

DECISION
in the name of the Russian Federation

The Kuibyshevski Federal Court of St. Petersburg's Central District with Presiding Judge A.N. Zhukov, Secretary O.G. Tikhomirova and Lawyer for the Defense V.N. Yastremski, having examined a civil case containing a complaint from Dominique Niragire against actions by the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast,

HAS FOUND AS FOLLOWS:

In January 2002, Dominique Niragire, a national of Rwanda, applied to the Territorial Agency of the Ministry for Federation Affairs in St. Petersburg asking it to grant him temporary asylum in Russia.

On January 22, 2002 the Territorial Agency granted him temporary asylum in accordance with Article 12 of the Federal Law on Refugees.

On January 8, 2003 Dominique Niragire applied to the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast asking it to extend the term of his temporary asylum in Russia but on January 28, 2003 the Office refused to extend it.

On February 26, 2003 he complained to the court about the refusal to extend his temporary asylum as unlawful saying that it meant either voluntary or forcible return to Rwanda and separation from his family, which would be contrary to Article 33 of the UN Convention Relating to the Status of Refugees. When the decision on extending temporary asylum was taken, the circumstances that had underpinned the initial granting of temporary asylum had not changed and the social and political situation in Rwanda remained extremely volatile. The plaintiff was of Hutu stock. Persons belonging to this ethnic group, including his cousin, still remained in prison, and there was continued fighting by Hutu groups against government troops. In this context, there were humanitarian reasons that prevented him from returning to the country of his origin. Since November 2001 he had been married to Russian citizen M.F. Nedelyayeva and he had had two sons by this marriage: Joseph Ntuari, born on August 13, 2001, who had organic cerebral dysfunction and speech retardation, and Timofei Hategekiman, born on September 1, 2003. The refusal to extend temporary asylum and the resulting deportation would break up the family. He would be separated from his wife and children against his will and the will of his family.

The St. Petersburg Migration Office representative asked the court to dismiss the complaint arguing that the refusal to extend the plaintiff's temporary asylum was correct and lawful and that the initial circumstances that had resulted in the granting of temporary asylum were not there when the latest decision was made.

After hearing out the plaintiff and the Migration Office representative, questioning the witnesses and studying the materials of the case, the court concluded as follows. According to the case materials, the plaintiff was born in the village of Busanza in the Remera area of Giseni prefecture (Rwanda), on January 10, 1966. Ethnic Hutu. Speaks Russian and French.

He arrived in the USSR (Moscow) on September 16, 1988 along Rwanda government lines for studies and enrolled in a preparatory course at a polytechnic. After finishing the course in September 1989, he was enrolled at the St. Petersburg Polytechnic and graduated from it in 1994. From August 1994 to December 1997 he worked at several companies in St. Petersburg. In 1998, he joined a postgraduate course at the St. Petersburg University of Architecture and Construction. In November 2001 he married Russian citizen M.F. Nedelyayeva and has had two boys by her. Joseph Ntuari was born on August 13, 2001 and Timofei Hategekiman on September 1, 2003.

According to information provided by the Africa Department of the Russian Foreign Ministry, a full-scale civil war broke out in Rwanda following the death in an air crash of President Habiarimana Juvenal on April 6, 1994. The war claimed 500,000 lives, making another five million refugees or displaced persons. The power struggle involved two ethnic groups, the Hutu and the Tutsi. The Tutsi won out and have been governing the country since the mid-1990s.

What with the escalating ethnic conflict and civil war and with fear of persecution for ethnic and political reasons, Dominique Niragire on February 5, 2001 filed a request with the Territorial Agency of the Federation Ministry in St. Petersburg to be recognized as a refugee in Russia.

On April 20, 2001 the Territorial Agency with its decision #172 refused to recognize him as a refugee.

On January 17, 2002 he asked the Territorial Agency to grant him temporary asylum in Russia.

Taking into account his personality and the fact that hostilities were indeed taking place in Rwanda, on January 22, 2002 the Territorial Agency, guided by humanitarian considerations, adopted a decision (#27) granting him temporary asylum in Russia in accordance with Article 12 of the Federal Law on Refugees.

On January 28, 2003 the Migration Office of GUVd for St. Petersburg and Leningradskaya Oblast (decision #41) refused to extend the term of his temporary asylum in Russia.

The court found this decision unfounded and rescindable for the following reasons. As was said earlier, the St. Petersburg migration authority had granted the plaintiff temporary asylum in January 2002 taking into account **his personality and hostilities in Rwanda**.

Decision #41 of January 28, 2003 refusing to extend the term of his temporary asylum suggests that the sole reason for the refusal was the changing situation in Rwanda. The migration authority failed to take into account the plaintiff's personality when it addressed the extension request. It based its refusal on a newsletter from the Federal Migration Service dated October 2, 2002 (#20/1993).

Considering that the migration authority adopted its decision on January 28, 2003 while the information provided by the Federal Migration Service – an interested party as it was – dated back to October 2, 2002, the court concluded that at the time it made its decision, the migration authority did not possess sufficient information about the social and political situation in Rwanda.

In the meantime, according to information distributed by the Russian Foreign Ministry on May 26, 2003 and provided to the court at its request, the power struggles between the Tutsi (14% of the population) and the Hutu (85%) had flared up in Rwanda in the early 1990s, escalating into a civil war in October 1990 and climaxing with an ethnic massacre on a genocidal scale. There were more than one million casualties on both sides (largely among the Tutsi), and about two million displaced persons (largely among the Hutu). The Tutsi won the war and their representatives have been ruling the country since the mid-1990s. In later years, Rwanda participated in armed conflicts in neighboring Burundi and the Democratic Republic of the Congo (DRC). Rwandan troops pulled out of the DRC at the end of 2002. When the Foreign Ministry compiled its newsletter, a number of armed Hutu groups continued fighting against government troops using neighboring countries as a refuge. Many Rwandans still remain outside their country for fear of resumed ethnic fights and their roles in the genocide. An International Tribunal has been set up in Rwanda but its effectiveness has been extremely low: in the past few years it has dealt only with a dozen cases. Meanwhile, some 200,000 persons are in prison waiting for the legal inquiry to begin. Differences between evaluations of the human rights situation between the Rwanda government and the United Nations High Commissioner for Human Rights (UNHCHR) led to the full termination of UNHCHR Office activities in Rwanda in May 1998.

Witnesses questioned under the case include Emmanuel Mbanjubuhoro, chairman of a St. Petersburg regional charity supporting Rwandan asylum seekers, and Valence Maniragena. They testified that in January 2003 the social and political situation in Rwanda had remained unstable with continued persecution of Hutu people for ethnic reasons and with large numbers of them in

prison, including the plaintiff's cousin. Denied temporary asylum would be a tragedy for his entire family.

Under Article 12.1 and Article 12.2 of the Federal Law on Refugees, temporary asylum is granted to foreign nationals or stateless persons in keeping with the procedure determined by the Government of the Russian Federation. Temporary asylum may be granted to a foreign national or a stateless person, if such persons have cause to be recognized as refugees but confine themselves to a written request to be allowed to stay in Russia for some time or if

such persons have no cause to be recognized as refugees as envisaged in the Federal Law, but for humanitarian reasons may not be deported from Russia.

In conformity with Paragraph 7 of the Procedure of Granting Temporary Asylum in the Russian Federation, a decision to grant temporary asylum is taken if there are reasons to recognize a person as a refugee based on the evaluation of the information about such person and his family arriving with him, including the manner in which they arrived in Russia, or if there are humanitarian reasons that necessitate that temporary asylum be granted to such person in Russia (e.g. condition of his health) until such reasons or the person's legal status change.

The principle of humanity is one of the legal principles in a democratic state, which stands for historical changes occurring in the system of views on society and man and imbued with respect for the human personality. It is enshrined in Article 2 of the Russian Constitution, which states that the human being and human rights and liberties are the supreme values.

Article 3 of the Law on the Legal Status of Foreign Nationals in the Russian Federation articulates that laws regulating the legal status of foreigners in Russia rest on the Constitution of the Russian Federation and consist of the present law and other federal laws. Furthermore, the legal status of foreign nationals is regulated by international treaties to which Russia is a party.

Articles 15.4 and 17.1 of the Russian Constitution recognize and guarantee the rights and liberties of the human being and citizen in accordance with generally recognized rules and principles of international law and in conformity with the Constitution of the Russian Federation. Generally recognized rules and principles of international law and international treaties to which the Russian Federation is a party are part and parcel of its legal system.

The principle of family unity and inadmissibility of state intervention in the exercise of the right to a private and family life is established in a number of international legal instruments that Russia has ratified – in Article 16(3) of the Universal Declaration of Human Rights, Articles 17 and 23(1) of the International Covenant of Civil and Political Rights, Article 9 of the UN Convention on the Rights of the Child, and Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

As was said earlier, the plaintiff is married to a Russian citizen and resides in St. Petersburg. He has had two boys by this marriage – Joseph Ntuari, born on August 13, 2001, and Timofei Hategekiman, born on September 1, 2003. Joseph Ntuari has a disease of the central nervous system, which is confirmed by a certificate issued by Children's Polyclinical Department #1 of City Polyclinic #4.

The refusal to extend the plaintiff's temporary asylum would cause him to leave Russia of his own free will or under coercion and would separate him from his family, one of whose members is sick, against his will.

The court has also taken into account that under Article 6 of the Law on the Legal Status of Foreign Nationals in the Russian Federation, the plaintiff, who is married to a Russian citizen and whose residence is in the Russian Federation outside the temporary residence quota approved by the Russian Government, may obtain a temporary residence permit and later a full-time residence permit in accordance with Article 8 of the Law, which would change his legal status.

Article 7 of the Procedure of Granting Temporary Asylum in the Russian Federation approved by the Government's Decision of April 9, 2001 (#274) implies that a potential change in a person's legal status is a legal reason to grant such person temporary asylum.

According to Paragraph 12 of the Procedure of Granting Temporary Asylum in the Russian Federation, temporary asylum is granted for a term of one year. The territorial migration body may extend this term for the next year based on a written application from the person seeking a temporary asylum extension and provided the reasons for the granting of temporary asylum still hold.

That being so, after evaluating the total body of evidence provided under the case, the court has come to the conclusion that on January 28, 2003 when the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast refused to extend the plaintiff's temporary asylum, there remained the circumstances that had been used to grant him temporary asylum in the first place, and that his term of temporary asylum could have been extended for humanitarian reasons.

Inasmuch as the court has established that the plaintiff's right to temporary asylum was violated, it recognizes Dominique Niragire's complaint as well founded in accordance with Article 258 of the Civil Procedure Code and rules to rescind the January 28, 2003 decision of the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast (#41) and oblige the Office to fully redress the breach of the plaintiff's rights and freedoms, namely extend his temporary asylum for another year starting from the day the court decision enters into legal force.

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

HAS DECIDED

To satisfy Dominique Niragire's complaint against the actions of the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast.

To repeal the January 28, 2003 decision of the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast not to extend the term of Dominique Niragire's temporary asylum.

To oblige the Migration Office of GUV D for St. Petersburg and Leningradskaya Oblast to extend the term of Dominique Niragire's temporary asylum for another year starting from the day the court decision enters into legal force.

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

Federal Judge (signed)