

Decision made on 30 September 1994

Finland

Asylum Appeals Board

The Ministry of Interior's gave a negative decision on asylum and residence permit application on January 27, 1994.

The appellants, "X" and "Y", declared that they were Muslims, born in Kosovo. They spoke Serbocroatian as their mother tongue. X had lived, since going to school, in Beograd, Serbia. Y stated that she was a member of the SDA (Stranka Demokratis Akcija) Party. She had not been an active member, and had not faced difficulties because of her membership.

X stated that in November of 1991, Serbian police forced him to go with them to a military barrack in Beograd, where he spent two days at an army training camps, and then went to Tenia, which is situated near the Vukovar front in Croatia. After having been in Tenia for one day, X escaped from his unit by hiding in the bed of a truck transporting dead bodies. His unit was scheduled to fight in the surroundings of Vukovar the following day. X stated that he could not have killed any Croats as he had previously worked in Vukovar. X reached Beograd, where he went into hiding with friends.

The appellants said that soon after X's escape, the authorities had started to harass X's father and his wife in Krstac. When X learned of this, he reported to the police as he began to fear for his family. He was taken to prison, where he was held in pre-trial detention for a month. He was released on grounds of an amnesty agreed to in the Serbian parliament. X was maltreated while in prison.

X was taken to the military barracks in Beograd again, and sent to the Bosnia and Herzegovina border. He escaped before a planned attack. The other man, who escaped with X, was later caught, brought to Serbia, and Killed.

Legal Ruling:

Legal Reasoning:

The appellants' oral testimonies were considered credible.

According to the information at the Asylum Appeals board's disposal, Yugoslavian domestic law stipulated quite harsh punishment for draft evasion. The punishments are aggravated particularly during times of war or imminent threat of war. The penal latitude varies from a minimum of five years of imprisonment to a maximum of a lifetime sentence. X had escaped from the army twice during a period in which war was imminent, and an emergency situation had been declared in the Federal Republic of Yugoslavia.

According to the information available, the Federal Republic of Yugoslavia had imposed relatively short terms of imprisonment on those who had refused military service. The Board had no information on how long terms of imprisonments deserters who were from Kosovo, had resided in Serbia for a long time, and then left the country, had been sentenced to.

Therefore, it could not be excluded that such persons could face quite serious punishments. The Serbian parliament had not passed a law on amnesty.

X had refused to take part in the fighting for reasons of conscience. The UN had in 1992 condemned Yugoslavia's participation in the war of Croatia and Bosnia and Herzegovina. UNHCR had recommended international protection for those who had deserted or evaded the draft in Serbian and Montenegro in 1991/92 because of political reasons or reasons of conscience.

Serbia's political standing remained unclear.

Based on the facts presented, particularly acknowledging the reasons of conscience for not participating in the war, the

appellants' nationality as Muslims, and the principle of the benefit of the doubt, the Board held that the appellants were in need of protection. They had however, not presented any such facts which constituted grounds for the granting of asylum.

Disposition:

The Asylum Appeals Board held the Ministry of Interior's decision on the issue of asylum legal, but quashed the residence permit part since it considered the appellants to be in need of protection.