

DECISION
in the name of the Russian Federation

On October 21, 2002 at an open court session, the Presnensky district court of the City of Moscow

Composed of:

Chairperson V.A.Rogozhin, a federal judge

Assisting: Y.V. Ivanova, a secretary

considered civil case No. 2-4068/2002 concerning a complaint filed by Mr Khan Mokhammad Yakub and Fauzya Mokhammad Yusuf, Afghan nationals, against actions of the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy (the Moscow GUV D Department for Migration is also a party to the case) and

ESTABLISHED THE FOLLOWING:

Mr Khan Mokhammad Yakub and Fauzya Mokhammad Yusuf, Afghan nationals, filed a complaint in court against actions of the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy. To substantiate their claim, they pointed out that in 1998, they came to Moscow, and on 27.09.1999 they approached the Territorial Branch with an application for refugee status in Russia. However, the Territorial Branch refused to accept their application. They were told they should wait until they are summoned to fill in a questionnaire. However, the authorities failed to summon them neither within the duly established time period nor later on. The applicants believe that their rights as asylum seekers have been violated as a result of the above inaction.

The applicants requested the Court should obligate the defendant to accept their refugee applications for immediate consideration.

During the court hearing, the applicant and his representative sustained his complaint.

A representative of the Moscow GUV D Department for Migration found the complaint subject to just satisfaction and suggested the applicant should approach the Moscow GUV D Department for Migration with a relevant application.

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.

It was established during the court session that the applicants arrived in Moscow in 1998, and on 27.09.1999 they approached the Territorial Branch with an application for refugee status in Russia. However, the Territorial Branch refused to accept their application. They were told they should wait until they are summoned to fill in a questionnaire. However, the authorities failed to summon them neither with the duly established time period nor later on.

In accordance with Article 4, Clause 5-2 of the Federal Law "On Refugees", the application of a person who is at a crossing point on the State Border of the Russian Federation or in the territory of the Russian Federation shall be subject to preliminary consideration by an immigration control post or a territorial branch of the

federal executive authority in charge of migration matters within five working days following the submission of an application.

Under Article 3, Clause 2-3 of the above Law, based on the results of consideration of an application on admissibility grounds, a territorial body should either take a decision on the issuance of an asylum-seeker certificate or declare the applicant inadmissible for substantive consideration of his application.

However, the Territorial Branch refused to accept the application, violated the duly established deadline, failed to summon the applicant for an interview or consider the refugee application and failed to take any decision (either to issue an asylum-seeker certificate or deny the applicant substantive consideration of his application).

The Court finds such actions of the Moscow City Territorial Branch of the RF Ministry of Federal Affairs as being unlawful. They violate the applicant's right to have his application considered by giving him access to the duly established RSD procedure.

According to Article 5, Clause 1-7 of the Federal Law "On Refugees", the following circumstance shall give the ground for denying a person substantive consideration of his application: if a person was forced to illegally cross the RF State Border with the intention to apply for refugee status and failed to apply as specified in Article 4, Clause 1-3 of the above Federal Law.

The Law also provides for a possibility to extend the deadline for submitting a refugee application. E.g., under Article 4, Clause 1-3, in the circumstances beyond a person's power, that prevent his timely application, the deadline for applying may exceed 24 hours but not the duration of the emerging circumstances.

In accordance with Article 3, Clause 3 of the RF Law "On Refugees", the decision to issue the certificate, to recognise an asylum-seeker as a refugee or to deny him substantive consideration or recognition as a refugee should be taken based on the results of questioning the asylum-seeker, completion of a questionnaire on the basis of individual interviews, as well as on the basis of examining the credibility of the data obtained about the person and his family members who arrived with him, the verification of the circumstances of their arrival in the RF territory and the grounds for their stay therein, after thorough examination of the reasons and circumstances described in the application. Additional interviews should be allowed for clarification of facts presented by the asylum-seeker.

In this particular case, the Territorial Branch failed to take any actions.

Under Article 7 of the RF Law "On appealing in court actions and decisions violating civil rights and freedoms", the disputed action shall be recognised illegal if it entails consequences indicated in Article 2 of the above Law. Article 2 provides for the following consequences of actions (decisions): those that entail violation of citizens' rights and freedoms or put obstacles in the way of exercising by a citizen of his rights or freedoms or if some responsibility is unlawfully imposed on a citizen or if he is unlawfully made accountable for some alleged offence.

When considering the complaint, the Court does not address the issue of the applicants' eligibility for refugee status, since this issue goes outside the framework of the subject of proof related to the case.

However, the Court has established that the disputed actions, that were manifested by denying the applicant access to the RSD procedure, is not based on law and impedes the applicant's right to undergo this duly established procedure.

Under Article 6 of the RF Law "On appealing in court actions and decisions violating civil rights and freedoms", officials and civil servants, whose actions (decisions) are appealed, are charged with the procedural obligation to submit

documentary evidence confirming the lawfulness of disputed actions (decisions). A person is relieved of the obligation to prove the unlawfulness of the appealed actions (decisions); however, he has to prove the fact that his civil rights and freedoms have been violated.

The defendant failed to submit documentary evidence confirming lawfulness of the disputed actions (inaction). Nevertheless, the Court established that the disputed decision impedes the applicant's right to gain access to the duly established RSD procedure.

Consequently, pursuant to Article 7 of the RF Law "On appealing in court actions and decisions violating civil rights and freedoms", the complaint shall be recognized as valid and subject to satisfaction.

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

HAS RULED AS FOLLOWS:

Actions of the Moscow City Territorial Branch of the RF Ministry of Federal Affairs, that were manifested by rejection of a refugee application and non-application of the RSD procedure as regards Afghan nationals Mr Khan Mokhammad Yakub and Fauzya Mokhammad Yusuf in accordance with the current law on refugees, shall be recognised unlawful.

The Moscow GUVB Department for Migration shall be obligated to accept and consider Mr Khan Mokhammad Yakub's and Fauzya Mokhammad Yusuf's application in keeping with the duly established RSD procedure.

An appeal against the decision can be filed with the Moscow City Court within the next 10 days.

Judge
(signature)

THE DECISION WAS ENFORCED ON OCTOBER 31, 2002