

DECISION
in the name of the Russian Federation

On February 5, 2003 at an open court session, the Presnensky district court of the City of Moscow Composed of:
Chairperson V.A.Rogozhin, a federal judge
Assisting: O.A. Sutyapova, a secretary

considered civil case No. 2-1158/03 concerning a complaint filed by Mr Mokhammad Ibrakhim Mokhammad Ismail, an Afghan national, 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:

The applicant, Mr Mokhammad Ibrakhim Mokhammad Ismail, an Afghan national, 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 his claim, he pointed out that in 1999, in keeping with a decision of the Immigration Control Directorate with the responsibility for the Moscow City and the Moscow region, he was denied substantive consideration of his refugee application. He filed an appeal against the said decision. However, in its decision of 05.09.2000, the Presnensky court dismissed his appeal. In its definition of 20.12.2000, the panel of judges on civil cases of the Moscow City Court upheld the above decision. Therefore, the applicant has no legal grounds to claim refugee status in Russia. In 2001, he approached the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy with an application for temporary asylum in Russia. However, in its letter of 24.12.2001, the Territorial Branch informed the applicant of its decision to deny him access to the duly established procedure. To substantiate its decision, the Territorial Branch pointed out that the applicant's case was not covered by Article 12, Part 2 of the RF Law "On Refugees", as his application for refugee status had not been considered on the merits.

The applicant believes that his rights as a person seeking temporary asylum have been violated as a result of the above action. The applicant requested the Court should obligate the defendant to accept his application for temporary asylum for duly consideration.

During the court hearing, the applicant and his representative sustained the complaint. Referring to Article 12, Clause 2 of the RF Law "On Refugees", they requested the Court should recognise the disputed action, which was manifested by non-application of the RSD procedure to the applicant in order to establish the availability or lack of humanitarian grounds for according temporary asylum, as being unlawful and obligate the defendant to consider the application by giving him access to the duly established procedure.

A representative of the defendant did not find the complaint subject to just satisfaction.

Having listened to the accounts of persons involved in the case and after examining the materials on this case, as well as civil case No. 2-3556/2000 concerning a complaint filed by Mr Mokhammad Ibrakhim Mokhammad Ismail, an

Afghan national, and others against actions of the Immigration Control Directorate with the responsibility for the Moscow City and the Moscow region, 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 applicant had no legal grounds to claim refugee status in Russia. In 2001, he approached the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy with an application for temporary asylum in Russia. However, in its letter of 24.12.2001, the Territorial Branch informed the applicant of its decision to deny him access to the duly established procedure. To substantiate its decision, the Territorial Branch pointed out that the applicant's case was not covered by Article 12, Part 2 of the RF Law "On Refugees", as his application for refugee status had not been considered on the merits.

In accordance with Article 12, Clause 2 of the Federal Law "On Refugees", temporary asylum shall be granted to a foreign national or a stateless person if they are not eligible for refugee status for reasons specified in this Law but cannot be expelled (deported) from the Russian Federation for humanitarian considerations.

During the court hearings, it was established that the applicant could not claim refugee status in Russia on lawful grounds, while he was denied the possibility of the authorities checking into the availability of humanitarian considerations or lack thereof.

When taking a decision regarding the complaint, the Court proceeds from the legal requirement to the effect that the availability of humanitarian considerations for temporary asylum in Russia or lack thereof should be established by the Moscow GUV D Migration Department when considering the application for temporary asylum filed by the applicant.

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 temporary asylum, since this issue goes outside the framework of the subject of proof related to the case.

However, the Court has established that the disputed inaction, that was manifested by denying the applicant access to the procedure to establish the availability of humanitarian considerations for temporary asylum in Russia or lack thereof, is not based on law and impedes the applicant's right to seek and be accorded temporary asylum in Russia.

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 has failed to provide documentary proof of the validity of the disputed actions (inaction). In the meantime, it was established during the court session that the disputed inaction impedes the applicant in exercising his right to temporary asylum in Russia.

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 194- 198 of the RF 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 non-application in accordance with the current law on refugees of the duly established procedure to establish the availability of humanitarian considerations for temporary asylum in Russia or lack thereof as regards the Afghan national Mr Mokhammad Ibrahim Mokhammad Ismail, shall be recognised unlawful.

The Moscow GUV D Department for Migration shall be obligated to accept and consider Mr Mokhammad Ibrahim Mokhammad Ismail’s application in keeping with the duly established procedure to establish the availability of humanitarian considerations for temporary asylum in Russia or lack thereof.

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 FEBRUARY 17, 2003