



20. 05. 2004



[This decision came into effect on 7th April 2004]

7 Saz 12/2003

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

The Regional Court in Bratislava chaired by the Judge Ivetta Marusakova decided

a s f o l l o w s

in the legal matter of the petitioner **RONG YAN LU**, born on 5th March 1976, Chinese national, currently staying at Komarnanska 59, Bratislava against the respondent, **the Migration Office of the Ministry of Interior** of Pivonkova 6, Bratislava in the proceeding on appeal of the petitioner against the decision in asylum procedure of the respondent, the administrative authority No.: MU-289/PO-Z/2003 of 17th April 2003:

The Regional Court **c a n c e l s** the contested decision of the respondent administrative authority No.: MU-289/PO-Z/2003 of 17th April 2003 and **r e t u r n s** same for further proceeding.

The court **d o e s n o t g r a n t** the petitioner compensation of legal charges for the proceeding.

R a t i o n a l e

On the basis of not fulfilling conditions established by §§ 8 to 10 of the Law No. 480/2002 Coll. on Asylum, the respondent administrative authority (further only “the respondent”) did not grant asylum to the petitioner by decision No.: MU-289/PO-Z/2003 of 17th April 2003.

The petitioner contested in disagreement within the period stipulated by law the decision of the respondent No.: MU-289/PO-Z/2003 of 17th April 2003, by filing the appeal on 8th July 2003 on the basis of the respondent not specifying in its decision, in accordance with the §20, sec. 3 of Law No. 480/2002 Coll. on Asylum, whether the prohibition of expulsion or refoulement applies on the petitioner.

The petitioner refers to the fact that it is not possible to examine the decision of the respondent the rationale of the decision states that no facts were determined that would prevent the petitioner to return to her country of origin according to the §47 of the Law on Asylum. The petitioner refers to the fact that the verdict of the respondent does not contain any grounds or considerations that may lead to not expressing the prohibition of expulsion.

The petitioner stated that in the context of legal aspect the decision of the respondent on not granting of asylum is incorrect, and issued on the basis of insufficient fact finding.

The petitioner requests the court to cancel the object decision of the respondent No.: MU-289/PO-Z/2003 of 17th April 2003 and return same for further proceeding.

On 1st August 2003 the respondent provided written statement reacting to the appeal and stated that the petitioner arrived to the territory of the Slovak Republic on 31st May 2002 for the purpose of employment, whereby she did not leave her country of origin for reason of fear of persecution on account of race, nationality, religion, membership of particular social group or political opinion. The respondent also stated that the petitioner applied for asylum on 20th January 2003 when she was placed in the police detention facility for aliens in Medvedov and a decision of administrative expulsion was made in regard to her person. The respondent stated that the petitioner is so called economic migrant, based on which it proposes confirmation by court of the respondent's decision No.: MU-289/PO-Z/2003 of 17th April 2003 as materially correct.

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

According to the regulation of §6, sec. b) of the Law No. 481/2002 Coll. amending the Law No. 328/96 Coll., which establishes seats and districts of courts and on change and amendments of some laws governing the decision-making on appeals against decisions issued in the asylum procedure, the Regional Court in Bratislava is competent according to the separate regulation for territorial districts of the Regional Courts in Bratislava, Trnava, Trencin and Nitra.

According to the §246, sec. 1 of the Civic Court Rule (further only "CCR"), the examination of legitimacy of decisions and procedures falls under the material competence of regional courts, if the law does not provide otherwise.

The Regional Court in Bratislava, as the materially and locally competent body for examination of legitimacy of decision and procedures of the administrative authorities, examined the contested decision in the scope of the reasons stated in the appeal in accordance with the regulation of §249, sec. 2, §2501, sec. 2, §250s of the CCR and came to the conclusion that the appeal is legitimate and the contested decision must be cancelled.

The given decision of the respondent shows that despite making a decision on not granting of asylum to the petitioner as she does not fulfil the conditions established in §§ 8 to 10 of the Law No. 480/2002 Coll. on Asylum, the respondent in the verdict of this decision did not state whether prohibition of expulsion or refoulement applies on the petitioner as in accordance with the §47 of the Law No. 480/2002 Coll. on Asylum.

The appeal of the petitioner against the decision of respondent No.: MU-289/PO-Z/2003 of 17th April 2003 pointed out to the missing verdict. However, the court carried out examination of legitimacy of the whole verdict of the decision despite the fact that the respondent refers in the decision to the §47 of the cited law, specifically it states that no facts were determined in the course of the asylum procedure that would prevent the return of the petitioner to her country of origin.

The court is of the opinion that the respondent did not thoroughly follow the regulation of §46 of the Law No. 71/1967 Coll. on Administrative Procedure when it issued a decision that is not in accordance with the Law No. 480/2002 Coll. on Asylum, namely the regulation of §20, sec. 3 of the cited law on asylum. In the view of the missing part of the verdict, the decision of the respondent is unclear and non-examinable.

According to the regulation of §46 of the Law No. 71/1967 Coll. on Administrative Procedure, the decision must be in accordance with the laws and other legal regulations, must be issued by a competent authority and must be based on reliably justified fact finding and must contain the prescribed requisites.

According to the regulation of §20, sec. 3 of the Law No. 480/2002 Coll. on Asylum, if the ministry rejects the application as manifestly unfounded, decides not to grant asylum or withdraws asylum, it shall state in the verdict of the decision whether the prohibition on expulsion or refoulement under §47 applies to an alien.

Based on the cited regulation it is clear, that the verdict, on whether the prohibition of expulsion or refoulement according to the §47 of the Law on Asylum is applicable in the case of the given alien, constitutes a compulsory part of the decision of the defendant on not granting of asylum.

In the interest of legal certainty, it is necessary (as can also be understood by a logic interpretation of this regulation) that, if the defendant comes to the conclusion that the prohibition of expulsion or refoulement does not apply in the case of the plaintiff, it shall provide verdict of a corresponding wording, whereby **in the rationale of the decision the it shall settle** the facts constituting ground for such a decision, provide

considerations used as a guidance in evaluation of the evidence and which legal regulations formed ground of the decision (§47, sec. 3 of the Law on Administrative Procedure).

Based on the aforementioned reasons, the Regional Court canceled the decision in this given contested part (according to the §250j, sec. 4 of the CCR) and returned same to the defendant for further proceeding.

In further proceeding, it shall be the obligation of the defendant, to proceed in the above indicated direction and upon consideration of all circumstances which should form grounds of the decision on whether the prohibition of expulsion or refoulement does or does not apply in the case of the plaintiff, to decide not only in the light of regulation of §47 of the Law on Asylum, but also in view of the Article 3 of the European Court for Protection of Human Rights and Fundamental Freedoms.

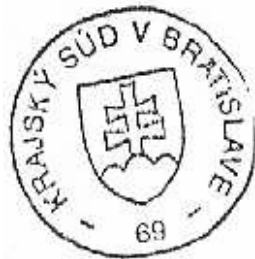
According to §250r of the CCR, if the court cancels a decision of the administrative authority, this authority is in further proceeding bound by the legal opinion of the court.

According to §250k, sec. 1 of the CCR, the court decided on legal charges as follows: it does not grant the petitioner compensation of legal charges as she did not incur any.

With regard to the above mentioned facts the court decided as provided in the verdict part of this judgement and cancelled the decision of the respondent administrative authority and returned same for further proceeding.

I n s t r u c t i o n Appeal against this decision is not admissible (§250j, sec. 4 of the CCR).

In Bratislava on the 23rd march 2004



Ivetta Marusakova, J.D.
Judge

Responsible for correctness of the copy:
Dana Majercikova