

Decision No. 207/1994

Finland

Asylum Appeals Board

Appeal concerning asylum

PLAINTIFFS X,Y and Z, former Yugoslavia

DECISION BEING APPEALED 68/310/94

Decision by the Ministry of the Interior of 27.1.1994 reg. nos. 2257/611/92 and 2258/611/92, in which the Ministry has rejected the plaintiffs' applications for asylum and a residence permit.

["The Ministry of the Interior thinks that the plaintiffs' stories can not be considered fully convincing, especially because they were able to leave the country freely with their own passport, although X has told that he is wanted for his desertion. According to the information possessed by the Ministry of the Interior, 3-5 months of imprisonment for ordinary deserters and 1 year of imprisonment for officers

- have been prescribed in Serbia. There is no war in the
Federal Republic of Yugoslavia and the deserters have not been

- forced to fight in Bosnia or Croatia. Imprisonment prescribed
for desertion cannot, as such, be regarded as a sufficient indication of persecution described in Article 30 paragraph 1 of the Aliens' Act. On the basis of the above, the Ministry of the Interior considers that the applicants do not have a well-founded fear of becoming persecuted in their home country, as specified in the Article mentioned above.

The Ministry of the Interior also considers that no need of protection, strong humanitarian reasons or other special reasons support issuance of a residence permit and that the refusal of the residence permit can not for any other reasons, either, be considered unreasonable."]

APPEAL TO THE ASYLUM APPEALS BOARD

The plaintiffs have demanded that the decision of the Ministry of the Interior be repealed and that they be given asylum or that they be, at least, issued a residence permit for the need of protection. The plaintiffs have stated that they have fled from their home country, because they have a well-founded fear of being persecuted particularly for X's desertion. The plaintiffs are Bosnian Muslims.

X is afraid that if he were returned to Yugoslavia, he would be sentenced for his desertion to imprisonment. Because of his conscience, he did not consider it possible to participate in the war of Yugoslavia against the states that had become independent. His refusal must be regarded as a justified demonstration of his conscience, especially considering that the acts of the Federal Republic of Yugoslavia in the whole conflict of Yugoslavia have been condemned by the international community, for instance in the form of an embargo declared against Serbia.

Y has experienced repeated pressure and threats by the Serbian authorities. These threats have meant an interference in her private and family life. This continual unlawful intimidation was due to her position as the spouse of her husband, and

her religion also affected the treatment she was subjected to by the Serbs.

STATEMENTS AND REJOINDERS

The Ministry of the Interior has stated that no sufficient grounds to change the decision have been presented in the appeal.

In his/her rejoinder the plaintiff has stated that considering the aspirations of the Serbs to "serbify" the whole Yugoslavia, it is quite natural that no attempts are being

- made to prevent the persons belonging to ethnic minorities from leaving the country. The plaintiffs are Muslims and, as such, a part of the group the Serbs would wish to leave the country. Therefore, there is no clear link between the fear of persecution and the relatively easy departure from the country.

ORAL HEARING

An oral hearing was held on 15.8.1994, in which X was being heard.

DECISION OF THE ASYLUM APPEALS BOARD

Decision

The Asylum Appeals Board rejects the appeal concerning asylum.

The Asylum Appeals Board repeals the decision of the Ministry of the Interior concerning a residence permit for the need of protection. The plaintiffs have to be issued a residence permit for the need of protection. Therefore, the case is returned to the Ministry of the Interior to be reviewed.

Grounds

Story of the Plaintiffs

The plaintiffs have told that they are ethnic Muslims. They were born in Kosovo and their mother tongue is Serbocroatian. X/Y has ever since his/her school time lived in Belgrade, Serbia. X/Y has told that s/he is a member of Stranka Demokratiz Akcija (SDA) party. S/he has not been active in the party, and has not experienced problems because of his/her membership.

X has told that in November 1991, the Serbian police forced him to come with them to barracks in Belgrade, from where he was taken for two days in a military training camp and thereafter to Tenia, which is located close to the Vukovar front in Croatia. After one day in Tenia, the plaintiff escaped from his unit hidden on the platform of a truck transporting corpses. The next day the plaintiffs unit was to participate in fighting around Vukovar. The plaintiff has said that he could not even imagine to kill any Croat, for he had been working in Vukovar. The plaintiff managed to reach Belgrade, where he hid with his friends.

'The plaintiffs have told that soon after the escape of X, the authorities had begun to harass his father and wife. After having heard about it, X reported to the police, because he was afraid for his family. X was taken to a prison, in which he had to stay in pretrial detention for one month. He was released on 15.1.1992, after the Serbian Parliament issued an amnesty concerning persons who had escaped the war of Croatia.

~: X has told that he was mal-treated in the prison.

X has told that he was taken to the barracks in Belgrade for the second time in March 1992. He was then sent to the village of Mali Zvornik close to the border of Bosnia-Herzegovina. The plaintiff decided to escape because, as a Muslim himself, he did not find it possible to participate in fighting against other Muslims. The plaintiff had that on 1.4.1992, a Muslim festival day, an attack on Zvornik was to take place. However, the plaintiff escaped with another Muslim before this attack. The plaintiff has heard that the Muslim he had escaped with had later been caught, taken to Knin in Serbia and killed.

The plaintiffs have told that they left Belgrade by train on 3.9.1992 via Hungary to Prague, from where they flew to Helsinki on 7.9.1992. The plaintiffs did not experience any special problems during their travel.'

Legal Assessment

No reasons have come up for which the decision could not be based on the plaintiffs' story.

According to the available information, the legislation of the Federal Republic of Yugoslavia provides for quite severe punishments for draft evasion. Especially during the state of war and immediate danger of war, aggravated punishments are in force. The penal scale for a crime, by which a conscript leaves the country during an immediate danger of war in order to avoid the military service, is in minimum five years' imprisonment and in maximum a life-time imprisonment. X has escaped from the army twice during a period, for which an immediate danger of war had been declared in the territory of the Federal Republic of Yugoslavia.

According to the available information, the persons having refused to conduct military service have been condemned to relatively short prison sentences. The Asylum Appeals Board has no information on what kind of punishments have, in practice, possibly been applied to persons born in Kosovo who, having lived for a long time in the area of the present Serbia, as X, have deserted the army of the Federal Republic of Yugoslavia and left the country, or whether they have been sentenced at all.

Therefore, it cannot be excluded that the plaintiff, who has deserted the army and left the country, could be subjected to a severe punishment. According to the information received by the Board, a proposal for an amnesty for the draft evaders has been presented to the Parliament of the Federal Republic of Yugoslavia. The Parliament has not, however, issued an amnesty.

X has told that he has, for reasons of conscience, refused to participate in actions of war condemned by the international community. The United Nations has, inter alia, in the form of economic sanctions declared in 1992, condemned the participation of the then Yugoslavia in the wars of Croatia and Bosnia-Herzegovina.

UNHCR has in its statements recommended international protection for draft evaders and deserters from Yugoslavia (Serbia and Montenegro) who, for political reasons or reasons of conscience, escaped the wars that took place in the latter half of 1991 and the former half of 1992 in Croatia and Bosnia. Serbia has announced that it does not, politically or economically, support the Bosnian Serbs, if they do not accept the international peace plan for Bosnia-Herzegovina. However, there is no certainty on the constancy and impact of the changed political position of Serbia.

On the basis of the above, especially in view of the reasons of conviction presented by the plaintiff not to participate in a war condemned by the international community, the plaintiffs' Muslim nationality, and that in unclear cases the benefit of the doubt has to go to the plaintiffs, the board considers that the plaintiffs are in need of protection as specified in Article 31 of the Aliens' Act. However, the plaintiffs have not presented such grounds that they could be given asylum on the basis of Article 30 paragraph 1.

Legislation Applied

Aliens' Act Article 30 (378/91), Articles 31 and 57 (639/93).

APPEAL According to Article 60 of the Aliens' Act, this decision cannot be appealed.