

DECISION

The City of Moscow

On October 17, 2003, Ms. G.A. Agafonova, a judge of the Moscow City Court, considered at an open court session a case concerning an appeal lodged by Ms Chjan Guizhun against the decision of the Preobrazhensky District Court, the City of Moscow, of October 3, 2003, according to which Ms. Chjan Guizhun – a Chinese national born on July 8, 1963 in the town of Suikhua, Heilontsyuan province, the Chinese People’s Republic, married, does not have any employment, has a child under 18 – was found guilty of committing an administrative offence under Article 18.8 of the RF Code on Administrative Offences and incurred a penalty in the form of an administrative fine to the total amount of 10 minimum wages (RuR 1,000) to be followed by her expulsion under escort from the territory of the Russian Federation. (the expulsion was to be preceded by detention and temporary custody at GUV D No. 2 detention centre in Moscow) and

ESTABLISHED THE FOLLOWING:

On October 3, 2003, administrative proceedings were instituted against Ms. Chjan Guizhun, a Chinese national, as per Article 18.8 of the RF Code of Administrative Offences. The case was forwarded for consideration to the Preobrazhensky District Court, the City of Moscow; the judge passed the above decision which Ms. Chjan Guizhun appealed and requested the said court decision be overruled.

Having examined the materials related to the administrative case and listened to the accounts of Ms. Chjan Guizhun’s representative Mr. I.P.Shkodyuk and lawyers Ms Kostromina and Ms Zababurina, the Court has found the decision of the district court subject to cancellation on the following grounds:

In accordance with Article 1.5 of the Code on Administrative Offences,

1. A person shall be administratively liable only for those administrative offences in respect of which his guilt has been established;
2. A person who is on trial for an administrative offence shall be regarded innocent until his guilt is proved in the course of the procedure established in this Code and determined by a lawful decision of the judge, the body or the official who have considered the case;
3. A person held administratively responsible is not obliged to prove his innocence;
4. Unavoidable doubts in respect of the guilt of a person held administratively responsible shall be interpreted in favour of this person.

Having taken the said decision, the judge came to the conclusion that there were legal grounds for instituting administrative proceedings against Ms. Chjan Guizhun under Article 18.8 of the Code on Administrative Offences. However, the Court failed to check into Ms. Chjan Guizhun’s arguments to the effect that she had taken steps to obtain refugee status. Therefore, she is not guilty of committing the administrative offence.

The stated arguments are supported by written responses issued by the Moscow GUV D Department for Migration on 09.12.2002 and 06.11.2002. However, the court has failed to take into account and properly assess this evidence.

Ms. Chjan Guizhun refers to the fact that the Moscow GUV D Department for Migration did not resolve in due time the issue concerning her refugee claim, which made her file a complaint in court against the neglect displayed by that body. Besides, Ms. Chjan

Guizhun pointed out that she was an advocate of the “Falun Dafa” movement, which is outlawed in China. In the event of her return to her home country, her life and health would be at risk.

The said claims stated by Ms. Chjan Guizhun should have also been examined in the court process.

It follows from the clarifications provided by Ms. Chjan Guizhun’s representative Mr. I.P.Shkodyuk and lawyers Ms Kostromina and Ms Zababurina that they they have filed applications for entering upon the record of the evidence attesting to the lack of guilt in the said transgression and summoning witnesses to the court hearing. However, the judge has rejected the above application in accordance with Art. 24.4 of the Code on Administrative Offences.

Since the decision was made without comprehensive, full and objective analysis of the circumstances of the case that are of considerable importance for proper resolution of the case, it can not be recognised as being lawful and well-founded. Therefore, it should be revoked.

When reviewing the case, the judge should take into account the above mentioned facts, examine the defendant’s arguments that merit attention and take a lawful and well-reasoned decision.

For these reasons and being guided by Articles 30.6 – 30.8 of the RF Code of Administrative Offences, the Court

HAS AWARDED THE FOLLOWING JUDGEMENT:

The decision of the Preobrazhensky District Court, the City of Moscow, of October 3, 2003 with regard to Ms. Chjan Guizhun shall be revoked, and the case shall be forwarded for a review to the Preobrazhensky District Court, the City of Moscow.

Judge:
G. A. Agafonova