

**COURT VERDICT
IN THE NAME OF UKRAINE**

Leninskiy District Court in Vinnitsa

21 July 2003

consisting of:

presiding judge

Vyshara I.U.

secretary

Gudemchuk N.Y.

after consideration of civil case concerning appeals of decision of Vinnitsa Regional Migration Department from XXXXXX (13 persons' names) in open court

ESTABLISHED:

XXXXXX (13 persons' names) appealed the decision of Vinnitsa Regional State Administration Directorate for Nationalities and Migration.

In appeal plaintiffs pointed that on 26.06.2003 after their applying for refugee status to Vinnitsa Regional State Administration Directorate for Nationalities and Migration they had been rejected admission on the basis of violation the terms, which were envisaged for asylum applications submission. Plaintiffs consider such decision as unlawful, because appellee has left out of account the fact, that they had left their country in order to avoid persecution and violation of human rights in Somalia. The fear of persecution, victims of which they could have become, forced them to illegally flee from their country of origin at the beginning of year 2003. The car, which transported them in Ukraine was stopped by traffic police on 22.01.2003 in Vinnitsa region. After that they were detained in detention center of MOI Directorate in Vinnitsa region. They cannot speak English, Russian and Ukrainian, that is why they did not know the procedure of applying for refugee status. At the end of June representatives from *Vinnitsa Legal Group* visited them and explained the procedure of applying for refugee status. Requested to satisfy the appeal.

In the court session representative of plaintiffs supported all statements, which were mentioned in appeal.

Representative of appellee did not admit the appeal and explained the following: on 22.01.2003 citizens of Somalia were detained in detention center of MOI Directorate in Vinnitsa region. On 26.06.2003 they applied for refugee status, but they were rejected admission on the basis of violation of terms, envisaged for asylum applications submission.

Court, after hearing of the arguments from both sides came to the conclusion that all appeals have every reason to be satisfied on the following grounds.

According to pleadings under claims during court session XXXXXX (13 persons' names) fled Somalia by sea in order to avoid persecution and violations of their rights, victims of which they were at the beginning of 2003. People, who were smuggling them did not informed them about country of their destination.

On 22 January 2003 car, which transported above-mentioned persons, was stopped by traffic police, as they found out later, on the territory of Ukraine in Vinnitsa region. After that, citizens XXXXXX (13 persons' names) XXXXXX (13 persons' names) XXXXXX (13 persons' names) were detained in detention centre of MOI Directorate in Vinnitsa region. Any person among above-listed cannot speak Russian or Ukrainian.

During all period of detention in detention center of MOI Directorate in Vinnitsa region police staff and other visitors have not explained them the procedure of applying for refugee status.

In June 2003, representatives from *Vinnitsa Legal Group*, implemented partners of UNHCR in Vinnitsa region, visited the above-mentioned citizens and explained them the procedure for

submitting the applications to Regional Directorate for Nationalities and Migration. Plaintiffs submitted applications on 26.06.2003.

Nevertheless, on 26.06.2003 plaintiffs received the notice of refusal in admission of their applications. The grounds of rejection were absence of valid reasons for violation of procedure for submission of asylum applications.

References of officials to Para 8 of Art.9 of *Law of Ukraine on Refugees* court consider as illegitimate. Application, which was submitted in violation of stated procedure, should be accepted, if a person who violated this deadlines had a valid reasons for that. Detention of persons for their identification can be considered as a valid reason.

As these persons were stopped by traffic police and detained in detention center of MOI Directorate in Vinnitsa region, and also they could speak neither Russian nor Ukrainian languages, therefore they did not know the procedure of applying for refugee status.

Provision of Art.13 of *Convention for Protection of Human Rights and Fundamental Freedoms*, Rome, 04.11.1950 require from the state bodies a proper and deep analysis of citizens' applications with regard to whether there is enough reasons to consider, that there is a real risk of treatment, which is prohibited by Art. of *Convention for Protection of Human Rights and Fundamental Freedoms*. On this occasion officials from Vinnitsa Regional State Administration Directorate for Nationalities and Migration did not follow above-mentioned provision. The notice of refusal is a typographic form of document, in which mere formal circumstances and only family name of applicant are supposed to be noted.

For disposition decision Court is going to take into account the practice of European Court on Human Rights in Strasbourg, namely case (from 20.07.2000) of *Djabary against Turkey* regarding deportation and prohibition of tortures, right for effective legal defense and irretrievable prejudice that can be caused to applicant. European Court on Human Rights considered Turkey guilty in violation of Art. 3 of *Convention for Protection of Human Rights and Fundamental Freedoms*, as this state was trying to deport to Iran asylum-seeker from Iran on the basis of violation the five-day deadline stipulated for submitting application for refugee status.

According to Para 14 of Art. 14 *Law of Ukraine on Refugees*: "A person who received notice of refusal of refugee status and did not exercise the right to appeal must leave the territory of Ukraine within the determined term".

Implementation of this article can lead to deportation of applicants to the country of their origin. But return to Somalia in this case means the danger for life, health, fear of persecution and discrimination. Therefore, decision of Vinnitsa Regional State Administration Directorate for Nationalities and Migration violates provision of Art.3 of *Convention for Protection of Human Rights and Fundamental Freedoms*: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Court consider automatic implementation of provision concerning the five-day deadline stipulated for submission of application for refugee status as a contradiction to policy directed to protection of fundamental rights, established in Art.3 of *Convention for Protection of Human Rights and Fundamental Freedoms*.

Art. 23 of *Law of Ukraine on Refugees* states: "Ukraine shall cooperate with other countries, the Office of the United Nations High Commissioner for Refugees and other international organisations with the purpose of elimination of the reasons for refugees' problems, improvement of their financial conditions and legal status."

Moreover, according to Art.1 of *The Convention Relating to the Status of Refugees* – human being is refugee due to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country

of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.

The Convention relating to the Status of Refugees does not contain the provision, that if person violate deadlines of applying for refugee status it would be the reason to consider such person as, a person who is not falling under protection of Convention.

The Art.33 of *The Convention relating to the Status of Refugees* envisages that: “no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened”.

On the basis of above-listed circumstances Court came to the conclusion, that rejection of Vinnitsa Regional State Administration Directorate for Nationalities and Migration to accept applications for refugee status is a violation of *The Convention relating to the Status of Refugees*, as according to the Art. 2 para 2 *Law of Ukraine on Refugees*: “If an international treaty ratified by the Verkhovna Rada of Ukraine establishes rules other than those contained in this Law, the rules of the international treaty shall apply”.

On the basis of above-mentioned, following Art. 3 of *Convention for Protection of Human Rights and Fundamental Freedoms*; Art. 1,3,33 of *The Convention relating to the Status of Refugees* (28.07.1951), Art, 2,9,14,23 of *Law of Ukraine on Refugees*, Art. 15,30,62, 248-7 of Civil Procedural Code of Ukraine, Court:

DECIDED:

To satisfy the appeal.

To declare actions of Vinnitsa Regional State Administration Directorate for Nationalities and Migration regarding the rejection admission of applications for refugee status of XXXXXX (13 persons' names) as unlawfull.

To abolish the decision of Vinnitsa Regional State Administration Directorate for Nationalities and Migration adopted on 26.06.2003 regarding rejection admission of applications for refugee status of XXXXXX (13 persons' names).

To oblige Vinnitsa Regional State Administration Directorate for Nationalities and Migration to accept applications of XXXXXX (13 persons' names) for consideration.

Court verdict can be appealed to the Vinnitsa Regional Court of Appeal during one month. This Court Verdict will come into force 01.09.2003.

Original version of this Court Verdict is retained in Court archival depository.