

**DECISION  
IN THE NAME OF UKRAINE**

**On the 24<sup>th</sup> of February 2004**, the Shevchenkivskyi District Court of Kyiv composed of O.O. Shostak, Judge, and O.S. Furman, L.S. Shevchuk, Secretaries

In the course of public hearing held on the premises of the Court in Kyiv of the civil case initiated by complaint lodged by XXXXXX contesting the decision made by the State Committee of Ukraine for Nationalities and Migration

**ESTABLISHED:**

The Claimant submitted his complaint to the Court contesting the decisions of the State Committee of Ukraine for Nationalities and Migration concerning refusal of the latter to grant refugee status to the Claimant.

In the Claimant's view, so contested decisions is unjustified and illegitimate since it was made without due regard to and examination of all circumstances having legal importance for determination of grounds for granting refugee status. He requested recognition of legal unjust of the decision.

In the course of the case hearing, the claimant supported his complaint and explained that he could not return to his homeland because his life and freedom was in danger and he was subject to inhuman and humiliating treatment due to his Chechen nationality.

He also explained that during his stay in Chechnya in the town Urus-Martan, he was persecuted by Russian military of the Federal Troops of the Russian Federation. They detained him and demanded a ransom from his relatives and he was set free only after the ransom had been paid to them. He also said that he had not been able to freely move across the territory of Chechnya, that he was detained several times and his passport was withdrawn from him. He also feared that next time when he was detained, he would never return home.

He explained that he had no chances to move to any other part of the Russian Federation to live since Russian authorities persecute all Chechens especially young people of his age.

The Chechen opposition also persecuted him, and the opposition's representatives repeatedly approached him and offered to take part in combat operations against the federal troops.

The claimant stated that he did not intend to combat but was continuously forced to do so.

During the interview, XXXXXX indicated specific occurrences of persecution from the part of representatives of Russian authorities and Russian military to the personnel of the migration service, however this information was not properly checked, otherwise it could have been verified and recognized as trustworthy.

No data reported by him were refuted.

Therefore, he believes that the decision approved by the State Committee of Ukraine for Nationalities and Migration refusing grant of the refugee status was unjustified and unlawful.

In the course of the hearing, the representative of the claimant supported the complaint and explained that the decision concerning refusal to grant the refugee status was made following only one interview and the facts communicated by the claimant to the representative of the State Committee of Ukraine for Nationalities and Migration were not checked. The refugee status was disapproved on the grounds of unavailability of documents verifying the fact of persecution of the claimant due to his nationality. However, the representative of the claimant stated that the situation was absurd: the migration service officers requested documents verifying the persecution from a person being persecuted by public authorities.

The representative of the claimant also stated that in accordance with the *Convention relating to the Status of Refugees*, to which Ukraine acceded on the 10<sup>th</sup> of January 2002, and the Law of Ukraine "On Accession to the *Convention relating to the Status of Refugees and its Protocol*", the obligation to prove the facts of persecution is the responsibility of the claiming person, however in the event of impossibility to present evidences, the refugee status should be granted without necessary presentation of the aforementioned documents, i.e. doubts are construed in favor of the claimant.

Representative of the State Committee of Ukraine for Nationalities and Migration did not appear before the court though the latter had been duly informed on the date, place and time of the hearing, and, therefore, the court deemed possible to hear the case in absence of the representative.

Having heard explanations of the claimant, his representative, examined materials of the case, the court decided that the claim is subject to satisfaction based by reasons laid down below.

In accordance with the decision of the State Committee of Ukraine for Nationalities and Migration dated May 30, 2003, XXXXXX was denied of refugee status in accordance with Article 10 of the Law of Ukraine "On Refugees" due to unavailability of proper grounds for fear to become a victim of persecution based on belonging to a race, confession, nationality, citizenship (allegiance), certain social group or political beliefs. This decision was approved by an agency of the migration service based on the only one interview.

According to Article 13 of the Law of Ukraine "On Refugees", migration authorities perform check of availability of circumstances, which may form grounds for denial of the refugee status. In case of doubts concerning credibility of information communicated by the applicant and necessity to verify credibility and validity of documents presented by the applicant, the migration service agency is entitled to address relevant requests to the internal affairs authority, security service, other public authorities, bodies of local self-government and association of individuals, which can facilitate establishment of real facts concerning the applicant.

As was established by the court, the State Committee of Ukraine for Nationalities and Migration had not undertaken check of the facts communicated by XXXXXX in the course of the interview, and no relevant inquiries were made, and therefore, it can be concluded that the decision of the State Committee of Ukraine for Nationalities and Migration was made in the formal way.

Based on the above and governed by provisions of articles 1, 13 of Law of Ukraine "On Refugees" and articles 15, 30, 62, 172, 202, 202-1, 203, 248-1, 248-2 of the Civil Procedure Code of Ukraine, the Court

**DECIDED:**

Sustain the claim filed by XXXXXX.

Adjudge illegality of the decision No. 256 made by the State Committee of Ukraine for Nationalities and Migration on the 30<sup>th</sup> of May 2003 denying of refugee status.

This judgement can be appealed in the Court of Appeals of the city of Kyiv within one month following one day after the date of publication by lodging the appeal to the district court.

Judge (signature)

This is a true copy of the original

Judge

*As of July 14, 2004, this judgment has not come into legal force as SCNM appealed against it to the Kyiv City Appeal Court.*