

DECISION
in the name of the Russian Federation

On December 22, 2003 the Presnya District Court of Moscow with Presiding Judge T.A. Pechenina and Secretary T.A. Pavlishina, having examined in an open session Civil Case #2-6065/03 containing a complaint from Genes Pantin Marco Antonio against the October 1, 2003 refusal of the Moscow GUV D Migration Office to review the merits of his request to be recognized as a refugee in Russia,

FOUND AS FOLLOWS:

The plaintiff, a national of Cuba, had complained to the court that on October 1, 2003 the Moscow GUV D Migration Office had refused to examine the merits of his application for refugee status in Russia by referring to Articles 2.1.4, 2.2, 5.1.5 and 5.1.8 of the Federal Law on Refugees.

He considered that the refusal had violated his rights and asked the court to qualify it as unlawful and make the defendant examine the merits of his request to be recognized as a refugee in Russia.

In support of his complaint, he said that he had graduated from the Odessa Institute of Refrigeration Engineering in 1992, after which he arrived in Russia. He could not afford to buy a ticket to Cuba and had to stay in Moscow. In 2001, he was deported to Havana aboard an Aeroflot plane. But Cuba refused to let him in for his political activities, as the plaintiff explained, and he was flown back to Russia on the return flight.

In the courtroom, he upheld his demands in full.

The defendant's representative, O.N. Lomova, acting on a power of attorney, asked the court to dismiss the complaint and provided written comments on it.

After hearing out the plaintiff, her representative T.V. Zababurina, who had been admitted to the hearings by a protocol decision of the court, and the defendant's representative, and after studying the materials of the case, the court found that the complaint must be satisfied for the following reasons.

The oral explanations provided to the court and the materials supporting the complaint indicated that the plaintiff was a national of Cuba. He was born in Havana on August 31, 1964.

In 1987, he took a preparatory course at Havana University where he studied Russian, and later he enrolled at the Odessa Institute of Refrigeration Engineering. In 1992, he graduated from the institute as a refrigeration engineer. Cuba had supported its students during their studies, paying them government stipends.

After graduation, he had no money to buy a ticket home and in November 1992 left Odessa for Moscow to ask the Interobrazovanie organization to help him buy a ticket to Cuba. In his words, he had heard of previous occasions when the organization had given some graduates this kind of assistance.

But he received no such help and had to stay in Russia.

In 2001, he was detained by police and taken into custody. Following a deportation decision, in November 2001 he was taken aboard an Aeroflot plane bound for Havana. But Cuba refused to let him in and he was flown back to Russia on the return flight.

The plaintiff said that he had repeatedly contacted the Cuban Embassy about his situation. But the Cuban Foreign Ministry denied him entry. The reason was that he had been a member of the Cuban Union party in 1992 and 1993, i.e. the reason is political.

All told, he left Cuba for the former Soviet Union for reasons other than those listed in Article 1 of the Federal Law on Refugees, and later was unable to return to Cuba, for other reasons.

In November 2002, he asked the Moscow GUV D Migration Office to recognize him as a refugee in Russia.

On October 1, 2003 the Office refused to examine the merits of his refugee status request by referring to Articles 2.1.4, 2.2, 5.1.5 and 5.1.8 of the Federal Law on Refugees.

The court found the refusal unlawful and unfounded for the following reasons.

The Migration Office had referred to Article 2.1.4 of the Law on Refugees, which provides that the law does not apply to persons whose nationality-related rights and obligations are recognized by the competent authorities of the country in which these persons resided. This reference is untenable because the Republic of Cuba, whose nationality the plaintiff holds, effectively denies him recognition as its citizen, does not allow him to enter its territory, does not protect him, and does not give him any support or assistance.

Just as meaningless is the reference to Article 2.2 whereby the Federal Law on Refugees does not apply to foreign nationals and stateless persons who left the country of their nationality (or former habitual residence) for economic reasons owing to a famine, epidemic or natural or man-made emergency, because the plaintiff said that he had left his country for Russia for reasons other than those stated therein.

Furthermore, neither reference may be used to refuse an examination of a refugee status request on its merits, for an exhaustive list of such reasons is contained in Article 5 of the Federal Law on Refugees, and this article does not stipulate that Article 2.1.4 or Article 2.2 may be invoked to refuse an examination of such a request on its merits.

The Migration Office also stretched the law when it refused to examine the merits of the request by referring to Article 5.1.5 of the Federal Law on Refugees, i.e. arguing that he had arrived from a foreign country where he could have been recognized as a refugee. The point is that he arrived in Russia from Ukraine in 1992 when he was not yet eligible for the status of refugee and did not consider himself as such and so he had no possibility of acquiring such status.

The Moscow GUV D Migration Office gives other untenable reasons why the plaintiff's request may not be examined on its merits – it argues that while living in Russia he made repeated trips to Finland, Poland, Germany, Hungary, the Czech Republic and Romania where he could have been recognized as a refugee. What the law says is that a person must arrive from a foreign country where he or she could have been recognized as a refugee. But in this case, as was mentioned earlier, the plaintiff arrived in Russia from Ukraine when he had no reason to apply to the migration service about this matter.

There is no legal rationale behind the refusal to examine the merits of the plaintiff's request by referring to Article 5.1.8 of the Federal Law on Refugees either, that is because the applicant fails to provide information about himself or the circumstances of his arrival in Russia. The court established that the plaintiff had reported all information about himself and the circumstances of his arrival in Russia when he applied to the Migration Office. He had answered all questions and provided all documents he had.

In this situation, the court found that the Moscow GUV D Migration Office's refusal to examine the merits of the plaintiff's request to be recognized as a refugee in Russia was unlawful and rescindable and that the complaint must be met.

Based on the above and pursuant to Articles 194-198 and 258 of the Russian Code of Civil Procedure, the court

DECIDED

To recognize as unlawful the October 1, 2003 refusal of the Moscow GUV D Migration Office to examine the merits of a request from Genes Pantin Marco Antonio to be recognized as a refugee in Russia.

To oblige the Moscow GUV D Migration Office to examine the merits of a request from Genes Pantin Marco Antonio to be recognized as a refugee in Russia.

The decision may be appealed at the Moscow City Court within ten days.

Judge (signed)