

File no. 9017/2002

Bucharest Sector VI Court

Ruling in civil case no. 12413

Public session of 11.11.2002

Court represented by:

PRESIDENT : NICOLETA ABALASEI

COURT CLERK: ERZSEBET PAL PARAU

The Public Ministry – the Prosecutor’s Office under the Bucharest Sector VI Court was represented by Prosecutor Darius Ureche.

The subject case deals with ruling on the present civil case having as object the complaints formulated by the appellants M A. A., T. K. G. and G. Y. A. from Sudan against the Decisions No 83392/h/DN of 6.0.2002, 83393/h/DN of 6.06.2002 and 83743/h/DN of 12.09.2002 given by the National Refugee Office.

The debates and the arguments of the parties took place in the public session of 26.10.2002, being noted in the conclusions of debates for the above mentioned date, which represents an integral part of the present decision. At that date, the Court, for the parties to submit the written conclusions and also needing time to deliberate, postponed the ruling first for the date of 4.11.2002 and then for the date of 11.11.2002, when the following was decided:

#### THE COURT

In the complaint addressed to the court registered under No. 9017 of 20.06.2002, the appellant M A. A. from Sudan appealed against the Decision No. 83392/h/DN of 6.06.2002 given by the National Refugee Office through which his application for being granted the refugee status in Romania was rejected as unfounded and requests the dismissal of the decision and asks for a decision through which a form of protection under GO No. 102/2000 is acknowledged to him.

In motivating the complaint, it has been shown that the appellant left the country of origin because his political activity as a member of the SPLA Party led to repressive acts being taken against him and his family from the part of the authorities, actions materialized through arbitrary detentions and inhuman treatments applied to his wife as a result of which she lost her pregnancy.

*De iure*, he founded his complaint on the provisions of Article 2 and 15 of G.O. No. 102/2000 approved through Law No. 323/2001, Article 3 of the European Convention for Human Rights, Law No. 46/1991 for the adoption of the 1951 Geneva Convention, Article 16 (1) and Article 24 of the Romanian Constitution and Article 3 of the European Convention of Human Rights.

In her turn, the appellant T. K. G. formulated a complaint against the decision No. 83393/h/DN of 6.06.2002 given by the National Refugee Office, through which her application for being granted the refugee status in Romania was rejected as

unfounded, showing that the reasons which determined her to resort to the institution of asylum are linked to the political activity of her husband, M.A. A..

Therefore, with regards to the well founded fear of prosecution, the Court observes as an objective element contained by this notion that the general situation in Sudan is characterized by serious breaches of human rights. The liberation movement of the people of Sudan is an opposition movement, the People's Liberation Army (SPLA) being the military wing of this group. It was founded in 1983 under the rule of John Garang, most of its members belonging to the DINKA ethnic group.

Starting 1983, when in Sudan the Islamic Law was imposed, several conflicts occurred between this group and the Governmental forces, generated by the fact that SPLA was formed mainly of citizens of Christian religion coming from the South of the country, who wanted to create a laic and democratic state. The conflicts that developed through the years, as well as the repressive actions to which the SPLA members were subject to determined some of them to conclude a separate peace agreement with the Government in 1996. However, the majority of the group continued to fight for achieving the party's objectives. The current president of the Republic of Sudan, the Lieutenant General Omar Hassan Al-Bashir abolished the Constitution and considered that the SPLA members, as well as all those who help the Christians in the south are considered legitimate military targets. More recent international reports show that the civil war between the north and the south, respectively between the Muslim governmental forces and the Christians (part of whom are politically registered with SPLA) have caused extreme suffering for the population, more than four million persons being internally displaced as a result of the fighting. At present there are also sporadic armed conflicts under development between the two forces involved in the conflict.

Taking into consideration this general framework, the situation of the appellant and his family can be pictured: he was born in the south of the country where he owned a farm, being a leader and member of the SPLA. He understood to fight within this movement as a result of a family tradition (his father has also been a member of the party), his activity consisting in sheltering the soldiers at the farm and feeding and offering them medicine.

These activities drew the attention of the Governmental forces which placed him under surveillance and in November 2000 he was beaten by the Sudanese security forces because there was information that he bought food for the SPLA. On the same occasion, his wife was also beaten and she lost her pregnancy. After the incident he stopped the activity of the farm, however, after seven months he re-started the activity of providing the SPLA members with food, which has led to his arrest in 2001 and being detained at a military prison in Malacal city. He was helped to escape from prison by a relative after 14 days of detention, on 20.11.2001. He took his wife who was at her relatives and went into hiding for two months until he left the country of origin.

He entered Romania illegally on 15.05.2002, both him and his wife applying for asylum on the same date. On the date of 22.08.2002, the minor G. Y. was born on the territory of Romania.

In this context, the subjective element of the notion of well founded fear of persecution is defined through the fact that the appellant is afraid to return to his country of origin, where he suffered the above mentioned actions from the authorities of Sudan, and where his life is endangered, having no other alternative left but to resort to the institution of asylum.

There must be also mentioned the position taken by the European Union in 1997 (The Common Position defined by the Council on 4 March 1996- The harmonized application of the term “refugee” in Article 1 of the Geneva Convention ) which recommended that in the analysis of the asylum applications there should be noticed whether there is a remedy to put an end to the abusive situation, persecution being characterized by the fact that there is no possibility to correct it or even if there are correcting means, the individual is bereft of the opportunity to have access to them or it was likely for the decision of the competent authorities not to be impartial or not to have an effect. Therefore, it was obvious for the appellants that there was no other remedy to put an end to the abuse situation but to resort to the asylum system.

Drawing a conclusion, the court observes that the appellants comply with the positive criteria in Article 2 (1) of the Geneva Convention considering that only in this way effect is given and the principle of non-refoulement under Article 33 (1) in the Geneva Convention is complied with.

As a consequence, the court shall admit the complaints, shall dismiss the challenged decisions as illegal and unfounded and, on the basis of Article 2 in the G.O. no. 102/2000 (and as regards the wife and the son of the appellant the Court has regards to the provisions under Article 3 in the same legal act) shall grant the appellants the refugee status in Romania with all the legal consequences deriving thereof.

ON THESE GROUNDS  
IN THE NAME OF LAW  
DECIDES:

It admits the complaint formulated by the appellants M. A. A., born on 25.05.1968, T. K. G. born on 3.11.1978 and GA Y. A. (legally represented by T. K. G.) born on 22.08.2002, all Sudanese citizens, with declared residence in Romania, in 16-34A Ramnicu Valcea Street, ap.3, sector 3, against decisions no. 8392/h/DN of 6.06.2002, 83393/h/DN of 6.06.2002, respectively 83743/h/DN of 12.09.2002 given by the National Refugee Office.

It dismisses the challenged decisions.

On the basis of Article 2 in the G.O. no. 102/2000 it grants the appellant M.A.A. the refugee status in Romania with all the legal consequences deriving thereof.

On the basis of Article 2 and 3 in G.O. no. 102/2000 it grants the appellant T.K. G. and the minor G. Y.A. the refugee status in Romania with all the legal consequences deriving thereof.

With possibility of appeal within 5 days from the ruling.  
Ruled in the public session of today, 11.11.2002

President

Court clerk