JUSTIFICATION

In June 1992 Jurij Prokudin left the Russian Federation with the intention to emigrate to another country. When he left the Russian Federation he held a Polish transit visa and a visa which authorized him to sojourn on the territory of the Republic of Ghana. After he crossing the Polish territory he was stopped at the border with the German Federal Republic because he did not hold a visa authorizing him to enter the territory of that country. Since than Jurij Prokudin has resided in Poland. He is not willing to return to his country of origin.

On 9 November 1992 Jurij Prokudin applied to the Minister of Internal Affairs to grant him refugee status. On 27 July 1993, the Minister of Internal Affairs, after consultation with the Minister of Foreign Affairs, made decision No. BMU-III-557/93 by virtue of which he refused to grant Jurij Prokudin refugee status as interpreted by the Geneva Convention of 28 July 1951 and the New York Protocol concerning Refugee Status prepared in New York on 31 January 1967. (The Journal of Laws, 1991, No. 119, item 516 and 517). The Minister of Internal Affairs justified this decision indicating that according to Article 10, paragraph 3 of the Alien Act of 29 March 1963 (The Journal of Law, 1992, No. 7, item 30 and No. 25, item 112) refugee status in the Republic of Poland can be granted according to the Geneva Convention and the Protocol concerning Refugee Status which were referred to supra. Therefore, this status is granted when the applicant will present facts concerning persecutions which took place and justify fears of persecution for reasons of "race, religion, nationality, membership in a particular social group or political opinion on account of which he resides outside the borders of the country he is the citizen of and cannot or is not willing to avail himself of this country protection". (Article 1, paragraph A, sub-paragraph 2 of the Geneva Convention of 21 July 1951).

According to the judicial adjudicating agency there are no grounds in the case for assumption that Jurij Prokudin was persecuted for reasons which were referred to above. Whereas he claims that he was persecuted for anti-communist activity he was engaged during the years when The Communist Party of the Soviet Union existed, i.e. during the existence of the former political system, it cannot constitute a foundation to allow his claim. According to the Minister of Internal Affairs the situation in Russia has radically changed and now fears of Jurij Prokudin concerning return to his country are not well founded.

Because of the decision referred to supra Jurij Prokudin requested the Minister of Internal Affairs to re-examine his case. In the note which contained this motion he endeavoured to prove that his fears of persecution in Russia for reasons referred to in the Geneva Convention are well-founded.

The Minister of Internal Affairs, after re-examination of the case on 14 December 1993 made a further decision which refused to grant Jurij Prokudin refugee status. Justifying this verdict the body referred to above repeated argumentation which was presented in the decision of 27 July 1993, stressing that in the course of re-examination of the case the evidence which would justify alteration of the earlier decision was not collected. Before this decision was made the Minister of Internal Affairs did not make a request to the Minister of Foreign Affairs to express his opinion.

In the complaint to the High Administrative Court Jurij Prokudin made a request to reverse this decision, claiming it was against the substantive law where it erroneously assumed that he did not meet requirements which are necessary to grant the refugee status and it violated the procedural regulations (Article 106 of the A.P.C.) due to the rendering of a second decision without consultation with the Minister of Foreign Affairs.

The Minister of Internal Affairs in reply to the complaint made a request for dismissal for reasons presented in justification of the decision which was the subject of complaint. He stated that the requirement arising from Article 106 of the A.P.C. was met due to the fact that he had received the opinion of the Minister of Foreign Affairs before the decision of 27 July was made.

The High Administrative Court examined the following:

According to Article 10, paragraph 4 of the Alien Act of 29 March 1963 as cited, the decision concerning refugee status determination is made by the Minister of Internal Affairs after consultation with the Minister of Foreign Affairs. Therefore, the act requires cooperation of the two bodies in order to render the decision referred to supra, which shall proceed according to the regulations defined in Article 106, paragraphs 1 - 5 of the A.P.C.. According to the provisions which are included in these regulations the body appointed to render the decision, particularly the Minister of Internal Affairs, is charged with the obligation to request the cooperating body to express its opinion and to notify parties of its activity. The cooperating body, i.e. the Minister of Foreign Affairs in the present case is obliged to give an opinion immediately. This is formulated in the form of ruling which can be the subject of the party's complaint.

The materials demonstrate that the obligation to cooperate provided for by Article 10, paragraph 4 of the act of 29 March 1963 which is being referred to was met only in case of the decision of 27 July 1993. The proceedings of cooperating bodies did not comply strictly with the regulations defined in Article 106, paragraphs 1 - 5 of the A.P.C. The Minister of Internal Affairs making a request to the Minister of Foreign Affairs to express an opinion did not notify complainant of this fact. On the other hand, the opinion of the Ministry of Foreign Affairs was not provided to the complainant. It was formulated in a letter of the Consular and Emigration Department of the Ministry signed in the name of the Department's Director by, as shall be presumed, an officer of this body. The content of this document does not establish whether the person who signed it had been authorized by the Minister. In the course of reexamination of the case the Minister of Internal Affairs did not request the Minister of Foreign Affairs to express an opinion (which was referred to above). Therefore, the decision of 14 December 1993 was given without the necessary opinion of the cooperating body. Because of the fact that Article 10, paragraph 4 of the Act of 29 March 1963, which is being referred to, does not provide for deviation from this requirement which obligates the Minister of Internal Affairs to give a decision concerning refugee status determination in consultation with the Minister of Foreign Affairs, undoubtedly the requirement, which is referred to in article 127, paragraph 3 of the A.P.C., also concerns the decision which is given after reexamination of a case. Ignoring the condition of co-operation of the bodies in the course of the case re-examination and rendering a decision without obtaining the opinion of the other body as required by law in the procedure which has been mentioned recently, constitutes the reason to overturn this decision on the basis of Article 207, paragraph 2, sub-paragraph 2, of the A.P.C.. The costs have been determined according to Article 208 of the A.P.C..