

DEFINITION

12 November 2002

The court collegium on civil cases of the Moscow Municipal Court comprised of:
Judges – V. V. Yermilova, E. M. Pendyurina
Attended by Lawyer T. V. Zababurina

Having listened at an open court session the case presented by E. M. Pendyurina regarding the appeal filed by Mohammad Naim Tadj, Mohammad, Nafisa Rakhamdin, Rona Fatekh Mohammad, Akhmad Javed Khalilulla, Said Yakut Shakh Said Khossain, Sakhina Said Khassan, Roya Daud Daud Shakh against the decision of the Presninsky district court of the Moscow City taken on August 23, 2002 that ruled to dismiss the appeal filed by Mohammad Naim Tadj, Mohammad, Nafisa Rakhamdin, Rona Fatekh Mohammad, Akhmad Javed Khalilulla? Said Yakut Shakh Said Khossain, Sakhina Said Khassan, Roya Daud Daud Shakh against the actions (decision) of the Moscow Territorial Branch of the RF Minfederation to deny them temporary asylum in the territory of the Russian Federation,

HAS ESTABLISHED

That the appellants filed in court an appeal against the decision of the Moscow Territorial Branch of the RF Minfederation to deny them temporary asylum in the territory of the Russian Federation on the grounds that they found the denial unlawful.

Having examined the materials of the case and having listened to representative of the appellants Ms. Zababurina, the lawyer, Ms. S. G. Nozdrina and Mr. E. Yu. Warshavsky the court collegium, having discussed the arguments of the appeal, has decided to overrule the decision as being taken in violation of provisions of the law, (i.e. the norms of material law were applied incorrectly in the course of decision-taking) and due to the fact that the conclusion made by the court did not comply with the circumstances described in the case and the circumstances of importance for the case under consideration were not duly proved to be authentic though the court stated it otherwise.

Denying the appellants to subject their appeal to just satisfaction the court referred to the norms established by the RF Law “On Refugees” and jumped to the conclusion that there were no grounds to subject their claims to satisfaction.

The court collegium cannot agree with the conclusion made by the court of first instance, as the appealed decision reads that the refugee claims submitted by Mohammad Naim Tadj Mohammad and Nafis Rakhadin were denied substantive consideration and they were denied refugee status without substantive consideration of their refugee claims which is confirmed by documents attached to the materials of the case under consideration.

The above circumstances are essential for taking decision on the appeal.

Apart from it, the court made wrong conclusion that in keeping with Article 7, Clause 3 of the Federal Law "On Refugees" the provision of asylum directly depends on whether an appellant's refugee claim has been considered on the merits or not.

In view of the above the court of first instance cannot be recognized as lawful and well founded.

In the course of the new consideration of the case the court shall take into account all the above and in compliance with provisions of law take well founded decision on the appeal.

Guided by Article 305 of the RSFSR "Civil Procedural Code", the court collegium

HAS ESTABLISHED

To overrule the decision of the Presninsky District Court of 23 August 2002;

To return the case under consideration to the court of the first instance to undergo some new consideration with a different board of judges.

Chairing Judge (Signature)

Judges (Signatures)