

Judge: M.L. Lipovenko

CONCLUSION

Civil case # 33-2381

22 February 2002-07-09

The panel of judges on civil cases of the Moscow Municipal Court comprised of E.A. Braghinskaya, the chairperson, M.V. Ovsyannikova, a judge, and I.P. Lemaghina, a judge, as well as O.V. Vatanova, a lawyer, having listened to in an open court session the report made by Ms. I.P. Lemaghina regarding the appeal filed by the territorial organ of the RF Ministry for Federal Affairs in the Moscow region against the decision of the Zamoskvoretsky District Court of the Moscow City passed on 21 November 2001 (The court established 1) to satisfy the appeals filed by Uver Jeanna d'Ark and Benerje Fransoise against actions of the Territorial organ of the RF Ministry for Federal Affairs in the Moscow region that denied substantive consideration of their applications for refugee status; 2) to oblige the territorial organ of the RF Ministry for Federal Affairs in the Moscow region to consider Uver Jeanna d'Ark and Benerje Fransoise's applications for refugee status),

ESTABLISHED THE FOLLOWING:

Uver Jeanna d'Ark and Benerje Fransoise filed appeals in court against actions of the Territorial organ of the RF Ministry for Federal Affairs in the Moscow region pointing out that they was denied refugee status substantive consideration in the RF. They are Rwanda nationals and in 1994, being persecuted for their political views, were forced to flee Rwanda and go to Zaire where they were not provided any support. Then they moved to Tanzania, and later - to Kenya, where they were also persecuted. Having arrived to Jabiti, the appellant found a job and his wife and children joined him there. In 1997 they came to Russia as the appellant used to study there at the University of Peoples' Friendship. The appellant believes that there were no grounds to deny him refugee status substantive consideration and requests to dismiss the decision.

The court session supported the appellant's appeal. The representative of the Territorial organ of the RF Ministry for Federal Affairs in the Moscow region did not recognize the appeal.

The court passed the above decision that is appealed against by the Territorial Organ of the RF Ministry for Federal Affairs in the Moscow region.

Having examined the materials of the case and discussing arguments advanced in the appeal of the Territorial organ, having listened to the representative of the territorial organ of the RF Ministry for Federal Affairs in the Moscow region (authorised by Mr. N.B. Tyutikov), the appellants (through translator Kembizu Leza Trizu), lawyer O.V. Vatanova defending the interest of the appellants, the panel of judges does not find any grounds to dismiss the decision passed on the basis of actual facts containing in the case and in line with the acting legislation.

While satisfying the appeal, the court took into account the fact that the appellant was unlawfully denied refugee status substantive consideration pursuant to Article 5 (part 1, para 4, part 1 para 5), Article 1 (part 1, para 2) of the Law of the RF "On Refugees". The panel of judges decided that the conclusion made by the Territorial organ that the appellants stayed legally in the territory of Jibut, were protected by the Jibut authorities and were not persecuted, was refuted by the proofs presented to the court, as well as by materials published in the journal of the PDR "Vozobnovleniye", letter from the UNHCR Office and explanatory statements made by the appellants.

The court decided that the above circumstances had not been taken into account by the Territorial organ of the RF Ministry for Federal Affairs in the Moscow region. The law contains provisions defining the grounds for denial of refugee status substantive consideration. The case in question does not provide such grounds. The court did not recognize that the fact that they had the right to stay in Jibut and stayed there for a long time, can serve as a ground for denial of refugee status substantive consideration; all the circumstances shall be taken into account in the process of their applications consideration on the merits.

The fact that the appellants arrived from the territory of Zaire, Tanzania, Kenya and Jibut where they could have been recognized as refugees was not recognized by the court as a ground for the denial to consider their applications for refugee status on the merits because the above mentioned states do not fulfil the 1951 Convention and its 1967 Protocol in their territories and do not protect refugees.

The court did not take into account the arguments regarding the appellants' illegal sojourn in the territory of the RF as the appellants submitted their applications to the Territorial organ on 3 December 1998 when the appellants could legally stay in the territory of the Russian Federation.

The panel of judges agreed with the conclusion made by the court because B. Fransoise's visa was to expire on 13 January 1999 and he approached the Territorial organ with the application on 3 December 1998. There were no grounds to deny the appellants refugee status substantive consideration, as the established circumstances should be taken into account when they are considered on the merits. The appellants fled Rwanda because in 1994, the civil war between Tutsi and Hutu started there. In Tanzania the appellants were in danger of being deported to Rwanda where they had been prosecuted. They were not allowed to leave the refugee camp. In Jibuti the appellant was also under examination and there was a treat for him to be deported to Rwanda. In Jibuti refugee status was not granted to refugees. In April 1994, about 1 million people were killed because of their belonging to ethnic group or for political views and, the appellants could not remain in their native country as their belonged to Tutsi, and Hutu came to power. The appellant was an active member of the National Democratic Movement. The circumstances described by the appellants and arguments contained in the appeal should be taken into account in the course of substantive consideration of their applications for refugee status. They do not provide any grounds for denying refugee status substantive consideration. The appeal's arguments do not disprove the conclusions made by the court. The penal of judges has not revealed any procedural violations that could serve as a ground for cancelling the court decision.

Being guided by articles 304, 305 of the RSFSR Civil Procedural Code, the panel of judges

HAS RULED AS FOLLOWS

To leave unchanged the decision taken by the Zamoskvoretsky District Court on 21 November 2001;

To leave unsatisfied the appeal of the Territorial organ of the RF Ministry for Federal Affairs in the Moscow region.

Chairperson (Signature)

Judge (Signature)

Secretary (Signature)