

Heard at Field House on 18 September 2003

IMMIGRATION APPEAL TRIBUNAL

Date determination notified

1.12.2003

Before:

Mr D Allen
(Chairman)
Mr J Perkins

Between

**ELENA MURAEVA
LENA MURAEVA**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. Before us Mr M Jackson of counsel, instructed by White Ryland, solicitors, appeared for the appellants and Mr J Morris, a Home Office Presenting Officer appeared for the respondent.

2. The appellant in case HX 57771 2002, Elena Muraeva, was born on 10 November 1976 and so is now 27 years old. She is described as “the First Appellant”. The appellant in case HX 57769 2002, Lena Muraeva, was born on 8 November 1979 and so is now 24 years old. She is described as “the Second Appellant”. They are citizens of Russia and are sisters. They each appeal a determination of an adjudicator, Mr J R Devittie, who, in a determination promulgated on 23 January 2003, dismissed their appeals against a decision of the Secretary of State that they were not entitled to refugee status and that their removal from the United Kingdom would not be contrary to the United Kingdom’s obligations under the European Convention on Human Rights.

3. The appellants were settled in Chechnya and suffered considerable problems when conflict broke out between Chechen rebels and the Russian authorities. They were together when they were raped by Russian soldiers.

4. The adjudicator believed their evidence. He noted “the bleak conditions the civilian population has had to endure in Chechnya. The rebel forces and the Russian army had committed gross human rights violations against civilians. Women and children have suffered particularly badly.” The adjudicator clearly believed that they could not be expected to return to Chechnya and live safely there. However he found that as Russian citizens they could reasonably be expected to relocate and live safely. Although they had been displaced in the war he did not accept that they had been persecuted for a convention reason or that there was a real risk that they would be in the event of their return.

5. With respect to the adjudicator the suggestion that ethnic Russians who were at risk in Chechnya could be expected to find safety amongst other ethnic Russians away from Chechnya might seem eminently attractive but they were given permission to appeal because it was arguable that it was not open to the adjudicator to find that they could be expected to settle elsewhere in Russia away from Chechnya. Having considered the evidence we find in these cases that it is not.

6. Mr Jackson referred to the case of Archakov v Secretary of State 01TH03277 decided by Mr Freeman’s tribunal in a determination notified on 3 January 2002. That case concerned a Chechen citizen who unsuccessfully claimed asylum in the United Kingdom. The Secretary of State gave removal directions including the words “by scheduled airline to RUSSIA”. Similar directions have been given here. Certainly there is no suggestion that the Secretary of State has undertaken not to return the appellants to Moscow. The Tribunal allowed the appeal in Archakov because it was not persuaded that the appellant could live safely in Moscow or get back to Chechnya. Archakov does not mean that no Chechen can ever be returned. It was decided at a time of heightened tension in the aftermath of bombings of two Moscow apartment buildings in September 1999. However, at the very least, it shows that the evidence in any particular

case needs to be assessed very carefully. It is also a significant feature of that case that the appellant was Chechen. These appellants have each described their ethnicity as Russian and have expressly distinguished themselves from Chechens. At least nominally they follow the Christian religion.

7. We have an advantage over the adjudicator. We have a report dated 5 September 2003 prepared for the hearing by Robert Chenciner. He is a Senior Associate Member of St Antony's College Oxford and an Honorary Member of the Russian Academy of Sciences, Dagestan Filial. Mr Morris took no point on the late production of the report. It is thoroughly sourced and written without obvious bias. Points similar to those made by Mr Chenciner are made in other material before us. We accept that the report sets out an informed opinion honestly held concerning the risks that these appellants would face in the event of their return to Moscow. However Mr Chenciner has not seen the appellants and we are surprised to see that the appellants' solicitors told him that the appellants' father is ethnically Chechen. The appellants described themselves as ethnically Russian and distinguished themselves from Chechens. According to the adjudicator the Second Appellant said in her oral evidence that her features showed her Chechen ancestry. Her mother is half Chechen. They also each claimed to follow the Christian religion. Mr Chenciner's report is less helpful than it might otherwise have been because he seems to have been given wrong information concerning the appellant's ethnicity.

8. The adjudicator accepted the appellants' evidence. They said that they had lost contact with their mother. Their father, an army officer, was killed by Chechen rebels in September 1998. The First Appellant's husband, also a soldier, was killed by the Chechen rebels in February 1999. Their mother escaped from Chechnya with the First Appellant's child at a time when elderly women and young children were allowed to leave. The Second Appellant had not married. Their mother was half Chechen and half Russian and the Second Appellant had inherited distinctly Chechen features.

9. The adjudicator was aware of the large number of ethnic Russians who had left Chechnya because of the conflicts there. According to the CIPU report

something in excess of 250,000 people including almost the entire Russian, Armenian, and Jewish population have left Chechnya as a result of the conflicts there. It was accepted that the second appellant's appearance suggests a Chechen origin and it is the appellants' case that they each have significant problems in Chechnya because they were perceived to be Russian. The horror of their being raped is, perhaps, made even worse by the irony of their being victims of Russian soldiers. The adjudicator found the appellants had been victims of war. However dreadful this incident was it does not show that these appellants risk being raped every time they meet Russian soldiers.

10. The expert report explains the difficulties they would have in the event of their return to Russia.

11. Firstly they have to get into the country. To do this would reveal their links with Chechnya. They would attract attention for two reasons. Their name is "recognisably Islamic" rather than Russian and they would have temporary travel documents issued by the United Kingdom. They would be questioned. If they said they came from Chechnya it would be assumed that they were returned asylum seekers and they would be treated as suspected Chechen collaborators and terrorists. They are nothing of the sort. Indeed it is precisely because they are not Chechen that they cannot live safely in Chechnya. However Mr Chenciner explains that ethnic Russians from Chechnya are treated with great suspicion and contempt. The appellants' have already experienced something of that. At paragraph 2.2.2 he emphasises that the ongoing Russian Chechnya conflict has hardened attitudes towards ethnic Russians from Chechnya and they tend to be ill treated. By way of illustration at paragraph 2.1 he explains that when the Russians bombed Grozny they made no attempt to release ethnic Russians and regarded any ethnic Russian who survived Grozny as a Chechen collaborator and terrorist.

12. They could, of course, lie but there is no reason to think that they would be able to deceive the border guards and their Islamic name would arouse suspicions. The risk would be particularly great in the case of the Second Appellant who, it seems, has Chechen features.

13. The contempt and suspicion of society is particularly apparent in the case of people of mixed ethnicity. Marriage between people of mixed descent is very rare and is seen as a sign of being anti-Russian.

14. It is important for us to remember that Russia is not a free country. To travel within it people need an internal passport and this will show their names (Islamic) and the nationality of their parents. Every time that they had dealings with officials they would risk opprobrium or worse and they would have to meet many officials.

15. The expert recognises that many displaced people from Chechnya have been given refuge in Ingushetia. He also says that it is now policy to return these people to Chechnya. Nevertheless according to the April 2003 CIPU report 110,000 or so displaced people continue to live there. The expert makes the point that the refugee camps there are controlled by the Russian military forces.

16. Concerning the present situation in Chechnya the expert opines that they would be going back to conditions at least as bad as when they left.

17. Whilst the appellants' rape by Russian soldiers may have been a dreadful consequence of the disorder that tends to follow military activity we do not understand the adjudicator's apparent conclusion that the appellants were not persecuted whilst they lived in Chechnya. Being made to remain there because they were Russian when children and old people were allowed to leave, and so be subjected to very harsh living conditions, was surely persecution. They are not wanted there by the remaining Chechen population and they have experienced great cruelty. We find there must be a real risk of their being persecuted because of their ethnic origin in the event of their return to Chechnya.

18. The expert's conclusions in his summary are concerning. He notes that the appellants have an Islamic rather than a Russian name. This will cause them to be seen as "non-Russian". The case of the second appellant is worse because of her Chechen appearance. At the point of entry there is a risk of their detention and transfer to a filtration camp because they would be assumed to be Chechen. There there is a risk of torture or death. There is nowhere obvious for them to go in Russia. The other internally displaced persons are not well treated. Rather

they are resented and the authorities are trying to return them to Chechnya although conditions there are not yet ready for people to return safely. The uncertainty and difficulties that they face are considerable. With respect to the adjudicator the proper finding here should have been that there is a risk of persecution in Chechnya. In all the circumstances we are persuaded that it will be unduly harsh for these two women to be returned to Russia and left to find somewhere to live. The deprivations that they face are too severe and the risks of very, very serious ill-treatment too great.

19. It follows that we allow the appeal.

20. In fairness to the adjudicator although the grounds of appeal disclosed an arguable error we have reached this conclusion because of the additional evidence that we had rather than because of fundamental errors in the adjudicator's approach and conclusions.

Jonathan Perkins
Vice President

25 November 2003