

## 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>Hof van Beroep Brussel (Court of Appeal Brussels)</b>	
<b>Date of the decision:</b> 29 / 10 / 2014	<b>Case number:</b> <sup>2</sup> 2014/8927
<b>Parties to the case:</b> X. v. Belgian State, represented by the State Secretary for Asylum and Migration, social inclusion and poverty reduction, Aliens Office	
<b>Decision available on the internet?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, please provide the link: (If no, please attach the decision as a Word or PDF file):	
<b>Language(s) in which the decision is written:</b> Dutch	
<b>Official court translation available in any other languages?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
<b>Countr(y)(ies) of origin of the applicant(s):</b> Former USSR	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> Belgium	
<b>Any third country of relevance to the case:</b> <sup>3</sup> Ukraine and Azerbaijan	
<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:
<b>(Only for cases with statelessness aspects)</b> The 1954 Convention relating to the Status of Stateless Persons <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: Article 1.1
<b>(Only for cases with statelessness aspects)</b> The 1961 Convention on the Reduction of Statelessness <input checked="" 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:  Articles 1 and 4 of the Charter of Fundamental Rights of the European Union.

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

Nationality and statelessness – Habitual residence

**Key facts (max. 200 words)**

The appellants arrived in Belgium on 14 December 2005 and their asylum claim was rejected.

They were recognized as stateless in the sense of article 1.1 of the 1954 Convention relating to the Status of Stateless Persons by the Tribunal of First Instance of Antwerp on 13 November 2007, after losing their nationality following the dissolution of the USSR in 1992.

On 4 February 2009 the embassy of Ukraine certified that they are not citizens of Ukraine. They also requested a similar certificate from the embassy of Azerbaijan but got no response.

On 14 December 2011 the President of the Tribunal of First Instance of Brussels ordered the Belgian State (by interim order) to deliver a temporary residence permit to the appellants.

On 21 December 2011 the Council for Aliens Law Litigation acknowledged that it was impossible to remove the appellants from the territory because no other state would receive them.

On 6 February 2012 they were awarded a temporary residence permit by the municipality on the basis of the order of the President of the Tribunal of First Instance of Brussels of 14 December 2011.

On 6 February 2012 the appellants summoned the Belgian State to deliver them a (permanent) residence permit.

On 25 September 2012 the order of the President of the Tribunal of First Instance of Brussels of 14 December 2011 was overturned, following which the temporary residence permit was withdrawn.

The Court of First Instance of Brussels declared that it has no jurisdiction to rule on the claim for a residence permit because the claimants could not demand a certain conduct from the government based on the provisions they cited (Articles 1, 6 and 31 of the 1954 Convention relating to the Status of Stateless Persons; articles 3, 13 and 15 of the European Convention on Human Rights; and articles 23 *jo.* 191 of the Belgian Constitution) and thus did not dispose of the required subjective right to establish jurisdiction.

The respondent [State Secretary for Asylum and Migration, Aliens Office] on 4 October 2013 received confirmation from the embassy of Azerbaijan that the appellants are not citizens of this state.

On 26 November 2013 [between the judgment at first instance and the appeal judgment] the appellants were temporarily regularized on the basis of article 9bis of the Belgian Aliens Act, and starting 12 December 2013 regained social benefits. They therefore adjusted their claim, now asking for damages because of the inaction of the Belgian state with regard to irremovable stateless persons.

**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]**

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12. The Court has jurisdiction to rule on the unlawful interference with a subjective right as a result of the exercise by the administration of a discretionary competence, both to prevent such interference as to compensate it, it being understood that the Court is not allowed to take the place of the administrative authority and that it may not deprive that administration of its discretionary power.

The court does not interfere with the exercise of powers reserved to the government by law, when it imposes a measure on the government to restore the injured party's rights (Court of Cassation 1 October 2007; Court of Cassation 24 April 2014).

17. Since the judgment of the Belgian Constitutional Court of 17 December 2009 it is established that due to the lack of a legal provision similar to the provision granting rights to refugees, the legal situation of the appellants was prejudicial to their rights in a discriminatory way, since they could not obtain a durable right of residence in another State with which they have ties.

It was therefore up to the Belgian State to do the necessary to remedy the gap in the regulation so that the legal situation of the appellant would no longer be discriminatory and thus could obtain a residence permit if they fulfill the conditions thereto, which it [the state] however failed to do.

Thus the respondent [the State Secretary for Asylum and Migration, Aliens Office] was also under an obligation to not apply unconstitutional regulations where appropriate to avoid discriminatory and therefore erroneous administrative practice.

18. Moreover, reference can be made in this regard to a judgment of the European Court of Human Rights (*Sisojeva and others v. Latvia* – EctHR, No. 60654/00, 16 June 2005 and 15 January 2007 - Although overturned by the Grand Chamber with regard to the violation of article 8 because the complainants had lost interest). The Court held that de persistent refusal to grant a permanent residence permit to a stateless person and her family, constituted a violation of the right to respect for family life. The fact that the persons concerned were not expelled and thus tolerated, offered no *inadequate* [*Sic* “geen ontoereikende”] solution.

The defense according to which the appellants should have delivered the necessary proof in order to be granted a residence permit on the basis of article 9bis of the Aliens Act – which doesn't provide the equivalent of what is provided for refugees, is therefore not acceptable.

19. From the case file it is clear that the appellants turned to the embassy of Azerbaijan in 2006 already, without consequence, but that the respondent [the State Secretary for Asylum and Migration, Aliens Office] did receive the necessary information from the embassy on 4 October 2013, however not in order to settle the legal status of the appellants, but in view of their expulsion.

Therefore there is no doubt that the respondent could have obtained the same information much earlier.

Instead of extending the temporary residence permit at least until a conclusive answer was obtained from the embassy of Azerbaijan, the residence permit was on the contrary revoked, in spite of the ruling of the Constitutional Court.

Only after the annulment by the Council for Aliens Law Litigation on 18 December 2012 of a decision whereby an application for residence on the basis of article 9bis of the Aliens Act was declared inadmissible, an order to leave the territory was revoked and the appellants obtained a temporary residence permit again.

20. From all this it can only be concluded that the respondent indeed acted incorrectly toward the appellants.

During seven years the appellants were not given the chance to lead a dignified life so that a subjective right guaranteed by treaty law was disregarded, which is in violation of article 3 ECHR that prohibits the submission of persons to degrading or inhuman treatment. Such treatment is moreover not compatible with articles 1 and 4 of the Charter of Fundamental Rights of the European Union.

When taking into consideration the precarious conditions in which they had to live because of the lack of a specific residence permit that should have been awarded to a stateless person in circumstances equivalent to those of a refugee, it is impossible to deny that this caused damage and that this damage is the sole consequence of the lack of suitable regulations as indicated by the Constitutional Court, not only in its decision of 17 December 2009, but also subsequently in its decision of 11 January 2012.

22. The suffered moral damage is estimated at 5000 EUR for each of them.

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

Based on to two rulings by the Belgian Constitutional Court dated 11 January 2012 and 17 December 2009 in which the Constitutional Court found that the difference in treatment as regards their right of residence between recognized refugees and recognized stateless persons who involuntarily lost their nationality and cannot obtain a legal and durable right of residence in another state is discriminatory since different treatment is applied to persons who find themselves in comparable situations.

Reference to European Court of Human Rights, Sisojeva and others v. Latvia – EctHR, No. 60654/00, 16 June 2005 and 15 January 2007 - Although overturned by the Grand Chamber with regard to the violation of article 8 because the complainants had lost interest).

## **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.

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