

Sygn. akt V SA 1683/03

JUDGMENT

IN THE NAME OF THE REPUBLIC OF POLAND

Warsaw, 28 April 2004

The Provincial (Voivodship) Administrative Court in Warsaw
in the following composition:

Chairman Judge of the Provincial (Voivodship) Administrative Court (WSA)	- Barbara Mleczko-Jabłońska
Judge of the Supreme Administrative Court (NSA)	- Ewa Józków
Judge of the Supreme Administrative Court (NSA)	- Barbara Wasilewska
Clerk of the Court	- Marianna Igielska

having considered on **28 April 2004**
the case concerning the appeal of X.Y.
against the decision of the Council for Refugees
of 28 March 2003 No. Rdu-195-1/S/03
concerning **refusal to grant the refugee status**

- dismisses the appeal -

JUSTIFICATION

By virtue of the decision of 12 March 2003 No. DP-II-39/SU/2003, the President of the Office for Repatriation and Aliens refused to grant X.Y, the citizen of Nigeria, the refugee status in the Republic of Poland.

The justification read that pursuant to art. 1 letter A point 2 of the Geneva Convention, "a refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality, and is unable or unwilling to avail himself of the protection of that country".

From the contents of the application and the testimony follows that the reason for applying for the refugee status in the Republic of Poland was the fact that the applicant, being a Christian from the Ibo tribe, was endangered by persecution on the part of Muslims. The alien testified that over the last two years he had conducted business and lived in Kadun. According to his statement, in Kadun, at the turn of October and November 2002 there occurred clashes between the Muslims and the Christians, during which his car-service establishment was destroyed. The conflict was

provoked by a press article related to the Miss World contest decided to be organized in Abuja, which offended the religious feelings of the Islam followers. The applicant, in fear of the fanatics, decided to flee the country because, according to him, as a Christian, he does not feel safe in any part of Nigeria.

In view of the administrative body of the first instance, the applicant failed to provide evidence on any actions threatening his life or health and at the same time related to his race, religion, nationality, membership in a particular social group or a political party that had been undertaken against him by the state authorities. According to the administrative body, the alien on return to his country of origin shall not be threatened by persecution because he has the possibility to avoid the attacks of the Muslims in other parts of the country. He may return to his native state of Ibo and settle in the area mostly inhabited by the Christians, where the laws of Koran are not applied. Moreover, he may count on the help of Nigerian authorities who intervene during riots so as to preserve public order. The aforesaid is implied by the information obtained by the administrative body (*Home Office-Country Assessment - Nigeria 2002 report*) and confirmed by the Polish Embassy in Nigeria. According to the said report, the new constitution of Nigeria, which entered into force on 29 May 1999 provides for the liberty of fundamental rights, including the liberty of religion. The Shariat law is not applied throughout the country and it is parallel to the civil legal system only in a few northern states. The members of the conflicted ethnic groups or different religious groups, who fear persecution on the part of non-state entities, have the possibility – taking into consideration the size of this country and the number of its citizens – of an „internal escape”. Moreover, the hitherto, more serious threats of clashes between the followers of different religions were firmly resolved by the federal authorities and the order was restored by the army. Due to the reasons mentioned above, the administrative body of the first instance questioned the explanations provided by the applicant and stated that they did not constitute premises for granting the alien the refugee status.

Ruling against the appeal of X.Y., the Council for Refugees, by virtue of the decision of 28 March 2003 No. RdU-195-1/S/03, issued on the basis of art. 42 point 2 and art. 69 of the Act of 25 June 1997 on aliens (Journal of Laws of 2001 No. 127, item 1400) as well as art. 138 §1 point 1 of the Administrative Procedure Code, upheld the decision of the body of the first instance. The appellate body agreed in totality with the standpoint of the President of the Office for Repatriation and Aliens that the appellant did not meet the requirements set forth in art. 1 letter A point 2 of the Geneva Convention, which justifies the refusal to grant him the refugee status. It pointed to the fact that the person concerned was neither a member of any political party or social organization, nor had he ever been arrested, detained, imprisoned or sentenced. The alien lodged the application for the refugee status not on entering the Republic of Poland but on the day when he was arrested by the officers of the Operational and Investigative Board of the Border Police Headquarters for an illegal attempt to cross the border. This circumstance, although it does not constitute as such any premise to refuse the refugee status may and should be taken into consideration upon assessment of the motives the applicant had when he was lodging the application for being acknowledged a refugee. In the opinion of the appellate body he did not want to be granted protection against persecution for reasons enumerated in the Geneva Convention of 1951, but rather to legalize his stay in the Republic of Poland.

In the appeal against the aforesaid decision, X.Y. applied for its reversal. In the application, and similarly in the appeal against the decision of the body of the first instance he declared that he had lodged the application for the refugee status owing to well-founded fears of being persecuted in the territory of Nigeria, as he got involved, as a Christian, in a religious crisis. Elaborating on the contents of the appeal in the written statement of claim of 11 February 2004 (chart No. 32 of the court files), he questioned the findings and conclusions of the appellate body. He quoted, official (in his opinion) reports confirming that the whole country of Nigeria is not free from the menace on the part of fundamentalist religious groups, and in particular the Muslims. As evidence proving that

his life would be menaced if he returned to his country of origin he presented excerpts of articles published in „The Guardian” of 25 and 27 November 2002 describing the religious riots of the Muslims directed against the Christians (charts No. 36-46 of the court files), the letters sent him from Nigeria by his sister and his friend of 27 and 30 May 2003 describing the everyday dangers faced by the Christians (charts No. 52-57 of the court files) and the copies of the police crimes records made on 14 July 2003 in the Nigerian Police Station in Ajegunle, Lagos state (charts No. 48-51 of the court files).

At the hearing held on 28 April 2004, the proxy of the appellant, in order to support the appeal, stated that the aim of the applicant was to settle in Poland and to conclude a marriage. The alien did not work at that time but he had a promise of employment.

Ruling on the appeal, the Council for Refugees dismissed the appeal providing similar arguments as in the justification of the attacked decision.

The Provincial (Voivodship) Administrative Court has considered as follows:

First, it is necessary to point out that pursuant to art. 97 §1 of the Act of 30 August 2002 on Legal Provisions for the implementation of the Law on the system of administrative courts and the Act on proceedings before administrative courts (Journal of Laws of 2002, No. 153, item 1271), the cases, against which the appeal was lodged to the Supreme Administrative Court prior to 1 January 2004 and the proceedings did not end prior to this date, are subject to consideration of the competent provincial (voivodship) administrative courts on the basis of the provisions of the Act on proceedings before administrative courts.

It should be noted that administrative courts, including the provincial (voivodship) court, administer justice among others by way of controlling the legality of the public administration activity, unless the laws state otherwise – see art. 1 § 1 and 2 of the Act of 25 July 2002 – Law on the system of administrative courts (Journal of Laws, No. 153, item 1269). The aforesaid regulation is complemented by art. 3 § 1 of the Act of 30 August 2002 – Law on proceedings before administrative courts (Journal of Laws, No. 153, item 1270), indicating that these courts apply measures specified in the Act (this Act shall be hereinafter referred to as Law on p.b.a.c.).

The aforesaid regulations specify the basic function of the judiciary and the proceedings conducted before the courts. Their function is, beyond any doubt, to administer justice through the control of the public administration.

As for the appeal, it should be noted that it is unfounded.

Pursuant to art. 32 of the Act of 25 June 1997 on aliens (Journal of Laws No.114, item 739) – applicable in the present case, the refugee status in the Republic of Poland may be granted to an alien, who meets the requirements set forth in the Convention concerning the refugee status, made at Geneva on 28 July 1951 (Journal of Laws No. 119, item 515) amended by the Protocol concerning the refugee status, made at New York on 31 January 1967 (Journal of Laws No. 119, item 517), but who was not granted this status in another country.

Pursuant to art. 1 letter A point 2 of the Geneva Convention, a refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is outside the country of his nationality, and is unable or unwilling to avail himself of the protection of that country.

In accordance with art. 42 point 2 of the Act on aliens quoted above, a refugee is refused the refugee status if he does not meet the requirements set forth in art. 1 of the Geneva Convention and the New York Protocol.

The administrative bodies considering the present case have correctly assessed the gathered evidence and they have rightly assumed that the appellant did not meet these requirements.

The fact of having lodged the application for the refugee status following an unsuccessful attempt to cross the border of Germany justifies the assumption that for the appellant Poland was not the

target country where he was seeking protection, but it only became the target country by chance. This supports the correctness of the appellate body's assumption that the alien's motive for lodging the application for the refugee status was the willingness to legalize his stay in Poland and not to be granted protection against persecution.

The applicant described the general situation concerning religious conflicts in Nigeria. The Geneva Convention requires however the persecution to be individualized. (see: judgment of the Supreme Administrative Court of 23. 08 2001, sygn. of acts V SA 3198/00 LEX No. 51273). Persecution „for reasons of religion” may assume different forms, for example banning the membership in a religious group, banning public or private participation in religious ceremonies, banning religion teaching or serious forms of discrimination of persons practising their religion or belonging to a particular religious group (judgement of the Supreme Administrative Court of 11.01.2001, sygn. of acts V SA 1937/00). The plaintiff did not submit any evidence permitting to confirm either his involvement in religious conflicts or the fact that he had been persecuted by the Nigerian authorities for reasons of religion. The gathered evidence does not either prove that the alien is not able to avail himself of the protection of the state authorities of his country of origin against potential persecution on the part of the Muslims.

A detailed analysis of religious conflicts in Nigeria presented in the justification of the decision of the body of the first instance does neither imply any threat of organized persecution, nor the lack of protection of citizens and the need to seek international protection. The correctness of findings of the administrative bodies is not undermined by the evidence (press articles, letters and copies of the police records) submitted in the course of proceedings. The aforesaid evidence may not be used for questioning the correctness of the rendered decisions as it was not subject to assessment during the proceedings before the administrative bodies.

Thus, in view of the above, as the attacked decision did not violate any laws, the Provincial (Voivodship) Administrative Court has dismissed the appeal on the basis of art. 151 of the Act of 30 August 2002 on proceedings before administrative courts (Journal of Laws No. 153, item 1270).