



The rejection of asylum seekers' documents without verifying their authenticity breached their human rights

In today's Chamber judgment in the case of [Singh and Others v. Belgium](#) (application no. 33210/11), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 13 (right to an effective remedy) taken together with Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned a family of asylum seekers who claimed to belong to the Sikh minority in Afghanistan. Their asylum application was dismissed by the Belgian authorities, which did not believe them to be Afghan nationals. They complained in particular that their removal from Belgium to Moscow entailed a risk of *refoulement* to their country of origin, where they would face ill-treatment.

The Court found that copies of attestations from the Office of the United Nations High Commissioner for Refugees in Delhi – documents produced in support of their case – had been rejected by the Belgian authorities without sufficient investigation and that that had been at odds with the close and rigorous scrutiny required by the right to an effective remedy.

Principal facts

The applicants, Nam Singh, Meena Kaur and their three children Priyanka, Sonam and Rounak Singh, are Afghan nationals who were born respectively in 1970, 1980, 2003, 2005 and 2008 and reside in Sint-Gillis (Belgium). The applicants arrived in Belgium in March 2011 on a flight from Moscow. As they did not have the legally required documents, they were refused entry into Belgium and the Aliens Office issued directions for their removal on 19 March 2011. The applicants, at the same time, applied for asylum.

They told the Belgian authorities that they were Afghan nationals, members of the Sikh minority, and that they had fled Afghanistan for India in 1992 because of the civil war and the attacks and kidnappings endured by the Sikh and Hindu communities there at that time. They had later taken refuge in Moscow. In 2009 the applicants had apparently returned to Kabul, but had not felt safe there and had fled to Belgium.

On 13 April 2011 the Office of the Commissioner General for Refugees and Stateless Persons ("CGRA") rejected their applications on the grounds that they had not provided evidence of their Afghan nationality. The applicants had been travelling with false

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

passports and Mrs Kaur had an insufficient knowledge of Afghanistan and the Pashto language for her nationality claim to be credible. The CGRA found that Mr Singh could not plausibly establish that he had been living in Afghanistan.

The applicants appealed against those decisions and produced new documents in evidence: e-mails between their lawyer and a representative of the Belgian Committee for Aid to Refugees, an operational partner of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Belgium. The documents included attestations that the applicants had been registered as refugees under the protection of the UNHCR; there was a reference to an application for Indian naturalisation, lodged by Mrs Kaur in late 2009, and to the fact that she had a valid Afghan passport delivered by the Afghan Embassy in New Delhi.

On 24 May 2011 the Aliens Disputes Board ("CCE") dismissed the applicants' appeals and clearly confirmed the CGRA's reasoning, agreeing with it that the applicants had been unable to prove their Afghan nationality or the veracity of the protection granted to them by the UNHCR. The CCE took the view that the UNHCR documents were easy to falsify and that without the originals those documents had no probative value. For the CCE, the only part of the applicants' story that was not in dispute was the fact that they had lived in India and so their fear of persecution had to be examined *vis-à-vis* India, not Afghanistan. It took the view that their decision to leave India had been based merely on social and economic grounds.

Once the asylum procedure had been closed, the removal decision by the Aliens Office dated 19 March 2011 became enforceable.

On 30 May 2011 the applicants applied to the Court for an interim measure under Rule 39 of the Rules of Court, to suspend their removal to Russia, and their request was granted for the duration of the proceedings before it. The applicants were thus given leave to remain in Belgium and were released from the transit zone, as the removal order was no longer immediately enforceable. On 22 June 2011 they lodged an administrative appeal on points of law before the *Conseil d'Etat*, but it was dismissed on 8 July 2011.

Complaints, procedure and composition of the Court

The applicants alleged that their removal to Moscow entailed a real risk of *refoulement* to Afghanistan, where they would face treatment in breach of Article 3 (prohibition of inhuman or degrading treatment), and that they did not have an effective remedy before the Belgian authorities in respect of that complaint (Article 13).

The application was lodged with the European Court of Human Rights on 30 May 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Dragoljub **Popović** (Serbia), *President*,
 Françoise **Tulkens** (Belgium),
 Isabelle **Berro-Lefèvre** (Monaco),
 András **Sajó** (Hungary),
 Guido **Raimondi** (Italy),
 Paulo **Pinto de Albuquerque** (Portugal),
 Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 13 taken together with Article 3

The Court observed that the risk of removal to Russia had been suspended with the implementation by the Belgian Government of the interim measure indicated on 30 May 2011. However, the applicants' status had not changed since there was still a removal order against them and they were obliged to leave Belgium.

The Court found that the applicants' fear that the Russian authorities might send them back to their State of origin was not manifestly ill-founded. It noted that the applicants had arrived at the Belgian border with identity documents and copies of pages from two Afghan passports and that copies of UNHCR attestations had subsequently been produced. The Court had before it a number of reports about discrimination and violence against the Sikh minority in Afghanistan. In the light of that material, it found that the applicants' allegations called for a detailed examination by the Belgian authorities and that their complaints under Article 3 were thus "arguable".

In view of the importance that the Court attached to Article 3 and the irreversible nature of the potential harm, Article 13 required close and rigorous scrutiny of individual situations by the reviewing authority. To that end, it was not sufficient for that authority to place itself artificially at the time of the removal decision in order to assess its validity under Article 3. Moreover, in order to be effective, a domestic remedy must have automatic suspensive effect, staying the execution of the removal order.

As there was no effective remedy available to the applicants, they could not be criticised for not having expressed their fears of *refoulement* from Russia to Afghanistan at the time the measure was notified on 19 March 2011. In addition, the asylum bodies had not sought to ascertain whether there were any risks for the applicants under Article 3 of the Convention. The CGRA had not made any additional enquiries, for example to authenticate the identity documents presented. The CCE had not made up for that omission, whereas the documents presented to it by the applicants had been capable of dispelling the doubts expressed by the CGRA as to their identities and previous movements. The CCE had given no weight to those documents on the grounds that they were easy to falsify and the applicants were not able to supply the originals.

The Court found that the documents presented to the CCE had not given rise to any investigation, whereas enquiries could have been made, for example, at the offices of the UNHCR in New Delhi, as the UNHCR itself had recommended. The fact that both the CGRA and the CCE had dismissed those documents, which were pertinent for the protection request, finding them to have no probative value and without verifying their authenticity as they could easily have done by contacting the UNHCR, was at odds with the close and rigorous scrutiny that the Court would have expected of the domestic authorities, which had thus failed to ensure effective protection against treatment in breach of Article 3.

Rule 39 of the Rules of Court

The Court considered that the interim measures indicated to the Government under Rule 39 of the Rules of Court would continue in force until the present judgment became final or until another related decision was taken by the Court.

Just satisfaction (Article 41)

The Court held that the finding of a violation provided in itself sufficient just satisfaction for the non-pecuniary damage sustained and that Belgium was to pay the applicants 3,000 euros in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.