8 Saz 26/2003

JUDGEMENT
IN THE NAME OF THE SLOVAK REPUBLIC

The Regional Court in Bratislava pronounced and the Judge publicly announced this

J u d g m e n t

at the public hearing held on 23rd February 2004 in the legal matter of the **plaintiff: Mohamad HASSAN HAMID**, born on 25th September 1977 in Chartun, Sudan of Sudanese nationality, member of Kunuz tribe, worshipping Moslem religion, holder of the travel document No. 193765, lastly residing abroad in the town of Bisha, Hotel Zahra, apartment No. 707 in Saudi Arabia, currently residing at the Accommodation Camp in Gabcikovo, temporarily staying at the address of Magdalena Maliskova of Clementisova No. 15/6 Prievidza, legally represented by Mgr. Martin Skamel of Slovak Helsinki Committee of Grosslingova 4, Bratislava, **against the defendant, the Migration Office of the Ministry of Interior of the Slovak Republic of Pribinova 2, Bratislava** in the matter of appeal against the decision of the defendant administrative authority of 22nd October 2003, file No.: MU-1580/PO-Z/2003.

The Regional Court **c a n c e l s** and **r e t u r n s** the contested decision of the defendant administrative authority No.: MU-1580/PO-Z/2003 of 22nd October 2003 to the defendant **for further proceeding**.

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

R a t i o n a l e

The defendant administrative authority rejected, by the decision No.: MU-1580/PO-Z/2003 of 22nd October 2003, the application for asylum of the alien - the plaintiff - Mohamad Hassan Hamid, namely according to the Law No. 480/2002 Coll. on Asylum and on change and amendments of some laws, according to the §20, sec. 1 on asylum and on account of not fulfilling the conditions established by the §§ 8 to 10 of this

law. At the same time, the defendant administrative authority stated in its decision that according to §20, sec. 3 of the Law on Asylum, the prohibition of expulsion or refoulement to Sudan and Saudi Arabia according to the §47 of the law on asylum does not apply on the alien Mohamad Hassan Hamid.

On 8th December 2003 the plaintiff requested, by mailing an appeal via his authorized legal representative, the examination of the contested decision of the defendant administrative authority based on his disagreement with the decision, and his conviction that he fulfilled the conditions for granting of asylum. In the written reasons of his complaint – appeal –beside other facts he also pointed out to the fact, that with the view to the legal aspect, the defendant made an incorrect assessment the matter. He objected to the fact that the defendant in the rationale of the contested decision states that no facts were determined in the course of asylum procedure that would prevent the return of the plaintiff to the country of origin according to the §47 of the Law on Asylum. According to the plaintiff, the defendant carried out insufficient fact finding and therefore this part of the decision is non-examinable due to lack of reasons. In the conclusion of his appeal, the plaintiff proposed that the court cancels the decision of the defendant administrative authority and returns same for further proceeding.

The defendant administrative authority (further only "defendant") provided extensive statement in reaction to the appeal, whereby proposing that the Regional Court shall hear the matter and issue a decision without ordering hearing, wherewith it confirms the contested decision.

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

According to the regulation of §246, sec. 1 of the Civic Court Rule (further only "CCR"), regional courts are materially competent for examination of the legitimacy of decision and procedure, if the law does not provide otherwise.

The Regional Court in Bratislava, as the materially and locally competent body for examination of legitimacy of decisions and procedures of administrative authorities, examined the contested decision according to the Chapter Three, §§ 250l to 250s of the CCR, utilizing regulations of Chapter Two with the exception of §250a as per the §250l, sec. 2 of the CCR and came to the conclusion that the appeal filed by the plaintiff is legitimate and the contested decision must be canceled.

According to the §250i sec. 1 of the CCR, the issue of fact prevailing at the time of the issuing of the contested decision is considered by the court to be decisive.

For purpose of interviewing the participants and in accordance with the §250q, sec. 1 of the CCR, the court ordered a hearing, supplemented and conducted probation in the matter by interviewing the plaintiff, his legal representative, the witness Andrea Maliskova, by familiarizing itself with the contents of the court file, including the

attached file of the defendant and came to the conclusion, that **the defendant administrative authority did not err**, when on the basis of comprehensive examination of reasons, it came to the conclusion **that the plaintiff does not fulfill the conditions for granting of asylum** as intended by the law on asylum in its regulations of §§ 8 to 10.

The Regional Court in Bratislava by examination of the defendant's decision, as well as the whole content of the file material, did not find any violation of the law in the first part of the contested decision on not granting of asylum to the plaintiff, nor any unlawfulness in the procedure of the administrative authority, The decision in this part of the verdict of the administrative authority is correct, legitimate, including the procedural steps, clear, detailed and logically rational, whereby the Regional Court points out in detail to the reason provided therein. The Regional Court rests this part without a change, as it did not find any legal reason for its cancellation.

Different however, is the situation regarding the probation of evidence in regard to the prohibition of expulsion or refoulement to Sudan and Saudi Arabia according to the §47 of the Law on Asylum, forming second part of the verdict of the contested decision of the defendant administrative authority.

In this part, the Regional Court must accept the reason provided by the plaintiff in his appeal and subsequently expressed at the verbal and public hearing, that despite the fact that the contested decision contains verdict according to §20, sec. 3 of the Law on Asylum, it is not possible to examine this verdict, respectively this part of the verdict of the contested decision as it is incomprehensible.

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, is 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.

According to §47, sec. 1 of the Law on Asylum no applicant, recognized refugee, alien applying for temporary protection or de facto refugee may be expelled in any way whatsoever or returned to the borders of the territory of the state, where his or her life or freedom would be endangered on account of his or her race, religion, nationality, membership of a particular social group or political opinion; the benefit of this provision shall, however, not apply to a person that can reasonably be regarded as a danger to the security of the Slovak Republic or who having been convicted by a final judgement of a particularly serious crime constitutes a danger to the society.

Although the policymaker qualifies the institute of prohibition or refoulement in the cited regulation of the law on asylum by enumerating the conditions, the Regional Court in this connection adds that when passing decision on whether the prohibition of expulsion or refoulement does or does not apply on the plaintiff, it is necessary to take consideration also of the international agreements and treaties accessed and binding for the Slovak Republic. It concerns supranational legal acts that surpass in its force the nationally set norms and legislation, i.e. the European Convention on Human Rights and the Geneva Convention. It will be necessary that the defendant also takes into consideration the criteria and procedures for determining refugee status issued by the Office of the United Nations High Commissioner for Refugees, especially articles 170 and 171, used by the legal representative of the plaintiff at the hearing before the court.

By conducted probation of evidence, the court definitely proved that the plaintiff is interested in legalizing his stay on the territory of the Slovak Republic. The plaintiff lives on the territory of Slovakia since 1995 that is 9 years. He came to the territory of the Slovak Republic with the intention to study medicine. On 14th September 2000 he was definitely expelled from the studies, whereby already on 16th February 2000 his long-term residence permit on the territory of the Slovak Republic for the purpose of studies expired based on the Decision of the Regional Directorate of the Police Force in Zilina – the Department of Alien and Border Police – under the file No.: KRP-99/CP-MT-2000 of 16th February 2002 because his permit above was valid until 20th October 1999 and he did not apply for extension of the residence permit, nor attended the proceeding on extension of residence permit. The validity of his travel document expired on 26th July 2003.

The plaintiff and witness Andrea Maliskova, a Slovak national, confirmed before the court at the hearing, that they concluded marriage on 3rd of April 2002 according to Islam law at the mosque in Martin and **live in common household since 12th June 2003** in a flat owned by the parents of the witness at Clementisova 15/6, Prievidza. The witness is employed at the Oncological Institute in Bratislava as a charge nurse and supports the plaintiff from her earnings. She is Christian and considers that she converts in future to the religionof plaintiff - Islam.

With regard to the relationship between the plaintiff and the witness, it shall be necessary that the defendant when making new decision settles the issue of prohibition of expulsion in the context of the domestic law of the Slovak Republic, namely the Law No. 94/1963 Coll. on Family as amended, the regulations governing the common-law relationships in the context of relevant regulations of the Civic Code, as well as the valid international agreements. In this context, it shall be necessary that the defendant administrative authority supplements the probation of evidence.

Last, but not least, is the importance of the fact produced by the plaintiff before the court at the hearing, which was supposed to be dealt with by the administrative authority in its original decision: that it is legally irrelevant to expel the plaintiff to Saudi Arabia, as this state would not even allow him to enter its territory. The plaintiff was born in Sudan and therefore is Sudanese. He followed his parents living in Saudi Arabia since he was 2 years of age until the time he was 18. After he came of age/attained his majority, he is still considered Sudanese, unless he has a guarantor (beside his parents) in Saudi Arabia. Saudi Arabia is not interested in men – aliens and as the plaintiff is not a national of Saudi Arabia, it is not possible to come to the verdict that prohibition of expulsion or refoulement to Saudi Arabia is not applicable in his case.

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 the regulation of §47 of the Law on Asylum, but also in view of the Article 8 of the European Court for Protection of Human Rights and Fundamental Freedoms (the right to private and family life).

In regard to the legal charges for proceeding, the Regional Court decided in accordance with the regulation of §250k, sec. 1 of the CCR as follows: the court did not grant the plaintiff the compensation for legal charges for the proceedings even despite the success of the plaintiff in the proceeding, as he did not incur any.

I n s t r u c t i o n : No appeal is admissible against this decision (§250j, sec. 4 of the CCR)

Regional Court in Bratislava,
on the 23rd February 2004

KRAJSKÝ SÚD V BRATISLAVE 145

Responsible for correctness of the copy
(Signature)

Gabriela Simonova, J.D.
Judge