

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Raad voor Vreemdelingenbetwistingen/Conseil du Contentieux des Etrangers (Council for Aliens' Law Litigation)	
Date of the decision: 6 January 2012	Case number: ² 72 824
Parties to the case: X v. The Belgian State, represented by the Secretary of State for Asylum and Migration, Social Integration and Poverty Reduction	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: http://www.rvv-ccce.be/rvv/dmdocuments/A72824.AN.pdf (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Dutch	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): Somalia	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Belgium	
Any third country of relevance to the case: ³ Malta	
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:
(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:
(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:
(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:
For EU member states: please indicate which EU instruments are referred to in the decision: Council Regulation 343/2003 Council Directive 2003/9/EC Council Directive 2004/83/EC	Relevant articles of the EU instruments referred to in the decision:

Council Directive 2005/85/EC Charter of Fundamental Rights of the European Union Treaty on the Functioning of the European Union	Charter of Fundamental Rights of the European Union, Articles 4 and 18 Treaty on the Functioning of the European Union, Article 78
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Topics / Key terms: (see attached 'Topics' annex):

Arbitrary arrest and detention

Expulsion

Inhuman treatment

Legal aid

Reception

Refugee/asylum law

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

The applicant, who said he was born in 1990 and had Somali nationality, requested asylum in Belgium on 27 October 2011. He had previously applied for asylum in the Netherlands, but had been transferred by that country to Malta in 2010 in accordance with the Dublin II Regulation. He alleged that he had been left homeless in Malta and that his asylum request had not been properly assessed since he had not been granted legal aid.

On 21 December 2011 the State Secretary for Asylum and Migration, Social Integration and Poverty Reduction adopted a decision refusing to examine the applicant's request for asylum and ordering his renewed transfer to Malta. The applicant was detained and his transfer was scheduled for 9 January 2012. On 5 January 2012 the applicant requested the suspension of the execution of the State Secretary's decision under extremely urgent procedure. He argued that, just like after his first transfer to Malta, he was threatened with homelessness or arbitrary detention and that his asylum request would not be properly assessed.

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]

3.3.2.2.1 Article 3 of the European Convention on Human Rights (ECHR) states: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” This provision safeguards one of the fundamental values of every democratic society and prohibits in absolute terms torture and inhuman or degrading treatment, irrespective of the victim’s situation and actions (settled case-law: see, e.g., ECtHR, *M.S.S. v. Belgium and Greece*, 21 January 2011, paragraph 218).

3.3.2.2.5.2. [...] Although the submitted reports show that Malta was making progress concerning the procedure and reception of asylum-seekers, the information cited and submitted by the applicant demonstrates that significant shortcomings still exist regarding reception and the asylum procedure.

In the case at hand it has been demonstrated that according to the report by T. Hammarberg, as cited by the applicant, significant deficiencies exist with regard to the detention policy regarding asylum-seekers and the living conditions in the detention centres. The detention policy is considered hardly reconcilable with the requirements of the ECHR (see paragraph 12 of the report). With regard to the asylum proceedings it is shown that clear shortcomings exist concerning both legal aid and the asylum proceedings (paragraphs 46–47, 51), partly caused by the detention policy (paragraph 48). These findings are not sufficiently disproved by the defendant in her written pleading.

At first sight the abovementioned shortcomings cannot be considered to be minor deficiencies of Directives 2003/9, 2004/83 and 2005/85 (cf. paragraph 85 of the judgment).

[...] it must therefore be noted that the defendant (cf. paragraphs 94 and 106 of the abovementioned judgment) could not have been unaware of these shortcomings in the system of the asylum proceedings and the reception facilities and should thus have taken them into consideration in the decision-making process.

It thus follows that the applicant seems to have an arguable claim based on Article 3 ECHR. The grounds for appeal, in so far as they allege a violation of Article 3 ECHR, thus appear to be serious at this stage of the proceedings.

3.4.2. [...] The disadvantage that consists of being subjected to inhuman treatment is obviously serious and difficult to repair.

Article 1

The suspension for extremely urgent reasons of the execution of the decision of the State Secretary [...] is ordered.

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

The judgment referred to in paragraph 3.3.2.2.5.2 is the judgment of the Court of Justice of the European Union in joined cases [C-411/10, *N.S. v. Secretary of State of the Home Department*](#) and [C-493/10, *M.E. and others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*](#), delivered on 21 December 2011. In paragraph 3.3.2.2.5.1, the Council for Aliens' Law Litigation cites extensively from this judgment: paragraphs 75, 78–86, 90–92, 94 and 106 are reproduced in full.

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.

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