

**JUDGEMENT  
in the Name of the Republic of Belarus**

On 5 March 2010 Court of Centralny District of city of Minsk consisting of presiding judge Bychko A.V., with secretary Korotish T.N., and with participation of complainant M.N., his representative advocate Makarchik N.I., representative of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus Kasinsky S.M. has examined during an open court session a civil case on M.N.'s appeal of wrongful acts of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus, and

**ESTABLISHED:**

In his appeal and during the court session the complainant has indicated that on 30 November 2009 he was rejected in refugee status in the Republic of Belarus by the Order No. 63 of Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus in concordance with paragraph 2 of Part 3 of Article 43 of Law of the Republic of Belarus adopted on 23 June 2008 "On Granting Refugee Status, Complementary and Temporary Protection to Foreign Citizens and Stateless Persons in the Republic of Belarus" (further - the Law) due to the absence of grounds for being granted refugee status.

Considers this decision unlawful as his previous job in Iran and circumstances that forced him to leave the country indicate that after returning to Iran he may be subjected to tortures, threats of criminal prosecution, imprisonment and other sanctions up to death punishment. He also indicated that on 11 May 1988 he was recognized as refugee in Germany according to the 1951 Convention relating to the Status of Refugees and provided with a residence permit. For a long term he worked and resided in Germany and was also engaged in delivery of humanitarian assistance to Belarus. Since his departure from Iran he has never returned to this country, does not consider himself as Iranian citizen and has made attempts to renounce his Iranian citizenship. After marrying a Belarusian citizen in 2001 he received a permanent residence permit in the Republic of Belarus. German authorities viewed him as legally residing in the Republic of Belarus and as a result they refused to issue a new travel document under the Article 28 of the Convention and paragraph 11 of Schedule to the Convention. Appealed to the court to cancel the Order No. 63 of Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus adopted on 23 June 2008.

During a court session representatives of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus did not admit the appeal and considered it to be ungrounded. They explained that the decision on M.N.'s appeal was made according to the Law of the Republic of Belarus adopted on 23 June 2008 "On Granting Refugee Status, Complementary and Temporary Protection to Foreign Citizens and Stateless Persons in the Republic of Belarus" within granted powers and

basing on the materials of the interview with the complainant and the information about the country of his origin – Iran. They indicated that the arguments provided by the complainant about renunciation of his Iranian nationality are not supported by any documentary evidence and therefore his fear of being exposed to persecutions after returning to Iran for the renunciation of nationality are ungrounded. Also the complainant has failed to provide convincing arguments indicating presence of well-founded fear of persecution because of race, religion, nationality, membership in a particular social group or political opinion.

Having listened to both sides and the specialist, having examined and analyzed the case materials, the court found the appeal grounded and to be upheld because of following reasons.

During a court examination it was found that M.N. was denied refugee status in the Republic of Belarus by the Order No. 63 of Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus adopted on 30 November 2009 in concordance with paragraph 2 of Part 3 of Article 43 of Law of the Republic of Belarus adopted on 23 June 2008 “On Granting Refugee Status, Complementary and Temporary Protection to Foreign Citizens and Stateless Persons in the Republic of Belarus” basing on the absence of grounds for granting refugee status.

From the case materials of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus, including the provided transcripts of the interviews with the complainant, as well as from the Conclusion of Citizenship and Migration Division of the Department for Internal Affairs of Gomel Region Executive Committee of 26 August 2009 and the complainant’s explanations follows that <...> /circumstances of the case not published/

On 11 May 1988 German authorities recognized him as refugee and provided him with a residence permit in Germany.

<...> /circumstances of the case not published/

In 1995 the complainant went to Istanbul, Turkey to meet his parents. There he got acquainted with his first wife – Zh.I.S., a Belarusian citizen.

During 1996 he has entered the Republic of Belarus twice using Zh.I.S.’s invitation. During his stay in Gomel he got acquainted with Yelova L.S., the head of Gomel regional socio-cultural charity centre “Prometey”. In 1997 he began to cooperate with this centre delivering the special-purpose equipment he bought in Germany at agreed price to the disabled.

In February 2000 the complainant registered a marriage with Zh.I.S. and in 2001 received a residence permit in the Republic of Belarus. In 2003 M.N. was documented with a residence permit of a foreigner valid until 22 February 2007. On 10 December 2004 he registered a marriage with I.T.A., a Belarusian citizen. On 21 December 2008 his son, M.A.A., was born.

Having a permanent residence permit in the Republic of Belarus valid from 2001, M.N. has continued his charity work. He delivered medical supplies, machinery and special-purpose equipment from Germany to public associations and medical institutions of the region: to the Gomel regional public association of handicapped persons with locomotor apparatus disorders “Spinal invalids”; to Gomel city public

association “Union of large families”; to Gomel regional socio-cultural charity centre “Prometey”; to Gomel regional clinical hospital; to Gomel regional clinical hospital for disabled during the Great Patriotic War and others. On 16 September 2005 Court of Zheleznodorozhnii District of city of Gomel sentenced M.N. to four years in prison with confiscation of property. On 15 May 2007 he was released in concordance with the Law of the Republic of Belarus adopted on 5 May 2005 “On amnesty”. In concordance with paragraph 2 of Part 2 of Article 54 and paragraph 7 of Part 2 of Article 28 of the Law of the Republic of Belarus “On legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus” a foreigner who has an outstanding or unremoved conviction for committing a serious or especially serious crime is to have his residence permit in the Republic of Belarus canceled. In this connection on 5 March 2007 the Department for Internal Affairs of Gomel region Executive Committee made a decision to cancel M.N.’s permit.

On 27 May 2009 the complainant applied to the Citizenship and Migration Division of the Department for Internal Affairs of Gomel region Executive Committee to be recognized as refugee in the Republic of Belarus.

According to Part 1 of Article 18 of the Law, a refugee status in the Republic of Belarus can be granted to a foreign citizen who resides in the Republic of Belarus due to well-founded fear of being persecuted because of race, religion, nationality, citizenship, membership in a particular social group or political opinion in the country of his/her citizenship and is unable or unwilling to avail him/herself of the protection of that country for that reasons, or to a stateless person residing in the Republic of Belarus due to listed reasons who is unable or unwilling to return to the country of his/her former permanent residence for fear of such persecutions.

According to Article 39 of the Law the following decisions are made on applications for protection: to suspend the investigation of application for protection; to dismiss the investigation of application for protection; to grant refugee status; to deny refugee status and to grant complementary protection.

According to Article 43 of the Law the decision of granting or denying refugee status and/or complementary protection is made by the Department on the basis of the case materials and considering the conclusion made by the [regional] Citizenship and Migration Unit and the information from the state security bodies of Belarus about whether the foreigner applying for protection meets the grounds stipulated in the Article 3 of the Law.

A foreigner applying for protection may be denied refugee status and/or complementary protection if:

- the application is manifestly unfounded;
- the application is abusive;
- grounds foreseen by the Article 3 of the Law were established;
- a foreigner has a citizenship of a third country, which protection he/she can enjoy;
- a foreigner entered the Republic of Belarus from the territory of a safe third country;

during the application examination period a foreigner was convicted for serious or especially serious crime.

Except for cases listed in Part 2 of this Article, a foreigner applying for protection can be denied refugee status if there are no grounds for granting refugee status.

The contested Order of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus was passed namely for the lack of grounds for granting refugee status.

However, the court considers this conclusion to be wrong.

According to Article 360-2 of Code of Civil Procedure of the Republic of Belarus after the examination on the case the court makes one of the following motivated decisions:

to leave the decision unchanged and dismiss the appeal;

on validity of the appeal and the necessity to rectify the violation made.

It has been reliably established during a court session and admitted by the representatives of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus that on 11 May 1988 M.N. was recognized as refugee in Germany.

The travel document No. A0085399 which was given to the complainant by German authorities expired on 25 July 2006. The complainant was subsequently refused a new travel document under the Article 28 of Convention and Paragraph 11 of the Schedule to the Convention by the Embassy of the Federative Republic of Germany in Minsk. The stated Paragraph of the Schedule provides that the responsibility for the issue of a new travel document, under the terms and conditions of Article 28 of the Convention, passes on to the competent authority of the country on which territory the refugee lawfully resides. In this case that country is the Republic of Belarus.

Due to refusal of German authorities to issue a travel document, the complainant was provided with a travel document of the Republic of Belarus valid from 17 July 2007 till 18 December 2007 and then by the Department of Internal Affairs of Centralny district of city of Gomel – valid from 16 February 2009 till 18 July 2009.

On 13 March 2009 the Embassy of the Federative Republic of Germany in Belarus in written form refused visa to the complainant without explaining the reasons. The complainant was therefore unable to exit the Republic of Belarus.

As stated in the Letter No. 40/M-169 of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus of 28 March 2007, the Consular Department of the Embassy of the Federative Republic of Germany replied that according to Geneva Convention on Refugees the diplomatic representation of Germany is no longer responsible for issuing a travel document for the mentioned foreigner.

According to the Article 8 of the Constitution of the Republic of Belarus, the Republic of Belarus recognizes the priority of the universal principles of international law and ensures compliance of legislation with them.

In concordance with Part 2 of Article 1 of the Law, if an international treaty to

which the Republic of Belarus is a party, lays down rules other than those envisaged by the current Law, then the rules of international treaty shall be applied.

According to Article 20 of the Law of the Republic of Belarus “On Normative Legal Acts of the Republic of Belarus”, legal rules contained in international treaties of the Republic of Belarus, which have entered into force, are the part of legislation in force on the territory of the Republic of Belarus and are subject to immediate application, except in cases when the international treaty states that the adoption of a domestic normative legal act is required for such provisions to be applied. These legal provisions then have the same force as the normative legal act by which the Republic of Belarus undertook its obligation as a party to the treaty.

In accordance with Paragraph 11 of the Schedule to the Convention relating to the Status of Refugees adopted on 28 July 1951 (ratified by the Republic of Belarus on 21 November 2001), when a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for issue a new travel document shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

According to the Advisory Opinion of a specialist, UNHCR Associate Protection Officer Saleyeu I.V., the refugee status is extraterritorial and if a person is recognized as refugee in one Contracting State there is no need to obtain a refugee status in other Contracting State.

Non-admission of a refugee on the territory of the State that issued a travel document could not and shall not mean a loss of his status. In another Contracting State, which took a refugee for a permanent residence, a refugee will be entitled all the rights and obligations according to the 1951 Convention, and the refugee status is preserved.

As evidenced by foregoing, UNHCR holds the opinion that the provisions of the 1951 Convention, considered together with the history of its adoption, illustrate the fundamental principle of preservation and continuity of refugee status after the primary determination and its international character. A refugee status, determined by one Contracting State, shall be recognized by other Contracting States.

Provisions of the 1951 Convention enable a refugee residing in one Contracting State, to exercise certain rights on the territory of another Contracting State without the necessity to re-examine refugee status.

The Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus did not account for the fact that the complainant had already been recognized as refugee in Germany.

During the court examination the complainant’s arguments that after returning to Iran he will be exposed to torture as minimum, and the death penalty is not excluded were confirmed. <...> /*circumstances of the case not published*/

The claims of Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus that arguments provided by the complainant about renunciation of Iranian nationality are not supported by any documentary evidence and therefore his apprehension of being exposed to persecutions after returning to Iran for renunciation of nationality are ungrounded. These claims are found inconsistent as the complainant has provided other reasons for his fear of persecutions

and unwillingness to return to Iran besides renunciation of citizenship.

The Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus claims that during the examination of the application, the complainant's refugee rights were not violated and non-refoulement principle was observed, and he was provided complementary protection. However, such position is controversial as the complementary protection shall be provided to a person with no grounds for receiving refugee status.

According to letter g) of the Conclusion of the Executive Committee of the High Commissioner Programme No. 12 (XXIX) – 1978: The Extraterritorial Effect of Determination of Refugee Status, the refugee status as determined in one Contracting State should only be called into question by another Contracting State in exceptional cases when it appears that the person manifestly does not fulfill the requirements of the Convention, e.g. if facts become known indicating that the statements initially made were fraudulent or showing that the person concerned falls within the terms of a cessation or exclusion provision of the 1951 Convention.

At the same time, the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus has failed to provide evidence that the complainant does not fulfill the requirements of the Convention for any reasons. The earlier examined circumstances, on the grounds of which the complainant has been granted refugee status, have not been contested by the Department.

However, due to objective reasons the complainant is currently not able to make use of his status. In such a case the regulations for granting refugee status do not prohibit receiving refugee status in another country, which will contribute to receiving a proper legal protection.

Due to the above-mentioned arguments, the conclusion of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus that “the complainant has not been a member of any political party or grouping during his residence in Iran and while living in emigration” can not serve as basis for the rejection. It was proved that the complainant can still become exposed to persecutions for his actions prior to escaping from Iran.

When passing the judgment the court takes into account that the facts from complainant's biography were not contested by the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus and his statements during the interviews were consistent and non-contradictory.

According to statutory provision, the arguments given by the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus at the court session concerning the complainant's previous criminal conviction can not be the reason for denying refugee status, and they were also not mentioned as reason for denial in the contested Order.

The court has also considered the Conclusion of the Citizenship and Migration Division of the Department for Internal Affairs of Gomel region Executive Committee of 26 August 2009 on the possibility of granting the complainant refugee status in the Republic of Belarus. Within this Conclusion all the circumstances concerning M.N. have been taken into account.

Considering such circumstances the court considers that the Order by the

Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus can not be recognized lawful and grounded, and that the mentioned facts should be taken into account during reconsideration of this case and the decision should be made according to the Law.

Considering all above-mentioned facts and in concordance with Articles 302, 360-1, 360-2 of Code of Civil Procedure of the Republic of Belarus the court has

**DECIDED:**

To satisfy M.N.'s appeal of wrongful acts of the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus.

To invalidate the Order No. 63 on denying refugee state in the Republic of Belarus to M.N. issued by the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus.

To compel the Department on Citizenship and Migration of the Ministry of Internal Affairs of Belarus to examine the M.N.'s application for receiving refugee status having rectified all breaches.

The decision can be appealed against and protested in Minsk City Court through the Court of Centralny District of city of Minsk within ten days from the moment of its proclamation.

Judge: signature