

Norwegian Supreme Court

<http://www.domstol.no/en/Enkelt-domstol/-Norges-Hoyesterett/Summary-of-Recent-Supreme-Court-Decisions/Summary-2012/>

JUDGMENT

29 March 2012

Immigration law. Asylum. Homosexuality.

The case concerned the validity of a decision by the Immigration Appeals Board and raised the question as to whether an Iraqi citizen is entitled to asylum on the grounds that he as a homosexual has a well-founded fear of persecution in Irak. The Court of Appeal found that it was not known in Irak that the asylum seeker was homosexual. The court further assumed that upon his return he would adapt his life so as to avoid persecution. In this light the Court of Appeal held that neither the conditions for asylum contained in section 17 of the Immigration Act of 1988, nor the conditions for protection against return in section 15 were satisfied. The Supreme Court quashed the Court of Appeal's judgment with appeal proceedings because the Court of Appeal had not made a decision as to what the reason was for the asylum seeker wanting to keep his sexual inclination a secret. If there were real grounds for fearing persecution and the fear of persecution was crucial to his choice, the condition that there must be a "well-founded fear of being persecuted", cf. Article 1 A of the Refugee Convention, cf. Protocol 31 January 1967, would be satisfied.

Reference: HR-2012-667-A, case no. 2011/1688), civil appeal against judgment.