

**DECISION
IN THE NAME OF UKRAINE**

May 11, 2004

Panel of the Shevchenkivskiy District Court of Kyiv
composed of I.M. Skrypka, Judge, and S.I. Doroshenko, K.I. Chuprii, Secretaries
having considered in the course of public hearing in Kyiv the civil case initiated of
complaint filed by XXXXXX, a citizen of the Democratic Republic of Congo on decision
of the State Committee of Ukraine for Nationalities and Migration

ESTABLISHED:

The claimant filed the complaint, on which he requests decision on illegitimate nature of the decision made by the State Committee of Ukraine for Nationalities and Migration, by which the Committee declined an appeal against the Department for Nationalities and Migration of the Kyiv City Public Administration denial in admittance into RSD procedure on the grounds that the claimant, a citizen of the Democratic Republic of Congo illegally arrived at Ukraine in 1998 having encountered fears to his life in result of civil war and persecutions due to his being a member of the ethnic group "Hutu". In accordance with the Law of Ukraine "On Refugees" dated December 21, 1997, he filed his asylum application in 1999, but the application was rejected. He could not return to the Democratic Republic of Congo or address the Embassy of this country (the situation in that country had not stabilized by that time), therefore the only opportunity for him to legally apply for asylum in Ukraine was repeated filing of asylum application and obtaining refugee status in accordance with the Law. He attempted to file appropriate application on June 3, 2003, but acceptance of the application was refused and, subsequently, he was not even admitted to the procedure, which given its normal run, could have established whether he had reasonable grounds for obtaining the refugee status. According with the decision dated June 10, 2003, acceptance of the asylum application was refused due to failure to observe deadline prescribed such applications (3 working days) and unavailability of reasonable excuses for violation of the procedures of filing the asylum application provided for in the Law of Ukraine "On Refugees". The State Committee of Ukraine for Nationalities and Migration by its decision No. 398-295/03 dated August 25, 2003 received by the claimant on February 26, 2004, turned down his complaint on the decision of the Department for Nationalities and Migration of the Kyiv City Public Administration. This decision is illegitimate since it was made without due regard to and examination of all circumstances having legal importance and relate to his case because he has not repeatedly crossed the Ukrainian border and after the second asylum application, there have been no reasons for refusal to accept the asylum application. He believes that the refusal is illegitimate and violating his civil rights and freedoms. He turned to the court for protection of his rights and freedoms and requested to recognize the decision No. 398-293/03 made by the State Committee of Ukraine for Nationalities and Migration concerning refusal of his application as illegitimate and obligation the subject of the claim to accept and consider his asylum application on its merits.

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The claimant supported his complaint in the course of the hearing.

Representative of the claimant supported the complaint in the course of the hearing and explained that since 1998 the claimant has been staying in the territory of Ukraine illegally. Until present time, he has repeatedly addressed the migration service of Ukraine with his asylum applications. He filed his last application in 2003, but the acceptance of the asylum application was refused due to violation by him of the 3-day deadline prescribed for such applications and unavailability of reasonable excuses for violation of established procedure for filing such application. Whereas the claimant has not exited Ukraine since 1998 and, therefore, he did not violate the deadline for filing the application, he believes that the refusal was illegitimate and violating his civil rights and freedoms protection of which he claimed in his complaint to court. He also requested recognition of illegitimate nature of the decision No. 398-295/03 of the State Committee of Ukraine for Nationalities and Migration, and obliging the subject of the claim to accept and consider his asylum application on its merits.

Representative of the subject of the claim did not acknowledge the complaint explaining that the decision was made correctly since the claimant had violated the procedure established for filing asylum applications by the Law of Ukraine "On Refugees" and there were no reasonable excuses for violation of the procedures, and that the claimant should have filed his asylum application immediately after adoption of the new Law of Ukraine "On "Refugees" in 2001, and that his asylum application had once been denied in 1999.

After having heard the explanations of the parties and examined materials of the case, the court decided as follows:

The claimant, XXXXXX, is a citizen of the Democratic Republic of Congo.

As follows from the materials of the case, the claimant arrived at Ukraine in 1998 from the Democratic Republic of Congo through Belarus. Since that time he has lived in Ukraine.

In 1998 the claimant filed his asylum application to the Department for Nationalities and Migration of the Kyiv Public Administration. This application was accepted and relevant certificate was issued to the applicant.

According to the decision No. 578 approved by the Department on July 23, 1999, the applicant was rejected in granting refugee status.

According the decision No. 671/12-2 approved by the State Committee of Ukraine for Nationalities and Migration on November 12, 1999, granting refugee status was also denied to the applicant in accordance with articles 1, 3(4) of the 1993 Law of Ukraine "On Refugees" (i.e. applicant did not met refugee definition and passed through the safe third country).

On January 25, 2000, the Shevchenkivskyi District Court of Kyiv considered the complaint of the applicant on the decision of the State Committee of Ukraine for Nationalities and Migration concerning refusal to grant the refugee status to the applicant and dismissed the complaint.

After the above decisions had been approved, the applicant did not exit Ukraine and the Department for Nationalities and Migration of the Kyiv Public Administration issued a certificate to the applicant valid until October 12, 2000.

On May 29, 2003, after the mechanism of granting the refugee status has been put in place in accordance with the new Law of Ukraine "On Refugees"(2001), the applicant filed the asylum application to the Department for Nationalities and Migration of the Kyiv Public Administration and the application was accepted.

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On June 10, 2003, the Department for Nationalities and Migration by its decision No. 346 refused in admittance of applicant into RSD procedure in accordance with the indent two and eight of article 9 of Law of Ukraine "On Refugees" as the applicant had missed the 3-day term without reasonable excuses thus violating the procedures established by law for filing asylum application.

According to the decision No. 298-295/03 of the State Committee of Ukraine for Nationalities and Migration dated August 25, 2003, dismissal of complaint of the citizen of the Democratic Republic of Congo XXXXXX on the decision of the Department for Nationalities and Migration of the Kyiv Public Administration concerning refusal in admittance into RSD procedure due to violation of the procedures established by the Law of Ukraine "On Refugees (Article 9) for filing asylum application without a reasonable excuse.

However, the court cannot agree with such decision.

As follows from the materials of the case, the claimant arrived at Ukraine in 1998 and has lived in Ukraine ever since.

In 2003, the claimant filed his asylum application to the Department for Nationalities and Migration of the Kyiv City Public Administration, but was refused in admittance into RSD procedure in accordance with provisions of indents two and eight of Article 9 of the Law of Ukraine "On Refugees" as the applicant missed the 3-day deadline established by law and due to the absence of a reasonable excuse for violation of asylum applications' submission procedure.

The State Committee of Ukraine for Nationalities and Migration by its decision dated August 25, 2003, declined an appeal filed by the applicant on the decision made by the Department for Nationalities and Migration of the Kyiv City Public Administration on refusal in admittance into RSD procedure.

However, the court holds that the subject of appeal had no reasonable grounds for refusal to satisfy the appeal.

In accordance with Article 9 of the Law of Ukraine "On Refugees", the persons who illegally crossed the borders of Ukraine should file an asylum application to an authorized representative of an Migration Service or an officer of the Frontier Troops of Ukraine, or internal affairs authorities.

However, as has been established by the court, the applicant had crossed the Ukrainian border in 1998 and his asylum application filed in 1999 was accepted for consideration by the Department for Nationalities and Migration, considered on its merits and rejected.

Ever since, the applicant has not left the territory of Ukraine nor crossed the border of Ukraine.

Therefore, there were no reasonable grounds for the subject of the appeal to refuse acceptance of his asylum application as the applicant missed the established 3-day term.

The court disregards the statement of the representative of the subject of the appeal that the applicant did not have reasonable excuse for observation of the established procedure of filing an asylum application, since no check of the circumstances of or reasons for such missing the established deadline for filing the application was undertaken. The subject of appeal did not clarify on which of the 3-day deadlines exactly the applicant missed and what was the date from which the deadline had to be calculated, or whether it was the 3-day deadline that the applicant missed since,

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as follows from relevant decision of the Shevchenkivskyi District Court of Kyiv dated January 25, 2000, the applicant arrived at Ukraine on legal grounds having his visas from Zaire, Nigeria and Belarus.

These facts were not checked by the Department for Nationalities and Migration at the time of rejection of his asylum application, therefore, there are no reasonable grounds for refusal in admittance into RSD procedure due to 3-day deadline missed by the latter.

In addition, the Law of Ukraine "On Refugees" does not prohibit repeated filing of asylum application by an individual nor does this new Law provide for necessary filing of the asylum application within 3 days from the moment the Law came into power.

Therefore, the court settles on the opinion that when refusing admittance into RSD procedure of the applicant, the subject of the appeal did not check whether the applicant left Ukraine after he has been refused granting refugee status in 1999 and after consideration of his complaint by the Shevchenkivskyi District Court of Kyiv in January 2000 upon expiration of validity of the certificate (October 2000), nor did the subject check which exactly deadline was missed by the applicant and, refused to admit him into RSD procedure without reasonable grounds.

Accordingly, the court holds the complaint justified and subject to satisfaction.

Taking into consideration the above and governed by articles 248-1, 247-7 of the Civil Procedure Code of Ukraine, the Court

DECIDED:

Sustain the complaint.

Recognize the decision No. 398-295/03 of the State Committee of Ukraine for Nationalities and Migration dated August 25, 2003 on declining of XXXXXX, a citizen of the Democratic Republic of Congo appeal against the Department for Nationalities and Migration of the Kyiv City Public Administration refusal in admittance of him into RSD procedure as illegitimate.

Oblige the State Committee of Ukraine for Nationalities and Migration to admit him XXXXXX into RSD procedure and consider the claim on its merits.

This judgment 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:

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Secretary

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