

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court</b> <sup>1</sup> (English name in brackets if the court's language is not English): <b>Korkein Hallinto-Oikeus (Supreme Administrative Court - Finland)</b>	
<b>Date of the decision:</b> (2012/01/13)	<b>Case number:</b> <sup>2</sup> KHO:2012:1
<b>Parties to the case:</b>	
<b>Decision available on the internet?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: <a href="http://kho.fi/paatokset/57307.htm">http://kho.fi/paatokset/57307.htm</a> (If no, please attach the decision as a Word or PDF file):	
<b>Language(s) in which the decision is written:</b> Finnish.	
<b>Official court translation available in any other languages?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If so, which): Short summary in Swedish	
<b>Countr(y)(ies) of origin of the applicant(s):</b> Iran, Islamic Republic of	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> Finland	
<b>Any third country of relevance to the case:</b> <sup>3</sup>	
<b>Is the country of asylum or habitual residence party to:</b>	
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: Art. 1 A (2)
<b>(Only for cases with statelessness aspects)</b> 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:
<b>(Only for cases with statelessness aspects)</b> 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:
<b>(For AU member states):</b> 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:
<b>For EU member states:</b> 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 European Union art. 2, 18 and 19

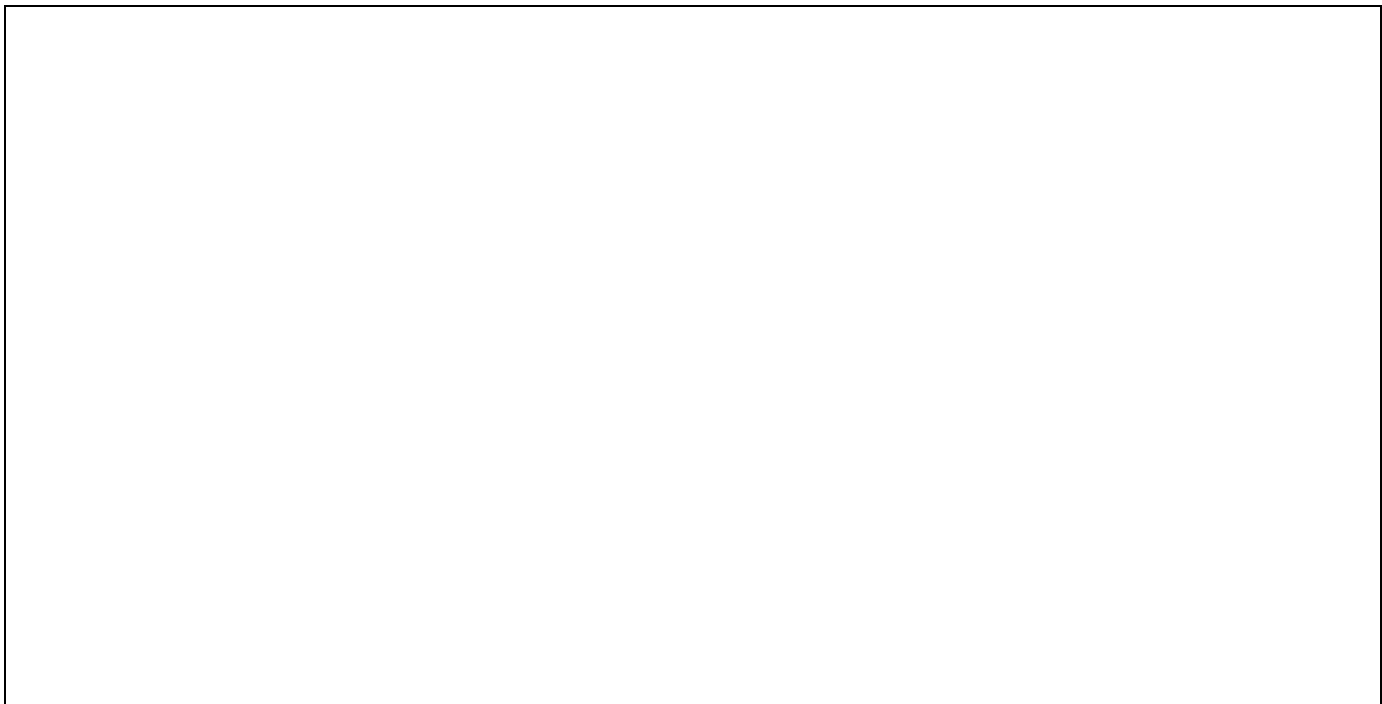
**Topics / Key terms: (see attached 'Topics' annex):**

**Asylum policy**  
**International protection**  
**Well-founded fear of persecution**  
**Grounds for persecution**  
**Social group persecution**  
**Homosexuals**

**Key facts (as reflected in the decision):** [No more than 200 words]

**The applicant has claimed problems relating to his homosexuality as grounds for international protection. In 2001 he had to choose a wife from three candidates chosen by his parents. He regularly dated his long-time boyfriend from his home-town. His wife saw him kiss his boyfriend at home. The next day he fled to Teheran. His wife's family sued him for betraying his wife and her family. They also informed the prosecutor general about the applicant's homosexuality. The applicant followed the trial through his family and friends. A false witness together with the applicant's wife and boyfriend testified about the applicant's homosexuality. His wife's family had coerced his boyfriend to say to the court that the applicant had abused him. In December 2001 the court sentenced him for betrayal and homosexuality and issued a search warrant. His parents were asked to attend to hear the death sentence.**

**The applicant fled from Teheran to Dubai in 2001 and arranged a residence permit to the United Arab Emirates. In Dubai he found new boyfriends. He moved to Sharjah in 2007. In 2008 he was issued an official order to leave the country within two weeks for security reasons. He decided to leave for Europe.**



**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]**

**Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original**

**The question to adjudicate in the Supreme Administrative Court is whether the applicant due to his sexual orientation has a well founded fear of persecution in his home country Iran or whether there are significant reasons to believe that he for the same reason would there be in a real risk of suffering serious harm. If his homosexuality would put him in the risk referred to above, it still has to be assessed if he can be required to, in order to avoid the above mentioned risks, behave in a manner that his homosexuality will not become generally known.**

**When minority status and membership of a particular social group and the risk of persecution based thereupon are invoked as asylum grounds, the first issue at hand is to evaluate if the applicant has credibly established being homosexual. After this the applicant still has to demonstrate that he, because of his sexual orientation, has a well founded fear of persecution upon his return to his country of origin. If the applicant has managed to credibly demonstrate that he, in his country of origin, is suspected of belonging to the alleged group and the evidence he has presented about events in his recent past corroborate this, it can at the least be considered as sufficient evidence of a risk of persecution.**

**As a next step it has to be evaluated on an individual basis how the person would in the future behave in his country of origin in his private life and in public in different circumstances and how, based on the evaluation of country of origin information, authorities and private persons would view him. If, as a result of this evaluation, it is found that the applicant in his country of origin has a well founded fear of persecution and his fear is also objectively well founded, the applicant has the right to asylum even if he by hiding his sexual orientation perhaps could avoid persecution.**

**Sexual orientation must be seen as belonging to human rights as a part of the protection of private life. The objective of international protection is to offer protection the country of citizenship is unable or unwilling to offer against a well founded risk of persecution. However, the purpose is not to grant a person belonging to a sexual minority the same possibility to free and open behavior he enjoys in the country of asylum. If the applicant is willing to hide his sexual orientation in his country of origin for social, cultural or religious reasons and not because of a well founded risk of persecution, there are no grounds to grant asylum.**

**In this particular case the applicant has established being homosexually oriented.**

**The applicant has according to himself earlier chosen to hide his homosexuality from his parents and relatives prior to the revelation of his homosexual relationship after signing the matrimonial agreement. Based on the facts put forward, the applicant's sexual orientation has probably come to the knowledge of the authorities at the latest at the stage when his mother was verifiably sued in connection to the applicant's hiding and his and his wife's matrimonial and identity documents. After this it can not be considered to be in line with the intention of the refugee convention to suppress ones sexual identity and to continue the earlier choice to keep it a secret.**

**Even if the applicant has not been able to bring forward reliable evidence of the alleged death penalty he was sentenced to, when deciding the issue, it should have been evaluated in line with the argumentation above, taking into consideration the most recent country of origin information and**

**all the facts presented in the case, if the applicant has a well founded fear of persecution or of facing a real risk of suffering serious harm in his country of origin Iran because of his sexual orientation.**

**Based on the above mentioned justifications the decisions by the Administrative Court and by the Immigration Service are repealed and the case is referred back to the Immigration Service.**

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

**In the decision the Supreme Administrative Court refers to**

- **UNHCR's Handbook on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,**
- **UNHCR 7.5.2002: "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,**
- **UNHCR's Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees 7.5.2002 and**
- **UNHCR Guidance Note on Refugee claims Relating to Sexual Orientation and Gender Identity 21.11.2008.**

**The Court also refers to the report "Fleeing Homophobia" from September 2011 by Sabine Jansen and Thomas Spijkeboer.**

**The following European case law is referred to by the court:**

- **I.I.N v. the Netherlands (nr 2035/4, 9.12.2004)**
- **Verwaltungsgericht Potsdam 11.9.2006 – 9 K 189/03.A.**
- **F v. UK 22.6.2004**
- **HJ (Iran) and HT (Cameroon) v. Secretary of state for the Home department (2010 UKC 31, United Kingdom; Supreme Court, 7 July 2010)**

## **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:**

Protection Information Unit  
Division of International Protection  
UNHCR  
Case Postale 2500  
1211 Genève 2 Dépôt  
Switzerland  
Fax: +41-22-739-7396  
Email: [refworld@unhcr.org](mailto:refworld@unhcr.org)