THE SUPREME COURT OF THE RUSSIAN FEDERATION: EXAMINATION OF CASES RELATING TO THE APPLICATION OF THE LEGISLATION ON REFUGEES AND FORCED MIGRANTS

DETERMINATION OF THE JUDICIAL BOARD FOR CIVIL CASES UNDER THE SUPREME COURT OF THE RUSSIAN FEDERATION

DETERMINATION

August 7, 1995

A person seeking refugee status should not present proof of his forced departure from the place of his permanent residence but should only submit information to the government bodies concerned that is essential for his application to be examined. The law does not make recognition of a person as a refugee dependent on the presence of any next of kin at the place of his proposed residence

(Extract)

Mr. Kakulia sued the Migration Service of Krasnodar Territory for its refusal to grant him refugee status. He stated that in 1993 ethnic strife had forced him to leave the Republic of Abkhazia, where he had resided, for Krasnodar Territory, where he settled down with his wife's relatives. In July 1993, he applied to the migration service for refugee status but his application was rejected.

The Oktyabrski Area Court in Krasnodar dismissed Kakulia's complaint, and this ruling was left unchanged by the judicial board for civil cases under the Krasnodar Regional Court.

The Presidium of the Krasnodar Regional Court turned down a protest against the court decisions filed by a Deputy General Procurator of the Russian Federation in the exercise of his supervisory powers.

On August 7, 1995 the Judicial Board for Civil Cases under the Supreme Court of the Russian Federation examined the protest filed by the Deputy General Procurator against the court decisions and repealed them for the following reasons.

Article 1 of the Russian Federation Law on Refugees of February 19, 1993 contains a definition of the term "refugee." A refugee is defined as a person who has arrived or is willing to arrive in the territory of the Russian Federation, who does not hold Russian Federation nationality, and who was forced or intends to leave the place of his permanent residence in the territory of another state owing to violence or any other persecution committed against him or owing to the real risk of violence or other persecution for reasons of race, nationality, religion, language, and membership of a particular social group or political opinion.

As it judged the case, the court referred to Article 1 of the Law whereby a mandatory condition for grating a person refugee status is the fact that he was forced to leave his residence owing to violence committed against him or to a real threat to his life. The applicant failed to prove such circumstance.

Kakulia had left his permanent residence in Gagri, Abkhazia, after the hostilities had come to an end. Printed and broadcast reports refute his claims of continued acts of attack and plunder against Georgians.

Furthermore, the local court argued that a person is required to submit information on his next of kin who have permanent resident status, if he is to be recognized as a refugee in Krasnodar Territory. This requirement had been enacted by the regional government on the assumption that it did not contradict regional legislation. Kakulia did not have any relatives in the region, and for this reason the migration service was said to have good cause to refuse him refugee status. Yet these arguments cannot be accepted as tenable.

It follows from the case (a letter from the Krasnodar Migration Service of November 25, 1993) that Kakulia's request was rejected on the claim that refugees may be registered for residence only with their next of kin, and since he did not have any, he may not be registered for residence or granted the legal status of refugee.

In its notice and letter, the migration service did not make any reference to Kakulia's request having been refused because he had failed to provide information that he had been forced to leave his permanent place of residence.

Therefore, the cause of the written refusal to grant Kakulia's request was the residence restrictions that had been imposed in Krasnodar Territory on persons leaving their permanent residences and moving into the Russian Federation.

It was not until it objected to Kakulia's complaint in court that the migration service stated that he had not presented proof of his forced departure from Abkhazia.

When it considered the case, the court did not examine the true reasons whereby the migration service had refused Kakulia's request.

Under Article 3 of the Law, a person applying for refugee status must submit information to the government bodies concerned that is necessary for such application to be examined.

The Law implies that a person must only submit information that is necessary for him being recognized as a refugee. It does not contain any reference that a person must submit any proof, or as in this case, that the cause of his leaving his permanent place of residence was violence or any other persecution committed against him or a real threat of him being subjected to violence or other persecution for reasons of nationality.

It is likewise not determined in the *Methodological Instructions on the Procedure of Working with Foreign Nationals and Stateless Persons Applying for Refugee Status in the Territory of the Russian Federation* (approved by the Order of the Federal Migration Service on July 15, 1993, # 110) that a person must submit such proof. Paragraph 3 of the *Methodological Instructions* states that one element of the procedure of determining refugee status is that the information submitted by the applicant must be verified (assessed).

There is no indication in the case that the regional migration service performed such verification (assessment) of the information submitted by Kakulia. The court did not examine these circumstances on the mistaken assumption that it was Kakulia who was supposed to submit proof of his forced departure.

The Russian Federation Law on Refugees does not stipulate that a condition for recognizing a person as a refugee is the presence of his next of kin in his proposed residence. Nor does the Law envisage that an applicant's rights to be recognized as a refugee are contingent on the peculiar residence rules in any region.

Furthermore, Articles 5 and 6 of the Law imply that a person may be recognized as a refugee at his temporary place of residence and that he must within the statutory deadline leave his temporary residence for the permanent residence he has chosen at the suggestion of the regional migration service.

In light of this, the court's judgment supporting the migration service's requirement that a person should have next of kin in the region, if he is to be granted refugee status, is not based on the law.

The court did not examine the material circumstances of the case and for this reason its decision must be rescinded and the case submitted for a retrial.

Bulletin of the Supreme Court of the Russian Federation, #11, 1995

THE SUPREME COURT OF THE RUSSIAN FEDERATION JUDICIAL BOARD FOR CIVIL CASES

OVERVIEW OF JUDICIAL PRACTICE IN EXAMINING CASES RELATING TO THE APPLICATION OF THE LAW ON REFUGEES AND FORCED MIGRANTS

This body of cases is not included in official court statistics but it can be presumed that they were few in 1997 and the first half of 1998 compared with other categories of cases. There were many fewer cases relating to the application of refugee legislation (most of them were examined by courts in St. Petersburg and Moscow) than cases relating to the application of forced migrant legislation.

An overview of judicial practice has shown that there were extremely few refusals to accept suits or complaints falling under this category of cases. In the period under review, courts in St. Petersburg did not make such determinations. In Voronezh region, there was one refusal to accept a complaint from a Rwanda national against the Voronezh Migration Service refusing him refugee status. The Leninski Area Court of Voronezh refused to accept his complaint arguing that he did not have a right to complain against actions by the Voronezh Migration Service. This determination was overruled by appeal as violating the RSFSR Code of Civil Procedure, and the case was returned to be re-examined on its merits.

One can conclude that complaints against actions and decisions by territorial organs (TO) of the Federal Migration Service are examined, as a rule, outside the statutory 10-day deadline. Most of these cases are considered within one month, which is due to the need to ask for additional information (sometimes from foreign countries) or the applicants' absences from court.

When they handled this body of cases, courts would be guided by the Russian Federation Law on Refugees of February 19, 1993 (as amended by the Federal Law #95-FZ of June 28, 1997) with the subsequent amendments and supplements introduced by the Decree of the Government of the Russian Federation *On Measures to Assist Refugees and Forced Migrants*, #135 of March 3, 1992 (as amended by the Decree of May 23, 1998), and by international legislation (the UN Convention Relating to the Status of Refugees of July 28, 1951, the Protocol Relating to the Status of Refugees, and the 1979 Handbook on Procedures and Criteria for Determining Refugee Status of the United Nations High Commissioner for Refugees).

Under Article 1.1.1 of the Federal Law on Refugees, 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.

The overview of judicial practice indicates that courts would often challenge refusals by TO of the Federal Migration Service to grant refugee status based on the simple claim that the applicants were not eligible in conformity with the definition of the term "refugee" unless the substance of the case or the evidence presented in court proved otherwise. When they prepare such cases for hearings, courts should pay special attention to how the body of evidence has been developed. The TO of the Federal Migration Service must prove that, in conformity with Article 3.3 of the Federal Law on Refugees, it has duly verified the information submitted by the applicant and that it had good cause to refuse him refugee status. Since a TO of the Federal Migration Service and a person seeking refugee status sometimes pursue conflicting interests when the case is tried, it would be insufficient to use the material of the case and the applicant's identity documents as evidence. Courts in St. Petersburg adopted a noteworthy approach when

they tried to establish the legal circumstances of the cases judged by additionally examining information from international organizations, the Federal Migration Service, media reports and other evidence, including information on the political, social, religious and ethnic situation in the applicant's country of nationality (former residence).

Sometimes, a TO of the Federal Migration Service would refuse refugee status by referring to Article 2 of the Law whereby the provisions of the Law do not apply to a person if:

1) there are serious reasons to believe that he has committed a crime against peace, a war crime or a crime against humanity as defined in international instruments developed with a view to taking action against such crimes;
2) he had committed a non-political felony outside the territory of the Russian Federation before he was admitted into the Russian Federation as a person seeking refugee status;
3) he is guilty of committing actions that are contrary to the purposes and principles of the United Nations Organization;
4) the competent authority of the country in which he formerly resided recognizes his rights and duties arising from that country's nationality; and,
5) he is currently under the protection and (or) care of bodies and institutions of the United Nations Organization other than the UN High Commissioner for Refugees.

2. This Federal Law does not apply to foreign nationals and stateless persons who have left the countries of their nationality (their former habitual residence) for economic reasons or owing to famine, epidemic or natural or man-made calamity.

For example, the Judicial Board for Civil Cases under the Supreme Court left intact a decision of the St. Petersburg City Court, which had refused to grant a complaint from a Jordanian national against the refusal of the St. Petersburg Migration Service to grant him refugee status. The court had thoroughly examined the reasons that had forced the applicant to leave Lebanon and not to return to the country of his nationality, Jordan. It correctly decided that these reasons were fears of persecution for his military activity, not for political opinion, and social and economic reasons including regional instability, economic weaknesses, and the applicant's desire to give his children a better life. The Federal Law on Refugees does not envisage these reasons as sufficient for granting refugee status.

Some complaints lodged with courts were against decisions (actions) by other government bodies that affected refugee rights.

The Leninski Area Court of Samara took up a complaint from O. against the refusal of the Leninski Area Administration to grant her permanent residence registration at her sister's place in Samara on the grounds that such registration would cause the living conditions of the occupants to deteriorate. The court established that O. was a refugee and that her sister agreed to have her and her children registered at her place. Under Article 8 of the Decree of the Government of the Russian Federation *On Measures to Assist Refugees and Forced Migrants* of March 3, 1992, refugees and forced migrants may be

registered for residence with their families or friends, given their consent, regardless of the size of the living unit occupied. This being the case, the court took the right decision to grant the complaint.

Evictions of refugees were also disputed in courts of law. The Gagarisnki Inter-municipal Court in Moscow's Southwestern Administrative Area examined a suit filed by the Akademicheskaya Hotel asking for M. to be evicted to the housing unit set aside for her. The court established that at the time the case was examined M. and her two children had refugee status and were living at the Akademicheskaya Hotel temporarily and free of charge. M. had not taken any initiatives on her own to exercise her right to a choice of a decent abode. In 1997, a two-room apartment had been offered M. and her family in Rostov and on the day of the trial the place remained vacant and guaranteed for her. In accordance with Article 8.1.6 of the Federal Law on Refugees, a person who is recognized as a refugee and his family forfeit the right to occupy a residential unit provided from the temporary accommodation stock if they acquire, receive or rent another unit. Since M. had been offered a place for permanent residence, the court rightly decided to support the hotel's case.

Cases Relating to the Application of Legislation on Forced Migrants

The term "forced migrant" is defined in the Russian Federation Law on Forced Migrants of February 19, 1993 (as amended and supplemented by the Federal Law #202-FZ of December 20, 1995).

Under Article 1 of the Law:

1. A forced migrant is a citizen of the Russian Federation who has left his place of residence owing to violence or any other persecution committed against him or owing to the real risk of being persecuted for reasons of race or nationality, religion, language, and membership of a particular social group or political opinion, which served as the pretext for the hostile campaign against the said person or group of persons and for mass violations of public order.
2. Based on circumstances envisaged in Paragraph 1 hereof, a forced migrant is recognized to be:
    1) a citizen of the Russian Federation who was forced to leave his place of residence in the territory of a foreign state and has arrived in the territory of the Russian Federation; and,
    2) a citizen of the Russian Federation who was forced to leave his place of residence in the territory of one constituent of the Russian Federation and has arrived in the territory of another constituent of the Russian Federation.
3. A forced migrant shall also be a foreign national or a stateless person who lawfully resides on a permanent basis in the territory of the Russian Federation and who has changed his place of residence within the Russian Federation owing to circumstances envisaged in Paragraph 1 hereof.

4. A forced migrant shall also be a citizen of the former USSR who resided on a permanent basis in a republic that was part of the USSR and who acquired refugee states in the Russian Federation and who forfeited such status when he acquired the citizenship of the Russian Federation, provided circumstances prevented him from accommodating himself in the territory of the Russian Federation at the time he held refugee status.

The judicial overview indicates that most complaints were filed at courts against the refusals of TO of the Federal Migration Service to recognize such persons as forced migrants because in their opinion the applicants did not qualify under the definition of "forced migrant" or were not eligible to be recognized as such in dent of Article 2 of the Law. In conformity with Article 2, a person may not be recognized as a forced migrant if:

1) he has committed a crime against peace or humanity or another grave crime qualified as such by the legislation of the Russian Federation;
2) has failed, without good cause, to apply for the status of forced migrant within 12 months from leaving his previous place of residence or within one month from forfeiting the status of refugee owing to the acquisition of Russian Federation citizenship; and,
3) he has left his place of residence for economic reasons or owing to famine, epidemic or natural or man-made calamity.

The Kurgan City Court supported as lawful the refusal of the Kurgan Regional Migration Service to grant P. and her family the status of forced migrants. The court established that P. had been registered in Russia on June 30, 1997 and first applied to the migration service on March 3, 1999. She told the court that she had missed the forced migrant application deadline because she was working and simultaneously tried to find another job. Furthermore, she stated in her application to the Kurgan Migration Service and in her speech at the court hearings that her family had been forced to leave Kazakhstan owing to the absence of work, the children's sickness, and contaminated water. P. did not refer to any persecution against her or her family. The court rightly decided that under Paragraphs 2 and 3, Article 2, of the Russian Federation Law on Forced Migrants, the applicant and her family could not be recognized as forced migrants.

The Basmanni Inter-municipal Court in Moscow's Central Administrative Area turned down a complaint from V. against the actions of migration bodies. The court established that V. had had refugee status which he forfeited when he acquired Russian Federation citizenship. V. had applied to the Migration Service of the Adyg Republic for the status of forced migrant. At the time of application, he had a place to live in, pension provision, and access to medical services. The Migration Service of the Adyg Republic refused to grant him the status of forced migrant. The court rightly decided that the migration service had acted in conformity with Article 1.4 of the Federal Law on Forced Migrants.

Some complaints lodged with courts were against the refusals of TO of the Federal Migration Service to register forced migrant status applications. The Meshchanski Inter-municipal Court in Moscow Central Administrative Area supported A.'s complaint

against the Moscow Migration Service's refusal to register his application for the status of forced migrant for failure to apply within one month after he acquired Russian Federation citizenship. Under Article 2.1.2 of the Law, a person who has without good cause not applied for the status of forced migrant within one month after he forfeited his refugee status owing to his acquisition of Russian Federation citizenship may not be recognized as a forced migrant. The court established that A. was a refugee and had acquired Russian Federation citizenship through registration in conformity with Article 18, Paragraph "?" of the Russian Federation Law on Citizenship of the Russian Federation of November 28, 1991 (as amended and supplemented) but he had been unable to apply to the migration service within one month because he was taking inpatient hospital treatments. The court found the reason for his failure to apply within the one-month deadline as valid and obliged the Moscow Migration Service to register his application.

Courts also handled cases relating to the exercise by forced migrants of their rights. The Z's filed a lawsuit with the Tverskoi Inter-municipal Court in Moscow's Central Administrative Area to oblige the Committee of Labor and Employment under the Moscow Government and the Tverskoi Branch of the Labor and Employment Office of the Central Administrative Area to register them as unemployed. The court established that the Z's were forced migrants without a fixed abode and were registered for temporary stay at a definite address under the jurisdiction of the Tverskoi Branch of the Labor and Employment Office whose competence is to decide on unemployment status. But the Tverskoi Office refused to register them as unemployed by referring to Article 3.2 of the Russian Federation Law on Employment in the Russian Federation of April 19, 1991 (as amended by the Federal Law of April 20, 1996) whereby a registered job seeker may be recognized as unemployed by the employment service at his place of residence.

It follows from Article 1 of the Russian Federation Law on Forced Migrants, which defines the term "forced migrant," that a forced migrant will usually have no fixed abode. But in conformity with Article 7.2.2 of the Law, federal executive bodies and executive bodies of constituents of the Russian Federation may, within their competences, register a forced migrant as unemployed if there is no way to employ him in accordance with the legislation of the Russian Federation regardless of the duration of his living in a given location within the Russian Federation. Therefore, the Law does not make a forced migrant's right to be registered as unemployed dependent on whether he resides in a given location on a permanent or temporary basis. In light of this fact, the court rightly obliged the Tverskoi Branch of the Labor and Employment Office to revisit the issue of registering the Z's as unemployed.

The overview has shown that when they accept complaints relating to the application of legislation on forced migrants, court sometimes have difficulty determining circumstances of legal substance and drafting the operative parts of their decisions. Thus, when they examined complaints against the refusal of the TO of the Federal Migration Service to accept applications for the status of forced migrants, some courts in Rostov Region, in the operative parts of their decisions, obliged the TO to recognize such applicants as forced migrants. In the meantime, to register an application for forced

migrant status and to recognize a person as a forced migrant are two different decisions that Articles 3 and 5 of the Russian Federation Law on Forced Migrants refer to the competence of TO of the Federal Migration Service. If a person disagrees with the decision taken on his behalf by the TO of the Federal Migration Service, he may go to court in conformity with Chapter 24 of the RSFSR Code of Civil Procedure within the timeframe envisaged in Article 8.3 of the Russian Federation Law on Forced Migrants. When it drafts the operative part of its decision on such a complaint, the court must decide the lawful or unlawful nature of the appealed decision taken by the TO of the Federal Migration Service, and outline a course of action needed to redress the applicant's rights.

Under Article 248 of the RSFSR Code of Civil Procedure, a court establishes facts of legal import only provided the applicant cannot otherwise obtain the proper documents confirming these facts, or if lost documents are impossible to restore. But in some cases courts would establish facts without deciding if they have any legal implications envisaged in legislation on forced migrants (such as the Russian Federation Law on Forced Migrants, the Decree of the President of the Russian Federation *On Additional Compensatory Payments to Persons who Suffered from the Resolution of the Crisis in the Chechen Republic*, #898 of September 5, 1995, and the Decision of the Government of the Russian Federation *On the Procedure of Paying Compensation for Lost Housing and/or Other Property to Citizens Who Suffered from the Resolution of the Crisis in the Chechen Republic and Who Left it without Return*, #536 of April 30, 1997). Not on every occasion did courts check on evidence in support of the applicants' claims that it was impossible for them to obtain documents otherwise or have lost documents restored. There were instances when interested persons were not involved in a case, in violation of Article 246 of the RSFSR Code of Civil Procedure.

For example, when it examined the legal fact of S.'s having resided in the Chechen Republic, the Proletarski Area Court of Rostov-na-Donu did not subpoena the TO of the Federal Migration Service concerned at all.

Since a court establishes legally substantive facts under a special procedure in the absence of a dispute about the law over which courts have jurisdiction (Article 246.3 of the RSFSR Code of Civil Procedure), it will do wrong to include in the operative part of its decision establishing whatever legal facts any judgment on the applicant being eligible or ineligible for the status of forced migrant or receive compensation for the housing and/or other property lost in the course of settling the crisis in the Chechen Republic.

The Judicial Board for Civil Cases under the Supreme Court of the Russian Federation.

Bulletin of the Supreme Court of the Russian Federation, #5, May 2000.