



Grand Chamber Panel's decisions

At its last meeting (Monday 7 July 2014), the Grand Chamber panel of five judges decided to refer one case and to reject requests to refer 12 other cases¹.

The following case has been referred to the Grand Chamber of the European Court of Human Rights.

S.J. v. Belgium (application no. 70055/10): concerning a refusal to grant a residence permit to an HIV-positive patient and the subsequent order to return her to Nigeria, which she claims would expose her to risks of inhuman and degrading treatment.

Referral accepted

[S.J. v. Belgium \(application no. 70055/10\)](#)

The applicant, S.J., is a Nigerian national who was born in 1989 and lives in Brussels. She arrived in Belgium in 2007 while pregnant with her first child, and filed an application for asylum. She stated that she had fled Nigeria after becoming pregnant by a man M.A., whose family had tried to pressure her into having an abortion. In the course of pregnancy-related tests, S.J. was found to be HIV-positive and to have a severely compromised immune system requiring antiretroviral therapy. S.J. then filed a request for leave to remain on medical grounds, but this was refused by the Aliens Office (AO) in 2008. In 2009, on account of the imminent birth of a second child, the AO withdrew its decision of 2008. In September and October 2010, her request for leave to remain and her asylum application were rejected, and the authorities served S.J. with an order to leave Belgium. The decision to refuse leave to remain was based on the fact that her medication was available in Nigeria. S.J. made a request for the suspension, as a matter of extreme urgency, of the refusal to grant her leave to remain and the order to leave Belgium, and also sought the annulment of those decisions. The request for suspension was rejected in November 2010 by a decision of the Aliens Appeals Board, and the appeal on points of law against the latter was declared inadmissible by the *Conseil d'État*. In the meantime, S.J. had applied to the European Court of Human Rights for interim measures under Rule 39 of its Rules of Court. In December 2010 the European Court indicated to the Government that S.J. and her children should not be removed until the end of the proceedings before it. In November 2012 S.J. gave birth to a third child. The action for suspension is still pending before the Appeals Board.

The applicant alleges that there are serious and established grounds to believe that if she were returned to Nigeria, she would face a real risk of being subjected to inhuman and degrading treatment, on account of the fact that the complex antiretroviral therapy which guarantees her survival is neither available nor accessible in Nigeria (Article 3 of the Convention). The absence of treatment would result in her premature death in particularly inhuman conditions, given the presence of her three young children. She also complains that the refusal to grant leave to remain on medical grounds is in breach of her right to respect for private and family life (Article 8). Lastly,

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

she alleges that she had no effective remedy in respect of her complaints under Articles 3 and 8 against the order to leave the country (Article 13).

In its Chamber [judgment](#) of 27 February 2014 the Court held, unanimously, that there had been a violation of Article 13 taken in conjunction with Article 3 of the Convention. The Court considered that the applicant had not had an effective remedy, on the ground that the Belgian system for suspending the removal of aliens, as applied in her case, was difficult to implement and too complex to meet the requirements arising under Article 13, taken together with Article 3, of availability and accessibility, in practice as well as in law. The Court further found, by six votes to one, that there would be no violation of Article 3 in the event of the applicant's being removed to Nigeria. The Court considered that even if the accessibility and availability of the antiretroviral treatment in Nigeria were neither guaranteed nor established, and even if the applicant's case was characterised by weighty humanitarian considerations in favour of regularising her residence position in Belgium, the applicant's removal would not be in breach of Article 3, since she was not in a "critical state" and was fit to travel. Lastly, the Court held, unanimously, that, even supposing it had jurisdiction to entertain the complaint under Article 8 of the Convention, there had been no violation of that provision. The Court held that in refusing to grant the applicant a residence permit the Belgian authorities had not given the public interest undue precedence in relation to the applicant's interests or the best interests of her children.

On 7 July 2014 the case was referred to the Grand Chamber at the request of the applicant and the Belgian Government.

Requests for referral rejected

Judgments in the following 12 cases are now final².

Requests for referral submitted by the applicants

Loncar v. Bosnia-Herzegovina (application no. 15835/08), [judgment](#) of 25 February 2014

Karaman v. Germany (no. 17103/10), [judgment](#) of 27 February 2014

Vella v. Malta (no. 69122/10), [judgment](#) of 11 February 2014

Gordiyenko v. Russia (no. 21462/06), [judgment](#) of 6 March 2014

Nosov and Others v. Russia (nos. 9117/04 and 10441/04), [judgment](#) of 20 February 2014

Requests for referral submitted by the Government

Grande Stevens and Others v. Italy (nos. 18640/10, 18647/10, 18663/10, 18668/10 and 18698/10), [judgment](#) of 4 March 2014

Ziaunys v. Republic of Moldova (no. 42416/06), [judgment](#) of 11 February 2014

Dzhabrailov and Others v. Russia (nos. 8620/09, 11674/09, 16488/09, 21133/09, 36354/09, 47770/09, 54728/09, 25511/10 and 32791/10), [judgment](#) of 27 February 2014

Firstov v. Russia (no. 42119/04), [judgment](#) of 20 February 2014

Pakshayev v. Russia (no. 1377/04), [judgment](#) of 13 March 2014

Semikhvostov v. Russia (no. 2689/12), [judgment](#) of 6 February 2014

Fazlı Aslaner v. Turkey (no. 36073/04), [judgment](#) of 4 March 2014

² Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

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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.