Follow-up on the Paposhvili judgment

Follow-up on the ruling by the Grand Chamber of the European Court of Human Right in Paposhvili v. Belgium on 13 December 2016. Removal of a seriously ill alien may raise an issue under Article 3 of the European Convention on Human Rights. The Danish authorities are making an adjustment to practice in certain cases regarding humanitarian residence permit. Further details regarding the adjustment of the practice and the practical implementation thereof will be made available in a memorandum published at www.nyidanmark.dk shortly.

On 13 December 2016, the Grand Chamber of the European Court of Human Rights gave its ruling in the case Paposhvili v. Belgium on the interpretation of Article 3 of the European Convention on Human Rights (ECHR) in a case concerning the removal of a seriously ill alien.

Firstly, in this ruling, the European Court of Human Rights for the first time gave an account of the "very exceptional cases" where removal of a seriously ill alien, although not at imminent risk of dying, raises an issue under Article 3 of the ECHR. The Court states that such cases concern seriously ill aliens for whom it is assumed that the alien, without treatment in their country of origin, would face a serious, rapid, and irreversible decline in his or her state of health, which will result in their intense suffering or in a significant reduction of their life expectancy.

Secondly, the ruling implies that member states, including Denmark, have an extended obligation of inquiry in such cases.

Accordingly, Denmark, when faced with such cases must establish - as was done hitherto in previous procedures - whether the necessary treatment is available in the country of origin (availability).

In cases where, on the basis of the alien's own situation, there are serious reasons to believe that there is no *actual* access to treatment in his or her country of origin (accessibility), Denmark will now have to examine this question more closely. The examination of the actual accessibility shall take into account the costs of the medication and treatment concerned the existence of a social and family network, and the distance to travel in order to have access to the required care. The threshold for considering that a person does not have actual access to treatment remains high.

Consequently, there is a need to adjust domestic procedures to ensure that the ministry, to a greater extent than today, examines the question of actual accessibility closer before making a decision on residence permits on grounds of health.

Further details regarding the adjustment of the ministry's practice and the practical implementation thereof will be made available in a memorandum published at www.nyidanmark.dk shortly.

Against this background, the Ministry of Immigration and Integration has decided to evaluate the consequences of the adjusted practice over a period of 4 weeks in a number of specific cases regarding residence permit on the grounds of health. The ministry will contact the concerned aliens currently staying in Denmark for whom the adjusted practice may be relevant. In such cases, the ministry will postpone time limits for voluntary departure with four weeks. Aliens who believe that their case is among those affected by the ruling may contact the Ministry of Immigration and Integration at uim@uim.dk