

DECISION
in the name of the Russian Federation

December 4, 2002, the City of Nalchik

*The Nalchik City Court composed of:
Chairperson B.N. Bezrokov, a presiding judge
Assisting: A.I. Zemskova, a secretary*

considered a civil case concerning a complaint filed by Ms Lala Soltsayeva against actions of the 2-nd OVD of the Nalchik Passport-and-Visa Service and

ESTABLISHED THE FOLLOWING:

Ms L. Soltsayeva lodged a complaint in court concerning the rejection of the 2-nd OVD of the Nalchik Passport-and-Visa Service to register the applicant at her place of residence.

According to the applicant, in 1995, she left Chechnya with no intention to return due to combat operations in the republic. The same year, she was registered with the Kabardino-Balkaria MS. In 1998, she was paid compensation for her destroyed housing and property. She bought an apartment in Nalchik at 173, Mechnikov str., Apt.17.

In view of the registration requirement, she approached the 2-nd OVD of the Nalchik Passport-and-Visa Service with an appropriate application on 30.10.2002 and was denied registration. The authorities referred to the Resolution of the Kabardino-Balkaria Parliament of 22.11.2001 "On provisional measures to restrict registration of persons arriving to Kabardino-Balkaria (KBR) for permanent residence".

The applicant finds this negative decision unlawful and believes it violates her civil rights. She requested the Court should obligate the 2-nd OVD of the Nalchik Passport-and-Visa Service to register her at her current place of residence at 173, Mechnikov str., Apt.17, of which she is a legitimate owner, in accordance with the Government Registration Certificate issued on 28.04.2002.

A representative of the 2-nd OVD of the Nalchik Passport-and-Visa Service, who had been duly notified of the time and place of the court hearing, failed to turn up in Court. Neither did he inform the Court of the reason for failing to come. Therefore, the Court maintains that consideration of the case in the defendant's absence is legal in accordance with Article 157 of the RSFSR State Procedural Code.

Having listened to the accounts of persons involved in the case and after examining the materials on the case, the Court has found the complaint sound and valid and subject to just satisfaction on the following grounds.

Under Article 27-1 of the RF Constitution, everyone staying lawfully on the Russian territory shall have the right to freedom of movement and free choice of the place to stay or reside.

Registration of persons at their place of residence is envisaged in RF Law No.5242 of 25.06.1993 “On the right of RF citizens to freedom of movement and free choice of the place to stay or reside within the Russian Federation” in order to enable Russian citizens to exercise their rights and freedoms and perform their duties with regard to other citizens, the government and society (see Article 3), rather than restrict Russian citizens’ constitutional rights.

In Article 6 of the said RF Law, registration at a place of residence is established as a notifying procedure, viz. a Russian citizen should inform the authorities of his new place of residence, while the authorities in charge of registration are to register the citizen in question at the place of his residence within three days following the submission of documents for registration.

Article 8 of the said RF Law provides an exhaustive lists of grounds restricting Russian citizens’ right to choose a place for residence or sojourn. Establishment of grounds, other than listed in the Federal Law, for introducing a registration procedure in a way of permission violates the Russian Constitution and the Federal Law.

In view of the above-mentioned provisions of the Russian Constitution and the RF Law «On the right of RF citizens to freedom of movement and free choice of the place to stay or reside within the Russian Federation», Ms. Soltsaeva could’ve been denied registration at her place of residence at Apt.17, 173, Mechnikova str., Nalchik only if the Federal Law had imposed restrictions regarding the choice of a place of residence in Kabardino-Balkariya (the KBR).

There is no federal law restricting the right to freely choose a place of residence and fully exercise the right to own residential premises in the KBR. Therefore, the rejection of the applicant’s application for residence registration at her apartment is unlawful.

Normative legal acts of the Russian constituent entities that run counter to the RF Constitution and the Federal Law cannot give the ground for restricting civil rights and freedoms and can not be applied pursuant to Article 76 and 120-2 of the RF Constitution. In view of the above, the Court shall take a decision in keeping with the current legislation.

For these reasons and being guided by Articles 191, 197, 239-7 of the RSFSR Civil Procedural Code, the Court

HAS RULED AS FOLLOWS:

The complaint filed by Ms Lala Solntsayeva shall be found sound and valid and subject to just satisfaction.

The 2-nd OVD of the Nalchik Passport-and-Visa Service shall be obligated to register the applicant at her place of residence at Apt.17, 173, Mechnikova str., Nalchik.

An appeal against the decision can be filed with the KBR Supreme Court within the next 10 days.

Judge
B.T. Bezrokov

THE DECISION WAS ENFORCED ON DECEMBER 16, 2002.