

DECISION
in the name of the Russian Federation

On May 11, 2004 the Presnya District Court of Moscow with Presiding Judge T.A. Pechenina and Secretary T.A. Pavlishina, after examining in an open session Civil Case #2-3120/04 containing a complaint from Ethiopian national Mesfin Legesse Tsadiku against actions (inactivity) by the Migration Office of Moscow's Head Office for Internal Affairs (GUVD)

FOUND AS FOLLOWS:

The plaintiff had filed his complaint with the court explaining that he had arrived in the former Soviet Union for studies in 1990. Following the change of the ruling regime in Ethiopia, he was unable to return to the country of his nationality. In December 2003, he applied to the Moscow GUVD Migration Office to be recognized as a refugee in Russia. But his application had not yet been examined. He had received a letter from the Migration Office reminding him of Article 4 of the Federal Law on Refugees and the address of the Refugee Department. He contacted the department to undergo a refugee determination procedure but was denied access to it because he was in Russian territory without registration.

He felt that such actions by the Moscow GUVD Migration office had violated his rights and asked the court to qualify them as unlawful and oblige the defendant to examine his request for refugee status in Russia by applying the refugee determination procedure.

In the courtroom, he upheld his demands in full.

The defendant's representative in the person of Yu.Yu. Semenyutenko, acting on a power of attorney, asked the court to dismiss the complaint and provided written comments on it.

Following the oral explanations and a study of the written evidence, the court established that the plaintiff of Ethiopian nationality had arrived in the former Soviet Union to study at the Tashkent Institute of Irrigation. In 1991, the Tashkent Institute referred him to the Moscow Veterinary Academy, from which he graduated in 1997. He then took a postgraduate course at the same academy until 2002. With an armed conflict occurring in Ethiopia in 1992 entailing a change of government, he was unable to return to the country of his nationality.

In December 2003, he applied to the Moscow GUVD Migration Office to be recognized as a refugee in Russia.

Under Article 4.5.2 of the Federal Law on Refugees, a request from a person who is at a border crossing point or inside Russian territory is pre-examined by immigration control or territorial agency of the Federal Migration Service within five business days from submission.

In accordance with Article 3.2.3 of the said Law, based on its pre-examination of the refugee status request, the territorial agency must decide to issue a certificate proving that the request was being examined on its merits, or to refuse to consider the request on its merits.

The Migration Office had failed to observe the deadline, invite the plaintiff for an interview, examine his request for refugee status, and issue proof of intent to examine the request on its merits or refuse to examine it on its merits.

On January 12, 2004 the plaintiff was mailed a letter reminding him of the provisions contained in Article 4.1 of the Federal Law on Refugees and the address of the Refugee Department.

The plaintiff explained to the court that on February 11, 2004 he had personally contacted the Refugee Department to undergo the refugee determination procedure but he was denied access to it because he had been in Russia without registration, i.e. illegally.

The court found such actions by the Moscow GUVD Migration Office to be unlawful and unfounded because legality or illegality of anyone's stay in Russia is determined through a pre-examination of a refugee status request but that is no reason to deny access to the refugee determination procedure.

In accordance with Article 3.3 of the Federal Law on Refugees, a decision to issue the certificate or recognize the person as a refugee, or a decision to refuse the examination of the request on its

merits or to deny refugee status is taken following the polling of the person, filling out the interview questionnaire, checking the accuracy of the information provided about the person, his family arriving with him or her and the reasons for their being in Russia, and after a thorough analysis of the causes and circumstances described in the application. Additional interviews may be arranged to refine the facts reported by the person.

In this case, the Migration Office failed to take any of the actions envisaged in the above article but derived conclusions from legally meaningful circumstances, and as a result denied the plaintiff access to the refugee status determination procedure.

In this situation, the court found that the Moscow GUV D Migration Office's inactivity in terms of denying the plaintiff access to the refugee status determination procedure was unlawful and that his complaint must be satisfied.

Based on the above and pursuant to Articles 194-198 and 258 of the Russian Code of Civil Procedure, the court

DECIDED

To recognize as unlawful the inactivity of the Moscow GUV D Migration Office as expressed in its failure to apply the refugee status determination procedure to Ethiopian national Mesfin Legesse Tsadiku in accordance with the current refugee law.

To oblige the Moscow GUV D Migration Office to examine the request from Ethiopian national Mesfin Legesse Tsadiku by applying the legal procedure governing refugee status determination. The decision may be appealed in the Moscow City Court within ten days.

Judge (signed)