(Unofficial translation)

SUPREME COURT OF NORWAY

On 29 June 2010, the Supreme Court passed judgment in

HR-2010-01130-A, (Case No. 2010/259), civil case, appeal against judgment,

The State (Immigration Appeals Board) (Office of the Attorney-General, lawyer Ingrid Skog Hauge)

v

A (lawyer Kjersti Cecilie Jensen)

VOTING:

(1) Judge Falkanger: The case concerns the interpretation of article 1 C (5) of the Convention relating to the Status of Refugees of 28 July 1951, which regulates the conditions according to which refugee status shall cease to apply. The central issue is whether the provision allows that changes in the refugee's personal circumstances may in themselves result in such loss of status or whether changes must have occurred in the country of origin of the person concerned.

(2) A came to Norway on 2 April 2004 from Iran. The Norwegian Directorate of Immigration granted her asylum on 13 June 2005. The ground was her "sexual orientation and the problems that she as a lesbian might risk on return to Iran".

(3) On 13 January 2006, A entered into marriage with an Iranian man. As a consequence of this, the Norwegian Directorate of Immigration decided on 15 March 2007 to revoke her asylum.

(4) The decision was appealed to the Immigration Appeals Board, which decided on 18 September 2007 that the appeal should not be allowed. The Appeals Board gave the following grounds for its decision:

> **"The conditions for revoking asylum granted, pursuant to section 18, second paragraph, of the Immigration Act and section 64, first paragraph, of the Immigration Regulations, are met. Like the Directorate, the Appeals Board finds that the appellant no longer falls under the definition of refugee given in section 16 of the Act. The Appeals Board is in agreement with the grounds given by the Directorate, and draws attention to the fact that the appellant, after being granted asylum on the basis of her lesbian orientation and the problems that she as a lesbian might risk on return to Iran, has contracted marriage with a man. Even if the appellant still has a lesbian or bisexual orientation, the grounds for the previously granted permit has ceased to apply since marriage to a person of the opposite sex indicates that the appellant has no intentions of living in accordance with her lesbian orientation in Iran."**

(5) The Appeals Board also considered whether A met the conditions for a work permit or residence permit pursuant to section 8, second paragraph, of the Immigration Act and whether section 15, first paragraph, precluded returning her to Iran, but found neither to be the case.

(6) A instituted legal proceedings against the State (Immigration Appeals Board), claiming the decision to be invalid. On 14 January 2009, Oslo District Court passed judgment with the following conclusion:

"1. The Immigration Appeals Board's decision of 18 September 2007 to refuse A a Norwegian residence permit pursuant to section 8, second paragraph, of the Immigration Act is ruled invalid.

2. A is awarded costs in the amount of NOK 120 800 – one hundred and twenty thousand eight hundred Norwegian kroner – including VAT in addition to legal fees of NOK 6 880 – six thousand eight hundred and eighty Norwegian kroner.

The due date is 2 – two – weeks from the date on which judgment is served."

(7) Like the Immigration Appeals Board, the District Court found that A`s marriage entailed that the circumstances that had given grounds for asylum no longer existed. The decision to grant asylum could therefore be revoked. Nor were there any other grounds for asylum, and A was not subject to protection against return to Iran pursuant to section 15, first paragraph, of the Act. The District Court nevertheless concluded that the Appeals Board's decision to refuse a residence permit pursuant to section 8, second paragraph, of the Immigration Act was clearly unreasonable, and thus invalid.

(8) The State gave notice of appeal against the District Court's judgment. A submitted a derivative appeal against the parts of the judgment that applied to revocation of the decision regarding asylum and protection against return pursuant to section 15, first paragraph, of the Act.

(9) On 1 December 2009, Borgarting Court of Appeal passed judgment with the following conclusion:

"In the appeal:
The appeal is dismissed.

In the derivative appeal:
The Immigration Appeals Board's decision of 18 September 2007 is invalid.

Costs:
The State (Immigration Appeals Board) shall indemnify A for the costs in the Court of Appeal in the amount of NOK 148 890 – one hundred and forty eight thousand eight hundred and ninety Norwegian kroner."

(10) In the derivative appeal, the Court of Appeal found it to be insufficient for revocation of asylum that the conditions of article 1 A of the Convention relating to the Status of Refugees, the so-called inclusion provision, no longer applied. In addition, one of the alternatives of the non-application provision of article 1 C (1)–(6) would have to be met. In the view of the Court of Appeal, article 1 C (5), which here is the appropriate alternative, concerns only changes in the refugee's country of origin, which have not occurred in this case.

(11) In the conclusion of judgment, the Court of Appeal dismissed the State's appeal, but it must be taken into account that it was not found appropriate for the court to consider this, since it concerned an alternative issue.

(12) The State (Immigration Appeals Board) has given notice of appeal against the Court of Appeal's judgment. The appeal addresses the Court of Appeal's interpretation of the law in connection with the derivative appeal against the District Court's judgment. On 26 March 2010, the Appeals Committee of the Supreme Court decided as follows:

"The appeal is allowed to be heard in respect of the Court of Appeal's general interpretation of section 18, second paragraph, cf. section 16, of the Immigration Act, cf. articles 1 A (2) and 1 C (5) of the Convention relating to the Status of Refugees. Leave to appeal is otherwise refused."

(13) On 19 April 2010, a preliminary hearing was held. The subject of appeal was then made clear. The following was recorded in the court record:

"It was made clear that the subject of the appeal proceedings in the Supreme Court shall exclusively be the general interpretation of section 18, second paragraph, cf. section 16, of the Immigration Act, cf. article 1 A (2), cf. article 1 C (5), of the Convention relating to the Status of Refugees. The appeal proceedings shall also concern whether restraint should be exercised in reviewing the administration's interpretation of the above-mentioned provisions. On the other hand, questions of evidence and the application of facts fall outside. The parties stated their acceptance of this."

(14) At the same hearing, the parties were informed that the case could have two possible outcomes: either the appeal would be dismissed or the judgment of the Court of Appeal would be set aside.

(15) For the use of the Supreme Court, the State has obtained a report on state practice from Intergovernmental Consultations on migration, asylum and refugees. The respondent too has obtained a certain amount of material concerning state practice. The case has otherwise the same status for the Supreme Court as for the other instances.

(16) *The State (Immigration Appeals Board)* principally submitted as follows:

(17) Article 1 C (5) of the Convention relating to the Status of Refugees does not solely relate to changes in the refugee's country of origin. Changes in the refugee's personal circumstances may also fall under the provision.

(18) This clearly ensues from the wording of article 1 C (5), which makes no distinction between the types of circumstance that must have changed. When interpreting a treaty under international law, the central source of law is the wording. The Court of Appeal has interpreted article 1 C (5) restrictively. In reality this constitutes an unwarranted limitation of Norwegian sovereignty.

(19) The State's interpretation is supported by purpose considerations. Asylum is by its nature temporary. When there is a change in the circumstances indicating asylum, there is no longer a need for it. This applies both to changes in the country of origin and to changes in personal circumstances.

(20) When the wording and purpose leave no doubt as to the interpretation, other sources of law have little weight. In any event, they provide no unequivocal support for the respondent's view. Furthermore, the State's interpretation is by no means unreasonable.

(21) If the Supreme Court is in doubt as to how the Convention should be interpreted, decisive weight should be placed on the standpoint adopted by the administration in the matter, cf. Norwegian Court Reports Rt. 1991, page 586.

(22) The State (Immigration Appeals Board) entered the following plea:

"Borgarting Court of Appeal's judgment of 1 December 2009 shall be set aside."

(23) A principally submitted as follows:

(24) Article 1 C (5) of the Convention relating to the Status of Refugees concerns only those cases where changes have occurred in the refugee's country of origin. Changes in the refugee's personal circumstances fall outside.

(25) When read in isolation, the wording of article 1 C (5) is not quite clear but, when read within its context, there can be no doubt that the State's interpretation is incorrect. In particular, the context of the inclusion provision in article 1 A (2) and the non-application provisions in article 1 C (1)–(4) indicate that the application of article 1 C (5) is dependent on changes in the country of origin.

(26) This restrictive interpretation is lent a certain support by the stringent principles that apply to revocation of favourable administrative decisions.

(27) The interpretation is further supported by the travaux préparatoires of the Convention relating to the Status of Refugees, statements by the United Nations High Commissioner for Refugees, practice of the parties to the treaty, EU directives, legal theory and Norwegian travaux préparatoires. Attention is drawn to the fact that a characteristic shared by these sources of law is that they only refer to changes in the country of origin.

(28) There are also strong grounds for this solution. Refugees should have a reasonable opportunity to accommodate themselves following a decision to grant asylum. The State's interpretation would result in limited freedom of action, arbitrariness and discrimination.

(29) In interpreting article 1 C (5), the Supreme Court should not place weight on the views of the administration. It should rather adopt an interpretation that quite certainly does not violate the Convention.

(30) A entered the following plea:

> **"1. The appeal shall be dismissed.**
>
> **2. A shall be awarded the costs for all instances with statutory interest from the date stipulated for payment until payment takes place."**

(31) *I have concluded* that the appeal must succeed.

(32) Before examining more closely the legal issues raised by the case, I find reason to provide a short account of the rules concerning the granting and revocation of asylum.

(33) Since it is the Immigration Act of 24 June 1988 No. 64 that has been applied in this case, I shall refer to this Act in the following. The Act has subsequently been replaced by the Immigration Act of 15 May 2008 No. 35, but I cannot see that this has resulted in any change in the status of the general legal issues raised by the case.

(34) Pursuant to section 17, first paragraph, of the Immigration Act, any refugee who is in the realm or at the Norwegian border has on application the right to asylum. Pursuant to section 16 of the Act, a "foreign national who falls under Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951, cf. the Protocol of 31 January 1967" is deemed a refugee. The article 1 A referred to provides further rules specifying the criteria that must be met in order that a foreign national shall have the status of refugee. Article 1 C, which this case concerns, provides rules specifying when refugee status shall cease to apply.

(35) Asylum granted may be revoked pursuant to section 18, second paragraph, of the Immigration Act "when the refugee no longer falls under the definition of refugee". The State submitted to the Court of Appeal that this entailed that revocation could take place as soon as the foreign national concerned fell outside the definition of refugee provided in article 1 A. However, this submission has been withdrawn in the Supreme Court. It is now accepted that revocation may only take place if one of the conditions of article 1 C (1)–(6) is met. In the present context, it is 1 C (5) that is appropriate. This establishes that the Convention shall cease to apply to a refugee if:

> **"He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality".**

(36) As mentioned above, the Court of Appeal has found that revocation of asylum pursuant to this provision requires that changes have occurred in the refugee's country of origin, and that changes of the refugee's personal circumstances entailing that he no longer belongs to a persecuted group would not constitute a sufficient ground. The question is whether this expresses the correct interpretation.

(37) I will first call attention to the fact that the Supreme Court is competent to review the question of interpretation in its entirety. Particularly with reference to the judgment in Norwegian Supreme Court Reports Rt. 1991, page 586, the State has submitted that, in cases of doubt, the interpretation adopted by the administration in the matter should be used as the basis; whereas the respondent has submitted that an interpretation should be chosen that quite certainly does not conflict with the Convention. I cannot endorse either of these views. An interpretive issue such as that of the present case must be independently and autonomously decided by the courts on the basis of the current principles for interpretation of treaties. I find no reason to consider in more detail the current significance of the decision in Norwegian Supreme Court Reports Rt. 1991, page 586, since the case concerned a somewhat different issue than that of the present case.

(38) I base my interpretation of article 1 C (5) on articles 31–33 of the Vienna Convention of 1969 on the Law of Treaties. Although Norway has not acceded to this Convention, the provisions referred to express customary public international law. It follows from article 31 (1) that a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

(39) I find it difficult to see that article 1 C (5) as it is worded should be limited to changes of conditions in the country of origin. The provision refers without further specification to change of "the circumstances" that have resulted in status as a refugee. Exclusion of personal circumstances entails a restrictive interpretation.

(40) Nor is it natural in the context of the Convention's remaining provisions to interpret article 1 C (5) as indicating that personal circumstances fall outside. In view of the respondent's submissions, I refer particularly to the fact that the context with neither article 1 A (2) nor article 1 C (1)–(4) may give grounds for such a restrictive interpretation.

(41) In my opinion, the view of the State complies with the purposes underlying the Convention relating to the Status of Refugees. It aims to provide protection, often referred to as surrogate protection, to persons unable to attain this in their country of origin. When the situation changes in such a way that protection is once more available in the country of origin, the need for asylum no longer prevails. It is difficult to see why this should not also apply where the need for asylum ceases to exist owing to a change in personal circumstances.

(42) As support for her view, the respondent submitted that it is also the purpose of the Convention relating to the Status of Refugees to secure refugees' rightful claim to be able to accommodate themselves following an asylum decision. I agree that this is one of the purposes safeguarded by the Convention, but I cannot see that this view entails that changes of personal circumstances should be dealt with differently than changes in the country of origin. It is recognised that, in order to safeguard refugees' need to accommodate themselves, changes in the country of origin must be of a certain force and duration before asylum can be revoked. I assume that such safety margins must also apply to changes in personal circumstances.

(43) I sum up so far by concluding that the Convention's wording and its purposes clearly support the view that changes in personal circumstances are subject to article 1 C (5). In interpreting a treaty, the implications of wording and purpose considerations may only exceptionally be regarded as having to give way to other sources of law. I cannot see that there is a basis for this here.

(44) The Handbook on Procedures and Criteria for Determining Refugee Status issued by the United Nations High Commissioner for Refugees deals only with changes in the country of origin, not with changes in personal circumstances. However, this may be owing to its focus on the most practical issues. Moreover, the High Commissioner's primary expertise is in the conditions of individual states, and it is therefore natural that attention is directed to this rather than to refugees' personal circumstances. The handbook does not otherwise state directly anywhere that personal circumstances fall outside article 1 C (5). Although the handbook

should generally be ascribed considerable weight, cf. Official Norwegian Report NOU 2004: 20 *A New Immigration Act*, page 102, I cannot see that it can on this basis be accorded any particular significance here.

(45) The above-mentioned reflections are also manifested in statements by the United Nations High Commissioner for Refugees and in other parts of the UN system.

(46) Nor can I see that state practice throws any decisive light on the issue in the present case. As mentioned above, the State, through Intergovernmental Consultations on migration, asylum and refugees, has requested reports from a number of states on practice in this area. One of the questions the states were requested to answer was worded as follows:

> **"Does the term 'circumstances' refer to general and fundamental changes in the country of origin or the individual fear of being persecuted? In other words: Can the refugee status be revoked if the well-founded fear of persecution, on the basis of which his refugee status was granted, has ceased to exist and there is no other reason to fear persecution, or must there also be a substantial and durable change in the country of origin?**
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> **One example: A person has been granted refugee status because s/he has converted from Islam to Christianity. Later, in the country of asylum, s/he reconverts back to Islam in a way that eliminates the risk. There has been no change in the country of origin. Still, there is no risk of persecution. The person could avail him- or herself to the protection of that state. Would it be possible to apply art 1 C (5) in this situation?"**

(47) Ten states responded to the enquiry. It is not necessary to give a detailed account of the responses here, but I find reason to emphasise that Belgium, Germany, New Zealand, Switzerland, the UK and the USA all stated that article 1 C (5) is assumed to include changes in personal circumstances. On this basis, it can at any rate be established that there is no clear interpretation of the provision that conflicts with the view submitted by the State.

(48) I call attention to the fact that, in the new Swedish Immigration Act of 1 January 2010, it appears that asylum may only be revoked on a change of conditions in the country of origin, but the issue is not directly discussed in the travaux préparatoires. I do not therefore find the Swedish arrangement to be of significance to the present case.

(49) Finally, it is difficult to see that the State's interpretation of the Convention results in arbitrariness or discrimination, as submitted by the respondent. Nor can I see that this interpretation involves an untenable limitation of refugees' freedom of action or self-fulfilment. It is true that refugees may risk revocation of asylum in connection with changes in the personal circumstances, e.g. religion, which originally formed grounds for asylum. However, if refugees, following changes in their personal circumstances, no longer risk persecution in their country of origin, it is difficult to see why they should have a claim to asylum in Norway.

(50) Article 1 C (5) must thus be interpreted as including changes in the refugee's personal circumstances.

(51) There is nothing to prevent Norway from implementing in law narrower access to revocation of asylum than follows from article 1 C (5). In such case, it would be necessary to take this into consideration in relation to A. However, I do not find this to be the case. As mentioned above, section 16 of the Immigration Act refers directly to the Convention relating to the Status of Refugees. In the travaux préparatoires to the Act, attention is, true enough, directed to changes in conditions in refugees' country of origin, but it is nowhere stated that changes in other circumstances fall outside. On the contrary, it can be maintained that certain formulations provide for this. I refer here to Proposition No. 46 (1986-87) to the Odelsting *On*

an Act concerning the entry of foreign nationals into the kingdom of Norway and their presence in the realm (Immigration Act), page 208, which states:

> **"The reason why the refugee no longer falls under the definition of refugee, is *as a rule* that the situation in the country of origin has changed [my italics]."**

(52) The Court of Appeal's interpretation of the law is thus incorrect. The judgment must therefore be set aside. The respondent's remaining submissions will, as decided during the preparatory proceedings, be dealt with during the Court of Appeal's continued consideration of the case.

(53) The State (Immigration Appeals Board) has not claimed compensation for costs.

(54) I vote for this

JUDGMENT:

The Court of Appeal's judgment is set aside.

(55) Judge Endresen: I am in all important respects and in the conclusion in agreement with the first judge to deliver judgment.

(56) Judge Matningsdal: I concur.

(57) Judge Øie: I concur.

(58) Judge Tjomsland: I concur.

(59) Following the voting, the Supreme Court passed this

JUDGMENT:

The Court of Appeal's judgment is set aside.