

CASE LAW COVER PAGE TEMPLATE

Name of the court: Korkein Oikeus (Supreme Court)	
Date of the decision:	5 April 2013
Case number:	KKO:2013:21
Parties to the case:	
Decision available on the internet? Yes http://www.finlex.fi/fi/oikeus/kko/kko/2013/20130021	
Language(s) in which the decision is written: Finnish	
Official court translation available in any other languages? <input checked="" type="checkbox"/> Yes No Short summary in Swedish	
Country(ies) of origin of the applicant(s): Afghanistan	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Finland	
Any third country of relevance to the case: Canada, Cyprus, Dubai, Egypt, Germany, UK	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <input checked="" type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21 <input type="checkbox"/> #22 <input type="checkbox"/> #23 <input type="checkbox"/> #24 <input type="checkbox"/> #25 <input type="checkbox"/> #26 <input type="checkbox"/> #27 <input type="checkbox"/> #28 <input type="checkbox"/> #29 <input type="checkbox"/> #30 <input checked="" type="checkbox"/> #31 <input type="checkbox"/> #32 <input type="checkbox"/> #33 <input type="checkbox"/> #34 <input checked="" type="checkbox"/> #35 <input type="checkbox"/> #36 <input type="checkbox"/> #37 <input type="checkbox"/> #38 <input type="checkbox"/> #39 <input type="checkbox"/> #40 <input type="checkbox"/> #41 <input type="checkbox"/> #42 <input type="checkbox"/> #43 <input type="checkbox"/> #44 <input type="checkbox"/> #45 <input type="checkbox"/> #46
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21 <input type="checkbox"/> #22 <input type="checkbox"/> #23 <input type="checkbox"/> #24 <input type="checkbox"/> #25 <input type="checkbox"/> #26 <input type="checkbox"/> #27 <input type="checkbox"/> #28 <input type="checkbox"/> #29 <input type="checkbox"/> #30 <input type="checkbox"/> #31 <input type="checkbox"/> #32 <input type="checkbox"/> #33 <input type="checkbox"/> #34 <input type="checkbox"/> #35 <input type="checkbox"/> #36 <input type="checkbox"/> #37 <input type="checkbox"/> #38 <input type="checkbox"/> #39 <input type="checkbox"/> #40 <input type="checkbox"/> #41
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15
For EU member states: please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision: Charter of Fundamental Rights of the Union (2000/C 364/01) article 18; Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (2002/946/JHA) article 6.

Topics / Key terms:

1951 Refugee Convention

Asylum-seekers

Criminal justice

Entry / Exit

False documents

Passports

Smuggling of persons

Travel documents

Key facts:

A had on 6 August 2010 used a forged British passport as a misleading piece of evidence at the border at the Helsinki-Vantaa airport. A had received the passport and the tickets from a smuggler against payment. A had left Kabul in Afghanistan on 24 July 2010 via Dubai to Egypt. From there he continued on 29 July 2010 to Cyprus, from where he flew on 1 August 2010 to Munich in Germany. He arrived in Finland later the same day. After staying six days in Finland he on 6 August 2010 tried to continue his journey to Toronto in Canada. He was however caught at the Helsinki-Vantaa airport after presenting the forged passport. He was at that point in possession of a printed flight reservation from Toronto to London for 16 August 2010.

The District Court sentenced A to 45 days conditional imprisonment for forgery committed as a young person. A was not charged for illegal entry, but for presenting a forged passport. The Court of Appeal acquitted A of the charges and the sentence. The prosecutor appealed to the Supreme Court. The Supreme Court granted the prosecutor leave to appeal.

Key considerations of the court:

Based on the prosecutors appeal, the issue at hand in the Supreme Court is the question if article 31 (1) of the 1951 Convention prevents A from being sentenced to a penalty for forgery committed as a young person, when he on 6 August 2010 tried to exit Finland presenting a forged travel document and, after being caught, applied for asylum in Finland.

It is proven beyond doubt that A has presented a false or forged travel document to border authorities in his attempt to exit Finland and that the constituent elements of the crime of forgery according to chapter 33, section 1 of the Criminal Act in his case are met.

A prerequisite for applying article 31 (1) of the 51 Convention is that the refugees come directly from the country, where their life or freedom was threatened in the sense of article 1 of the 1951 Convention. A had arrived in Finland via Dubai, Egypt, Cyprus and Germany and was continuing the journey to Canada and possibly the UK. His journey to Finland had lasted about 8 days in all. The Supreme Court considers that besides its wording, also its aim and objective to protect refugees has to be taken into consideration when interpreting the 1951 Convention. For this reason, the transit and short sojourn of an asylum-seeker in other countries on the way to the final destination does not prevent the application of the protection granted by article 31 (1) of the 1951 Convention even in cases where the asylum-seeker has not been in risk of persecution or threat in the sense of article 1 of the 1951 Convention in the countries of transit. In the circumstances referred to above, A can be considered to have come directly from the country where his life or freedom had been threatened as intended by article 31 (1) of the 1951 Convention.

A had stayed in Finland during 1 – 6 August 2010. He had applied for asylum only after being apprehended on 6 August 2010 for presenting a forged travel document in the border control at the Helsinki-Vantaa airport when trying to exit the country and continue the journey to Canada and possibly the UK, where he intended to apply for asylum. The Supreme Court considers that since A could have appealed to the protection granted by article 31 in his final destination, it would be artificial to deny him the protection granted by the article during the journey. Even the fact that he has applied for asylum only when exiting the country and not upon arrival bears no significance. Thus, A's arrival in Finland must be considered fulfilling the requirement in article 31 (1) of the 1951 Convention, that he has presented himself to the authorities without delay.

A further requirement to the protection granted by article 31 (1) of the 1951 Convention is that refugees show good cause for their illegal entry or presence. A is an Afghan citizen and has fled the city of Kabul. According to A's account, he has there been subject to the persecution of the Taliban because of his work. The Supreme Court considers that A's account shows that he has in his country of origin Afghanistan, prior to his arrival in Finland, been subject to persecution or threat intended by article 1 of the 1951 Convention. Thus, A can be considered to have presented a good cause for his entry, in line with article 31 (1) of the 1951 Convention.

The Supreme Court states as its conclusion, that A's entry can be considered to fulfill the requirements in article 31 (1) of the 51 Convention so that A cannot be convicted for forgery after presenting a forged travel document on 6 August 2010 when trying to exit Finland. The charges must be dismissed.

Other comments or references

In its decision, the Supreme Court, besides the 51 Convention and the EU legislation mentioned above, refers to the following:

Vienna Convention on the Law of Treaties, 1969, article 31

UNHCR Revised Guidelines, Applicable Criteria and Standards relating to the Detention of Asylum Seekers, 1999, paragraph 4.

UNHCR: Handbook on Procedures and criteria for Determining Refugee Status (Finnish translation) 1993, page 13.

R v. Uxbridge Magistrates Court & another, Ex parte Adimi (1999) and House of Lords v Asfaw (2008)

In its decision, the Court of Appeal had referred to the following:

Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, recital 2.

Hathaway: The rights of Refugees under International Law, Cambridge University Press 2005

Goodwin-Gill: Article 31 of the 1951 convention Relating to the Status of refugees: non-penalization, detention and protection