

26.06.02.

**PRESIDIUM
of the Moscow City Court**

Judge of the 1st instance – V.M. Pilganova

Judges of the 2nd instance – Ye.N. Neretina (Chairman)

M.V. Ovsianikova

I. Ye. Lukyanov(report)

PROTEST

against the decision of the Basmanny Municipal Court of Moscow of January 16, 2001, and the ruling of the court chamber for civil cases of the Moscow City Court of September 24, 2001, concerning the case based on the appeal of Said Abaz Said Rakhman against the actions of the Immigration Control Department for Moscow and the Moscow region

The appellant lodged with the court an appeal against actions of the Immigration Control Department for Moscow and the Moscow region that dismissed his request for refugee status, indicating that he is a citizen of Afghanistan, and as a result of the existing political situation in the country, change of the regime and, as a consequence, the emergence of threat to his family, was forced to leave Afghanistan in 1997.

The decision of the Basmanny Municipal Court of Moscow of January 16, 2001, resolved: to dismiss Said Abaz Said Rakhman's appeal against actions of the Immigration Control Department for Moscow and the Moscow region.

The ruling of the court chamber for civil cases of the Moscow City Court of 24.09.2001 left the above court decision unchanged.

I believe that the above court decisions should be overruled for the following reasons:

Under Clause 1 of Article 192 of the Code of Civil Procedure of the RSFSR, a court decision must be lawful and justified.

In accordance with Clause 4 of Article 197 of the Code of Civil Procedure of the RSFSR, the motivation part of the decision should indicate the facts of the case established by the court, evidence on which the conclusions of the court are based, arguments as to why the court rejects this or that evidence, and the laws the court was governed by.

Pursuant to Clause 1 of the Resolution of the Plenum of the Supreme Court of the RSFSR "On Court Decision" of 26.09.1973, it was explained that a decision should be considered as justified if it reflects the facts material for the given case, supported by the evidence verified by the court, as well as if it contains indisputable conclusions of the court that follow from the established facts.

As can be seen from the materials of the case, page 34, the decision of the Basmanny Municipal Court of 02.06.99 appointed a political and country study expert examination in respect of that civil case in order to determine the political situation in

Afghanistan and existence of the danger for the appellant in case of his return to that country.

In compliance with that expert opinion the presence of the appellant in the territory of Afghanistan is fraught with a real threat of persecution for political reasons.

However, in violation of the requirements of Articles 14 and 56 of the Code of Civil Procedure of the RSFSR, the court did not evaluate the said opinion, and the court decision does not contain the arguments supporting the court's rejection of the said opinion.

Under such circumstances, the issued court decisions cannot be regarded lawful and justified.

In view of the above and in compliance with Articles 320 and 324 of the Code of Civil Procedure of the RSFSR

I REQUEST

that the decision of the Basmanny Municipal Court of Moscow of 16.01.2001 and the ruling of the court chamber for civil cases of the Moscow City Court of 24.09.2002 be overruled, the case be sent for reexamination to the same court with another composition of judges.

Chairman of the Moscow City Court

O. A. Yegorova

True Copy:

Secretary of the Presidium of the Moscow City Court

Signature /Signed/