

Summary of Supreme Court Decisions 2012

JUDGMENT

21 December 2012

Administration law. Immigration law. Residence permit on humanitarian grounds. Declaratory judgment for breach of convention.

In a case relating to the validity of the Immigration Board of Appeals' refusal of an application for a residence permit for a family from Bosnia-Hercegovina who had children in Norway the Supreme Court's majority held that the Immigration Board of Appeals had relied on a correct understanding of section 38 of the Immigration Act in its evaluation of the question whether a residence permit should be granted. The decision satisfied the requirements as to reason in section 38 subsection 3 of the Immigration Act as these are specified in another plenary judgment of the same date in case HR-2012-2398-P. A court has a procedural right to deliver a declaratory judgment to the effect that a deportation violates Article 8 of the ECHR relating to the right to respect for private and family life. After having reviewed the European Court of Human Rights' judgment of 4 December 2012 in the case *Butt v. Norway*, the majority concluded that there were no such "exceptional circumstances" that could constitute grounds for a violation of the convention when the duty to leave the country had been breached over several years. Unlike the ECHR and the ICCPR, the Children's Convention does not contain any requirement for an effective remedy in law at national level. It is accordingly not possible to deliver a declaratory judgment for a breach of this convention. Plenary decision. Dissenting votes 11-8 regarding the question whether it is possible to deliver a declaratory judgment for breach of the Children's Convention, 14-5 regarding the other issues.

Reference: HR-2012-2399-P, case no. 2012/1042, civil appeal against judgment.