

THE SUPREME COURT OF THE REPUBLIC OF HUNGARY

as court of second instance

In the case of applicant ZT, represented by attorney Lilla Farkas, against the Refugee Directorate of the Office of Immigration and Nationality (hereinafter: OIN), requesting the judicial review of the decision taken in the refugee status determination procedure, as a result of appeal no. 3 submitted by OIN against the decision of the Municipal Court dated 4 October 2000, the Supreme Court of the Republic of Hungary brings – in camera – on the day written below, the following

decision:

The Supreme Court upholds the decision of the court of the first instance.

Fees of the second instance procedure shall be borne by the state.

There shall be no appeal against this decision.

Reasoning:

The court of the first instance changed the decision of the defendant, which had been taken in a repeated procedure, and recognized the applicant as a refugee with extending the effect of the decision to the spouse and minor children of the applicant.

The reasoning of the court's decision stated that the applicant, a Yugoslav citizen of Serbian ethnicity, had arrived in Hungary together with his family in May 1999 during the war in Kosovo and had sought recognition as a refugee. As grounds for his application (which had been supplemented in the repeated procedure) he stated that politics became a part of everyday life during the war in Kosovo and that flyers reported about the condemnation by the democratic world of the military actions of the Milosevic-regime. The applicant, similarly to numerous fellow Serbs, agreed that the war is senseless and he did not wish to participate in war crimes. He had expressed this conviction to a circle of friends in April 1999. Afterwards, he had to face reprisals: the police took him in for interrogation, where he was repeatedly slapped in the face. A few days later, he received a military draft. As he did not wish to take part in committing war crimes because of his beliefs, he went into hiding in the neighborhood, then, when he was captured a few days later and was to be transported to a different location, he escaped from the police yard. Afterwards, with assistance, he went to Hungary, his wife and children following him the next day.

In the opinion of the first instance court, OIN erred when it rejected recognition as a refugee of the applicant because it found that Section 2 point a) of the Act CXXXIX of 1997 on asylum (hereinafter: Act on Asylum) was inapplicable, and only recognized the applicant as person authorized to stay based on point c). In the view of the first instance court, the credibility of the applicant's anti-war conviction was supported by the fact that it was in line with public opinion in the given circumstances and the opinion of the international community. Moreover, the genuineness of his conviction was supported by the fact that during the procedure he described in a consistent and unquestionable manner, as his wife, the reasons and circumstances that resulted in his persecution and flight. The court stated that the genuine conviction of the applicant opposing military actions contrary to international norms and constituting severe and mass violations of human rights, in light of the spirit of the

Geneva Convention, may (should) be considered as political opinion serving as a ground for refugee recognition. Therefore, perceiving the applicant's opinion concerning the war as his political opinion, the court considered the words of criticism as an expression of a political opinion. Following the expression of the applicant's political opinion, in close chronological order, the applicant was held accountable by the police (was slapped), then ordered to serve in the military, and eventually detained and his family members were harassed. The first instance court went on to say that the chronology of the expression of the political opinion and the measures inducing to his flight conclude that the military draft, the detention and the harassment of the family members were related to the applicant's political opinion. From this, the first instance court concluded that the prison sentence threatening the applicant in his country of origin was equal to the threat of personal persecution based on political opinion as set forth in the Geneva Convention. Although by recognizing the applicant as authorized to stay OIN acknowledged the threat of persecution, imprisonment in the applicant's country of origin, it erred in considering the circumstances and denying refugee protection. For these reasons, [the court of the first instance] in terms of the procedure set forth in Section 39 (2) of the Act on Asylum, changed OIN's decision and granted refugee status to the applicant and his family members.

In the appeal submitted against the court's decision, OIN requested that the decision of the first instance court be changed and the applicant's request for judicial review be rejected. In its appeal, it relied on the fact that the Yugoslav authorities had not seized the applicant's passport, therefore, he had not committed a serious act that would have served as a basis for persecution by the authorities. For these reasons, he could not substantiate in a convincing manner in the refugee determination procedure that his political opinion was related to his refusal to serve in the military.

The applicant did not submit a counter-appeal.

The appeal of OIN is not well grounded.

The court of the first instance established the facts correctly and with proper details, the legal reasoning as concluded from the facts is correct. In the appeal, OIN did not show any new facts or circumstances with relevance to the in-merit decision of the matter.

In light of the above, the Supreme Court upholds the decision of the first instance court in accordance with Section 254 (3) as applicable by Section 259 of the Code on Civil Procedure. In the view of the Supreme Court, the correctness of the first instance court's decision is supported by the fact that, based on Section 41 of the Act on Asylum, the UN High Commissioner for Refugees taking part in the procedure, in a note submitted on 28 October 1999, was also of the opinion that the applicant's recognition as a refugee was justified, taking into consideration the applicant's well-founded fear of persecution based on his political opinion.

The appeal procedural fees, not paid in advance because of the right to deterred payment shall be born by the state in terms Section 14 of the Decree of the Minister of Justice 6/1986 (May 26) with regard to OIN's personal exemption from fees.

Budapest, April 2001