



Seriously ill people at risk of removal from the UK must exhaust all national remedies before applying to the ECHR

The case [Khaksar v. the United Kingdom](#) (application no. 2654/18) concerned an Afghan asylum seeker's complaint about his threatened removal to Afghanistan. Mr Khaksar, the applicant, argued that his removal would breach Article 8 (right to respect for private and family life) and Article 3 (prohibition of inhuman or degrading treatment), in view of his serious health issues following a bomb blast in Afghanistan.

In its decision today in the case the European Court of Human Rights has, **unanimously, declared the application inadmissible** for non-exhaustion of national remedies. The decision is final.

The Court pointed out in particular that the UK Court of Appeal had recently provided formally binding guidance to the lower courts on the removal of seriously ill people. Mr Khaksar, who had not sought permission for judicial review before the High Court of a decision by the Secretary of State refusing to reconsider his case, had therefore not given the domestic courts the possibility to consider his case in accordance with domestic law.

Principal facts

The applicant, Turyalai Khaksar, is an Afghan national, who was born in 1990 and lives in Uxbridge (the UK).

Aged 14, Mr Khaksar was seriously injured in a bomb blast in Kunar province. He has suffered from continuous pain and bleeding caused by malformations on his neck and back ever since. Four years later he left Afghanistan for the UK.

He claimed asylum. However, in 2015 the Secretary of State for the Home Department in the UK refused his application, finding in particular that his medical condition was not at such a critical stage that it would be inhumane to remove him and that in any case suitable, if not equal, treatment was available in Afghanistan.

Mr Khaksar appealed to the domestic courts, without success.

He then made further submissions in 2017 to the Secretary of State, following a judgment by the European Court concerning a Georgian national suffering from leukaemia and tuberculosis who was facing deportation to his home country. In that judgment, *Paposhvili v. Belgium* (application no. 41738/10) of 13 December 2016, the Court found that the Belgian authorities had not examined Mr Paposhvili's very serious medical condition when deciding whether to deport him and that, if he were to be removed, there would be a violation of Articles 3 and 8 of the European Convention.

The Secretary of State considered the submissions, but decided that they did not amount to a fresh claim.

No appeal against this decision was possible, and Mr Khaksar did not seek permission to apply for judicial review of this decision before the High Court.

Complaints, procedure and composition of the Court

Mr Khaksar alleged that his return to Afghanistan would violate his right to a private life under Article 8. He also made reference to Article 3 (prohibition of inhuman or degrading treatment).

The application was lodged with the European Court of Human Rights on 9 January 2018.

The decision was given by a Committee of three, composed as follows:

Kristina **Pardalos** (San Marino), *President*,
Ksenija **Turković** (Croatia),
Tim **Eicke** (the United Kingdom), *Judges*,

and also Renata **Degener**, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the UK Court of Appeal had recently stated that all UK courts and tribunals below the level of the Supreme Court, when considering a stay on removal, should apply the guidance for removing seriously ill people to their country of origin as set out in the European Court's Grand Chamber judgment *Paposhvili v. Belgium*. The Court of Appeal had thus provided formally binding guidance on the removal of seriously ill people, pending consideration by the Supreme Court of the impact of *Paposhvili* on domestic law.

However, Mr Khaksar had not sought permission before the High Court for judicial review of the Secretary of State's decision of 2017 refusing to reconsider his case. The domestic courts had not therefore been able to consider the matter in accordance with domestic law. Therefore, Mr Khaksar had failed to exhaust all national remedies available to him and the Court rejected his application as inadmissible.

The decision is available only in English.

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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.