

## **Luxemburg - Administrative Tribunal, A. and B (Iraq) v. Ministry for Migration and Asylum, N° 43536, 6 November 2019**

**Country of Decision:**

Luxembourg

**Country of Applicant:**

Iraq

**Date of Decision:**

06-11-2019

**Citation:**

A. and B (Iraq) v. Ministry for Migration and Asylum, (2019), Luxembourg Administrative Tribunal, 43536

**Court Name:**

Administrative Tribunal, 1st Chamber

**Keywords:**

Health (right to)  
Inadmissible application  
Non-refoulement  
Real risk  
Responsibility for examining application  
Subsidiary Protection

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**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]

Council of Europe Instruments

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [3]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [2] > [Article 4](#) [4]European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [5]

**Headnote:**

An authority examining an application for international protection by an individual already holding protection status in another Member State must check whether the protection of fundamental rights is systematically guaranteed by the country already providing international protection. This especially concerns applicants who are entirely dependent on public aid, and, in particular, on the public health system of the country providing them protection.

**Facts:**

The applicants are an Iraqi national and his mother. The son, a public servant in Iraq, had been shot in the streets, becoming paraplegic. Together with his mother, they fled Iraq for Greece in September 2017, where they were granted international protection. The inflatable boat they had boarded to reach Greece had hit some rocks and taken on water. The applicant, in view of his paraplegia, had to be dragged towards the shore, as a consequence of which he suffered serious injury.

The applicants claimed that the Greek authorities refused to take him into care, and that a Greek doctor advised the applicant to leave Greece if he wanted to be treated. They also argue that the granting of international protection hadn't changed anything regarding their situation in Greece, as the son did not receive necessary care. In late 2018, they fled to Luxembourg where they applied for international protection on 12 November.

The Ministry for Migration and Asylum rejected their application as inadmissible, considering that the applicant was already benefiting from subsidiary protection in Greece until July 2021. The Minister also estimated that the applicants would not fear for their lives or freedom in Greece, which respected the principle of non-refoulement. They added that medical grounds could not be the basis for international protection in that case.

The applicants appealed against the Ministry's decision on 6 September 2019, claiming a violation of Article 3 of the European Convention on Human Rights and Article 4 of the Charter of Fundamental Rights of the EU.

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**Decision & Reasoning:**

The Administrative Tribunal confirmed that the applicant's prognosis would be seriously decreased if authorities failed to provide him with necessary medical care. It reiterated that an authority examining a new application for international protection must check whether the protection of fundamental rights is systematically guaranteed by the country already providing international protection. This especially concerns applicants who are entirely dependent on public aid, and, in particular, on the public health system, of the country providing them protection.

The Tribunal, noting that the Minister's decision relied on the protection status already provided by Greece, considered that the Minister had failed to verify whether the applicant benefited from adequate care, without which he would be finding himself in a situation which would seriously damage his physical or mental health or put him in a state of degradation incompatible with human dignity ? and could henceforth be characterised as inhuman or degrading treatment.

The Minister's decision was therefore flawed, and was annulled by the Administrative Tribunal.

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**Outcome:**

Appeal granted.

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**Observations/Comments:**

This summary was written by Sinéad Gough, LL.M Student at Queen Mary University of London.

**Attachment(s):**



[43536 Lux - Inadmissibility decision SP status.pdf](#)[7]

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**Other sources cited:**

AIDA, [Country Report : Greece](#) [8], 31 December 2016

**National / Other Legislative Provisions:**

[18 December 2015 Law on International Protection and Subsidiary Protection \(Loi sur la Protection Internationale et la protection subsidiaire\)](#) [9]

[Articles 35 \(3\)](#) [10]

[28 \(2\)](#) [11]

[29 August 2008 Law on Free Movement of People and Migration \(Loi concernant la libre circulation des personnes et l'immigration\)](#) [12]

[Article 129](#) [13]

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**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] <https://www.asylumlawdatabase.eu/node/453>

[3] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

[4] [https://www.asylumlawdatabase.eu/node/453#toc\\_29](https://www.asylumlawdatabase.eu/node/453#toc_29)

[5] <https://www.asylumlawdatabase.eu/node/3946>

[6] <https://www.asylumlawdatabase.eu/node/4038>

[7] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/43536%20Lux%20-%20Inadmissibility%20decision%20SP%20status.pdf>

[8] [https://www.asylumineurope.org/sites/default/files/report-download/aida\\_gr\\_2016update.pdf](https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2016update.pdf)

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/18-december-2015-law-international-protection-and-subsidiary>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/articles-35-3>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/28-2>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/29-august-2008-law-free-movement-people-and-migration-loi-concernant>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/article-129>