

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: 3 February 2012	Case number: ² 74 623
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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, please provide the link: (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): 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 Italy	
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 2004/83/EC Council Directive 2005/85/EC	Relevant articles of the EU instruments referred to in the decision:

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

Expulsion

Inhuman treatment

Reception

Refugee/asylum law

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

The applicant, who said he had Afghan nationality, requested asylum in Italy on 2 October 2011. Ten days later, he applied for asylum in Belgium. On 10 January 2012 the Belgian authorities requested his transfer to Italy on the basis of the Dublin II Regulation. Having received no response from the Italian authorities by 25 January 2012, they were considered to have tacitly approved.

On 26 January 2012, 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 transfer to Italy. In her decision, she held that Italy was a Member State of the European Union and had ratified the same conventions regarding the treatment of asylum seekers as Belgium. There was thus no reason to believe that the Italian authorities would not respect the minimum standards regarding asylum procedures as provided for in directives 2004/83 and 2005/85. The applicant was detained awaiting his transfer.

On 2 February 2012, the applicant requested the suspension of the execution of the State Secretary's decision under extremely urgent procedure. He argued, *inter alia*, that there was no guarantee that he would be adequately treated in Italy, especially considering the recent influx of asylum seekers in that country and the fact that Italy had only tacitly approved his transfer. He invoked in particular Article 3 of the European Convention on Human Rights (ECHR).

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]

3.3.2.2.5.2. Regarding the fact that it is argued in the disputed decision that Italy is currently experiencing an exceptional influx of candidate refugees and economic migrants, especially due to the political events that have taken place in Northern Africa and the Middle East, more specifically in Tunisia, Libya and Egypt, and that this does not automatically mean that the applicant will be exposed to inhuman or degrading treatment and/or that his asylum request will not be treated with the necessary attention and objectivity, the Council establishes that the responding party has not made the slightest effort to examine the concrete influence for the situation of asylum seekers in Italy of the “exceptional influx of candidate refugees and economic migrants, especially due to the political events that have taken place in Northern Africa and the Middle East”. Having read the general information that the applicant joined to his application, it appears that, with regard to the conditions that he will potentially face after his transfer to Italy, he has made his claim plausible at this stage of the proceedings, no other objective and recent information showing that the respondent party has completed “an investigation that was as detailed as possible” having been joined to the administrative file. The general information that has been joined to the file by the applicant shows at this stage of the proceedings to a sufficient degree that currently there are serious problems in Italy regarding the way that asylum seekers are being treated. Despite the fact that isolated press releases and/or general reports do not suffice to assume that there is a violation of Article 3 ECHR, it appears that in the case at hand the respondent party, while taking her decision, in which she refers to Italy’s responsibility regarding the treatment of the asylum request, has not sufficiently taken into account the precarious situation of asylum seekers since the events in Northern Africa.

The applicant also correctly points out that, since the Italian authorities failed to reply to the transfer request, there is no formal approval by the Italian authorities from which it could (implicitly) be derived that he would be given appropriate reception.

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.

Article 1

The suspension for extremely urgent reasons of the execution of the decision [...] of 26 January 2012 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 relies heavily on 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.

On 6 January 2012, the Council for Aliens' Law Litigation issued a judgment suspending the transfer of a Somali asylum seeker to Malta based on an arguable claim under Article 3 ECHR because of the latter country's shortcomings regarding reception and the asylum procedure. The judgment is available at <http://www.unhcr.org/refworld/country,,,BEL,,4f21b2b52,0.html>.

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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