

Estonia, Supreme Court, Case no. 3-3-1-11-16, Judgement of 22 March 2016

Deciding bodies and decisions

- Supreme Court of Estonia, Case no. 3-3-1-11-16, Judgement of 22 March 2016
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Area of law

- Asylum and Immigration Law
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Subject matter

Immigration policy – right to an effective remedy and to a fair trial

The case concerned issues of suspension of the execution of the precept to leave. The Supreme Court had to decide whether the removal order should be suspended until the end of the dispute over the removal order and the prohibition on entry.

Summary Facts Of The Case

Court cites the case law of the ECtHR about the Art. 13 of the ECHR and the need for the appeal to have a suspensive effect (*De Souza Ribiero v. France*, Appl. 22689/07, 13 December 2012; *Baysakov and others v. Ukraine*, Appl. 54131/08, 18 February 2010; *Jonka v. Belgium*, Appl. 51564/99, 5 May 2002). The court indicated, that the notion of an effective remedy under Article 13 required that the remedy could prevent the execution of measures that were contrary to the Convention and whose effects were potentially irreversible.

The Court found that according to the practice of the ECtHR even in the case of a need to protect person's private and family life in certain cases the suspension of the removal order is the only measure to assure the efficiency of a legal remedy. In the case of expulsion of a complainant to a state, where he does not have any contacts and a place to live, his participating on the proceedings where he has to protect his private and family life turns out to be difficult. The Supreme Court concluded that suspending the execution of the precept to leave is essential to assure that the complainant could efficiently take part of the court proceedings. The expulsion of the complainant before the end of the court proceedings would in the case of settling the complaint significantly aggravate the achievement of its aims.

Relation to the scope of the Charter

- Art. 47 EU Charter - Right to an effective remedy and to a fair trial
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Impact on Jurisprudence

The Supreme Court gives directions to domestic courts in the case of deciding over the need to suspend the precept to leave.

Sources - EU and national law

National Law:

- Obligation to Leave and Prohibition on Entry Act (Väljasõidukohustuse ja sissesõidukeelu seadus) of 1998, Art. 16(1), art. 10(2)
 - Code of Administrative Court Procedure (Halduskohtumenetluse seadustik) of 2011, Art. 249(1),(3), Art. 251(1)(1)
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Sources - ECHR

- Art. 13 - Right to effective remedy
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Sources - ECtHR Case Law

- ECtHR, De Souza Ribiero v. France, Appl. 22689/07, 13 December 2012
 - ECtHR, Baysakov and others v. Ukraine, Appl. 54131/08, 18 February 2010
 - ECtHR, ?onka v. Belgium, Appl. 51564/99, 5 May 2002
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Sources - Internal or external national courts case law

- Supreme Court decision 3-3-1-32-15, 15 September 2015
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