

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): ОДЕСЬКИЙ АПЕЛЯЦІЙНИЙ АДМІНІСТРАТИВНИЙ СУД [Odesa Administrative Court of Appeal]			
Date of the decision:	03 /Sep / 2013	Case number:²	№ 815/3681/13-a
Parties to the case: Plaintiff v. State Migration Service of Ukraine			
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: http://reyestr.court.gov.ua/Review/33437951 (If no, please attach the decision as a Word or PDF file):			
Language(s) in which the decision is written: Ukrainian			
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):			
Countr(y)(ies) of origin of the applicant(s): Syria			
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Ukraine			
Any third country of relevance to the case:³ ---			
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:	
(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:	
(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:	
(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:	
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:	

Topics / Key terms: (see attached 'Topics' annex):

Syria

Ukraine

Complementary protection

Subsidiary protection

European Convention on Human Rights

Article 3

Key facts (max. 200 words)

In March 2013, the State Migration Service of Ukraine rejected the asylum application of a person from Syria, stating that he did not face a risk of persecution in Syria and that his migration was motivated by economic grounds. The first-instance court upheld that decision in June 2013. However, in this decision the appellate court over-ruled that decision and obliged the State Migration Service to grant the individual complementary protection (a subsidiary form of protection). The appellate court refers to COI sources showing the widespread and indiscriminate nature of violence in Syria. Referring to the criteria established by the European Court of Human Rights, the appellate court concludes that the violence in Syria has reached such an intensity that returning a person to Syria would result in a real risk of torture, inhuman or degrading treatment, and thus a violation of Article 3 of the European Convention on Human Rights. As this would be a violation of Ukraine's international obligations, the plaintiff is granted complementary protection.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

Taking into account the above mentioned, the ruling of the State Migration Service of Ukraine 192-13 dated 29.03.2013 and the decision of the trial court that are being appealed by the claimant cannot be considered as having been adopted in accordance with Part 3 of Article 2 of CAS_{KR} of Ukraine. As a result, the panel of judges concluded that there were grounds for substituting these previous rulings with a new ruling.

Given the above, and the requirements of Part 2 of Article 11, p. 162 CAS Ukraine, the panel of judges decided that the State Migration Service of Ukraine was under an obligation to decide to recognize the Applicant _{KR}as a person in need of complementary protection._{KR}

References by the plaintiff in the lawsuit and in the appeal to grounds for recognition of his refugee status were not corroborated during the proceedings in the Administrative Court of Appeal, and therefore his claim in this section cannot be satisfied.

According to Section 3, Part 1, Article 198, p. 202 of CAS of Ukraine, upon consideration of an appeal on the decision of the trial court, the appellate court cancels it and adopts a new decision, if satisfied that the trial court violated substantive or procedural law, which led to the wrong decision in the case.

Based on articles 11, 162, 160, 198, 202, 205, 207, 254 of CAS of Ukraine, the panel of judges -

HAS RULED:

To allow the Applicant's appeal partially.

To cancel the Ruling of the District Administrative Court dated 11 June 2013 on the case 815/3681/13-a.

To adopt a new ruling that partially satisfies the claim.

To recognize as unlawful and to repeal the Decision of the State Migration Service of Ukraine 192-13 dated 03.29.2013 insofar as it refused recognition of the Applicant as a person in need of complementary protection.

To compel the State Migration Service of Ukraine to decide on recognize the Applicant as a person in need of complementary protection.

The rest of the claim is denied.

The Ruling comes into effect five days after sending its copies to all persons involved in the case, but it may be appealed to the Supreme Administrative Court of Ukraine within twenty days from the date of coming into effect.

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Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

In the case of *Sufi and Elmi v. the United Kingdom* dated 28.06.2011 (8319/07 and 11449/07), the European Court of Human Rights concluded that there is no need to demand from an applicant to demonstrate special distinguishing features when he can otherwise demonstrate that the general situation of violence in the country of destination has reached sufficient intensity to create a risk of a breach of Article 3 (para. 217 of the ruling).KR

In accordance with Section 5 of Article 10 of the Law of Ukraine 3671 – VI “On refugees and persons in need of complementary or temporary protection” dated 8 July 2011 KR– as the results of a comprehensive study and evaluation of all the documents and materials that may be evidence of the conditions to recognize as a refugee or a person in need of complementary protection, the central executive body that implements the state policy in the field of refugees and persons in need of complementary or temporary protection, rules on recognition as a refugee or a person in need of complementary protection, or to refuse recognition as a refugee or a person in need of complementary protection. KR

At the time of adoption of the ruling by the defendant on recognition as a refugee or a person in need of complementary protection (29.03.2013), the defendant did not take into account the UN General Assembly Resolution 66/253 “Situation in the Syrian Arab Republic” dated 03.08.2012 and UN General Assembly Resolution 67/183 “Situation of human rights in the Syrian Arab Republic” dated 20.12.2012 and the practice of the European Court of human Rights in *Sufi and Elmi v. the United Kingdom* dated 28.06.2011 (8319/07 and 11449/07).

According to the ICP KR on Syria both parties to the conflict were using the methods and tactics of war, which increase the risk of civilian casualties. In July 2012 the International Committee of the Red Cross recognized the conflict in Syria as an armed conflict of a non-international character. The number of people affected by the conflict at the moment is very high and is still rising. Sources of information on the country of origin reported that as of May 2013 more than 70,000 people were killed, and the number of refugees exceeded 1.5 million. Besides, numerous cases of extrajudicial executions, torture and other serious violations of human rights were recorded, as evidenced in particular by paragraphs 1, 2 of UN General Assembly Resolution 66/253 “The Situation in the Syrian Arab Republic” dated 03.08.2012 and paragraph 1 of UN General Assembly Resolution 67/183 “Situation of human rights in the Syrian Arab Republic” dated 20.12.2012. According to ICPKR, the situation in Der-ez-Zor, where the plaintiff resided, is also dangerous because of military operations with heavy weapons, bombings, violence against civilians, instances of extrajudicial executions, torture, and human rights violations. Taking into account this position and the circumstances of the plaintiff’s personal case, the conclusion of the defendant and the trial court on the absence in the plaintiffs case of the conditions required to recognize him as a person in need of complementary protection is unreasonable.

The requirement of the trial court to provide "the circumstances regarding specific threat" are also found unreasonable.

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

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