

**DECISION
IN THE NAME OF UKRAINE**

On July 28, 2004, Shevchenkivsky District Court, Kyiv, composed by
President A.I.Gumenyuk, and
Secretary K.I.Mishko,

having examined in open court in Kyiv the civil case on the complaint of M. a national of Iraq, on the decision of the State Committee of Ukraine for Nationalities and Migration, interested party: Department for Nationalities and Migration, Kharkiv regional state administration, on the decision to deny granting the status of refugee, the Court

HAS ESTABLISHED:

M. a national of Iraq, hereinafter referred to as "the Claimant" on March 25, 2004, have filed a claim with Shevchenkivsky District Court, Kyiv on the Decision No. 538 made by the State Committee of Ukraine for Nationalities and Migration, hereinafter referred to as "the Subject of the Claim" on the denial to grant the status of refugee dated December 22, 2003 hereinafter referred to as "the Decision" and in the said claim he requested that the said Decision be recognized invalid and that the Subject of the Claim grant him the status of refugee in Ukraine.

The Claimant justifies his requests as follows: he crossed the border of Ukraine on June 10, 1995 based on a tourist visa via Jordan. However, in Jordan he did not applied for the status of refugee as he feared extradition to the Iraqi authorities. As in 2000 his passport was stolen, he is unable to receive a new passport due to unavailability of his country's embassy in Ukraine. In addition, he believes that his country may not issue a passport to him as he has yet to serve several months at his military service and, for the purposes of his country's law is a traitor for which he can be killed. The Claimant has stated that he is an opponent of war, does not want to kill or be killed, and, therefore, requests that the court invalidates the Decision made by the Subject of the Claim and obliges the Subject of the Claim to grant the Claimant the status of refugee.

In the court proceedings, the Claimant and his representative supported the claim and requested that the court invalidate the Decision made by the Subject of the Claim and oblige the Subject of the Claim to grant the Claimant the status of refugee.

The representative of the Subject of the Claim in the court proceedings objected against honoring the claim, arguing that the decision under claim is valid as the Claimant provided no ponderable evidence to justify the claim, and, in addition, that as a person who have committed a crime in the territory of his own country, he may not be subject to the operation of the law governing the procedure for granting the status of refugee.

Having heard to the arguments of the Claimant and his representative, the representative of the Subject of the Claim, the Court has found that the Claim shall be honored on the following grounds.

In accordance with part 2, Article 2 of the Law of Ukraine "On Refugees", if an international agreement consent to be bound by which has been given by the Verkhovna Rada of Ukraine, specifies any rules other than those contained in the said Law, then the rules specified in such international agreement, shall apply.

In accordance with Article 14 of the Universal Declaration of Human Rights, everyone has the right to seek and to enjoy in other countries asylum from persecution.

In accordance with Article 15 of the Universal Declaration of Human Rights, in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

In accordance with Article 3 of the 1950 Convention for Protection of Human Rights and Fundamental Freedoms, no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The Court has found that the Claimant has lived in Ukraine for 9 years and is unable to return to his mother land, having left his country due to unwillingness to continue his military service and to kill or to be killed. In accordance with the Memorandum issued by the UN High Commissioner for Refugees on March 1, 2004, the situation in Iraq is still unstable and unsafe. In addition, the said Memorandum shows that Iraqi Minister for Displaced Persons and Migration have applied to UNHCR with a request to caution the receiving countries against accelerated or forcible return of refugees to Iraq unless the conditions for their organized and uninterrupted return are established.

Considering the unstable and unsafe situation in Iraq, the court has reached a conclusion that granting the Claimant the status of refugee does not contradict other obligations of Ukraine under the international law.

Given the circumstances, the Decision No. 538 made by the State Committee of Ukraine for Nationalities and Migration on December 22, 2003 to deny granting the status of refugee to the Claimant, has been found invalid and subject to cancellation.

Based on Article 14 and Article 15 of the Universal Declaration of Human Rights, the aforesaid, Article 3 of the 1950 Convention for Protection of Human Rights and Fundamental Freedoms, Article 2 of the Law of Ukraine "On Refugees", being guided by Articles 248-1-248-7 of the Civil Procedural Code of Ukraine, the Court

HAS DECIDED

To sustain the Claim.

The Decision the Decision No. 538 made by the State Committee of Ukraine for Nationalities and Migration on December 22, 2003 to deny granting the status of refugee to M., a national of Iraq, shall be deemed invalid.

The State Committee of Ukraine for Nationalities and Migration shall grant the status of refugee in Ukraine to M.

This Decision may be appealed against in the Court of Appeals in Kyiv via Shevchenkivsky District Court, Kyiv, within one month upon the day of its promulgation.

Judge's signature