

Children's Rights Moot Court 2017 – Leiden Law School

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The Case of Noorzai & Nuratdin v. Bruscium

Swuabia is a nation with around 30 million inhabitants. The president of Swuabia has ruled the country since the beginning of the 1990s. Any opposition to the ruling party of the president is oppressed. In the region Sloycia, a separatist movement is attempting to reach independence from Swuabia. In the past ten years, there has been civil unrest in the region. The government of Swuabia is using a lot of violence to fight the separatist movement. The separatist movement was responsible for several terrorist attacks all over Swuabia.

Gopresau is a nation which has been troubled by civil war over the past twenty years. The government can be characterised as weak and there are numerous tribal and religious groups fighting over power in influence in all provinces of the country. Furthermore, Gopresau is a strongly religious state in which individual freedoms are limited by religious rules and practices. Especially for women and girls, it is difficult to appear in public and to express opinions.

Bruscium is a rich and developed nation. It is a member state of both the European Union and the Council of Europe. It has ratified all major human rights treaties without any reservations. Over the past two years, a large number of asylum seekers have arrived in Bruscium. The country has insufficient reception places and therefore it has built emergency camps to accommodate all asylum seekers. Due to the increase of the number of asylum seekers, the population of Bruscium is increasingly voicing concerns regarding the newcomers in their society. A newly-elected government has announced that it will be stricter in handling applications for asylum and proposed a more restrictive immigration policy in general.

Noorzai, born in 1999, is a Gopresau national who fled from the civil war in her home country in 2014. A clandestine travel agent brought her to Bruscium, where she applied for asylum. Her application for asylum was rejected. The Bruscium authorities did not consider that the general situation of violence in Gopresau is so serious that everyone fleeing that country should be granted international protection. On 5 May 2015, the rejection of Noorzai's asylum application became final after the Bruscium Supreme Court rejected the appeal against the negative decision by the Bruscium Immigration Service.

Nursultan, born in 1991, is an Swuabia national who travelled to Bruscium in 2014 using a tourist visa and subsequently applied for asylum. He fears persecution in his home country because he claims to be an activist for the independence of his home region Sloycia. The Bruscium authorities refused his asylum claim because they suspected that he had taken part in terrorist attacks in Swuabia on the basis of Article 1F of the Refugee Convention. On 10 August 2015, the Bruscium Supreme Court rejected his appeal against the negative decision on his asylum application. Nursultan was ordered to leave Bruscium within one month.

Noorzai and Nursultan met each other in an asylum seeker reception centre in November 2014. In June 2015, Noorzai discovered she was pregnant. On the basis of her pregnancy, Noorzai was allowed to remain in Brusium until January 2016. Baby Nuratdin was born on 6 December 2015. Under the Brusian family code, the court issues a declaration of majority, which enables Noorzai to exercise parental custody over Nuratdin. Nuratdin was also formally recognised by Nursultan as his child and obtained both the nationality of Swuabia and Gopresau pursuant the nationality law of both countries.

Meanwhile, Nursultan did not leave Brusium, but remained as an irregular immigrant. He lived in a flat, which he rented with several other irregular immigrants. He visited Noorzai regularly at the reception centre, but had to be careful not to be caught, as he could be arrested and deported due to his irregular residence status.

After the birth of their baby son, Noorzai and Nursultan applied for a residence permit in Brusium in order to be able to remain in Brusium to take care of their son together. This application was rejected by the Brusium Immigration Service. The Immigration Service did not recognise the relationship between Noorzai and Nursultan as family life because Noorzai was younger than eighteen. Furthermore, the Immigration Service held that Noorzai and Nursultan could exercise their family life with their son in either Swuabia or Gopresau.

Noorzai and Nursultan appealed this decision. They argued that it was not possible for Nursultan and Nuratdin to settle in Gopresau because of the unsafe conditions there. They also alleged that Noorzai and Nuratdin could not settle in Swuabia because the Swabian authorities refuse to issue a visa to Noorzai. The official reason for this is that Nursultan does not have sufficient resources to support his family in Swuabia. However, Nursultan believes they do not want him to move back to Swuabia because of his past as a political activist. The rejection of the Brusium Immigration Service is upheld by the Brusium Supreme Court on 2 June 2016. No appeal was possible against this decision. Their deportation is scheduled in two months time.

Pending their deportation, Noorzai and Nuratdin are placed in a (semi-)closed reception centre so that they will not escape and frustrate their deportation. The reception centre is meant for women and (unaccompanied) children and does provide for some special facilities for children. There is a big garden with special toys for children. However, inhabitants of the centre are not allowed to leave the premises of the centre. The centre forms part of one of the larger emergency camps and there are some reports of male adults from the camp breaking in and harassing women. There are also concerns about an unidentified number of unaccompanied children that have disappeared from the centre. Nursultan is placed in a detention centre pending his deportation. He is not allowed to see his wife and child as he is deemed a flight risk. Brusium refuses to place Noorzai and Nursultan in the same reception centre because Noorzai is only seventeen years old.

Noorzai and Nursultan have decided to bring a case to the United Nations Committee on the Rights of the Child. Noorzai submit claims in her own name and on behalf of her child Nuratdin, together with Nursultan, for violations of the rights of the child as recognized in the UN Convention on the Rights of the Child and demand remedies under international law, including the prevention of the deportation.

Bruscium ratified the UN Convention on the Rights of the Child on 1 January 1991 with no reservations. In 2013, it ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

The Committee on the Rights of the Child will convene on the 29th of March, 2017 for a hearing in the case of Noorzai & Nuratdin v. Bruscium.