

The Czech Republic

DECISION

In the Name of the Republic

The Superior Court in Prague in a senate composed of the Chairman JUDr. Michal Mazanec and the judges JUDr. Eliska Cihlarova and JUDr. Bohuslava Hnizdila, decided in the legal matter of the plaintiff Tamara Nikolajevna **Borisova**, currently residing at the refugee camp Bela nad Bezdezem-Jezova, represented by JUDr. Olena Cvetlernou, attorney in Prague 8, Za Porickou Branou 22, against the defendant Minister of Interior, Prague 7, Nad Stolou 3, concerning the complaint against the decision dated Aug. 31, 1993, file no. U-360-30/93,

as follows:

- I. The decision of the Minister of Interior dated Aug. 31, 1993, file no. U-362-30/93 and the decision of the Office of the Alien Police and Passport Services of the Federal Police Force, dated Oct. 20, 1992, file no. PCPS-2844/C-225-92 are annulled.
- II. The matter is returned to the defendant for further proceedings.
- III. The defendant is required to pay the plaintiff, to the hands of her attorney JUDr. Olena Cvetlerova, the amount of 260 kc., within 3 days from the decision entering into legal force.
- IV. The defendant is required to pay the state, into the account of the Superior court in Prague, the amount of 500 Kc within 3 days of the decision entering into force.

Reasoning:

The plaintiff called for the annulment of the declaration of the Minister of Interior's specified decision which denied her appeal against the Office of the Alien Police and Passport Services of the Federal Police Force's decision dated Oct. 20, 1992, denying the plaintiff's application, dated Jul. 21, 1992, for the granting of refugees status within the deadline via the filed complaint.

In her complaint and supplement the plaintiff stated that fear of persecution and possible physical liquidation of her person as an inconvenient witness, had led her to leave Russia. Her cousin who had been investigating a corruption scandal at the Trade Directorate for Moscow, and whose managing employees were connected to the highest representatives of the state, had given to her, prior to his death, some documents related to the investigation of this affair, and she therefore believes that a connection exists between the subsequent attack on her person and the search of her apartment by member of the KGB and her knowledge concerning the background of the cited corruption scandal. She points out that neither of the administrative organs of both instances objectively weighed the persecution of her persons in the course of making their decision, especially in view of the fact that her cousin, her only close relative was killed. The plaintiff could no longer remain on the territory of her native country, which she left hurriedly practically without funds, for reasons of personal safety. She is convinced that in the state of which she is a citizen, she is in danger of persecution for reasons of membership in a particular social group, for her political convictions, also she supposes for reasons of protecting her human rights, and for humanitarian reasons.

In his response to the complaint the defendant stated that he insists that reasons for the granting of refugee status were not found, since it was not proven that the plaintiff is in danger of justified fear of persecution in her native country as per § 2 paragraph 1 of law no. 498/1990 Sb.

The court obtained the administrative organ's records of both instances from which the following became evident:

The plaintiff stated in her application dated Jul. 21, 1992, that she left her native country for political reasons. She stated that she was an advocate of individual personal freedom and that she never hid her beliefs. For this reason she was pointedly oppressed at work and even at home she did not feel safe. Finally she had to leave her job because she was subjected to unfavorable conditions and she was not allowed to work normally. On the day of the May day celebration she was beaten at the entrance to her home, in June of 1992 a search was conducted of her apartment by the KGB without the permission of the appropriate organs, during which she was roughly treated. Shortly before her departure from her native country someone set fire to her front door and it was a miracle that a serious fire did not break out.

On Jul. 13, 1992 an interview was conducted with the plaintiff by a worker of the Office of the Alien Police and Passport Services in Usti nad Labem, at which time the plaintiff repeated the previously stated reasons which led her to depart from Russia. She added that after August's events in the year 1991 (the attempted coup) it was directly indicated to her at work that she should terminate her employment there because she was condemned for her participation in the defense of the white house in Moscow. From Sept. 1991 she was unemployed, she would only do temporary work infrequently. The fact that she defended Gorbachev followed her everywhere. This she could not understand and it had a terribly negative effect on her nerves. Another shock for her was the killing of her cousin who had been investigating thefts in government, to which highly placed people were linked. The attack on her during the May day celebration at which time she was also threatened with death, in the year 1992, she believes took place because she defended Gorbachev.

The decision of the first instance dated Oct. 20, 1992 denied her application. From its reasoning it is evident that in evaluating the facts provided by the plaintiff and other specific information, it was not proven that in her country of origin, the plaintiff was in danger of justified fear of persecution within the meaning of § 2 law no. 498/1990 Sb. The organ of the first instance considered the plaintiff's reasons to be personal reasons resulting from the economic and social evolution in her country and therefore not justification for the granting of refugee status within the meaning of international and intrastate legal arrangements. As a result the administrative organ of the first instance came to the conclusion that at the current time the plaintiff is not in danger of persecution within the meaning of the provisions of § 2 of law no. 498/1990 Sb., and the reasons given by her can not be considered as protection of human rights or a humanitarian case, since it is not evident from the information she provided that her human rights were being violated as per international and intrastate legal norms.

The plaintiff filed an appeal against this decision on Jan. 12, 1993, in which she repeated her claims presented during the proceedings of the first instance. She added that for a certain period of time she believed that president Jelcin would be able to make some changes, however, today she has no such belief. When signatures were being collected for the resignation of Jelcin she also added her signature.

Prior to a decision concerning the appeal, an interview was conducted with the plaintiff on Aug. 5, 1993, by a worker of the Asylum Proceedings Department of the Department for Refugees of the Ministry of Interior, in which the plaintiff expressed herself as to her employment situation, reasons for leaving her job, the death of her cousin, reasons for leaving her job, the death of her cousin, and the assault on her on May 2, 1992 and the subsequent search of her home. When asked when she decided to leave Russia, she stated that she had already thought of it at the time of the reorganization when the promised changes had not materialized. She had begun to consider it more seriously after the coup and even more so after the death of her cousin.

The Minister of Interior denied the appeal with the brief justification, that the contested decision was made on the basis of the discovered actual situation in the matter and that the plaintiff does not fulfill the conditions for the granting of refugee status.

The complaint is well founded.

According to the provisions of § 2 paragraph 1 of law no. 498/1990 Sb., concerning refugees, refugee status will be granted to the alien who, in the state of which he is a citizen, has a justified fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or for political convictions. According to § 3 of the same law, (in the version prior to amendment implemented by law no. 317/1993 Sb., which came into legal force on Jan.1, 1994) it was possible to grant refugee status for reasons of protecting human rights or for humanitarian reasons also to the alien who does not fulfill the conditions in §2 paragraph 1 of the law. During the course of proceedings for the granting of refugee status it is the primary responsibility of the administrative organs to investigate the reasons for which the alien is applying for refugee status. It is evident from the application, that the plaintiff was led to departure from her country of origin by the political reasons presented by her.

It is firstly obvious from the submitted administrative record, that in the period of time from when the application, was filed (Jul. 21, 1992) to the conclusion of the proceedings (Aug. 31, 1993) the relevant investigation was not conducted by the administrative organ in a legal manner, specifically the plaintiff was not properly heard as to the reasons for her emigration and no supporting evidence was obtained indicating the possibility that these reasons are inconsistent with reality or false.

In order for the administrative organ to be able to decide on the application, it must be first of all established, for which reasons, given in the law, the applicant is requesting refugee status. The key concept is the phrase "justified fear of persecution for reasons of ...". If the plaintiff stated that her reasons for emigration were fear of persecution for political reasons, it is necessary that she at least be heard out as to what her political convictions are, how she is able to present them, if and how she ever did so in her home country (besides the claimed participation in the defence of the white house in Moscow in Aug of 1992), on what basis she has become inconvenient for state or other authoritative entities, who, why and how had ever persecuted her, from what she derives the connection between this persecution and her expressed political conviction etc. The administrative organ must concurrently invite the plaintiff to provide if possible feasible evidence supporting her claims through verifiable means.

Only after conducting an interview such as this can the administrative organ judge whether her participation in political life, as described by the plaintiff, can even be a reasons for her persecution, and of course, also whether the plaintiff really has political convictions for which she could even be persecuted. The plaintiff should also explain in more detail from what she derives the belief, that she is in danger of persecution for membership in a particular social group (at which time she should state what social group is concerned), as she stated in the complaint. It is the responsibility of the administrative organs, in the course of the proceedings, to gather objective supporting evidence for the discovery of the situation in the country of origin and as appropriate also including the possible use of information concentrated in the computer database of the United Nations Office of the High Commissioner for Refugees, the use of diplomatic and consular Channels, and the resources of organizations concerned with the protection of human rights, or religious institutions. The appropriate conclusion regarding whether the plaintiff's fear of persecution in the country of origin is not justified can be arrived at then, only after gathering the indicated evidence and its evaluation.

The Court found that the contested decision contains insufficient evidence and is therefore unreviewable within the meaning of § 25f Civil Code.

It therefore annulled the contested decision as per the same provisions without ordering proceedings, and concurrently annulled also the decision of the administrative organ of the first instance which contains the same flaws, and concurrently returned the matter to the defendant for further proceedings (§ 250j paragraph 2 Civil Code).

The plaintiff was successful in the matter and the court therefore allowed her, in contrast to the defendant, the rights to reimbursement for costs of proceedings as per the provisions of § 250k

paragraph 1 sentence 1 Civil Code). The plaintiff requested reimbursement for the costs of proceeding associated with her legal representation, at which time her legal representative billed her for payment for 6 transactions and 6 lump sum payments without more detailed specification of individual transactions. From the contents of the record though, it is evident that payment for 2 transactions in connection with the first meeting with the client can be allowed, including the assumption and preparation of representation and for the filing in writing of the amendment to the complaint (§ 16 paragraph 1 letter a and c, notice no. 270/1990 Sb.), which represents a payment in the amount of 100 Kc. per transaction and 30 Kc lump sum (§ 14 and 19 paragraph 3 of the cited notice). The plaintiff was therefore allowed reimbursements of costs of proceedings in the total amount of 260 Kc, and the court ordered the defendant to pay this amount to the hands of the plaintiff's legal representative.

The plaintiff was freed from court costs, and the court therefore ordered the defendant to pay the complete court cost (500 Kc) to the account of the Superior court in Prague within the meaning of the provisions of § 2 paragraph 2 of law CNC no. 549/1991 Sb., concerning court costs and payments for current copy of criminal record, and concurrently came to the conclusion that the freedom from court costs as per § 11 paragraph 2 letter a of the same law does not extend to the defendant.

Instruction: This decision can not be appealed.

In Prague on May. 27, 1994

Chairman of the Senate:

JUDr. Michal Mazanec v.r.

For accuracy of copy:

(Signature)

(STAMP: Superior court in Prague)