

CASE LAW COVER PAGE TEMPLATE

Name of the court Korkein Hallinto-Oikeus (Supreme Administrative Court)	
Date of the decision:	24 June 2013
Case number:	KHO:2013:113
Parties to the case:	
Decision available on the internet? Yes http://www.kho.fi/paatokset/62488.htm	
Language(s) in which the decision is written: Finnish	
Official court translation available in any other languages? Yes Short summary in Swedish	
Countr(y)(ies) of origin of the applicant(s): Iran, Islamic Republic of	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Finland	
Any third country of relevance to the case: Iraq, Turkey	
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: <input checked="" type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21 <input type="checkbox"/> #22 <input type="checkbox"/> #23 <input type="checkbox"/> #24 <input type="checkbox"/> #25 <input type="checkbox"/> #26 <input type="checkbox"/> #27 <input type="checkbox"/> #28 <input type="checkbox"/> #29 <input type="checkbox"/> #30 <input type="checkbox"/> #31 <input type="checkbox"/> #32 <input checked="" type="checkbox"/> #33 <input checked="" type="checkbox"/> #34 <input checked="" type="checkbox"/> #35 <input type="checkbox"/> #36 <input type="checkbox"/> #37 <input type="checkbox"/> #38 <input type="checkbox"/> #39 <input type="checkbox"/> #40 <input type="checkbox"/> #41 <input type="checkbox"/> #42 <input type="checkbox"/> #43 <input type="checkbox"/> #44 <input type="checkbox"/> #45 <input type="checkbox"/> #46
(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: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21 <input type="checkbox"/> #22 <input type="checkbox"/> #23 <input type="checkbox"/> #24 <input type="checkbox"/> #25 <input type="checkbox"/> #26 <input type="checkbox"/> #27 <input type="checkbox"/> #28 <input type="checkbox"/> #29 <input type="checkbox"/> #30 <input type="checkbox"/> #31 <input type="checkbox"/> #32 <input type="checkbox"/> #33 <input type="checkbox"/> #34 <input type="checkbox"/> #35 <input type="checkbox"/> #36 <input type="checkbox"/> #37 <input type="checkbox"/> #38 <input type="checkbox"/> #39 <input type="checkbox"/> #40 <input type="checkbox"/> #41
(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: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15 <input type="checkbox"/> #16 <input type="checkbox"/> #17 <input type="checkbox"/> #18 <input type="checkbox"/> #19 <input type="checkbox"/> #20 <input type="checkbox"/> #21
(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: <input type="checkbox"/> #1 <input type="checkbox"/> #2 <input type="checkbox"/> #3 <input type="checkbox"/> #4 <input type="checkbox"/> #5 <input type="checkbox"/> #6 <input type="checkbox"/> #7 <input type="checkbox"/> #8 <input type="checkbox"/> #9 <input type="checkbox"/> #10 <input type="checkbox"/> #11 <input type="checkbox"/> #12 <input type="checkbox"/> #13 <input type="checkbox"/> #14 <input type="checkbox"/> #15
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:

UNHCR Mandate

Grant of Asylum

Non-refoulement

Convention Refugee

Refugee status determination

Key facts:

The applicants applied for asylum in Finland in 2008. They are Iranian Kurds. Applicant A left Iran illegally in 1997 to Iraq and further to Turkey in 2001. Applicant B left Iran for Iraq with her family at age 11, then went back to Iran, and then went from Iran to Turkey. Applicants A and B got married in Turkey and were recognized as refugees in Turkey by UNHCR on 8 February 2007.

The politically active uncle of Applicant A disappeared in 1986 after being arrested. This hampered Applicant A's possibilities to be admitted to university. Applicant A left for Iraq and joined the KDPI (Kurdish Democratic Party of Iran). The party sent Applicant A to work at the local hospital; Applicant A also worked as the manager of the library of the KDPI's education centre. Because of the harassment from authorities and the general situation in Iraq, Applicant A left for Turkey in 2001. He quit the KDPI one week prior to that.

Applicant B left her country of origin because of the problems her father had. Her father had been politically active and a member of the KDPI. Applicant B stated that she cannot return to her home country because her husband has opposed the state by being a peshmerga.

Key considerations of the court

In the case, it has to be assessed specifically, what significance the refugee status granted by UNHCR has for the conditions for granting international protection.

The applicants have as evidence presented copies of documents proving the refugee status granted to them by UNHCR on 8 February 2007.

UNHCR's office in Stockholm has upon the request of the applicants submitted a statement on 5 May 2010 according to which the refugee status granted to A on 8 February 2007 remains valid to date. The statement points out, that the refugee status granted by UNHCR has universal validity.

Even if states according to international law are not bound by the recognition of refugee status by the UNHCR, it has to be considered and its significance assessed adequately. According to the statement, it is the practice of several States not to dispute recognition granted by the UNHCR. The statement also refers to the decision by the European Court of Human Rights in the case *Jabari v. Turkey*.

The Finnish Immigration Service, in its motivations for its decision, referred only briefly to the refugee status granted by UNHCR to the applicants and stated that the granted refugee status does not bind Finland in assessing applications for international protection. The value as evidence of the refugee status granted by UNHCR was not investigated in detail by the Administrative Court, for example in an oral hearing. In their statement to the Supreme Administrative Court the Finnish Immigration Service did not expressed its opinion on the refugee status.

According to international law, states have the right to control entry, sojourn and return of aliens. Also, the refugee status granted by UNHCR cannot as such be binding to a state party to the 1951 Refugee Convention. However, the mandate refugee status granted by UNHCR to a certain person in an individual refugee status determination procedure must be given due weight and the reasons why it has been granted must, if possible, be investigated. Especially the possible danger or serious harm that the person could encounter upon return to the country of origin must here be assessed.

Since this ground has not been adequately examined, the decisions by the Administrative Court and the Finnish Immigration Service must be set aside and the case referred back to the Finnish Immigration Service for new proceedings.

Other comments or references

The Supreme Administrative Court refers to

- the 1951 Convention and the 1967 Protocol;
- the Handbook on Procedures and Criteria for Determining Refugee Status (Geneva 1993);
- the UNHCR Resettlement Handbook (2011); and
- UNHCR's publication from 2005 "Procedural Standards for Refugee status Determination under UNHCR's Mandate".

The Supreme Administrative Court further refers to the following case-law of the European Court of Human Rights:

- *Jabari v. Turkey*, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, available at: <http://www.refworld.org/docid/3ae6b6dac.html>
- *R.C. v. Sweden*, Appl. No. 41827/07, Council of Europe: European Court of Human Rights, 9 March 2010, available at: <http://www.refworld.org/docid/4b98e11f2.html>; and
- *S.F & others v. Sweden*, Application no. 52077/10, Council of Europe: European Court of Human Rights, 15 May 2012, available at: <http://www.refworld.org/docid/5034e2162.html>

The court also refers to its own previous jurisprudence in the case 30.11.2001/3008.