

## CASE LAW COVER PAGE TEMPLATE

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| <b>Name of the court</b> <sup>1</sup> <b>(English name in brackets if the court's language is not English):</b><br>Asylgerichtshof (Asylum Court)   |  |
| <b>Date of the decision:</b>  | 2012/11/23   |
| <b>Case number:</b> <sup>2</sup>  | S1 416.449-3/2012/10E  |
| <b>Parties to the case:</b> Federal Asylum Agency and asylum seeker   |  |
| <b>Decision available on the internet?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |  |
| If yes, please provide the link: not yet available, but will be available here: <a href="http://www.ris.bka.gv.at/AsylGH/">http://www.ris.bka.gv.at/AsylGH/</a><br>(If no, please attach the decision as a Word or PDF file): |  |
| <b>Language(s) in which the decision is written:</b> German   |  |
| <b>Official court translation available in any other languages?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No<br>(If so, which):  |  |
| <b>Countr(y)(ies) of origin of the applicant(s):</b> Guinea   |  |
| <b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> Austria is responsible for the asylum procedure  |  |
| <b>Any third country of relevance to the case:</b> <sup>3</sup> Hungary   |  |
| <b>Is the country of asylum or habitual residence party to:</b>   |  |
| The 1951 Convention relating to the Status of Refugees<br><input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No  | Relevant articles of the Convention on which the decision is based: -  |
| <b>(Only for cases with statelessness aspects)</b><br>The 1954 Convention relating to the Status of Stateless Persons<br><input type="checkbox"/> Yes<br><input type="checkbox"/> No  | Relevant articles of the Convention on which the decision is based:  |
| <b>(Only for cases with statelessness aspects)</b><br>The 1961 Convention on the Reduction of Statelessness<br><input type="checkbox"/> Yes<br><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<br><input type="checkbox"/> Yes<br><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: Dublin II Regulation   | Relevant articles of the EU instruments referred to in the decision: Art 3 para 2 and Art 16 para 1 lit e Dublin II Regulation |

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

Use of the sovereignty clause (Art 3 para 2 Dublin II Regulation) regarding Hungary

**Key facts (as reflected in the decision):** [No more than 200 words]

A Guinean citizen applied for asylum in Hungary in August 2009 (at the age of 16 years). After a negative decision he moved on to Austria but was later on returned to Hungary on the basis of the EU Dublin II Regulation. His asylum application in Hungary had meanwhile been finally rejected and he was immediately detained upon return. The detention lasted for five months and a second asylum claim lodged was again rejected by the first instance authority.

After his release from detention, the asylum-seeker came to Austria a second time and again applied for asylum. He was again issued a negative decision. However, this decision was reversed by the Asylum Court as new COI as well as the fact that meanwhile a second negative asylum decision had been issued in Hungary had not been taken into account.

In the third administrative decision on the case in Austria, an expulsion order to Hungary was issued claiming that reports on Hungary dated June 2012 showed that the reception conditions in Hungary were in accordance with European standards.

The applicant filed a complaint with the Asylum Court against this rejection, which was, after an oral hearing, granted.

**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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Even though the asylum seeker's statements about his immediate detention upon return to Hungary irrespective of his minor age as well as about his difficulties in lodging an asylum claim in Hungary were contradictory to what was mentioned in the COI referred to by the FAA, relevant reports from UNHCR and other NGOs made his story seem plausible.

The Asylum Court did not come to the conclusion that – irrespective of the facts of the individual case – there are systemic deficits in the Hungarian asylum system, which could be compared to the situation in Greece. Related COI rather showed that changes in the legal system were currently under preparation, especially in response to respective UNHCR reports.

However, the asylum-seeker credibly claimed that his first asylum procedure in Hungary had been completed without an appropriate review by the second instance and without any legal assistance (Art 47 CFREU). Furthermore, there was no court or legal assistance involved in his second procedure either and he was prevented from lodging a third asylum claim upon his second transfer from Austria to Hungary. Moreover, the vulnerability of the minor asylum-seeker had been increased by his long stay in a detention facility even though a deportation to Guinea had not been possible.

In light of the above, Austria is obliged to make use of the sovereignty clause (Art 3(2) of the Dublin II Regulation), not least because of the CJEU ruling C 245/11 in which the Member State's obligation to apply the Dublin II Regulation in a way that guarantees an effective and speedy decision on an asylum application.

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

The circumstances of the five-month detention in Hungary were considered to be similar to the ECtHR case *Hendrin & Aras Al Said*.

As for the obligation of the authorities to apply the EU Dublin II Regulation in a way that guarantees an effective and speedy decision there is a reference to CJEU C 245/11 Rs *K* para 48.

## **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.

For any questions relating to this form, please contact the RefWorld team at the address below.

### **Please submit this form to:**

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