

DECISION  
in the name of the Russian Federation

The Kuibyshevski Federal Court of St. Petersburg's Central District with Presiding Judge I.A. Vorobyova and Secretary A.A. Batova, having examined a civil case containing a complaint from Rwanda national Francois Xavier Tulikunkiko against the refusal of the Migration Office for St. Petersburg and Leningradskaya Oblast to recognize him as a refugee in Russia,

HAS FOUND AS FOLLOWS:

Rwanda national Francois Xavier Tulikunkiko, born in 1968, applied to the St. Petersburg Migration Service to be recognized as a refugee in Russia.

On June 1, 2001 the Territorial Agency of the Ministry for Federation Affairs for St. Petersburg and Leningradskaya Oblast refused to recognize him as a refugee, of which he was apprised with a notice dated June 1, 2001 (#2047-og).

On August 30, 2001 he filed a complaint with the court, asking it to qualify Decision #374 of June 1, 2001, the migration service's refusal to provide the full text of its decision and the information on which it was based, and "more than four years during which the migration executive authority failed to act on the refugee status request" as unlawful.

On May 17, 2000 the Russian President signed a decree titled *On the Structure of Federal Executive Bodies* whereby the Federal Migration Service was liquidated. Under Paragraph 5 of the decree, the Ministry for Federation and Nationalities Affairs was transformed into a Ministry for Federation Affairs and for Ethnic and Migration Policies and invested with the functions of the liquidated Migration Service. Pursuant to the decree, a Territory Agency of the Ministry for Federation Affairs was set up to cover St. Petersburg and Leningradskaya Oblast. On October 16, 2001 the Russian President signed another decree to liquidate the Ministry for Federation Affairs and for Ethnic and Migration Policies and hand its functions over to the Ministry of Internal Affairs. On July 11, 2002 the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast was formally registered.

The court takes the view that in the light of the above Presidential decrees, migration policy functions (including powers to grant refugee status) have fully been transferred to the Ministry of Internal Affairs, and therefore the court believes that the Migration Service of GUV D for St. Petersburg and Leningradskaya Oblast should be treated as the legal successor to the St. Petersburg Migration Service and the Territorial Agency of the Ministry for Federation Affairs. The court presumes that the St. Petersburg Migration Office, with the competences it has received, is empowered to restore the plaintiff's denied right to asylum, and for this reason the Office has been invited to examine the case.

In the course of the hearings, the plaintiff refined his complaint and asked the court to qualify as unlawful the five years during which the Federal Migration Service for St. Petersburg and Leningradskaya Oblast had failed to take action, i.e. from October 31, 1996 to June 1, 2001; to recognize as unlawful and to rescind the refusal of the Territorial Agency of the Federation Ministry dated June 1, 2001 (#374) to recognize him as a refugee; to oblige the Migration Office to grant him refugee status; to qualify as unlawful the seizure of his refugee status determination certificate by the Territorial Agency of the Federation Ministry; to oblige the Migration Office to issue him a certificate testifying that his request for refugee status is being examined on its merits; and to extend the term of such certificate until the court decision enters into legal force. He plaintiff insists that he should be granted refugee status because he belongs to the Hutu ethnic group which is being persecuted in Rwanda, is engaging in social and political activities and is actively opposed to the current political regime in Rwanda; he has lived and studied in Russia for

a long time and so he believes that Rwanda's ruling regime might persecute him for ethnic and political reasons and for his membership of a particular social group.

A representative of the Migration Office for St. Petersburg and Leningradskaya Oblast takes the view that the complaint about denied refugee status must be dismissed since the migration authority took the contested decision within its competence; the information that the plaintiff provided about himself falls short of the criteria that define the term "refugee" as written in Article 1.1.1 of the Federal Law on Refugees; the plaintiff is believed to lack any impediments to returning home; he failed to provide sufficient proof of potential persecution at home for ethnic and political reasons; the plaintiff tries to legalize his presence in Russia by any means. In addition, the Migration Office representative charged that the plaintiff had given inaccurate or mendacious information about himself.

The representative asked the court to reject the part of the complaint asking the court to qualify as unlawful the failure by the St. Petersburg Migration Service to take action on the refugee status request because the Territorial Agency of the Federation Ministry had taken the contested decision within the legal deadline and was not to blame for ignoring the prescribed timeframe for examining the request. The Migration Office representative also called for rejecting the part of the complaint accusing the migration service of unlawfully taking away the plaintiff's certificate testifying that his request for refugee status was being examined on its merits, and demanding that the certificate be reissued and extended until the court decision entered into legal force. The representative stated that such actions by the migration authority were based on the law, whereas the plaintiff had missed the deadline for lodging his demands with a court of law.

After hearing out the plaintiff, his representative, the representative of the St. Petersburg Migration Office and witnesses, and after studying the materials of the case, the court found that the complaint must be granted in part, i.e. the June 1, 2001 refusal of the Territorial Agency of the Federation Ministry (#374) to grant Tulikunkiko refugee status in Russia must be qualified as unlawful and the Migration Office must be obliged to grant him refugee status, for the following reasons.

In accordance with the 1951 UN Convention Relating to the Status of Refugees, the 1967 UN Protocol Relating to the Status of Refugees and Article 1.1.1 of the Federal Law on Refugees (as enacted on July 3, 1997), a refugee is a person who is not a citizen of the Russian Federation and who owing 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Under Article 3 of the Law, a decision to issue the certificate or recognize the person as a refugee, or a decision to refuse the examination of the request on its merits or to deny refugee status is taken following the polling of the person, filling out the interview questionnaire, checking the accuracy of the information provided about the person, his family arriving with him or her and the reasons for their being in Russia, and after a thorough analysis of the causes and circumstances described in the application.

The court believes that the contested decision of the Territorial Agency of the Federation Ministry cannot be recognized as lawful because it misinterpreted the information provided by Tulikunkiko along with the information about the social and political situation in Rwanda. In this connection, the court considers that the migration authority arrived at the wrong conclusion that the plaintiff had no well founded fear of being persecuted should he return home.

It follows from his CV and the interview records that he confirmed in court, and from the explanations provided during the hearings, that he was born in Rwerere community, Riseni prefecture (Rwanda) in 1968. Ethnic Hutu. Citizen of Rwanda. After leaving school in 1989, he came to the USSR where he took a preparatory course in Rostov from 1989 to 1990, and studied at the Rostov Medical Institute in 1990-1993 and at the St. Petersburg Mechnikov Medical

Institute of Sanitary Science and Hygiene in 1993-1996. He has been taking a postgraduate course at the St. Petersburg Mechnikov Medical Academy since 1999. Married. Five children. Since 1994, he has been chairman of the Rwanda Community in St. Petersburg. In 1995, he was among the founders of Ichumbi, a regional Rwanda charity, and later he became its chairman. Since 1996, he has been a volunteer of the St. Petersburg chapter of the Russian Red Cross. In 1995-1997, he organized a humanitarian assistance campaign and helped to distribute the aid among Rwandans in St. Petersburg. In 1998-2000, he was a member of the Coordinating Committee of Migrant Organizations, which had been founded at the Territorial Agency of the Federal Migration Service. In 1999, he was chairman of the Organizing Committee of the African Unity public association in St. Petersburg and later he served as deputy chairman of its Board.

Since 1994, he has repeatedly appealed, on behalf of the organizations he has led, to the international community (the United Nations, UNHCR, the African Unity Organization), the governments of the world's leading nations and African states, diplomatic missions, international humanitarian organizations and the mass media (see pages 57-68, 71-73 and 162-164) to condemn the genocide in Rwanda and censure the political and military campaigns of the Rwanda Patriotic Front. He participated in Rwanda reconciliation conferences attended by members of Rwanda's ruling regime, where he represented the Rwandans living in St. Petersburg.

As it grants his complaint, the court believes that what is material to this case is an analysis of the social and political situation in Rwanda.

Rwanda became independent in 1962. Ethnically, it consists of two groups: the Tutsi (c. 15% of the population) and the Hutu (c. 85%). The civil war in the 1960s installed a government that largely represented the Hutu interests. Many Tutsi were killed or fled to neighboring countries. A Tutsi-dominated Rwandan Patriotic Front (RPF) was founded abroad with the aim of overthrowing the government and getting the Tutsi to return home. In 1990, the RPF invaded Rwanda causing a full-scale civil war. In 1994-1995, the RPF came to power and unleashed a massacre killing 800,000 people and forcing about two million (mostly Tutsi) to flee to neighboring countries.

As the RPF government took the reins, hostilities came to an end. The international community helped to hammer out political agreements (Arush Agreement, Tanzania) whereby the Rwanda government pledged to move toward a democratic multi-party society. Currently, several political organizations nominally exist and are formally represented in parliament. In actual fact, politics is controlled by the special services. The government is appointed by the president. There has been continued persecution of persons who were militarily or politically opposed to the current regime. Although the situation has stabilized to all intents and purposes, tensions have persisted between the Hutu and the Tutsi.

To investigate the crimes committed during the civil war, a tribunal has been set up in Arush, Tanzania, which is examining allegations against the more important political figures in Rwanda. In Rwanda, a system of local courts has been established to identify the political roles of individuals in the genocide and the degree of their loyalty to the ruling regime. Everyone who arrives in Rwanda must appear before one of these courts. It should be noted that the Arush tribunal is dealing only with more important persons. The local courts are examining their cases extremely slowly and just as arbitrarily because there is no organized procedure and not enough competent staff. The result is that tens of thousands of inmates (currently from 80,000 to 100,000) have been kept under inhumane conditions in prisons for years waiting to be summoned before the law. The authorities pay more attention to Hutu people (one could even speak of elements of discrimination against the Hutu by the Tutsi government), and to persons opposed to the regime. These people stand more than 50% chance of waiting for court decisions in custody for years.

These facts are confirmed by information provided by the Russian Foreign Ministry (pages 72, 73 and 172), the Federal Migration Service (pages 76 and 77), Amnesty International reports,

mass media reports in many countries (mostly US media) (pages 23-28, 181-183, and 182-194), depositions from N.M. Girenko (Africa specialist of the Anthropology Museum) who was questioned as a witness (pages 218-221), and depositions from witnesses Mbanjoubuoro and Maniragena of Rwanda, and I.Z. Karpinski, whom the court has no reason not to believe.

In accordance with the 1951 UN Convention (paragraphs 94-96) and the 1967 Protocol, Tulikunkiko's request should be treated as a "sur place" case, i.e. a person was not a refugee as he left his country but became a refugee "sur place" in a foreign country owing to circumstances arising in the country of his origin during his absence.

Based on the information provided, the court believes that although Tulikunkiko did not participate in the civil war hostilities, he would come under government scrutiny and go through the legal investigation, should he return home. As it grants his request to be recognized as a refugee, the court takes into account the fact that the Rwanda authorities know him for his pronouncements opposing the ruling regime. Furthermore, he is of Hutu stock and as a result has well founded fear of being arrested and placed in custody for the duration of the legal inquiry, should he return to Rwanda. The court also believes that the Rwanda government may take other reprisals against him, given the current social and political situation in Rwanda and his opposition to the regime.

The court takes a critical view of the migration body's argument that Tulikunkiko received his new passport from the Rwanda authorities and consequently should have no fear about his life at home. Since he did not show up at the Rwanda diplomatic mission personally (he mailed his passport application to Bonn, Germany, and received it at an international conference in St. Petersburg), the court believes that he felt protected by the country of his residence (Russia) and out of reach of the Rwanda authorities, which enabled him to apply to the latter. Furthermore, the court is of the opinion that the issuance of a passport is no proof that the person will not be persecuted if he returns home.

The court also takes a critical view of the argument that the Ichumbi organization's aims are limited to charity and humanitarian issues and that Tulikunkiko's role as head of it is not political. The court believes that Ichumbi's appeals to the international community, the leaders of other countries and the mass media have dealt with aspects of the Rwanda disaster other than purely humanitarian. They had political content and criticized RPF actions, including its political actions. In these conditions, the court believes that the plaintiff's activities have been of a social and political nature. Furthermore, it is necessary to take into account that he is opposed both to the RPF and to the current Rwanda regime it backs up and that he has been openly airing his views.

Therefore, the court has come to the conclusion that Tulikunkiko has well founded fear of being persecuted by the Rwanda authorities for political and ethnic reasons and that he cannot go to them for protection. Consequently, he should be accorded international protection and refugee status as provided by the 1951 UN Convention Relating to the Status of Refugees.

The June 1, 2001 refusal of the Territorial Agency of the Federation Ministry (#374) to grant him refugee status must be qualified as unlawful because it is contrary to the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees and substantially violates the legitimate rights and interests of Rwanda national F.X. Tulikunkiko. The current migration authority must grant him refugee status.

As for the other elements of the complaint, the court takes the view that they must be dismissed for the following reasons.

The court believes that there was no culpable failure on the part of the migration authority to examine Tulikunkiko's request. He had applied to the Migration Office for St. Petersburg and Leningradskaya Oblast on December 6, 2000 and the decision to decline it was taken on June 1, 2001; the Federal Migration Service had extended the three-month period to six months. His previous requests had not been examined by the earlier migration bodies because they were liquidated in keeping with the Russian President's decrees.

Concerning the plea to recognize as unlawful the withdrawal of the refugee status determination certificate by the Territorial Agency of the Federation Ministry and to oblige the current migration authority to issue a new certificate testifying to the refugee status request being examined on its merits and extend its term until the court decision enters into legal force, the court takes the view that this demand is not based on the law. According to Paragraph 25 of the Procedure of Approving, Issuing and Exchanging Certificates Testifying to the Examination of the Merits of Refugee Status Requests in Russia approved by the Government's Decision on May 28, 1998 (#523), if a migration body denies recognition of refugee status, it withdraws such certificate. That being so, the court believes that the Territorial Agency had legal reason to take away Tulikunkiko's certificate.

The court believes that there are no grounds to satisfy the demand to extend the term of the certificate because no such extension is envisaged in the existing law.

Furthermore, the plaintiff has missed the deadline for going to court about this matter and failed to present any valid reason for missing the deadline.

In the light of the above and pursuant to Articles 197-199 of the Russian Code of Civil Procedure, the court

#### HAS DECIDED

To recognize as unlawful the June 1, 2001 refusal of the Migration office for St. Petersburg and Leningradskaya Oblast to recognize Rwanda national Francois Xavier Tulikunkiko as a refugee in the Russian Federation.

To recognize Rwanda national Francois Xavier Tulikunkiko as a refugee in the Russian Federation.

To reject the other demands.

The decision may be appealed at the St. Petersburg City Court within ten days.

Federal Judge

I.A. Vorobyova (signed)