

DECISION
in the name of the Russian Federation

Frunzensky court

*On January 26, 2001 at an open court session, the Saratov district municipal court,
Composed of:*

Chairperson O.M.Podvetelnova

Attending: NGO Representative Zh.A. Biryukova

Assisting: Secretary Y.B. Sorokina

has considered an appeal filed by Abdel Nasir Abdel Magid Akhmed against unlawful actions of the passport-and-visa service of the Saratov regional Department of Interior and

ESTABLISHED THE FOLLOWING

Abdel Nasir Abdel Magid Akhmed filed an appeal in court against actions of the passport-and-visa service of the Saratov regional Department of Interior, indicating that he was a citizen of Sudan.

On July 3, 2000 the Saratov regional MS denied him the refugee status.

He filed an appeal in court against this unlawful action.

It follows from Article 13 of the Law "On refugees" that a person is subject to deportation only if he failed to appeal against the negative decision denying him the refugee status.

However, on December 12, 2000 the Saratov regional visa and passport service (PVS) issued him a visa obliging him to leave Russia before December 25, 2000.

The defendant pleaded in court to recognise the actions of the passport-and-visa service of the Saratov regional Department of Interior (PVS UVD) as unlawful and its conclusion on the plaintiff's expulsion of December 13, 2000 as invalid. He also pleaded for cancellation by the PVS UVD of his visa for expulsion, making a relevant entry in his passport.

At a court session, the plaintiff and his representative confirmed the facts presented in the appeal.

The defendant's representative pleaded for dismissal of the appeal on the grounds that the plaintiff had been expelled from the country under Article 31 of the USSR Law "On legal status of foreign nationals in the USSR", since on two occasions, administrative proceedings were instituted against him: on 15.09.00 – for having no residence registration and on 24.11.00 – for failure to leave Russia upon expiration of the established deadline.

Having heard the statements of the participants of the court proceedings and having examined the materials related to the case and documents submitted by the parties concerned, the court came to the conclusion that it should find in favour of the plaintiff on the following grounds.

The court established that the plaintiff was a citizen of Sudan.

In 1992-2000, he lived in Saratov and studied at a medical faculty of the Saratov University.

In June 2000, he applied with the territorial branch of the Russian Ministry of Federal Affairs for refugee status. He was denied refugee status and he filed his appeal against the negative decision in court.

On 13 November, 2000, the Frunzensky district court in the city of Saratov ruled to dismiss the appeal.

However, on 25 December, 2000, the panel of judges on civil cases of the Saratov district court overruled the court decision of November 13, 2000, and the case was filed for a review. On January 25, 2000, the appeal filed by Abdel Nasir Abdel Magid was examined and the court found in favour of the plaintiff.

On 13 November, 2000, the PVS UVD of the Saratov region ruled to expel the plaintiff from the RF and a relevant entry was made in Abdel's passport.

The above decision of the Saratov regional PVS and other actions related to the plaintiff's expulsion from the RF can not be recognised as lawful.

In accordance with the ruling of December 13, 2000, its author was guided by Article 31 of the USSR "On legal status of foreign nationals in the USSR" of 24.06.81 ratified on 12.12.91.

However, under Article 31 of the a/m Law, a foreign national can be expelled from the USSR

- 1. if his actions are found to be at variance with the interests to ensure state security or protect public order;**
- 2. if the expulsion is necessitated by the need to protect public health or public morals, rights and lawful interests of the USSR citizens and other persons;**
- 3. If he has flagrantly violated the legislation on legal status of foreign nationals in the USSR, customs currency or other Soviet regulations.**

The ruling of 13.12.00 on the plaintiff's expulsion lacks reference to Article 31, where the expulsion procedure is stipulated.

The ruling contains a reference to the fact that administrative proceedings were instituted twice against Abdel Nasir : on 15.09.00 – for having no residence registration and on 24.11.00 – for failure to leave Russia upon expiration of the established deadline.

However, administrative penalties were imposed against the plaintiff after June 2000, that is after he had applied with a competent body for refugee status.

According to Article 31 of the 1951 Geneva Convention, "the Contracting States shall not impose penalties on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

However, regardless of international requirements, administrative penalties were imposed on the plaintiff, though he used to present himself to the Saratov regional PVS and the Migration service on a regular basis and provided clarification as to why he had to stay in Russia.

In view of the above, the decisions of the Saratov regional PVS can not be found lawful, particularly taking into account the fact that at the time when a decision

on the the plaintiff's expulsion was taken, he had already appealed against the decision denying him refugee status.

In accordance with Article 13 of the Law "On Refugees", a person notified of the negative decision denying him refugee status, if he/she fails to use the right to appeal against this decision, will be expelled (deported) from the country.

According to Article 31, Part 2 of the 1951 Geneva Convention, the Contracting States shall not apply to the movements of refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Therefore, the Saratov regional PVS was not supposed to take a decision on the plaintiff's expulsion as long as his appeal against the negative decision was pending in court. Consequently, in view of the above, the conclusion of the Saratov regional PVS of December 13, 2000 on Abdel Nasir's expulsion from Russia should be found null and void, the PVS should be obligated to cancel the expulsion visa and make a relevant entry in his passport.

However, the court can not find in favour of the plaintiff with regard to that part of the appeal where he requests from the Saratov regional PVS to issue him authorisation for residence in Russia during a reasonable period, as the plaintiff has failed to present any proof of the violation of his rights as regards this particular part.

In accordance with Article 2 of the RF Law of 27.04.1993 (in its reviewed version) "On appealing in court against actions and decisions that violate human rights and freedoms", those actions can be appealed in court that violate human rights and freedoms and create obstacles in the way of exercising these rights and freedoms, or when a citizen is unlawfully obligated to perform some duties or brought unlawfully to account.

The above law does not provide for the right to appeal against those actions that have yet to be committed.

In accordance with Article 7 of the a/m RF Law, the court shall determine the responsibility only when the fact of human rights violations is established.

Since the court has not established the fact that the body, whose actions are appealed against, will not authorise the plaintiff to reside in the Russian territory during the period as indicated in the current legislation, it will not satisfy the plaintiff's demand concerning the determination of the responsibility.

In view of the above and being guided by Articles 191-197 Chapter 24 of the RSFSR GPK and the RF Law of 27.04.1993 "On appealing in court against actions and decisions that violate human rights and freedoms", the court

HAS RULED AS FOLLOWS:

The court shall find null and void the conclusion of the Saratov regional PVS of 13,12,00 on the expulsion from Russia of Mr. Abdel Nasir Abdel Magid Akhmed, a citizen of Sudan, born in 1972.

The Saratov regional PVS shall be obligated to cancel his expulsion visa and make a relevant entry in his passport, invalidating the entry on expulsion.

Other parts of the appeal shall be dismissed.

An appeal against the decision can be filed with the Saratov regional court within 10 days since its final draft is ready.