

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Afdeling bestuursrechtspraak Raad van State (Council of State)	
Date of the decision: 17 July 2012	Case number: ² 201202473/1/V3
Parties to the case: X vs The Minister for Immigration, Integration and Asylum	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: www.raadvanstate.nl (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):	
Any third country of relevance to the case: ³	
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: Directive 2004/83/EC of the Council of the European Union of 29 April 2004.....	Relevant articles of the EU instruments referred to in the decision: Article 15c

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

Lifting Aliens detention; no prospect of return; Mogadishu not safe to pass through.

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

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]

Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original

Relevant parts, Council of State 17 July 201202473/1/V3

The Minister acknowledges it will not be possible to leave the airport of Mogadishu without travelling through the city of Mogadishu and acknowledges that in this city there exists a situation as meant in article 15, heading and under c, of the Directive 2004/83/EC of the Council of the European Union of 29 April 2004.....

According to the Minister, one can travel from the airport of Mogadishu to the outskirts of the city via the intersection KM4. The travel from the airport via this intersection to the outskirts of the city (the Afgooye corridor) is around five-and-a-half kilometer. The intersection has always been controlled by TFG groups and the AMISOM (African Union Mission in Somalia). The intersection KM4 and the connected roads are used by the population of Mogadishu on a daily basis.

According to the Minister, one can expect from Somali aliens that they undertake the travel from the airport to their area of origin, even though one should travel through an area in which a situation as mentioned in Article 15, heading and under c, of the Directive, exists. The Minister states that the question, whether or not a situation as laid down in article 15, heading and under c, of the Directive, exists, is only relevant for answering the question whether someone can settle there and not for answering the question whether one can travel through this area.

The Council of State taking into account the Minister is of the opinion that in the city of Mogadishu there is a situation as mentioned in article 15, heading and under c, of the Directive - no exception being made for the intersection KM4 and the roads persons have to travel by from the airport of Mogadishu in order to enter or leave the city, concludes there was no possibility for the alien (in the time he was in detention) to travel to a safe area in Mogadishu without being forced to travel through a 15c area. . Resulting from the wordings “only his presence there” of the Court in the case Elgafaji it can be concluded that the single presence of a person in the area is of relevance. There is no room for making a distinction between long stay (settling) and short stay (travelling through) now a person that returns to the city of Mogadishu only because of his presence in the city risks being subjected to acts as mentioned in Article 15, heading and under c, of the Directive mentioned harm.

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