

16 March 2017

RE: Musician in Finland – Asylum denied

To whom it may concern,

I am the Executive Director of Freemuse, an international CSO advocating and defending artistic freedom worldwide. Freemuse has consultative status with the United Nations and is regularly consulted by UN special procedures and UNESCO.

The Finnish Immigration Service (Migri) has denied asylum protection to a musician, whose identity is known to Freemuse. The musician has explained to Freemuse that he fled to Finland due to the threats and assaults he suffered in his home country because of his art, and applied for asylum. In the decision that denied his right to asylum in Finland, Migri argued:

“The Finnish Immigration Service does not accept it as a fact that you would be exposed to a threat if you give up your music career. The Finnish Immigration Service finds that you could reasonably earn your living by taking up some other trade, if you feel that your music profession puts you at a risk. Although you are a professional musician and play violin in a symphony orchestra, the occupation of a musician is not an innate characteristic fundamental to conscience or the realisation of human rights. Moreover, you do not have such a distinct profile as a musician that you would be specifically targeted by the militia squads if you gave up your music career. The Finnish Immigration Service does not accept it as a fact that you would be at a risk of being exposed to serious violations of your rights if you returned to your native country.”

The Finnish Immigration Service’s decision is a violation of human rights and of international law.

Prompting the artist to return to his home country, abandoning his profession in favour of one that will entail a lower risk for his life, violates the musician’s right to freedom of expression, which is recognized in article 19 of the Universal Declaration of Human Rights (UDHR), in article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), in article 10 of the European Convention on Human Rights (ECHR), in article 11.1 of the EU Charter of Fundamental Rights, and in Section 12 of the Constitution of Finland.

In connection to this right, the decision also violates the artist’s right to participate in cultural life, as protected in article 27 of the UDHR, and in article 15 of the ICESCR.

The UDHR, in its article 23.1, recognizes the right to free choice of employment – something that is backed by article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and article 15.1 of the EU Charter of Fundamental Rights. Furthermore, the measure is also against the Constitution of Finland, given that its Section 18 recognizes the right to free choice of employment as well.

In the UN General Assembly document A/HRC/23/34, of 14 March 2013, concerning the ‘Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, on the right to freedom of artistic expression and creativity’, it is stated that all persons enjoy the right to freedom of artistic expression and creativity (para. 85). Furthermore, the consequences of violating this right are grave, as is established in paragraph 86:

“The effects of art censorship or unjustified restrictions of the right to freedom of artistic expression and creativity are devastating. They generate important cultural, social and economic losses, deprive artists of their means of expression and livelihood, create an unsafe environment for all those engaged in the arts and their audiences, sterilize debates on human, social and political issues, hamper the functioning of democracy and most often also impede debates on the legitimacy of censorship itself.”

Furthermore, there exist various UN recommendations that call on States to protect artists from violence by third parties, such as the UN Special Rapporteur in the field of cultural rights’ Report (*ibid.*, para. 89(e)) or the UNESCO Recommendation concerning the Status of the Artist (sec. III, para. 6).

Concerning the admissibility of the musician’s claims for asylum, Section 52(1) of Finland’s Aliens Act allows for issuance of residence permits on compassionate grounds, when refusing such permit would be manifestly unreasonable. Section 87 allows for granting of asylum if the aliens are residing outside their home country owing to a well-founded fear of being persecuted, and Section 87b(5) declares it is immaterial whether the asylum applicant actually possesses the characteristics which attract the persecution as long as they are attributed to the applicant by the actor of persecution. Section 88 establishes the subsidiary protection by which, were the applicant to fail to meet Section 87 requisites, protection will still be granted when the applicant faces a real risk of being subjected to serious harm if returned to the home country. Furthermore, Section 147 establishes a non-refoulement principle, which forbids the State from sending back the musician to his native country, where he is facing serious threats to his life and physical and psychological integrity.

Concerning the interpretation of the term “particular social group” as contained in the cited legislation and as applies to the musician concerned, the United Nations’ Refugee Agency (UNHCR) defines it in its document HCR/GIP/02/02, of 7 May 2002 (‘Guidelines on International Protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees’) as:

“a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.”

Further elaborating on these terms, in paragraph 13 of the same document, the UNHCR includes occupation as a social group when, even if the claimant’s profession was determined to be neither unalterable nor fundamental, it is perceived as a particular social group by the society.

In paragraphs 40 and 41 of the UNHCR document HCR/EG/IRQ/12/03 it is stated that, in the specific context of the affected musician’s home country, professions are counted as “membership of a particular social group” when their activities “are considered to be inconsistent with religious beliefs of the persecutors, or because they are considered to have political opinions not tolerated by the latter.”

For all of the reasons stated above, I strongly urge the Finnish Immigration Service to review its decision on the matter and rule in accordance to international law. Furthermore, I urge the Finnish Immigration Service to recognize the crucial role that artists play in society and the right to freedom of artistic expression as a fundamental part of human integrity.

Sincerely,

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