



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	Netherlands
Case Name/Title	
Court Name <i>(Both in English and in the original language)</i>	District Court Almelo (Rechtbank Almelo)
Neutral Citation Number	AWB 10/23999
Other Citation Number	LJN BQ9993
Date Decision Delivered	23-06-2011
Country of Applicant/Claimant	Somalia
Keywords	Internal protection, indiscriminate violence
Head Note (Summary of Summary)	By only assessing whether in south and central Somalia there is a situation as in Article 15(c) of the QD and whether staying in south and central Somalia due to the bad humanitarian situation is a violation of Article 3 of the ECHR, the respondent has interpreted requirement sub c) of the Dutch policy concerning internal protection alternative, which entails that the applicant can establish herself in central and south Somalia and that she can reasonably be expected to stay in that part of the country, too restrictively. The interpretation used by the respondent would entail that requirement sub c) of the policy has no independent meaning, since the assessment regarding Article 15(c) of the QD and Article 3 of the ECHR is already made when examining whether requirement sub a) is fulfilled.
Case Summary (150-500)	The applicant is a woman from Mogadishu.
<i>Facts</i>	The respondent (the minister of Immigration and Asylum) rejected the asylum application on the grounds that the applicant has an internal protection alternative in south and central Somalia. In that context, the respondent referred to the Dutch policy with regard to Somalia, which states that persons from Mogadishu, who aren't minorities, single women and unaccompanied minors, can, in principle, rely on internal protection in central and south Somalia, if they fear a threat due to a situation, as described in Article 15(c) of the QD, in Mogadishu
<i>Decision & Reasoning</i>	The district court ruled that the applicant did not fall under any of the categories of persons who, in principle, cannot rely on internal protection. Therefore, it had to be considered whether there is the possibility of internal protection in this individual case. According to Dutch policy, an internal protection alternative is available if: a) it concerns an area where there is no well-founded fear of persecution or a real risk of torture, inhuman or degrading treatment or punishment for the asylum seeker; b) the asylum seeker can enter that area safely; c) the asylum seeker can settle in the area and he/she can reasonably be expected



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	<p>to stay in that part of the country.</p> <p>The district court ruled that:</p> <p>"(...)by only assessing whether in south and central Somalia there is a situation as described in Article 15(c) of the QD and whether staying in south and central Somalia due to the bad humanitarian situation is a violation of Article 3 of the ECHR, the respondent has interpreted requirement sub c) of WBV 2010/18 [<i>Dutch policy concerning internal protection alternative, ed.</i>], which entails that the applicant can establish herself in central and south Somalia and that she can reasonably be expected to stay in that part of the country, too restrictively. The interpretation used by the respondent would entail that requirement sub c) of the policy has no independent meaning, since the assessment regarding Article 15(c) of the QD and Article 3 of the ECHR is already made when examining whether requirement sub a) is fulfilled. The district court considers that this cannot be the intention. In addition, the district court refers to the explanation of requirement sub c). Therefore, it can be concluded that this requirement shall not be fulfilled if the living conditions in the area in question are of such a nature that they, in themselves, could lead to a humanitarian emergency situation."</p> <p><i>"(...)dat verweerder, door slechts te beoordelen of in Centraal- en Zuid-Somalië sprake is van een situatie als bedoeld in artikel 15, aanhef en onder c, van de Definitierichtlijn en of een verblijf in Centraal- en Zuid-Somalië wegens de slechte humanitaire situatie in strijd is met artikel 3 van het EVRM een te beperkte uitleg heeft gegeven aan de in WBV 2010/18 onder c opgenomen voorwaarde dat eiseres zich in Centraal- en Zuid-Somalië kan vestigen en van haar redelijkerwijs verwacht kan worden dat zij in dat deel van het land verblijft. De door verweerder voorgestane uitleg zou meebrengen dat aan de in het beleid onder c opgenomen voorwaarde geen zelfstandige betekenis toekomt, aangezien de toetsing aan artikel 15, aanhef en onder c, van de Definitierichtlijn en artikel 3 van het EVRM reeds plaatsvindt bij de vraag of voldaan is aan de voorwaarde vermeld onder a. Naar het oordeel van de rechtbank kan dit niet de bedoeling zijn. Daarbij verwijst de rechtbank naar de toelichting bij voorwaarde c. Daaruit blijkt onder meer dat aan deze voorwaarde niet zal zijn voldaan als de levensomstandigheden in het desbetreffende gebied zodanig zijn dat die op zichzelf al kunnen leiden tot een humanitaire noodsituatie."</i></p> <p>The district court ruled that the respondent could not, without any further motivation, have reached the decision that the applicant could rely on internal protection in south and central Somalia.</p>
<p><i>Outcome</i></p>	<p>The appeal was well-founded.</p>