

Summary of Supreme Court Decisions 2012

JUDGMENT

21 December 2012

Public administration law. Immigration law. Asylum. Children. Courts' competence.

In a case concerning the validity of the Immigration Board of Appeals' refusal of the application for asylum and residence in Norway for an Iranian family with children who, at the time of the decision, had lived here for a long time, the Supreme Court's majority concluded, after an extensive review of theory, preparatory works of acts and case law that the review of administrative decisions shall in general be based on the facts at the time when the decision was made. Norway's human rights obligations do not give grounds for any other solution, including in immigration cases. The obligation to ensure an effective right of review under Article 13 of the EHRC is safeguarded through the system we have in Norway today. The Immigration Board of Appeals, which is to be regarded as a court of law according to the EHRC system, is required to hear requests for reversals based on new circumstances, and refusals to grant reversals may also be heard by the courts. Section 38 subsection 3 of the Immigration Act, according to which the child's best interests shall be a fundamental consideration in cases relating to the granting of a residence permit on the grounds of strong humanitarian considerations or a special connection to Norway, shall be interpreted to mean that the consideration for the child's best interests shall carry significant weight. This is in conformity with Article 3 of the Children's Convention. Importance shall be attached to a connection that has developed while the child has been an illegal immigrant in the country. Immigration-regulating considerations, cf. section 38 subsection 4 of the Immigration Act, including derived consequences of a decision and the regard for the respect for the other rules of the Act may, however, carry so much weight that they must prevail over the consideration for the best interests of the child. However, the consideration for the child may, depending on the circumstances, nevertheless be so weighty that it takes precedence regardless of any other existing counter considerations. Section 38 subsection 1 of the Immigration Act does not allow for a right of judicial review of the administration's application of the conditions "strong humanitarian considerations" or "special connection to Norway". In cases under section 38 subsection 3 of the Immigration Act it must be clear from the decision that the regard for the child's best interests has been properly evaluated and weighed against conflicting considerations and carries weight as a fundamental consideration. Whether the decision satisfies these requirements may be examined by the courts. The concrete weighing of interests cannot be examined. A concrete review of the Immigration Board of Appeals' decisions showed that the consideration for the child had been duly evaluated and that there were no errors in the decision leading to invalidation. Decision in plenary. Dissenting votes 14-5.

Reference: HR-2012-2398-P, case no. 2012/688, civil appeal against judgment.