

JUDGMENT

IN THE NAME OF THE REPUBLIC OF POLAND

Warsaw, 28 May 2004

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

Chairman	Judge of the Supreme Administrative Court (NSA)	- Barbara Wasilewska
	Judge of the Supreme Administrative Court (NSA)	- Małgorzata Dałkowska-Szary (rep.)
	Judge of the Provincial (Voivodship) Administrative Court (WSA)	- Beata Krajewska
	Clerk of the Court	- Marianna Igielska

having considered during the hearing of **28 May 2004**
the case concerning the appeal of **X.Y.**
against the decision of **the Council for Refugees**
of **22 August 2003** No. **RdU-449-1/S/2003**
concerning **the granting of refugee status**

- 1. dismisses the appeal;**
- 2. orders the Treasury of the Provincial (Voivodship) Administrative Court in Warsaw to pay for the benefit of Katarzyna Sawa-Rybaczek, a lawyer of the Lawyer's Office in Warsaw, at Dobra 56/58, an amount of 300,- PLN (three hundred) for legal aid granted gratuitously ex officio.**

JUSTIFICATION

By virtue of the appealed decision the Council for Refugees upheld the decision of the President of the Office for Repatriation and Aliens of 15 June 2003 No. DP-II-1256/SUB/2001 concerning the refusal to grant X.Y. the refugee status in the Republic of Poland.

The justification of the decision read that X. Y., the citizen of Sierra Leone, came to Poland illegally in autumn of 2001. On 16 November 2001 he illegally crossed the border between the Republic of Poland and Germany and on 19 November 2001 he was transferred to Poland in view of readmission. On 20 November 2001, the Voivod of the Lubuskie Voivodship issued a decision on expulsion of the alien from the territory of the Republic of Poland. On 23 November 2001, the alien lodged an application for the refugee status to the President of the Office for Repatriation and Aliens. By virtue of the decision of 15 June 2003 No. DP-II-1256/sub/2001, the President of the Office for Repatriation and Aliens refused to grant the applicant the refugee status. In the application for the refugee status as well as in the course of proceedings, the applicant, giving the crucial motive for applying for being acknowledged a refugee, pointed to his fear related to the

conflict in Sierra Leone, and in particular to the fact that he participated in the conflict as a member of the Revolutionary United Front (RUF) squad around 1998/1999. In order to justify his fear the party quoted the fact of publishing his picture in a newspaper. The information concerning the alleged publication of his picture was not provided until in the appeal to the Council for Refugees. In the previous stage of proceedings the party maintained that his name – as one of the RUF rebels – was mentioned on the radio. In commentary of the party's testimony, the Council underlined that it was incoherent, was substantially changed in the course of the proceedings and was characterized by low authenticity. Neither during the proceedings before the body of the first instance, nor before the Council for Refugees was the party able to provide any detailed and reliable information concerning for example his participation in the conflict on the side of the RUF, the circumstances of his incorporation in the RUF squad or his detention by the government troops. The information presented by the party was of a general character; the applicant was indeed unable to provide any details concerning the described events. In the opinion of the Council, throughout the proceedings the party failed both to sufficiently authenticate the described events and to provide any evidence proving the truthfulness of his testimony.

Considering the party's appeal, the Council for Refugees examined numerous detailed reports concerning the situation in the party's country of origin, taking into consideration in particular the present situation in Sierra Leone, including the situation of thousands former RUF rebels. The Council underlined that the substantial elements of the present situation in Sierra Leone are: placing the several thousand UNAMSIL (United Nations Mission in Sierra Leone) peacekeeping forces contingent in Sierra Leone and a gradual withdrawal of the UNAMSIL units with the advancement of the stabilization process, the final end of the 11-year civil war in January 2002, disarmament of approx. 72 thousand former rebels (mainly from the RUF) and granting amnesty to those rebels who did not commit any crime or offence, normalization of the internal situation, including in particular the presidential and parliamentary elections held in May 2002 (the Revolutionary United Front (RUF) also stood in the elections), a mass repatriation of refugees (the citizens of Sierra Leone) mostly from Guinea and Liberia as well as from other countries conducted under the auspices of the Office of UNHCR, the establishment of a Special Court for Sierra Leone in view of passing judgments on the crimes committed by the leaders and commanding officers of the RUF, the death of the most widely-known RUF criminals – Foday Sankoh in July 2003 and Samuel Bockarie in May 2003. What needs to be underlined is the fact that the UN Security Council considered it legitimate and justified to begin (in September 2002) the withdrawal of over 17 thousand UN peacekeeping force (UNAMSIL) from Sierra Leone. It should also be mentioned that the Office of UNHCR participated actively in repatriating to Sierra Leone thousands of refugees not only from the neighbouring countries (Guinea and Liberia) but also from the Western European countries.

Considering the above, the body stated that the present case lacked premises for assuming that X.Y. cannot return to Sierra Leone and avail himself of the protection of his country of origin due to well-founded fear of being persecuted for reasons of his race, religion, nationality, membership in a particular social group or political opinion. The Council pointed to the fact that at each stage of the proceedings, including the proceedings before the Council for Refugees, the concerned party called upon exclusively those circumstances and events that took place before his departure from Sierra Leone, namely those concerning the period 1998-2001. From the party's testimony made before the Council for Refugees follows that the party concerned is completely unaware of the present situation in Sierra Leone. Moreover, the party was not able to present any facts proving that he may not avail himself of the protection of the state authorities in his country of origin due to the menace of being persecuted. When assessing the alien's motives for applying for the refugee status, the Council should take into consideration substantial changes that occurred in Sierra Leone following the departure of the applicant from his country of origin. Disarmament of the RUF, granting amnesty to thousands of rebels and covering the process of reintegration of former guerillas with the World Bank program as well as the process of normalization do not allow for an assumption

that due to an incidental connection with the RUF the applicant could presently be menaced by persecution on the part of the authorities of Sierra Leone. The body also pointed to the fact that the party concerned lodged the application for the refugee status not immediately following the arrival in Poland but only after he illegally attempted to cross the border with Germany, he was transferred to Poland in view of readmission, arrested by the Border Police and after the authorities issued the decision on his expulsion from the territory of the Republic of Poland. In the opinion of the Council, these circumstances indirectly point to the fact that the application for the refugee status in the Republic of Poland was actually lodged in view of legalizing the applicant's stay in Poland and his protection against expulsion and not in view of being granted necessary protection in face of menace of being persecuted in the country of origin, as immediately following the arrival in Poland the party was not seeking such protection.

In conclusion, the Council for Refugees stated that X.Y. did not meet the requirements set forth in art. 1 of the Geneva Convention, and thus there were no premises to grant him the refugee status in the Republic of Poland.

In his complaint to the Supreme Administrative Court, X.Y. imputed that the decision was rendered in violation of the material law – art. 1 of the Geneva Convention concerning the refugee status of 1951 and the New York Protocol of 1967 through incorrect interpretation and thus stating that the plaintiff was not a refugee in the sense of the said provisions as well as through breaching the provisions concerning the administrative proceedings, namely art. 7, 77, 107 § 3 of the Administrative Proceedings Code, through incorrect conduct of the evidence proceedings consisting in the fact that the body not only failed to exhaustively gather and examine the evidence but also failed to provide correct factual justification. The plaintiff underlined that the peace in Sierra Leone is unstable and his fears of being persecuted for political reasons are well-founded.

The Council for Refugees dismissed the appeal upholding the standpoint and the arguments contained in the justification of the attacked decision.

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

In view of the fact that the appeal was submitted to the Supreme Administrative Court prior to 1 January 2004 and the proceedings did not end prior to this date, and pursuant to art. 97 of the Act of 30 August 2003 - 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, as amended), the court competent for consideration of the appeal is the Provincial (Voivodship) Administrative Court in Warsaw.

In accordance with 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) as well as art. 3 § 1 and art. 13 § 1 and § 2 of the Act of 30 August 2002 – Law on proceedings before administrative courts (Journal of Laws, No. 153, item 1270), the Provincial (Voivodship) Administrative Court when considering the appeal controls the legality of the public administration activity.

The legal and material grounds for refusing to grant the plaintiff the refugee status were constituted by art. 42 point 1 of the Act of 25 June 1997 on aliens (Journal of Laws of 1997, No. 114, item 739, as amended) in relation to art. 14 sec. 1 of the Act of 11 April 2001 on amendments to the Act on aliens as well as on amendments to particular acts (Journal of Laws No. 42, item 475).

Pursuant to the aforesaid provision, an alien is refused the refugee status if he does not meet the requirements specified in the Geneva Convention and the New York Protocol or he was granted the refugee status in another country which assures him real protection.

The Geneva Convention stipulates in art. 1 letter A point 2 that the notion „refugee” is applicable to 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.

The aforesaid provision contains a comprehensive list of reasons of being persecuted which justify granting an alien the refugee status and it stipulates that the fear of being persecuted for these reasons must be „well-founded”, which means that the state of mind of the person concerned (subjective element) must be justified by the objective situation.

The latter premise was not complied with in the considered case as the fears of being persecuted in the country of origin presented by the plaintiff did not provide the administrative bodies deciding on this case with any grounds for assuming that the fear of the plaintiff concerning the return to his country was justified in the sense of art. 1 letter A point 2 of the Geneva Convention.

In the application for the refugee status as well as in the course of proceedings, X.Y. giving the crucial motive for applying for being acknowledged a refugee, pointed to his fears related to the conflict in Sierra Leone, and in particular to the fact that he participated in the conflict as a member of the RUF squad around 1998/1999.

Neither during the proceedings before the body of the first instance, nor before the Council for Refugees was the plaintiff able to provide any detailed and reliable information concerning his participation in the conflict on the side of the RUF, the circumstances of his incorporation in the RUF squad or his detention by the government troops. The presented information was of a general character; the applicant was indeed unable to provide any details concerning the described events. The Council's findings, namely that throughout the proceedings the party failed both to sufficiently authenticate the described events and to provide any evidence proving the truthfulness of his testimony, are thus correct.

The Council aptly remarked that in the light of substantial changes that occurred in Sierra Leone following the applicant's departure from his country of origin, namely the disarmament of the RUF, granting amnesty to thousands of rebels and covering the process of reintegration of former guerillas with the World Bank program as well as the process of normalization, the plaintiff's fear of being persecuted by the authorities of Sierra Leone for incidental membership in the RUF is irrational.

The institution of the refugee status may not be used for legalizing the stay in the territory of the Republic of Poland. There exist other legal forms specially designed for this purpose and requiring the compliance with specific conditions.

Moreover, it should be underlined that the general reports quoted by the plaintiff may not be determinant in the assessment of the individual situation of the person applying for the refugee status. The aforesaid assessment of the plaintiff's situation, thoroughly carried out by the body of the second instance taking into account the social and political situation, fully justifies the refusal to grant the refugee status.

In conclusion it should be thus stated that the attacked decision is compliant with the law. In view of the above, on the basis of art. 151 of the Law on proceedings before administrative courts, the appeal should be dismissed as unfounded.