

DECISION
in the name of the Russian Federation

On January 04, 2003 at an open court session, the Mineralovodsky City Court

Composed of:

Chairperson: Ms. S.V. Izvozchikova, a presiding judge;

Attending: Ms. L.I. Shevtsova and A.N. Karamzins, People's assessors;

Assisting: Ms A.A. Suprunova, a secretary

considered a civil case as regards a complaint filed by Ms M.N. Petrova against actions of the Stavropol territorial body of the RF Ministry of Federal Affairs, National and Migration Policy (the Stavropol territorial GUV D Department for Migration is also a party to the case) denying the applicant the issuance of refugee status and

ESTABLISHED THE FOLLOWING:

The applicant Ms M.N. Petrova filed a complaint in court against actions of the Stavropol Territorial Body of the RF Ministry of Federal Affairs, National and Migration Policy indicating that she was unlawfully denied the issuance of refugee status.

During the court hearing, the applicant and her representative Ms O.A. Plykina specified the claims and requested the Court should recognise the decision of the Territorial Body denying the applicant refugee status as being unlawful and obligate the Stavropol Territorial GUV D Department for Migration to recognise her as refugee.

To substantiate her claim, they informed the Court that Ms Petrova was born in the village of Tuyabuguz, Tashkent region, and was a stateless person. In 1995, Ms Petrova, her daughter A.V. Petrova, born in 1985, and her son L.V. Petrov, born in 1981, were forced to leave Uzbekistan due to well-founded fear of persecution for reason of race, religion and nationality and, being presently outside the country of their habitual residence, are unable or, owing to such fear, are unwilling to return to it. She hasn't had her registration cancelled in Uzbekistan.

In 1993, Ms Petrova was forced to quit her job in Uzbekistan due to the introduction of the Uzbek language in all official communication. The Uzbek language, which she doesn't know, was brought into practice all over Uzbekistan: at the school, which her daughter attended, at shops, medical centres, etc. The applicant couldn't find a job since she didn't know the Uzbek language, and her daughter could no longer attend school for the same reason.

Besides, Ms Petrova's family was subjected to persecution on nationality grounds. She was forced under threats to have a general power of attorney executed authorising

other people to own and use her apartment. Otherwise, she was told, her apartment would be confiscated. They also threatened that no one would be looking for her in case she disappears, as she had no relatives in Uzbekistan. She was not paid anything for her apartment. Instead, she was given some money for a train ticket, so that she could leave Uzbekistan.

The applicant stated that when she had approached the law enforcement authorities in Uzbekistan, they refused to accept her claim as regards the above incident and recommended her to leave Uzbekistan to save her own life and that of her children.

In 1998, the Petrovs moved into a house located in the Mineralovodsky district. They were assigned this house for temporary accommodation by a stud farm in the city of MinVody, where the applicant is currently employed. Her daughter attends secondary school No.8 in the village of Levokumka, Mineralovodsky district.

The Petrovs do not intend to go back to Uzbekistan for fear of persecution on ethnic and religious grounds.

In accordance with the decision issued by the Stavropol Territorial Body of the RF Ministry of Federal Affairs, National and Migration Policy on 24.05.02, the applicant was denied refugee status on eligibility grounds.

The reasoning behind the negative decision was as follows: the applicant has failed to prove that the actions, that were undertaken or may be undertaken against her, occurred due to her ethnic, religious or national background or her membership of a particular social group or political opinion in the country of her habitual residence.

A representative of the defendant submitted a statement from which it followed that the Stavropol Territorial GUV D Department for Migration requested the Court to consider the case in absentia.

Having listened to the applicant's statement and her representative's account and after examining the materials on the case, the Court has found the declared claims subject to just satisfaction on the following grounds.

It was established during the court session that Ms Petrova was forced to leave Uzbekistan in 1995 for fear of persecution for reason of nationality and religion. She was forced under threats to have a general power of attorney executed authorising other people to own and use her apartment. Otherwise, she was told, her apartment would be confiscated. They also threatened that no one would be looking for her in case she disappears, as she had no relatives in Uzbekistan. She was not paid anything for her apartment. Instead, she was given some money for a train ticket, so that she could leave Uzbekistan. When she approached law enforcement authorities in Uzbekistan, they refused to accept her claim as regards the above incident and recommended her to leave Uzbekistan to save her own life and that of her children. She feared for her children's safety and was forced to leave Uzbekistan. Ms Petrova has been residing in the Stavropol territory, Russia, since 1995 and presently, she is a stateless person.

In accordance with the Federal Law “On Refugees” No.45-28-1 of 19.02.1993 as amended in the Federal Laws of 28.06.1997 B-95 ФЗ, of 21.07.1998 No.117- ФЗ, of 07.11.2000 No.13 FZ), a refugee is a person who is not a citizen of the Russian Federation and owing to well-founded fear of being persecuted for reason of race, religion, citizenship, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Under Article 6 of the RF Law “On appealing in court actions and decisions violating civil rights and freedoms”, an official, whose actions (decisions) are appealed, is charged with the procedural obligation to submit documentary evidence confirming the lawfulness of disputed actions (decisions). A person is relieved of the obligation to prove the unlawfulness of the appealed actions (decisions).

Article 2 of the same Law envisages the following consequences of actions (decisions): those that entail violation of citizens’ rights and freedoms or put obstacles in the way of exercising by a citizen of his/her rights or freedoms, or if some responsibility is unlawfully imposed on a citizen, or if he is unlawfully made accountable for something.

As indicated in the Definition of the Supreme Court Panel of Judges of 07.08.1995 with regard to the case of Kakuliya, Bulletin of the Supreme Court No.11, 1995, a person applying for refugee status is not obliged to present proof of the forced nature of their departure from their permanent place of residence. The person is only required to provide information to the relevant government agencies necessary to consider his/her application.

It follows from the materials of the case that Ms Petrova indicated information in her application related to her forcible displacement from Uzbekistan for fear of persecution on ethnic grounds, that she provided to the Territorial Branch all the information required for consideration of her application. Ms Petrova was not supposed to produce proof of her forcible departure from Uzbekistan.

However, the Stavropol Territorial Body of the RF Ministry of Federal Affairs, National and Migration Policy denied Ms Petrova the issuance of refugee status because she had failed to prove that the actions, that were undertaken or may be undertaken against you, occurred due to her ethnic, religious or national background or her membership of a particular social group or political opinion in the country of your habitual residence.

In the Court’s opinion, the Stavropol Territorial Body of the RF Ministry of Federal Affairs, National and Migration Policy took the above negative decision without proper examination of the current situation in Uzbekistan and did not conduct an investigation based on the facts furnished by the applicant. E.g., lack of information on the general situation in Uzbekistan at the time when the application was being considered and the negative decision was taken on May 24, 2002 by the Stavropol Territorial Body. It was only on October 11, 2002 that the information in question was provided by the FMS MVD at the Court’s request. The FMS MVD’s

claims to the effect that cases of discrimination indeed occur in Uzbekistan in every day life, but they have nothing to do with the applicant's case, since they occurred in other areas of Uzbekistan, are not in keeping with the actual facts.

Ms. Agonesyan, a witness, testified that Ms. Petrova told her earlier she was forced to have a power of attorney executed authorising other people to own and use her apartment in Uzbekistan, while the law enforcement authorities refused to accept her application concerning her case. Ms Petrova and her daughter shared an apartment with the witness for some time in view of her difficult material situation.

Mr Gaidarenko, another witness, indicated that he had lived in Uzbekistan till 2001. He was forced to leave Uzbekistan for fear of persecution on ethnic and religious grounds. He was forced under pressure to acquire the Uzbek citizenship, and it happened in the following way. At twelve midnight, law enforcement officers came to his place and took away his and his elderly father's passports issued in 1974. They said that his passport would be exchanged for a passport of an Uzbek citizen. However, neither Mr Gaidarenko nor his father had indicated any wish to acquire the Uzbek citizenship. Presently, Gaidarenko's application papers for the Russian citizenship are under consideration with the RF Presidential Commission for Russian citizenship. Mr Gaidarenko further observed that over the last few years, the internal struggle between the Government and radical Islamic opposition forces working underground had considerably intensified. The cases of ethnic Russians losing their jobs, that have nothing to do with their lack of the Uzbek language skills, have occurred more often recently. Their attempts to approach the law enforcement authorities on these cases produced no result, and sometimes the authorities simply refuse to accept applications from ethnic Russians.

Among the case-related materials, there is a letter from Mr Ponomaryov, a free-lance expert, manager of the Central-Asian programme of the human rights centre "Memorial", which says that according to the human right organisations' estimates, the political regime in Uzbekistan is one of the most undemocratic on the CIS territory.

Regardless of official declarations concerning the "stability" and "guarantees of rights of all ethnic groups residing in Uzbekistan", numerous cases of discrimination and humiliating treatment of the Russian-speaking minority indeed occur in Uzbekistan both in every day life and in government agencies' every day practice. Numerous complaints, which the Russian Embassy Consular Office in Uzbekistan is swamped with, serve as a telling evidence of the above. Recently, both Mr Ponomaryov and his colleagues have had an opportunity to become familiar with several dozens of such complaints during their business trips to Uzbekistan. In many cases, the Russian-speaking population in Uzbekistan has no access to legal protection, while ethnic discrimination takes place in the sphere of human rights, employment, property protection, etc. Legal transgressions by law enforcement agencies are pandemic, while inquiries filed by ethnic minorities with law enforcement authorities, courts and executive agencies concerning these legal transgressions very seldom produce a positive result. Numerous cases of unlawful conviction of ethnic Russians residing permanently or temporarily in Uzbekistan became known to the public at large. In the meantime, it is forbidden to raise any of the existing problems in local mass media. The Uzbek authorities do not allow any

independent organisation of Russian compatriots to be set up, which could take actions aimed at safeguarding the rights of the Russian-speaking population. The letter points out at the general deterioration of the situation in the sphere of human rights in Uzbekistan over the last 7 years, when Ms Petrova has been residing in Russia. Moreover, since 1998 there has been observed the growth of tension in Uzbekistan in connection with the struggle between the government and the underground Islamic opposition that manifested itself in armed clashes in 1999-2001 in several Uzbek regions. All this undoubtedly testifies to a serious threat to safety and security of the Russian-speaking population.

The decision of the Stavropol Territorial Body denying Ms Petrova refugee status may lead to the violation of the underlying principle of *non-refoulement* envisaged in Article 10.1 of the RF Law "On Refugees" and Article 33 of the UN 1951 Convention Relating to the Status of Refugees.

The defendant has failed to prove the legality of the appealed action. Consequently, the Court can not agree to the arguments presented by the Stavropol Territorial GUV D Department for Migration and considers it to be an established fact that the appealed action violates the applicant's rights.

Considering the evidence presented by the applicant, the Court believes that the applicant's claims are based on law and were supported during the court session, namely: Ms Petrova's family was subjected to persecution in Uzbekistan on ethnic and religious grounds, and in the event of her return to Uzbekistan, she has every reason to fear persecution on ethnic and religious grounds.

For these reasons and being guided by Articles 14,191- 197, 239-1 of the RSFSR Civil Procedural Code, the Court

HAS RULED AS FOLLOWS:

The decision of the Stavropol territorial body of the RF Ministry of Federal Affairs, National and Migration Policy denying Ms M.N. Petrova the issuance of refugee status shall be recognised unlawful.

The Stavropol Territorial GUV D Department for Migration shall be obligated to officially recognise Ms M.N. Petrova as refugee.

An appeal against the decision can be filed with the Stavropol Territorial Court through the Mineralovodsky City Court within the next 10 days.

Judge
(signature)

THE DECISION WAS ENFORCED ON JANUARY 15, 2003