



11 Saz 13/2003

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

The Regional Court in Bratislava headed by the Judge Elena Berthotyova, J.D., Ph.D., decided

**as follows**

in the legal matter of **Avdi HOTI, born on the 28<sup>th</sup> August 1962 in Sibovac, national of the Federal Republic of Yugoslavia of Albanian ethnic origin and Moslem religious belief**, having latest residence in the region of Sibovac 93 in Pristina, the Federal Republic of Yugoslavia, currently residing at the Accommodation Camp in Gabcikovo, legally represented by J.D. Jan Benko, CSc of Hlavna 20/54, Trnava, against the defendant the **Migration Office of the Ministry of Interior of the Slovak Republic of Pivonkova 6, Bratislava** regarding the appeal of the plaintiff against the decision of the defendant No.: MU-4554/PO-Z/2003 dated 24<sup>th</sup> September 2003:

The Regional Court in Bratislava  **Cancels** the contested decision No.: MU-4554/PO-Z/2003 dated 24<sup>th</sup> September 2003 of the administrative authority and **returns** the matter for further proceeding.

None of the participants have the right for compensation of the legal costs of the proceeding.

**Rationale:**

By its decision, the defendant administrative authority rejected the application of the plaintiff as manifestly unfounded, and in accordance with §20, sec. 3 of the Law on Asylum decided that the prohibition of expulsion or refoulement to the Federal Republic of Yugoslavia applies to the plaintiff according to the §47 of the Law on Asylum.

On 7<sup>th</sup> October 2003, the plaintiff lodged at the post office an appeal for review of the contested decision of the defendant administrative authority.

Following the request of the court, the plaintiff supplemented his appeal by a written submission dated 7<sup>th</sup> November 2003. According to the plaintiff, the defendant administrative authority did not correctly interpret the reasons of his asylum application and decided on the basis of attitudinal assessment of the plaintiff's application. In support of his claim regarding the his concerns and fear of persecution by Serbs and also by the Albanian population in his country of origin, in part due to ethnic unrest prevailing in Kosovo also after the end of the war, but also because of his defecting the militia, so called UCK (Liberating Army of Kosovo). The plaintiff, presented the court with the following documentary evidence: Confirmation of the Communal Assembly GLLBOC dated 22<sup>nd</sup> October 2003 and Confirmation of the Municipal Court of Pristina dated 4<sup>th</sup> November 2003.

The Confirmation of the Communal Assembly Gllgoc dated 22<sup>nd</sup> October 2003 states that Nazmije Zymer Hasani originating from the village of Strovca is in direct relation with Shemsije Zymer Hesoni Murqolli who was murdered on 17<sup>th</sup> April 1999 together with her five children at a place called Poklek in village of Gllgoc and is registered on the list of endangered families of BORCOV – the civilian victims.

The Confirmation of the Municipal Court of Pristina dated 4<sup>th</sup> November 2003 states that Avdi HOTI, born 28<sup>th</sup> August 1962 is prosecuted for criminal offence punishable by a deprivation of freedom for up to three years, if circumstances and reasons of his defection and not returning to Kosovo shall not be explained. The confirmation shows that the given person was persecuted before and during the war by the state authorities of the former Yugoslavia for his unfriendly activities against the autonomous system of the Socialist Federative Republic of Yugoslavia and against the brotherhood and integrity and that he and his family were constantly persecuted because of cooperating with foreign powers in order to destroy and obliterate Yugoslavia.

In his appeal, the plaintiff further states that he lives on the territory of the Slovak Republic together with his wife Nazmije HOTI and their two children. The wife of the plaintiff lives in Dunajska Streda in a rented flat. The plaintiff presented the court a copy the a lease agreement. He stated that his wife was granted tolerated stay permit on the territory of the Slovak Republic. In support of his claims regarding the unfavorable situation in Kosovo, he provided the court a report of the Press Department of the Ministry of Foreign Affairs of the Slovak Republic dated 22<sup>nd</sup> November 2004 and an article titled „NATO remains in Kosovo“ published by daily SME on 17<sup>th</sup> January 2004.

On the 16<sup>th</sup> December 2003 the defendant administrative authority made a written statement on the appeal. It stated that the plaintiff's application for asylum in the Slovak Republic is repeated, already fourth in the row, and based on the war conflict and political conscience in the country of origin.

According to the statement of the defendant, the plaintiff did not state any subjective problems relating to the persecution of his person or his family. He exclusively refers to the general war situation in Kosovo and his unfavorable social conditions. He denied any kind of persecution whatsoever and therefore the documentary evidence presented to the court is, according to the defendant, in direct contradiction to his testimonies.

On the basis of the above the defendant proposed to confirm the contested decision.

The Regional Court as the body materially and locally competent (§246, sec.1 of the Civic Court Order /CCO/, §21 of the Law on Asylum, §6, letter b) of the Law No. 481/2002 Coll.) in relation to revision of the legitimacy of decisions and proceedings of the administrative authorities, made a revision of the contested decision in the scope of the reasons declared in the appeal, and came to the conclusion that the appeal is legitimate and that it is necessary to cancel the contested decision.

According to the §250i, sec. 1 of CCO the court considers as decisive the situation which prevails at the time of the issuing of the decision.

For the purpose of interviewing of the participants and in accordance with the §250q, sec. 1 of the CCO, the court ordered a hearing session, conducted probation in regard to the matter by interviewing of the plaintiff, his representative, the representative of the defendant and examined the contents of the court file, including the attached documents of the defendant No.: MU-

4554/PO-Z/2003, No.: MU-3258/PO-Z/2002, No.: MU-1959/PO-Z/2001 and No.: MU-21/1-1/1999. Following that the court made a conclusion that during fact finding exercise the defendant did not consistently follow the regulation of §32, sec. 1 of the Law no. 71/1967 Coll. on Administrative Procedure.

The defendant administrative authority did not thoroughly interview the plaintiff in regard to all circumstances forming ground of the plaintiff's application for asylum. The questionnaire prepared by the defendant on the basis of the interview conducted with the applicant on 16<sup>th</sup> September 2003 shows, that in the serial number 36 of the aforementioned questionnaire the plaintiff replied to the question whether there was or currently exist persecution against his person, that: based on the telephone conversation with his father which took place roughly two months ago he found out that he is wanted by the Serbian police because he deserted the war. He further stated that he participated in the military fights against the Serbs and therefore he fears to return through Serbia.

However, as the record of the hearing session of 16<sup>th</sup> September 2003 shows, the defendant did not consider this fact at all and did not ask any questions that would better clarify the plaintiff's fear to return to his country of origin. Ultimately, this reason is not even stated in the rationale of the decision of the defendant administrative authority dated 29<sup>th</sup> September 2003 rejecting the application of plaintiff as manifestly unfounded.

The plaintiff stated before the court that, from the very beginning of his entering the asylum procedure, the reason for his application for asylum on the territory of the Slovak Republic was fear for his life and the lives of his family. He stated that he fears persecution by Serbs, since as the member of UCK (militia), he participated on the military fights against the Serbs. At the same time, he expressed his fear of persecution by Albanian population due to the fact that he defected the UCK.

He underlined the seriousness of the situation in his country of origin that prevails even after the end of the war conflict, particularly as a result of constant tensions between Kosovo Albanians and Serbs. He described this fear as realistic and prevailing despite the fact that the war in his country has ended and that Kosovo is currently under the administration KFOR. He justified the legitimacy of his fearing the death by the fact that the sister of his wife and her five children were killed in 1999 (during the war conflict) and that his family is on the list of endangered families.

In relation to the aforementioned facts, as well as to the fact that the plaintiff presented the court with documentary evidence, contents of which are exceptionally consequential, it appears that the issuing of the defendant administrative authority decision was premature.

Therefore, the obligation of the defendant in further proceeding shall be to elaborately re-interview the plaintiff in regard to his reasons for application for asylum, whereby it is essential that the defendant settles up the existence of the evidence and makes an appropriate evaluation of the same not only in the light of credibility of their origin, but also with regard to the contents of the said evidence.

At the same time, it shall be the obligation of the defendant administrative authority to find out and to supplement, in the further proceeding, the information about the current socio-political situation in Kosovo, especially in light of the situation of the Kosovo Albanians of Moslem religious belief in regards to a possible cohabitation with the Serb minority, and particularly to find out whether the ethnic tensions have ascending or descending tendency and whether, in the context with these

findings, it is possible to characterize the plaintiff's concerns regarding the fear of potential attacks by the aforesaid minority against the plaintiff and his family as legitimate.

Equally, it is necessary to supplement the information regarding the country of origin, especially in regard to characteristic of the judicial system and indication of the possible consequences for that the plaintiff may face for defecting the UCK, respectively the persecution by the state authorities for so called unfriendly activities before and during the war.

The defendant administrative authority shall supplement the documentary evidence also by the decision of the Alien and Border Police, respectively of other authority granting the plaintiff's wife, Nazmije Zymer Hasani the tolerated stay permit.

According to §250j, sec. 2 of CCO, if the court comes to the conclusion, that from the legal point of view the administrative decision assessed the case incorrectly, or that the fact finding forming basis of the administrative decision is in contradiction with the contents of the files, or if it is insufficient for reliable assessment of the case, the court shall cancel the contested decision of the administrative authority and return it to the defendant administrative authority for further proceeding.

Underlining the finding of the court that the defendant administrative authority did not sufficiently determine the issue of fact for the purpose of evaluation of the case, the court cancelled the decision of this authority and returned the matter for further proceeding.

In further proceeding, the defendant administrative authority has a duty to proceed in the above indicated manner and to issue a decision in the matter, whereby it give reasons for the decision stating what facts constitute the ground for the decision, what considerations guided the evaluation of the evidence and application of the legal regulations on the basis of which the decision was made (§47, sec.3, Law No. 71/1969 Coll. on Administrative Proceeding).

According to the §250r of the CCO, shall the court cancel decision of the administrative authority, the administrative authority is obliged to follow the legal opinion of the court in the new proceeding.

In regard to the legal costs, according to the §250k, sec. 1 of the CCO, the court decided that despite the attainment of the plaintiff it shall not grant the plaintiff the compensation for legal costs of the proceeding as he did not apply for any (since he did not incur any legal costs).

**I n s t r u c t i o n:** Appeal against this decision is inadmissible (§250j, sec. 4 of CCO).

Bratislava, on the 2<sup>nd</sup> February 2004-06-24

J.D. Elena Berthotyova, Ph.D.  
Judge



Responsible for correctness of copy:  
Veronika Szvetlikova (signature)