

DETERMINATION

The Judicial Board for Civil Cases of the St. Petersburg City Court with Presiding Judge A.E. Filippova and Judges V.S. Paraeva and E.M. Didenko,

Having considered the December 11, 2003 case containing a cassation appeal against the October 22, 2003 decision of the Kuibyshevski District Court of St. Petersburg based on a complaint by Dominique Niragire against a decision by the Migration Office for St. Petersburg and Leningradskaya Oblast,

Having listened to a presentation by Judge A.E. Filippova, explanations by Migration Office representative L.O. Mikhailova (power of attorney #122/1213 dated December 31, 2002) who supported the cassation appeal, and explanations by Dominique Niragire and his lawyer V.N. Yastremski, the Judicial Board

HAS FOUND AS FOLLOWS

Rwanda national Dominique Niragire has complained to the court against the January 28, 2003 decision of the St. Petersburg Migration Office (#41) refusing to extend the term of his temporary asylum in Russia.

On October 22, 2003 the Kuibyshevski District Court of St. Petersburg granted the complaint, rescinded the contested decision of the St. Petersburg Migration Office, and obliged the latter to extend the plaintiff's temporary asylum for a term of one year.

The St. Petersburg Migration Office filed a cassation appeal asking the court decision to be repealed as incorrect.

Having heard out the two parties and studied the materials of the case, the Judicial Board found no reason to repeal the first-level court decision.

Under Article 12 of the Federal Law on Refugees, temporary asylum may be granted to a foreign national or a stateless person, if there is no cause to recognize them as refugees for reasons envisaged in the said law but because of humanitarian reasons they may not be deported from Russia.

When it examined the case, the court had rightly used references to Paragraph 12 of the Procedure of Granting Temporary Asylum in the Russian Federation approved by the Russian Government's Decision on April 9, 2001 (#274), which provides that temporary asylum is granted for a term of one year. The territorial migration body may extend this term for the next year based on a written application from the person seeking a temporary asylum extension and provided the reasons for the granting of temporary asylum still hold.

It follows from the materials of the case that on January 22, 2002 the Territorial Agency of the Federation Ministry in St. Petersburg granted Rwanda national Dominique Niragire temporary asylum in the Russian Federation. According to the decision (page 60), the reasons for it were the applicant's personality, current hostilities in Rwanda, and humanitarian considerations.

These circumstances had not changed by the time he had asked for an extension of his temporary asylum, which is confirmed by information provided by the Russian Foreign Ministry (page 69-71). According to the ministry, a number of armed Hutu groups continue fighting against government troops using neighboring countries as their refuge. Large numbers of Rwandans still remain away from their country for fear of resumed ethnic clashes and their responsibility for the genocide. An International Rwanda Tribunal is functioning in the country, but its effectiveness is extremely low: in its several years of existence the tribunal has dealt only with a few dozen cases. In the meantime, around 200,000 people are in prison waiting to be tried.

The conclusion that the Migration Office for St. Petersburg and Leningradskaya Oblast put into its contested decision to the effect that the change of the situation in Rwanda should be seen as proof of the discontinuation of the circumstances that had warranted the granting of temporary asylum to the plaintiff, is unfounded because there is no evidence that confirms the termination of hostilities in Rwanda or a substantial improvement of the social and political situation that would allow the plaintiff to return home without any threat to his safety.

That being so, and in evaluating the total body of the proof presented, the court came to the right conclusion that at the time the migration authority had taken its contested decision there still remained the circumstances that had warranted the granting of temporary asylum to the plaintiff in January 2002. For this reason, the refusal to extend the term of his temporary asylum is unfounded and must be rescinded.

In the light of the above, the court decision to satisfy the complaint is lawful and well founded.

The arguments contained in the cassation appeal cannot serve as the basis to repeal the said court decision because they fail to overrule the first-level court findings and are based on circumstances that the court examined in detail and properly assessed.

Pursuant to Article 361 of the Russian Code of Civil Procedure, the court

HAS DETERMINED

To leave intact the October 22, 2003 decision of the Kuibyshevski District Court of St. Petersburg, and to reject the cassation appeal of the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast.

Presiding Judge (signed)

Judges (signed)