REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 2442/95

D V K

AT AUCKLAND

Before:	V J Shaw (Chairperson) GJX McCoy (Member)
Counsel for Appellant:	Himself
Representative for NZIS:	No Appearance
Date of Hearing:	19 March 1996
Date of Decision:	20 February 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a national of the Russian Federation.

THE APPELLANT'S CASE

The appellant is a 22 year old single man from the city of K. His family are Russian. The appellant is an only child. After his parents separated, he lived with his maternal grandparents who are still living in K. His father, with whom he maintains regular contact, is a ships' engineer currently working on fishing vessels. The appellant has had little contact with his mother but understands that she too is currently working at sea.

After leaving secondary school, the appellant attended a technical school for two years where he studied to be a ships' welder. He then started work as a welder at

an on-shore base where fishing vessels are maintained and repaired. Just before he turned 18, the appellant received a written notice to attend for a medical examination in respect of compulsory military service. At the examination the appellant falsely claimed to suffer from bedwetting, as he understood that this was an ailment recently added to the list of medical conditions which qualified for an exemption from service. The appellant's deception was accepted by the specialist who examined him, which resulted in his being issued with a certificate confirming he was unfit for military service in peace time but fit for non-combatant service. The appellant told the Authority that he thought he had his certificate at his home and he would arrange for it and a translation to be forwarded to us after the hearing.

At the end of November 1993, the appellant left Russia on a vessel that was being sent abroad for repairs. He returned in March 1994 and in April 1994 joined a fishing vessel that arrived in New Zealand on 29 June 1994. The appellant travelled on a Soviet Seamen's passport issued in 1993. He was granted a work permit by the NZIS current until 30 October 1995. On 21 May 1995 the crew were due to fly home, however, the appellant and at least 10 other crew members failed to get on the flight arranged by the ship's owners.

On 1 June 1995, the appellant applied to the Refugee Status Branch for the grant of refugee status. At his interview with the Refugee Status Branch on 2 August 1995, the appellant stated that, although he had previously managed to avoid being called for military service on medical grounds, he feared that the regulations might have changed so that he would now be required to fight. Should he object as a conscientious objector he thought that the Russian authorities would not recognise this and send him to war anyway. He also stated that his having jumped ship meant that there was now a "black mark" against him so that he would not be able to secure employment or be allowed to leave Russia. He could also be prosecuted, though he was not certain as to the likely penalty.

Before this Authority, the appellant explained that he had decided not to return to Russia at the time of the crew change over in June 1995 because during the previous year he had had much time to think of his situation in Russia. He had become better informed about the current state of affairs after having listened to the Voice of America. He had been able to compare the information obtained from the Russian media, in particular about the war in Chechnya, with that on the Voice of America. He had identified many discrepancies and had concluded that

although Russia was supposed to be a democracy, there was still no true freedom of information.

The appellant and his fellow seamen had frequently discussed the situation in Russia and had concluded that Russia stood at a political turning point and that the past was about to return again. Talk of democracy and perestroika was empty talk by the newspapers and the media while real power lay in the hands of people who have not done any good for Russia. The people only heard empty talk.

The appellant had become worried that his military category "fit for non-combatant service" might be revoked and he definitely did not want to have to take up arms. Although he initially stated that taking up arms went against his moral or ethical convictions and his idea of himself, he agreed that he was not a pacifist and that he could envisage certain situations where it would be appropriate to fight, such as the defence of Russia against Germany during World War II. The appellant said his grandfather had fought in World War II and he thought that his grandfather had been right to fight and he would have done the same in that situation. The situation prevailing during World War II was, however, in the opinion of the appellant, not comparable to what was happening today. At that time people knew what they were fighting for. Perhaps if he was convinced that it was the situation similar to that prevailing in 1941 he would fight, but not because someone like Yeltsin tried to indoctrinate him that it was a patriotic war. He used to think that he lived in a great country but now he did not know. Today Russia was a poor, miserable country ruled by fools and thieves. The army was being used as a weapon of subjugation, or as a means of preserving the power of the rulers. As such, it was becoming a victim of the conflicts amongst the top leadership.

As an example of such subjugation the appellant referred to the war in Chechnya. The Russian leaders had become bogged down in the conflict and saw the army as the only means of resolving the situation. It was the opinion of the appellant that the Russians had no business being involved in Chechnya which should be given independence. The Russian government, however, had left itself with no choice but to completely subjugate Chechnya.

The appellant stated that if called up to fight in Chechnya he would try to explain his objection to the military command but realised that those above would consider it to be none of his business. His job was simply to shoot his automatic weapon. Even if called up to fight in a non-combatant role, the appellant said he would still

object. The Russian army has no business in Chechnya and he objects to the killing that is going on, in particular, the killing of women and children.

We asked the appellant if he had received any information from his grandparents, with whom he said he maintained regular contact through a third person, of any action on the part of the authorities to revoke his military status or call him up to fight in Chechnya. He said he had received no such reports and believed he would have been told that this had happened. In the ship yard where he had worked most of his friends over the age of 18 had been called to perform military service, but most had completed their time and returned to work before the war in Chechnya had commenced.

We therefore asked the appellant why he thought there was a real risk that on his return to Russia he might be called up, despite his earlier military exemption. He explained that he thought that there would be a good chance of this happening if the communists were to win the Presidential election as their policy, supported by other nationalist groups, was to reconstruct the former USSR.

The appellant also confirmed his fear that, as a ship jumper, he had now been blacklisted. He was not sure exactly what would happen. It was possible he might escape notice but equally there could be serious consequences for him.

At the end of the hearing it was agreed that the appellant would provide to the Authority a copy of his military exception certificate which he believed he had with him at his home. However, no copy has been received. However, on 22 July 1996 a letter was received from the appellant advising that he had received from Russia a notice requiring him to appear on 14 May 1996 at Military Commission in K for a medical examination. This notice was enclosed along with an English translation.

Since the hearing the Authority has endeavoured to obtain further information on the conflict of Chechnya as well as the likely punishment for draft evaders, and in particular those who refuse to fight in Chechnya. An extract from an Amnesty International Report dated March 1996 in respect of the imprisonment of two conscientious objectors in Kiev and various Reuters news reports on President Yeltsin's decree in May 1996 ending conscription in favour of an all professional army by the year 2000 were referred to the appellant for comment although none were received. More recently, the Authority has referred to the appellant for

comment various news reports dating from August to December 1996 which deal with the negotiations to settle the conflict in Chechnya. These were returned as the appellant had left his address. He has not provided the Authority with a current address.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:

> "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

2. If the answer is Yes, is there a Convention reason for that persecution?

DECISION

We find the appellant to be a credible witness and have no reason to doubt that the reasons expressed by him for why he objects to serving in the Russian army, especially in Chechnya, are sincerely held.

The appellant's claim is that, despite his earlier medical exemption obtained on bogus grounds, there remains a real chance of him being called for military service because of his age and the current conflict in Chechnya. His objection to military service appears to be two-fold. First, he feels alienated from contemporary Russian society and, in particular, the current leadership whether communist or non-communist. He sees the army's legitimate role as the defender of Russia as having been usurped by a political leadership who is using the army as a weapon of subjugation and as a means of preserving political power. For these reasons he objects to performing compulsory military service even if the army was not

involved in any actual conflict. Second, he also has a particular objection to fighting in the war in Chechnya, whether in a combatant or non-combatant role. He believes the army has no business in Chechnya and supports Chechnian independence. He also objects on moral grounds to the conduct of the war with its excessive killing of civilians, including women and children.

There has been some delay in finalising this decision because of attempts by the Authority to obtain information concerning the Russian authorities' attitude to draft evaders and/or conscientious objectors as well as the nature of the fighting in Chechnya. The situation has been further complicated by uncertainty as to whether the various attempts during the latter half of 1996 to negotiate a settlement would be successful.

In most countries the failure to perform compulsory military service or desertion attracts penalties of varying degrees of severity. Because punishment is generally in accordance with laws of universal application, prosecution and punishment for evasion or desertion will only amount to persecution for a Convention ground in limited circumstances.

One example where it may be possible to establish the required nexus between the punishment and a Convention ground is where an otherwise lawful system of conscription is applied in a discriminatory manner against certain social or racial groups who are disproportionately conscripted, or assigned to duties that are especially dangerous or involvement exceptional hardship or are differentially punished (J Hathaway, The Law of Refugee Status 1991, Butterworths, page 180).

A second example where punishment for evasion or desertion may amount to persecution within the Convention is where:

> "… the desertion or evasion reflects an implied political opinion as to the fundamental illegitimacy in international law of the form of military service avoided." (Hathaway, page 180)

See also paragraph 171, UNHCR Handbook:

> "… where the military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft evasion could, in the light of all other requirements of the definition, in itself be regarded as a persecution."

Examples cited by Hathaway at pages 181-182 where this principle has been recognised, are the Canadian decisions, Jorge Ardon Abarca, Immigration Appeal Board Decision V86-4030W, 21 March 1986, which concerned a Salvadorian who deserted the army because of its persecution of civilians in breach of basic international principles and Zacarias Osorio Cruz, Immigration Appeal Board Decision M88-20043X, C.L.I.C., Notes 118.6, 25 March 1988, where the Mexican claimant deserted from his army unit as he did not wish to be involved at the summary execution of political prisoners.

In Zolfagharkhani v Canada [1993] 3 F.C. 546, the Canadian Court of Appeal considered the case of an Iranian Kurd who had served for 27 months in the Iranian army during the Iraq/Iran war. He deserted when, after being sent to serve a further six months as a paramedic, he learned that it was proposed to use chemical weapons against the Kurds. The Court of Appeal, at page 552, considered the status of a law of general application:

> "… an ordinary law of general application, even if non-democratic societies, should, I believe be given a presumption of validity and neutrality, and the onus should be on a claimant, as is generally the case in refugee cases, to show that the laws are either inherently or for some other reason persecutory."

Adopting the opinion of Guy Goodwin-Gill that a refusal to bear arms, however motivated, is an essentially political act, the Court found:

> "the probable use of chemical weapons, which the board accepts as a fact, is clearly judged by the international community to be contrary to basic rules of human conduct, and consequently the ordinary Iranian conscription law of general application, as applied to a conflict in which Iran intended to use chemical weapons, amounts to persecution for political opinion.
>
> There can be no doubt that the appellant's refusal to participate in the military action against the Kurds would be treated by the Iranian government as the expression of an unacceptable political opinion."

Guy Goodwin-Gill, in The Refugee and International Law, 2nd Ed, 1996, Claredon Press, pages 54-59, proposes that punishment of conscientious objectors may amount to persecution within the ambit of the Convention, where the motivation for objecting is a legitimate exercise of the right to freedom of conscience. Goodwin-Gill notes at pages 55-56 that:

> "No international human rights instrument yet recognises the right of conscientious objection to military service, even though the right to freedom of conscience itself is almost universally endorsed … " (See Art. 18, 1948 Universal Declaration of Human Rights and Art. 18, 1966 Covenant on Civil and Political Rights)

> "The international community nevertheless appears to be moving towards acceptance of a right of conscientious objection, particularly as a result of the standard setting activities of United Nations and regional bodies.
>
> It is increasingly accepted in a variety of different contexts that it may be unconscionable to require the individual to change, or to exercise their freedom of choice differently. The question is, how to distinguish between those opponents of state authority who do, and those who do not, require international protection."

Objections to performing military service may be based on a variety of motives such as ethical, religious or philosophical convictions, opposition to government policy or objectives, or merely a simple dislike of the burdens involved in military service or fear of being killed in combat. Objections can extend to participating in all violence without exception to participation in particular wars only either because of the unconscionable methods of warfare being employed or the purpose to which the military is being applied. The conscientious objector is:

> "distinguishable from the 'mere' draft evader or deserter by the sincerely-held opinion. This locates the conflict of individual and state within the realm of competing (but legitimate) rights or interests, and separates out those whose motivations may be purely self-regarding and devoid of any recognised human rights interest, such as conscience or religion."

According to Goodwin-Gill:

> "Military service and objection thereto, seen from the point of view from the state, are also issues which go to the heart of the body politic. Refusal to bear arms, however motivated, reflects an essentially political opinion regarding the permissible limits of state authority; it is a political act. The 'Law of universal application' can thus be seen as singling out or discriminating against those holding certain political views. While the state has a justifiable interest in the maintenance of its own defence, the measures taken to that end should at least be 'reasonably necessary in a democratic society'; specifically, there ought to exist a reasonable relationship of proportionality between the end and the means."

In this context the availability and nature of an alternative service will be critical to the determination of whether or not prosecution and punishment will amount to persecution.

Turning to the case at hand, the appellant objects to performing his compulsory military service because of a general disillusionment with the policies and performance of the Russian leadership, including the use of force to surpress Chechen aspirations for independence. Such objections, while no doubt sincerely held, are fairly general political opinions rather than fundamental or core beliefs which it would be unconscionable to require the appellant to change or act to the contrary. The freedom to act in accordance with such opinions cannot therefore

take precedence over the legitimate interest of the State to require its citizen to perform military service in furtherance of its defence, including the defence of its own sovereignty.

> "Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action." (UNCHR Handbook, paragraph 171)

The appellant's further objection to fighting with the Russian army in Chechnya because he objects on moral grounds to the methods of warfare being employed is in a different category.

In December 1994, the Russian government deployed forces to counteract a pro-independence movement in Chechnya led by the late Chechen President Dzhokar Dudayev. As Chechnya had no regular army, retaliation was by partisan forces.

The Authority has considered the following country information relating to the conflict:

1. Human Rights Watch/Helsinki: Russia: Partisan War in Chechnya on the Eve of the WWII Commemoration (May 1995) Volume 8;

2. Human Rights Watch/Helsinki: Russia (Chechnya and Dagestan), Caught in the Cross-fire (March 1996) Volume 8, 3(D);

3. Human Rights Watch/Helsinki: The Commonwealth of Independent States: Refugees and Internally Displaced Persons in Armenia, Azerbaijan, Georgia, the Russian Federation and Tajikistan (May 1996), Volume 8, 7(D);

4. Amnesty International: Russian Federation: Open Letter from Amnesty International to the Presidential Candidates on the occasion of 16 June 1996 Presidential Elections AL Index: EUR 48/29/96;

5. Russia: Selected Military Service Issues, Question and Answer Series, Documentation, Information and Research Branch, Immigration and Refugee Board, Ottawa, Canada (May 1996);

6. UNHCR: Guidelines relating to the treatment of refugee claims filed by draft evaders and deserters from the conflict in Chechnya, Geneva December 1995.

7. Russia: Profile of Asylum Claims and Country Conditions UNHCR Centre for Documentation on Refugees, 5/8/96.

As well as the above the Authority has considered a variety of newspaper articles from 1996 reporting on the war and the various negotiations that took place in an endeavour to broker an agreement to end the conflict.

The war in Chechnya proved extremely unpopular with the Russian people so that Yeltsin was under pressure to end the war, especially in the lead up to the July presidential election. During the conflict there were various unsuccessful attempts to negotiate the cease fire and/or settlement. Just prior to the presidential election on 3 July 1996 an agreement was brokered which provided for the withdrawal of all Russian troops by the end of August 1996 and the disarming of all rebel forces. (New Zealand Herald, Wednesday June 12, 1996 “Chechnya pact boosts Yeltsin’s campaign”). However, fighting continued with a successful partisan assault on Grozny which commenced on 6 August 1996 (Guardian Weekly, August 18, 1996 “Yeltsin leaves trial of broken promises”, Guardian Weekly, August 25, 1996, “Grozny rebels create confusion in Kremlin” and Grozny Rebels Prove Metal Underfire”, New Zealand Herald, Friday 26 July 1996, “Discretion the better part of Valour”. The appointment of General Lebed as National Security Chief with special responsibility for negotiating a settlement with his Chechen counterpart led to the signing of a further truce and preliminary political agreement in early September 1996 which envisaged deferring consideration of Chechen’s political status until the year 2001, holding of elections, and a referendum on the territory’s status. (Guardian Weekly, September 1, 1996 “Chechen peace deal put on hold”. Guardian Weekly, September 8 1996, “Lebed claims ‘war is over’ in Chechenia”).

Although the Guardian Weekly report of September 8 referred to the likelihood of the peace plan allowing for two Russian brigades to stay on in Chechnya, it would now seem that this is not to be the case. President Yeltsin dismissed General Lebed in October 1996 and replaced him with Irvin Rybkin as Secretary of the Security Council and personal envoy to Chechnya. (Guardian Weekly, October 27 1996, “Loose canon at large in Kremlin”). At the end of November 1996 a further agreement was signed in Moscow between a Chechen delegation and the Russian

Prime Minister Victor Chernomyrdim. This provided for the continuation of Russian Federation law in Chechnya until local elections at the end of January 1997 and the rebels have agreed that no final decision on the territory's status will be made until the year 2001. Yeltsin also ordered the withdrawal of the interior Ministry's 101st brigade and the Defence Ministry's 205th brigade which according to the Guardian Weekly "brings to an end any pretence at Moscow controls Chechnenia" (Guardian Weekly, December 1 1996, "Chechen rebels rejoice in freedom", and January 12 1997, "Russia Weighs Costs of War in Chechnya"). The Guardian Weekly also notes that although Yeltsin has come under attack from radical nationalist opponents who accused him of allowing the break up of the Russian Federation, the final troop withdrawal is likely to be popular with most Russian who never wanted the conflict and resented the death of Russian conscripts.

It is likely that there will continue to be considerable tensions between the Russian leadership and the separatist movement in Chechnya for some time to come. Even so, on the basis of the above reports, we consider that it would be highly speculative to conclude that there will be an early return to full scale hostilities. As such, we find that there is no real chance of the appellant being placed at risk of being sent to Chechnya should he be required to undertake military service so that a refusal on his part to serve for this reason alone would not be a valid exercise of the right of conscientious objection.

This finding makes it unnecessary to determine whether a claim based on objections to the methods of warfare employed by the Russian forces in Chechnya could have succeeded. However, in order to illustrate the steps involved in any such inquiry the Authority has summarised the relevant information available to it.

The above information suggests that the war in Chechnya was notable for the extent of human rights abuses committed against the civilian population, especially on the part of Russian troops. In summary, these abuses included the following:

(a) The Russians indiscriminately grid bombed civilian areas such as large sections of the capital Grozny.

(b) Civilians were deliberating targeted and subject to indiscriminate and disproportionate attacks.

(c) Massacres of civilians occurred such as the killing of between 100 and 200 civilians between 6 April and 8 April in the village of Samaskhin, Western Chechnya.

(d) Civilians were prevented from escaping from villages about to be bombed, refugees colonies attacked, including the strafing from helicopters in daylight of fleeing civilians including women carrying children, and civilians were not been informed of impending hostilities, or the existence of humanitarian corridors.

(e) Civilian property was wantonly looted and destroyed. There has been a massive destruction of civilian homes and infrastructure such as roads, railways, schools and hospitals, so that tens of thousands of displaced persons have no homes to return to.

(f) The Russian government impeded the safe flood of civilians from active combat zones and imposed an almost total blockade on evacuation assistance from such organisations as the International Committee of the Red Cross.

(g) Civilian causalities of the war were estimated at over 30,000 by mid 1996.

(h) Abuses by the Chechen fighters included taking civilian hostages and using civilians as human shields.

The hostilities between the Russian and Chechen forces constituted a non-international armed conflict and as such are governed by Common Art. 3 to the 1949 Geneva Conventions and Protocol II, to which the Russian Federation is a party. As well as this the customary international law applies.

Human Rights Watch has identified the following breaches of the international laws of war. Refer Human Rights Watch/Helsinki March 1996, Volume 8, No. 3(D), pages 7-11.

(a) Prohibition of attacks against civilians -
Art. 13(2) Protocol II, UN General Assembly Resolution 2444, December 1969;

(b) Prohibition of indiscriminate or disproportionate attacks.
This is connected to the prohibition of attacks on civilians (Protocol I, Art. 51(4)(a)(b)). (Protocol I which applies to international armed conflicts provides guidance in the interpretation of the prohibition of attacks on civilians.)

(a) The requirement for humane treatment of civilians, including members of the armed forces who have laid down their arms and those placed “hors de combat” by sickness, wounds, detention or other causes - (Common Art. 3). Expressly prohibited is “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”.

(b) Prohibition of hostage taking (Common Art. 3).

(c) Prohibition of using civilians as shields.
(Protocol I, Art. 51(8) and Art. 57) also places an obligation on an attacker, where the attack may affect a civilian population to give an effective advance warning unless circumstances do not permit.

(d) Interfering with the care of the sick and wounded (Protocol II, Art. 7.).

(e) Prohibition of displacement of civilians for reasons relating to the conflict except for their security or imperative military reasons (Art. 17, Protocol II).

The international community expressed its concern at the serious human rights violations during the conflict in Chechnya and the disproportionate use of force. On 27 February 1995 at the 51st session of the United Nations Commission on Human Rights, the Chairman stated that the Commission deplored the violation of international humanitarian law while in July 1995 the United Nations Human Rights Committee deplored the violation of the right to life in Chechnya. On 16 March 1995, the European Parliament condemned the serious human rights violations by the Russian army and again, in January 1996 the European Parliament passed a resolution condemning actions by both Russian and Chechen forces. However, Human Rights Watch is critical of what it considers it to have been an inadequate international response, as evidenced by the decision on 26 January 1996 to admit Russian to the Council of Europe.

In guidelines issued in December 1995, UNHCR noted that every Russian performing military service, including new recruits, was liable to be assigned to military operations in Chechnya. There were reports of high numbers of desertions amongst both enlisted men and officers since hostilities began in Chechnya (refer to Russia: Selected Military Service Issues, Ibid, pages 17-21). The UNHCR guidelines refer to prosecutions of such persons having started in August 1995 pursuant to Art. 246(c) of the Russian Criminal Code. Art. 246(c) applies to unauthorised departure from place of service for more than one month, for which the penalty is three to seven years imprisonment, although UNHCR reported that actual sentences being imposed by military courts were ranging between 6 to 18 months. Concerns were expressed that the relative leniency in penalties reflected the general political uncertainty prevailing in Russia so that a move towards a tougher stance was not at that time able to be discounted. Furthermore, although Art. 15.9 of the Constitution of the Russian Federation provides for alternative civilian service for conscientious objectors, the Duma has failed to pass enabling legislation so that the constitutional right to alternative service has not been implemented. In the light of the absence of an alternative civilian service, the uncertainty as to the punishment for desertion and draft evasion from the conflict in Chechnya and the probability that Russian soldiers in Chechnya would become involved in military actions contrary to basic rules of human conduct, the UNHCR advised against returning to Russia persons whose acts of desertion or evasion were based on genuine political, religious, or moral convictions, or valid reasons of conscience.

It would seem, therefore, that during the period of the conflict evasion or desertion because of conscientious objection to the methods of warfare that were employed in Chechnya could well have come within the scope of the Convention, depending on the nature of the punishment being imposed by the Russian authorities.

As noted, the UNHCR guidelines were published in December 1995. It was stated therein that their relevancy may diminish over time. In the present case, the Authority is satisfied that recent developments leading to the end of the conflict have superseded the UNHCR recommendations.

The appellant also claims that he fears returning to Russia because as a ship jumper he has now been black-listed and that there might be serious consequences for him. It may well be that the appellant, because of his actions in failing to return with his crew, will find obtaining further employment as a seaman

difficult. He may also be liable to his employer under the terms of his employment contract or incur some other type of penalty. There is though, no evidence that ship jumping is still treated as a criminal offence under Art. 64 of the Criminal Code of the Russian Federation which made flight abroad or refusal to return from abroad a treasonable offence punishable by a lengthy period of imprisonment. Even in the period prior to the break-up of the former Soviet Union, there were few reports of such prosecutions with only one recorded by Amnesty International in 1991. Refer to Refugee Appeal No. 58/92 Re SAP (12 August 1992). The situation would appear to be even more certain given that on 20 December 1995 the Constitutional Court of the Russian Federation held that Art. 64 of the Criminal Code of the Russian Federation is contrary to the constitution of the Russian Federation and therefore, illegal. (Information is supplied to the RSAA by Professor YUG Sharikov). In a memorandum received from the UNHCR's regional representative in Canberra on 2 August 1996, it is also noted that the new draft of the Criminal Code now pending in the Russian Parliament does not contain Art. 64.

Accordingly, we find that the appellant's fear of persecution for ship jumping is not well-founded. It may well be that he could still be liable for some technical offence for his conduct, but any such penalty would not amount to persecution nor would it relate to a Convention ground.

For the above reasons, we find that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is dismissed.

.....
Chairperson