

CASE LAW COVER PAGE TEMPLATE

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| 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 | |
| Date of the decision: (2012/05/15) | Case number: ² 81368 |
| Parties to the case: Claimant: unknown X Defendant: Belgian state | |
| Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: http://www.cce-rvv.be/rvv/index.php/fr/component/docman/doc_download/47638-a81368 (If no, please attach the decision as a Word or PDF file): | |
| Language(s) in which the decision is written: Dutch (Flemish) | |
| <input checked="" type="checkbox"/> 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): Afghanistan | |
| 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 Austria and Hungary | |
| 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: Article 33. |
| (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: Dublin Regulation (EC) No 343/2003 | Relevant articles of the EU instruments referred to in the decision: Article 16, (1) c |

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

Non-refoulement principle

Council Regulation (EC) No 343/2003 of 18 February 2003.

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

The applicant (X) submitted his asylum application to the Belgian authorities on the 20th of February 2012. Following this application, the Belgian authorities discovered that X already applied for asylum in Austria. Consequently they requested Austria to take the applicant back based on the provisions of the Dublin Regulation. However, it seemed that X was already the subject of a take-back agreement between Austria and Hungary because he filed his first asylum application in Hungary. Consequently the defendant requested Hungary to take Mr. X back and Hungary agreed to this on 18th of April 2011. Following this agreement, the applicant was issued a refusal of stay and an order to leave the territory as well as the decision of his detainment in a specific place.

The applicant requested the suspension of the execution of these measures with extreme urgency.

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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A claim that concerns the suspension of a decision with extreme urgency, must fulfill 3 conditions:

- The claim must contain a disposition of the facts that justify the urgency. (par. 3.1)
- The applicant must provide serious arguments, which are able to justify the annulment of the disputed decision. (par. 3.1)
- The immediate execution of the previous decision must create a serious disadvantage, which is difficult to restore. (par. 3.1)

The applicant was subjected to an order to leave the country and the execution was imminent. Taking into consideration this situation, the court decided that the first condition is met because the urgency of the suspension has been indicated.

With regard to the second condition, the applicant has the possibility to argue that one of his/her rights embedded in the European Convention of Human Rights (ECHR) has been violated (par. 3.3.1.2). In this case the applicant pleads that returning him to Hungary would constitute a violation of article 3 ECHR (par 3.3.2.1).

When assessing a violation of article 3 ECHR the court investigates the expected consequences of the applicant's expulsion to the country of destination, taking into account that country's specific situation and the individual circumstances of the applicant (par. 4.3.2.2.2.1).

The Belgian state failed to evaluate this risk of violation of article 3 ECHR when drafting the original order to leave the country. Consequently the court focusses on a relevant publication by UNHCR (*Hungary as country of asylum, observations on the situation of asylum seekers and refugees in Hungary, April 2012*) to establish that sending the applicant back to Hungary would amount to a violation of article 3 ECHR. The reason being that Hungary treats asylum seekers that are send back, as illegal migrants and doesn't process their asylum procedure without the admission of new elements to their case. Asylum seekers are also kept in detention for periods often reaching 12 months. On top of that consecutive asylum applications don't automatically suspend expulsion measures, which leaves these asylum seekers vulnerable for expulsions to third countries (par. 4.3.2.2.4 and 4.3.2.2.5.2)

The court judges that the second condition has been met. The risk of inhuman treatment in the country of destination (Hungary) justifies the suspension of the measures.

With regard to the final condition the court reasons that the applicant runs the risk of being subjected to inhuman treatment due to the shortcomings of the Hungarian asylum procedure and the risk of long term detention (par. 3.4.2). These conditions create a situation tha is likely to generate a serious disadvantage for the claimant.

The third condition is fulfilled.

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

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:

Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org