



Notification of case concerning asylum seeker's removal from the UK to Rwanda

The European Court of Human Rights (President of Section IV) has today given notice to the Government of the United Kingdom of the application **N.S.K. v. the United Kingdom** (no. 28774/22) and requested that they submit their observations. This follows receipt of a valid application form on 15 March 2023.

The case concerns an asylum-seeker from Iraq facing removal to Rwanda. He complains in particular under Article 3 of the Convention (prohibition of torture and inhuman and degrading treatment) that, if removed to Rwanda, he would not have access to an adequate refugee status determination; that the UK had made no adequate assessment of whether he would in practice have effective access to such a process in Rwanda; and that persons relocated to Rwanda may be at risk of “detention and treatment not in accordance with international standards should they express dissatisfaction or protest at their conditions after arrival”.

A brief description of the facts submitted to the parties, with questions from the Court, is available in English on the Court's [website](#). The Court's ruling in the case will be made at a later stage.

In addition, following a decision by the UK High Court in N.S.K.'s case on 19 December 2022, and in the light of the parties' further submissions, the Court has today informed the parties that the interim measure granted on 14 June 2022, under Rule 39 of its Rules of Court, ceased to have effect on 6 February 2023. This is because the High Court quashed the individual decisions by the Home Secretary to remove the applicant to Rwanda for inadequate reasoning and failure to consider the evidence put forward by the applicant.

The Court recalls that it had decided to grant the interim measure requested by N.S.K. on 14 June 2022, indicating to the UK Government that he should not be removed until the expiry of a period of three weeks following the delivery of the final domestic decision in the ongoing judicial-review proceedings ([press release of 14 June 2022](#)). Following an application by the UK Government, the Court had reviewed the interim measure and, in the light of the parties' submissions, confirmed it on 1 July 2022.

Two other interim measures concerning Iranian and Vietnamese asylum seekers facing removal from the UK to Rwanda were granted by the Court for a short period ([press release of 15 June 2022](#)). That period was not extended and those interim measures therefore expired.

N.S.K., an Iraqi national, was born in 1968. He left Iraq in April 2022, travelled to Turkey and then across Europe before crossing the English Channel by boat. Alleging that he was in danger in Iraq, he claimed asylum upon arrival in the UK on 17 May 2022.

On 6 June 2022 N.S.K. was notified that his asylum claim had been deemed inadmissible. He was served with removal directions to Rwanda for 14 June 2022, pursuant to the UK Government's Memorandum of Understanding with the Government of the Republic of Rwanda for an asylum partnership arrangement.

N.S.K. sought permission to judicially review the lawfulness of the asylum partnership arrangement and the individual decisions taken in his case. He also sought interim relief, either in the form of an order preventing the relocation of all asylum seekers to Rwanda under the asylum partnership arrangement or preventing his removal there.

The High Court refused to grant N.S.K.'s request for interim relief. It acknowledged that there were "serious triable issues", but proceeded on the assumption that Rwanda would comply with the Memorandum of Understanding. In any event it considered that if N.S.K.'s judicial-review challenge was successful, he could be returned to the UK.

An appeal against the refusal to grant interim relief was heard on 13 June 2022 and was dismissed by the Court of Appeal. The Supreme Court refused permission to appeal on 14 June 2022.

Following this decision of the Supreme Court, notified on 14 June 2022 at 12:15 UK time, the European Court of Human Rights decided later that afternoon to grant N.S.K.'s request for an interim measure, indicating to the UK Government, under Rule 39, that he should not be removed until the expiry of a period of three weeks following the delivery of the final domestic decision in the ongoing judicial-review proceedings ([see press release](#)). This was to ensure that the competent national court(s) had the opportunity to first consider the issues raised by the applicant. According to the European Court:

"The Court had regard to the concerns identified in the material before it, in particular by the United Nations High Commissioner for Refugees (UNHCR), that asylum-seekers transferred from the United Kingdom to Rwanda will not have access to fair and efficient procedures for the determination of refugee status as well as the finding by the High Court that the question whether the decision to treat Rwanda as a safe third country was irrational or based on insufficient enquiry gave rise to "serious triable issues". In light of the resulting risk of treatment contrary to the applicant's Convention rights as well as the fact that Rwanda is outside the Convention legal space (and is therefore not bound by the European Convention on Human Rights) and the absence of any legally enforceable mechanism for the applicant's return to the United Kingdom in the event of a successful merits challenge before the domestic courts, the Court has decided to grant this interim measure to prevent the applicant's removal until the domestic courts have had the opportunity to first consider those issues."

On 24 June 2022, the UK Government wrote to the European Court to ask for a review of the decision to grant an interim measure and for the interim measure to be lifted. Following communication of that request to the applicant and following consideration of the parties' submissions and the material before the Court, the measure was confirmed on 1 July. The Court acknowledged that the UK courts had refused N.S.K.'s application for interim relief but noted that its examination of a request for interim measures under Rule 39 was different in scope. The Court concluded that the material presented by the Government was not sufficient to enable it to be satisfied that the applicant could and would be returned to the UK in the event that he was successful at any stage in his legal proceedings, including in the proceedings before this Court. Moreover, in case of a finding that the applicant's removal to Rwanda put him at real risk of irreparable harm during the period pending the final determination of his asylum application, his return to the UK at the conclusion of appeal proceedings or proceedings before this Court would be inadequate to protect against that risk.

The judicial-review proceedings brought by N.S.K. were linked with judicial-review claims brought by other individuals and organisations. The litigation challenged both the lawfulness of the policy of removing people to Rwanda, and the lawfulness of the individual decisions and related decision-making in the particular cases before the court.

On 19 December 2022 the High Court handed down its judgment. It found that it was lawful for the Government to make arrangements for relocating asylum seekers to Rwanda and for their asylum claims to be determined in Rwanda rather than in the UK. However, the High Court held that the way in which the Home Secretary went about the implementation of her policy in a number of the individual cases before it was flawed. It quashed the individual decisions relating to N.S.K. on the basis that the Home Secretary did not provide adequate reasons for her conclusion that his asylum was inadmissible and that the decision refusing the human rights claim did not consider the

evidence put forward. The High Court further indicated that if the Home Secretary wished to apply her policy to any of these claimants (including N.S.K.), she would first have to reconsider the decisions in these cases.

The claimants were granted permission to appeal the High Court's findings in respect of the lawfulness of the asylum partnership arrangement. The Government did not, however, seek to appeal the quashing of the individual decisions. An order issued by the High Court on 16 January 2023 formally quashed the individual decisions in N.S.K.'s case, together with those of the other successful claimants.

On 19 January 2023 the UK Government informed the Court of the High Court's decision. The Court subsequently invited the parties to comment on whether, in so far as N.S.K.'s risk of removal was concerned, the judgment of the High Court was the "final domestic decision".

Having considered the parties' responses, the Court today informed the parties that the interim measure granted on 14 June 2022 ceased to have effect on 6 February 2023, being three weeks after the individual decisions in N.S.K.'s case were formally quashed. It also informed the parties of its decision to give notice of N.S.K.'s complaint under Article 3 of the Convention (prohibition of torture and inhuman and degrading treatment) to the UK Government.

When a case is communicated, a Chamber of seven judges or the President of a Section decides, in accordance with Rule 54 of the Rules of Court, to bring to the attention of a Government that an application against that State is pending before the Court and invites the Parties to submit written observations on the admissibility and/or merits and respond to the questions asked. For more information on what happens after this stage, please see [here](#).

Under the Convention system, interim measures (Rule 39 of the Rules of Court) play a vital role in avoiding irreversible situations that would prevent national courts and/or the Court from properly examining Convention complaints and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. A failure by a respondent State to comply with interim measures undermines the effectiveness of the right of individual application guaranteed by Article 34 and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention.

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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.