home at this juncture even technically.

A similar description of the situation in Iraq is contained in a paper titled Some Aspects of the Migration Situation in the Republic of Iraq from the Federal Migration Service of Russia.

These facts constitute the humanitarian reasons why the plaintiff may not be deported from Russia.

That being so, the court found that the refusal to grant him temporary asylum in Russia must be rescinded and his complaint to be granted.

Based on the above and guided by Articles 194-198 and 258 of the Russian Code of Civil Procedure, the court

DECIDED

To dismiss as unlawful the September 19, 2003 refusal of the Migration Office of Moscow GUV D to grant Iraqi national Said Khairalla Rishak temporary asylum in Russia.

To oblige the Migration Office of Moscow GUVB to grant Iraqi national Said Khairalla Rishak temporary asylum in Russia in keeping with the procedure and timing as provided in the Federal Law on Refugees.

The decision may be appealed at the Moscow City Court within ten days.

Judge (signed)