

File No. 8945/2003

Bucharest Sector II Court

Ruling in civil case No. 7180

Non-public session of 24.11.2003

Court represented by:

PRESIDENT: EMANUELA DULGHERU

COURT CLERK: CERASELA CARSTEA

The Public Ministry was represented by Dan Toma, prosecutor

The subject case deals with ruling on the civil case having as object the complaint filed by the minor appellant L. A.A., against the decision of the National Refugee Office.

Upon the nominal call in the public session, the appellant declared herself present, assisted by the curator Gabriela Drobu, on the basis of the decision No. 1024/11.08.2003 issued by the Mayor of Sector II Bucharest, and by lawyer Stoica Josan Manuela and Mr. Ibrahim Ahmed Mohamed, as a Somali Language Translator, the representative of the Guardianship Authority being absent.

The Procedure conditions are met.

The court clerk assigned for the session drafted the case report, after which the Court brings up the necessity for continuing the proceedings in non-public meeting having in mind the object of the case, the motifs invoked by the appellant, the age of the appellant.

The appellant, through her lawyer, shows that she desires to be heard in a non-public session.

The Public Ministry representative shows he agrees that the session should take place in secret session.

The Court, on the basis of the provisions of Article 121 (2) Code for Civil Procedure, declares the session secret, considering that the public debate could harm the minor appellant.

The appellant, through the lawyer, submits for the file the detailed argumentation of her complaint, giving a copy for the representative of the Public Ministry as well.

The court proceeds to the hearing of the minor appellant who signs the statement after this has been translated to her by the interpreter.

The Appellant, through her lawyer, adds to the record information about Somalia, the country of origin of the minor appellant, information provided by the National Refugee Office, providing one copy to the representative of the Public Ministry.

The Court, observing the case under deliberation, gives the floor for substantial evidence.

The appellant's lawyer requests the admission of the complaint and granting of the refugee status, showing that the minor complies with the conditions stipulated by law for this form of protection; the rape produced physical and psychological traumas to the appellant, who is afraid to return to Somalia, especially as she is part of a

minority tribe; upon the interview held at the National Refugee Office she was not listened to enough and there was no legal interpretation given to the appellant's declarations.

The appellant and her curator show agreement with the conclusions exposed by the lawyer.

The representative of the Public Ministry formulates conclusions of admitting the complaint, taking into consideration the international reports showing that Somalia is a place where criminal acts are a common practice, the authorities being unable to offer protection to the persons found in similar position with the appellant.

As a result of deliberations

THE COURT

Observes as follows:

Through notification No. 312522/19.09.2003 registered with the Court on 19.09.2003, National Refugee Office submitted for competent ruling, based on the provisions of Article 15 (3), (4), (5) in the Government Ordinance No. 102/2000, the complaint filed by the minor appellant L. A. A., against the decision No. 316448/h/IC of 09.09.2003, through which she requested the dismissal of the decision and to be granted a form of protection on the basis of the provisions in Article 1, 2, 5 of G.O No. 102/2000, with all legal consequences resulting thereof.

In motivating the complaint, subsequently attached to the file – at the session of 24.11.2003, the appellant showed that the decision of the National Refugee Office is unfounded and with no legal ground for the following reasons: it was noted that the appellant left the country as a result of a rape suffered two years before, although she said that the rape happened when she was 15 and left the country at 16; it was also noted that there were contradictions in her other declarations which put her general credibility under question, without having provided information with regards to these contradictions; the NRO employee only assumed that the unknown persons with whom the appellant left Somalia were mostly men since she did not make such a declaration, nor was such mention written down in the interview form; she also did not state during the interview that the family she used to live with was part of a minority tribe, but that they were not exposing themselves, hiding. Moreover, in the report cited by the NRO employee – Joint British, Danish and Dutch fact-finding mission to Nairobi, Kenya, 17-24 September 2000, it is stated that Shekaal is considered by certain sources as being a minority tribe. The appellant considers that her asylum application should be analyzed also from the perspective of what the refugee law calls gender and sexually based violence.

The appellant states that, on the other hand, the fact that she is an unaccompanied minor makes her eligible for the provisions of the Convention on the Rights of the Child to which Romania is a party and whose main idea the respect of the best interest of the child, which implicitly presupposes ensuring a good climate for her subsequent development in a country that is first of all safe and to benefit from protection, to have access to education.

De iure, the following were invoked: the provisions of Article 2, 3, 15 (1) of GO No. 102/2000 approved through Law 323/2001, Article 3 of the European Convention on Human Rights, Law No. 46/1991 on the adoption of the 1951 Geneva Convention on the status of refugees, Article 16 (1) and Article 24 of the Romanian Constitution.

Attached to the complaint, exempted from payment of the stamp fee according to Article 15 (10) in GO. No. 102/2000, were the challenged decision and the proof of its notification to the appellant on the date of 12.09.2003, the documents that were used in issuing the NRO decision.

The appellant was heard by the court in the session of 24.11.2003, through the assistance of the Somali language translator, in the presence of the designated legal curator and her lawyer.

Analyzing the documents on the record, the Court observes that through Decision No. 316448/h/IC of 09.09.2003, the National Refugee Office rejected as unfounded the asylum application of the appellant to be granted refugee status and conditioned humanitarian protection.

Upon the interview held at the National Refugee Office, the appellant declared that she was of Sunni Muslim religion, from the tribe of Baajuun; she did not go to school, although she would have wanted to. She left Somalia on 25.02.2003, illegally through Kenya, where she spent two months. A passport was issued for her and she entered Turkey; she stayed there for several days and then she does not remember where they had been because they traveled mostly by night. She reached Romania on 03.06.2003. She left her country with a group of persons that were unfamiliar to her, with the help of the person who raised her from the age of 5, when her parents were killed. This person helped her sell the house of her parents in order to obtain the money necessary to leave the country. Her parents were murdered by arson when she was little, but she does not know what tribe the perpetrators were from. The lady who brought her up did not give her too many details, only that her father was an officer in the former regime. She had two brothers and a sister, but they were killed together with her parents. When there were problems in the town she would run away, together with the lady who brought her up to other parts of the town which were quieter, they would look for brick houses to hide, stayed for a few hours and then, as things calmed down, they would go back. These brick houses were safe from bullets.

The appellant declared that she participated in taking care of the household, she would go shopping with her neighbours. However, they would not stay in the street because they were afraid. She would not go to school because, given the existing conflicts, the lady that was taking care of her considered that it was better for her safety to stay home.

The determining factor of her leaving Somalia was that, at the age of 15, she was raped, an incident in which she risked losing her life. She went to the market, and, upon return, she was stopped by five armed men who beckoned her to get in their car. For fear not to be shot she complied; the men took her to a place where drugs are usually consumed. She was withheld in that house for several hours, was raped by the men who threatened her with a gun. After, two of the men took her to her neighborhood and abandoned her there; a seller from the market recognized her and took her home. The respective men were members of a paramilitary group Moorayaan.

The family where she lived was part of the Sheekhaal tribe and was staying mostly in the hiding. The lady who brought her up advised her to leave after what had happened. She has never been in touch with that woman again after leaving. She has nobody left in Somalia and she wants to leave here in peace. The Baajuun tribe, to which she belongs, is a weak tribe, the members are mostly fishermen. She could not have lived in Somalia, she would have never been asked into marriage, and she would have been regarded as a person who has been stained. If she returned to Somalia she

would risk being raped again or even murdered. After the incident, a doctor saw her and a painkiller based treatment was administered.

The National Refugee Office employee appointed for assessing the reasons invoked for granting the refugee status noted that the appellant had not offered dates and information in a coherent and plausible manner from which a well defined fear of persecution could result, that there were some contradictions that put under question her general credibility. The fear of persecution of the appellant was considered unjustified with regards to the fact that before the mentioned incident she had not been personally involved in any other incidents and that she fled the country at the suggestion of the lady who took care of her and not at her own initiative, two years after the event invoked. During the above mentioned period she had no problem, her social life did not change, she benefited from medical assistance and her physical and mental state returned to normal. It was also noted that, in spite of the fact that she belonged to a minority tribe (Bajuni), the appellant benefited from the protection of the Hawiye clan, being considered as one wing of it. It was also considered that the appellant did not meet the conditions necessary for granting conditioned humanitarian protection.

Against this decision, the minor appellant filed a complaint within the legal term of 10 days provided for in Article 15 (1) of G.O. No. 102/2000, recorded for the ruling of this Court, with territorial jurisdiction over the appellant's place of residence.

Analyzing the statements of the appellant made along the procedure, the content of the complaint and the decision challenged, the court considers that a fear of persecution is invoked in that the right to life provided for in the Universal Declaration of Human Rights, Article 3 and 5 is breached, but more important, the right of the child to life and to not being subjected to torture, cruel, or inhuman or degrading treatments, rights guaranteed by the Convention on the Rights of the Child (Article 6 and Article 37 (a)) are breached.

The task of the asylum seeker to probe the above mentioned circumstances does not require comprehensive evidence of all the statements, which is most of the time impossible to achieve, but the coherent exposure of events that took place in the country of origin, during which the person was subjected to persecution or which justify the fear of persecution.

There is no legal definition of the notion of persecution, however, it is admitted that this refers to acts which, through their nature or through repetition, are serious enough to constitute a threat to the right to life, liberty, physical or psychological integrity of the person.

Taking into consideration the lack of school instruction of the appellant, and implicitly, the degree of cultural development, the Court asserts that the appellant's accounts do not contain contradictions with regards to major elements and are coherent enough to allow for applying the benefit of reasonable doubt.

With regards to the fear of persecution invoked, this is justified under objective terms and reasonable under subjective terms.

Thus, from the information regarding the country of origin, the person is not in danger so long as she is member of a majority clan and is finds herself in the area of residence of the clan or is a member of a minority clan under the protection of a majority clan. However, the appellant is not in this situation, as she is member of a minority tribe – Bajuni, which not only that does not enjoy the protection of a majority clan, but, according to the information on the country of origin, is considered

as an inferior clan in comparison with the Somali clans. At the beginning of the 90s, after the fall of the Barre administration, Bajuni were attacked by the Somali organized clan militias, and it is likely that the parents of the appellant fell victims to a similar attack, the appellant declaring that her parents were killed (through arson) when she was little and that she does not know what tribe the attackers belonged to. Also according to the information on the country of origin it results that the area of origin of the appellant – Kismayo is found in a state close to anarchy. As a consequence, it results thereof that she cannot obtain protection from the ethnic group to which she belonged since the ethnic Bajuni are a minority in Somalia, representing one of the inferior clans, that the persecution inflicted indirectly upon her through killing her parents and brothers was ethnically based.

The Court will also take into consideration the situation of the appellant – unaccompanied, without parents or other close relatives, she lived an experience considered as traumatizing even for an adult person, so much more for a child. According to the information on the country of origin, the rape is practiced on a large scale in the inter-clan conflicts; it has become a weapon for the militias and bandits. Women belonging to the minority clans are often victims of such crimes (Norwegian Council for Refugees, July 2001.) Also, according to the religion, a woman must not live alone, but stay either with her family, or with the husband (Danish Immigration Service, July 2002,) which impossible in the appellant's case. It is shown in the country of origin information that a single woman who tries to travel to an area under the control of a foreign clan risks to be attacked and subjected to psychological ill treatments from the ordinary bandits or members of the hostile clans.

As regards the subjective aspect, the Court considers that the fear of persecution of the appellant is well founded, having in mind not only the lack of education (nonattendance of school), but also the age at which she suffered the traumatizing events invoked (killing of parents and brothers and the rape against herself) during childhood, as well as the mentality of the community that she belongs to with regards to women and single girls, especially if they were victims of sexual attack, in which case there is a risk for feminine genital mutilation enforced by the members of her own community.

This fact can represent, in the opinion of the Court, a persecution through endangering the appellant's physical as well as psychological health, and even of her life under the conditions of an existing traditional practice, based on the fact that the authorities do not have the power to prevent such practices and to offer protection to the women found in similar situations to that of the appellant.

With regards to the above mentioned, the Court considers that the personal situation presented justifies the appellant having invoked ethnic-based persecution exercised by a third party non-state agent, the authorities being unable to offer protection. Thus, having in mind the best interest of the child, principle presented in Article 3 of the Convention on the Rights of the Child, the Court shall admit the complaint, shall dismiss the challenged decision and shall grant the minor appellant the refugee status, on the basis of Art. 2 (1) of G.O. 102/2000 approved with amendments through Law No. 323/2001, with all the legal consequences that result from this form of protection.

ON THESE GROUNDS
IN THE NAME OF LAW
DECIDES:

It admits the complaint of the minor appellant L. A. A., born on 15.01.1987 in Kismayo – Somalia, daughter of A. and S., with residence in Bucharest, 15 Stolnicu Street, Sector 2.

It dismisses the decision no. 316448/h/IC of 09.09.2003 given by the National Refugee Office.

It grants the minor appellant the refugee status in Romania, with all the legal consequences deriving thereof.

With possibility of appeal within 5 days from the ruling.

Ruled in the public session of today, 24.11.2003

President
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Court clerk
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