

**DECISION**  
**In the Name of the Russian Federation**

On 22.04.2002, the Presnensky District Court of the Central Administrative District of Moscow represented by the federal judge V.A. Rogozhin, in the presence of court clerk T.A. Pavlishina, having examined in open court civil case No. 2-2351/2002 based on the appeal of the citizen of the Republic of Somalia Ali Ahmed Ibragim against actions (decision) of the Territorial Subdivision of the Ministry of the Federal Affairs, National and Migration Policy in Moscow,

**ESTABLISHED:**

The appellant – a citizen of the Republic of Somalia Ali Ahmed Ibragim, lodged with the court an appeal against actions of the Territorial Subdivision of the Russian Ministry of the Federal Affairs, National and Migration Policy (MFANAMP) in Moscow. In support of his appeal he states that on 05.1.2001 he applied to the Territorial Subdivision with the request for refugee status in the territory of the Russian Federation. However, the Territorial Subdivision did not consider the request within the established time whereby it infringed upon his rights as a person seeking refugee status.

The appellant requested that the Territorial Subdivision be obligated to immediately consider his refugee status request.

During the court hearing the appellant and his representative specified the claims of the appeal. They explained that later the appellant received the reply of the Territorial Subdivision to his first request whereby he was informed that he may apply to the Territorial Subdivision if he stays in Moscow on lawful grounds. The appellant applied at the address specified in the reply but was denied access to the refugee status determination procedure because he did not have entry visa. After that the appellant again sent a letter to the Territorial Subdivision in which he once again requested that his application be considered and gave additional details of the circumstances of his arrival in the Russian Federation. The Territorial Subdivision sent the appellant the reply from which it followed that his application would not be considered as the time limit for filing applications was exceeded. The appellant requests that the actions of the Territorial Subdivision, namely, the denial of access to the refugee status determination procedure, be declared illegal and the Territorial Subdivision be obligated to consider his application by applying the refugee status determination procedure.

The representative of the Territorial Subdivision of MFANAMP in Moscow believes that the appeal is unjustified on the grounds that the appellant illegally stays in the territory of the Russian Federation and did not comply with the application filing time limits. In the opinion of the representative of the person concerned, under such circumstances the appellant's request cannot be accepted and considered and the refugee status determination procedure should not be applied to him.

Having heard the explanations of the parties in the case and having examined the materials of the case the court finds that the appeal is justified and should be satisfied. The court proceeds from the following:

It was established at the court session that the appellant Ali Ahmed Ibragim – a citizen of the Republic of Somalia – in 1998 arrived in the territory of the Russian Federation. On 05.11 2001, he applied to the Territorial Subdivision of MFANAMP in Moscow with a request for refugee status in the territory of the Russian Federation. He received a reply whereby he was informed that if he stayed in Moscow on legal grounds he should apply to the Territorial Subdivision of MFANAMP in Moscow at the address specified in the letter. In accordance with the given recommendations, the appellant forthwith personally applied to the Territorial Subdivision but was denied access to the refugee status determination procedure because he did not have entry visa.

Under Subclause 2 of Clause 5 of Article 4 of the Federal Law “On Refugees”, the request of a person who is at the check-point at the State Border of the Russian Federation or in the territory of the Russian Federation should be preliminarily examined at the Point of Immigration Control or territorial migration service subdivision of the federal executive authorities within five working days of the date of the request.

Under Subclause 3 of Clause 2 of Article 3 of the said law, based on the results of the preliminary examination of the refugee status request the territorial subdivision must either decide on issuing a certificate on the examination of the request on the merits or refuse to consider the request on the merits.

However, the Territorial Subdivision did not comply with the above period of time, did not summon the appellant for an interview, did not examine the refugee status request, and did not adopt a decision on the issue of a certificate on the examination of the request on the merits or on refusing to examine the request on the merits.

Instead, the Territorial Subdivision sent the appellant the letter from which it followed that his requests would not be considered due to the failure to comply with the time limits for application filing.

The court considers the above actions of the Territorial Subdivision of MFANAMP in Moscow unlawful and infringing upon the appellant’s right to consideration of his request by applying the refugee status determination procedure established by existing laws on refugees.

In compliance with Subclause 7 of Clause 1 of Article 5 of the Federal Law “On Refugees”, the ground for refusing to consider a person’s request on the merits is the following circumstance: if the person was forced to illegally cross the State Border of the Russian Federation with the intention to request for refugee status and did not apply for the status in accordance with the procedure specified in Subclause 3 of Clause 1 of Article 4 of the said Federal Law.

The Law also provides for the possible prolongation of the period for filing applications. Thus, under Subclause 3 of Clause 1 of Article 4 of the Federal Law “On Refugees”, in the event of the circumstances beyond the control of the given person that prevent him/her from duly applying with a request, the period for the application filing may exceed one day but for no longer than the period during which such circumstances last.

Therefore, a refugee status request must be preliminarily considered without fail and only based on the results of such examination a decision can be taken to refuse to consider the request on the merits. The issue of the validity of reasons for non-compliance with the application filing time limits must also be solved in the process of the preliminary consideration of the request. Sending any letters instead of considering the request and taking a decision thereon is not provided for by the law.

The court also considers illegal the denial of access to the refugee status determination procedure on the ground that the appellant is illegally staying in the territory of the Russian Federation. The court proceeds from the law requirement that the issue of legality or illegality of the arrival in the territory of the Russian Federation should also be established in the process of preliminary consideration of the request by the territorial subdivision.

Thus, under Clause 3 of Article 3 of the Federal Law “On Refugees”, a decision to issue a certificate or to recognize a person as a refugee or to refuse to consider a request on the merits or to deny refugee status is to be taken based on the results of interviewing a person, filling in a questionnaire on the basis of individual interviews, as well as based on the results of the verification of the accuracy of the obtained data on the given person and his/her family members that arrived together with such person, check of the circumstances of their arrival in the territory of the Russian Federation and the grounds for their stay in the territory of the Russian Federation, after thorough investigation of all the circumstances set out in the request. Additional interviews may be conducted in order to clarify the facts reported by the person concerned.

In this case, the Territorial Subdivision did not take any actions specified above, however, conclusions were made based on relevant in law circumstances and the appellant was denied access to the refugee status determination procedure.

Pursuant to Article 7 of the Russian Law “On Appealing in Courts Against Actions and Decisions Infringing upon Rights and Freedoms of Citizens”, the action appealed against is considered unlawful if it leads to the consequences specified in Article 2 of that Law.

Article 2 of the above law specifies the following consequences of actions (decisions): those that result in violation of rights and freedoms of citizens; prevent the exercise by a citizen of his/her rights and liberties; illegally impose any duty on a citizen or lead to illegal institution of legal proceedings against a person.

In considering the appeal the court will not enter into discussing the issue of granting the appellant the refugee status as this issue is beyond the ultimate facts of this case.

At the same time, the court considers it established that the actions appealed against expressed in the non-appliance to the appellant of the refugee status determination procedure are not based on the law and infringe on the appellant's right to access to the refugee status determination procedure established by the Russian Refugee Law.

Under Article 6 of the Russian law "On Appealing in Courts Against Actions and Decision Infringing upon Rights and Freedoms of Citizens", the officials or government employees whose actions (decisions) are appealed against are charged with the procedural duty to give documentary evidence of the validity of the actions (decisions) that are appealed against; a citizen is exempt from proving the unlawfulness of the actions (decisions) under appeal, but has to prove the fact of his/her rights and liberties having been infringed upon.

The person concerned has not provided documentary evidence of the lawfulness of the actions that are appealed against, at the same time, it has been established during the court hearing that the decision under appeal has infringed on the right of the appellant to access to the refugee status determination procedure established in the Russian Refugee Law.

Consequently, by virtue of Article 7 of the Russian Law "On Appealing in Courts against Actions and Decisions Infringing upon Rights and Freedoms of Citizens", the appeal is justified and should be satisfied.

In view of the above, in compliance with Articles 191 through 197 of the Code of Civil Procedure of the RSFSR, the court

**DECIDED:**

that the actions (omission) of the Territorial Subdivision of the Russian Ministry of the Federal Affairs, National and Migration Policy in Moscow, expressed in non-appliance of the refugee status determination procedure to the citizen of the Republic of Somalia Ali Ahmed Ibragim be declared unlawful;

that the Territorial Subdivision of the Russian Ministry of the Federal Affairs, National and Migration Policy in Moscow be obligated to consider the status request of the citizen of the Republic of Somalia Ali Ahmed Ibragim by applying to him the refugee status determination procedure established by legislation.

The decision may be appealed in the Moscow City Court within 10 days.

Judge            /Signed/