Ruling obligation State reception minors who have been denied asylum

21 September 2012
Civil Division
11/01153
DV/EE

Supreme Court of the Netherlands

Judgment

in the case of:

THE STATE OF THE NETHERLANDS,
with its seat in The Hague,

APPELLANT in the cassation proceedings,
attorneys-at-law: M.W. Scheltema and M.M. van Asperen,

against

[the mother], acting on her own behalf and in her capacity as the legal representative of the minors [child 1], [child 2] and [child 3],
residing at the time of the issue of the writ of summons in Ter Apel, municipality of Vlagtwedde,
DEFENDANT in the cassation proceedings,
attorney-at-law: G.R. den Dekker.

The parties will be referred to below as 'the State' and 'the mother'.

1. Proceedings before the courts hearing the facts

For the course of the proceedings before the courts hearing the facts the Supreme Court refers to:
a. the judgment of the interim relief judge of The Hague district court of 15 April 2010 in case no. 363137/KG ZA 10-426;
b. the judgments of The Hague court of appeal of 27 July 2010 and 11 January 2011 in case no. 200.063.511/01.

The appeal court judgments are appended to this judgment.

2. Cassation proceedings

The State has lodged an appeal in cassation against the judgments of the court of appeal. The writ of summons for the cassation proceedings is appended to this judgment and forms part of it.

The mother moved that the appeal be dismissed.
Counsel presented the case on behalf of the parties.

The advocate-general, F.F. Langemeijer, advised that the appeal court judgment be overturned and the case referred back.
The mother's counsel responded to the advocate-general's advisory opinion by letter of 16 May 2012.

3. Assessment of the grounds for appeal in cassation

3.1 In cassation, the following can be taken to have been established.
(i) The mother comes from Angola. She arrived in the Netherlands on 3 October 2001 with her partner [first person concerned], also from Angola, and their child [child 1], born in 1999. The mother gave birth to two children in the Netherlands: [child 2], born in 2002, and [child 3], born in 2008.
(ii) In October 2001, the mother submitted an application, for herself and [child 1], to be admitted as refugees. This application was denied by decision of 25 June 2002. The subsequent application for review and appeal did not lead to any change in this decision.
(iii) On 27 November 2006, the mother was placed in aliens detention with a view to expelling her from the country. She was asked to fill in an application for a laissez-passer and a declaration of nationality. The mother refused to cooperate with either request. After the mother's submission of a new application, this time for a residence permit on medical grounds, the order for her to be held in aliens detention was revoked with effect from 26 February 2007. The new application was denied.
(iv) In February 2009 the mother submitted a fresh application for asylum on the basis of new facts and circumstances. This application was denied by decision of 16 February 2009. The subsequent application for review and appeal did not lead to any change in this decision.
(v) On 16 February 2009, an order restricting the mother's liberty was issued under section 56, subsection 1 of the Aliens Act 2000 (Vreemdelingenwet 2000). This order was implemented by placing the mother and the children in the restrictive accommodation at Ter Apel, where they were offered limited facilities.
(vi) In Ter Apel, a total of seven interviews were held with the mother concerning her obligation to return to her country of origin. In these interviews she was informed that she was obliged to leave the Netherlands and to cooperate in her departure. She was also informed of the facilities available to her, including financial support in the case of voluntary return, and the negative consequences of refusing to cooperate. The mother consistently refused to cooperate in her return to Angola. At a meeting with the vice-consul of Angola on 24 April 2009, the mother indicated that she was not willing to say anything. Angola subsequently refused to issue a laissez-passer.
(vii) In the sixth interview with the mother concerning her obligation to return, she was informed that the reception facilities being offered to her and her children would shortly be terminated since she was refusing to cooperate either in her departure from the Netherlands or in the procedure for obtaining a laissez-passer. In the final interview, the mother stated that she had taken no action to effect her return and that she was not willing to return to Angola. She was then informed that her residence in Ter Apel would be terminated on 31 March 2010.

3.2.1 The mother instituted interim injunction proceedings, insofar as relevant in cassation, on her own behalf and on behalf of her three children, seeking an order forbidding the State to remove her and her children from the reception centre and instructing the State to continue to provide her and her children with accommodation and a subsistence allowance on the current basis, as long as they were subject to the State's jurisdiction and no other acceptable provision had been made for them. Her case rested on the contention that the State was acting wrongfully by terminating her residence and hence her access to reception facilities in the restrictive accommodation, since in the absence of any alternative to this access she and her children would be out on the street. In support of this contention, she invoked inter alia articles 17 and 31 of the European Social Charter (ESC), a decision by the European Committee of Social Rights (ECSR) of 20 October 2009 (Defence for Children International/the Netherlands, no. 47/2008, LJN BM3650), articles 3 and 8 of the European Convention of Human Rights (ECHR), and articles 3, 27 and 37 of the Convention on the Rights of the Child (ICRC).

3.2.2 The interim relief judge dismissed the claims. In the judge's opinion, the mother and her children could not derive any support for their position from the ESC, the ECHR, or the ICRC. The mother bears primary responsibility for the care of her children, and she is obliged to cooperate in her return to Angola in the interests of her children considerations 3.4-3.6).

3.2.3 The court of appeal overturned this judgment and, in a new judgment, forbade the State to remove the mother and the children from the restrictive accommodation in Ter Apel and ordered the State to continue to provide the mother and the children with shelter and a subsistence allowance on the current basis as long as the children were minors, they continued to be within the territory of the State and fell within its jurisdiction, and no equivalent provision was made for them. The judgment of the court of appeal was based on the following considerations.

In its interim judgment, the court of appeal ruled that the State was not in principle acting wrongfully by turning the mother out into the street. She herself was responsible for the consequences of her refusal to cooperate in her return (consideration 3.3). However, turning the children out into the street, in the care of a mother who had no financial resources to provide them with adequate care and accommodation, and without any other provision for the children being assured, was wrongful, according to the court of appeal, in the circumstances of the case. The State had a legal obligation, partly pursuant to the provisions of articles 17 and 31 of the ESC, articles 3 and 8 of the ECHR and articles 2, 3, 27 and 37 of the ICRC, in cases in which parents do not, or do not sufficiently, fulfil their responsibilities, to protect and safeguard the rights and interests of children who are present within its territory, and to take whatever legal or practical measures may be necessary to this end. The court of appeal found it important that the children cannot be held responsible or blamed for their mother's refusal to cooperate in her return to Angola, that the children are very young and wholly dependent on adults for their care and upbringing, and that to a certain extent they have established roots in Dutch society. It further considered that upholding the judgment (dismissing the claims) would mean leaving the mother and children to fend for themselves; the family would no longer be monitored and the Child Protection Board would no longer be alerted to their situation. There was no evidence to indicate that any other institution would protect the children's interests, were the State to remove them from Ter Apel reception centre. The court of appeal therefore ruled that the State could not remove the children from Ter Apel reception centre unless some other adequate provision were made for their everyday care, accommodation, medical care, and schooling (considerations 3.5-3.8). The court of appeal gave the State an opportunity to say whether, and if so how, it would comply with this legal obligation (considerations 4.1-4.3).

In its final judgment, the court of appeal took into account the State's assertions that the termination of the parents' right to reception facilities also terminates the right of their minor children to such facilities, and that if necessary, help or reception can be offered to the children in the form of a child protection order (placement in a foster family or residential facility). Any such order would not necessarily follow on smoothly from the removal of the mother and the children from Ter Apel reception centre, and this form of reception would in any case mean that the children would be separated from their mother (consideration 2). The court of appeal based its further assessment of the case on the assumption that the mother and the children are staying only temporarily in the Netherlands, pending their departure, whether voluntarily or enforced by the State, and that the State has a legal obligation to ensure that the children's needs, in terms of everyday care, accommodation, medical care, and schooling, are adequately met during this period (consideration 3). In response to the invocation by the mother and the children of article 8 of the ECHR, the court of appeal

held that the issue in the present case is how the children, whom the State may not turn out into the street, can best be supported in the – in principle limited – time during which their expulsion is not yet possible, and whether, in these circumstances, disrupting family unity, that is, separating the children from their mother, is 'necessary'. After weighing the interests at stake, the court of appeal concluded that, in the circumstances of this case, the measures proposed by the State constituted a disproportional, and hence unjustified, breach of article 8, paragraph 1 of the ECHR, and do not constitute an acceptable alternative to their continued stay in Ter Apel (considerations 4.3 and 6).

The court of appeal concluded that terminating the residence of both mother and children in Ter Apel in the manner proposed by the State was incompatible with the State's legal obligation to provide the children with adequate reception facilities and care, with due respect for their right to family life, and that these rights asserted by the children mean that the mother's continued residence in the reception centre at Ter Apel on the current basis must likewise be accepted. The State must give the children the opportunity to continue their stay on the present basis, together with their mother, until the children's reception has been arranged in some other way that respects their right to continue their family life with the mother, or until such time as they have left the country (or reception centre) together with their mother. The State's obligation in this regard does not in any case extend beyond the moment at which the children reach the age of majority (consideration 5).

3.3 The mother and the children have submitted that the State has no interest in pursuing an appeal in cassation, since they were expelled to Angola in April 2011, and that the appeal should therefore be dismissed.

This line of defence cannot be upheld, since the fact that the State has been ordered to meet the legal costs in the action in itself constitutes a sufficient interest in the case. That the mother pursued the case before the courts hearing the facts on the basis of the assignment of counsel does not alter the matter.

3.4 The question to be answered in these proceedings is whether the State has an obligation to provide for the reception of minors whose asylum applications have been denied, if their parents, who are also staying in this country, refuse to cooperate in their expulsion, and if so how it should do so. In answering this question, the following principles apply first and foremost.

3.5.1 Pursuant to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ EU L 31/18) (the 'Reception Directive'), the Dutch Government must grant to asylum seekers and their family members reception facilities during the period in which they are waiting for a final decision on their asylum application. The minimum standards relate inter alia to the education of minors (article 10), material reception conditions (article 13) and health care (article 15). Article 8 provides that Member States must take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned.

3.5.2 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ EU L 348/98) (the 'Return Directive') aims, according to the preamble, to develop an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity. The Member States have an obligation to ensure the basic conditions of subsistence for third-country nationals who are staying illegally but who cannot yet be removed. The Directive leaves it to the

Member States to define these conditions in their national legislation (point 12 of the preamble). The preamble further states (in point 22) that in line with the ICRC and the ECHR, the best interests of the child and respect for family life should be primary considerations of Member States when implementing this Directive (see also article 5 of the Directive, which states that the Member States must take due account of these interests). During the period allowed for voluntary departure, and during the period for which removal has been postponed in accordance with article 9, Member States must ensure, as far as possible, inter alia that family unity is maintained, emergency health care and essential treatment of illness are provided, and that minors are granted access to the basic education system (article 14). The implementation of this Directive, by Act of Parliament of 15 December 2011 (Bulletin of Acts and Decrees 2011, 663), which entered into effect on 31 December 2011, led to certain amendments to the Aliens Act 2000 that are irrelevant to the case at hand.

3.5.3 Article 3, paragraph 1 of the ICRC provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child must be a primary consideration. Paragraph 2 imposes on the authorities the obligation to ensure that the child receives such protection and care as are necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her.

The European Court of Human Rights ('ECtHR') has in a number of its judgments incorporated the rights of the child as protected by article 3 of the ICRC into its interpretation of article 8 of the ECHR, and in the context of the weighing of interests that must be made under paragraph 2 of that article, has emphasised the obligation of Member States to take particular account of the interests of minors. See ECtHR 23 June 2008, no. 1638/03, Landelijk Jurisprudentie Nummer (LJN) BD8475, Nederlandse Jurisprudentie (NJ) 2009/45 concerning the exclusion order and expulsion of a minor alien, in which the ECtHR considered, in point 82: 'The Court's case-law under Article 8 has given consideration to the obligation to have regard to the best interests of the child in various contexts (for instance in the field of child care; see Scozzari and Giunta v. Italy, nos. 39221/98 and 41963/98, § 148, ECHR 2000-VIII), including the expulsion of foreigners. . . '. When assessing actions affecting children – such as child protection orders or decisions on expulsion – focusing on the best interests of the child is 'of crucial importance', see ECtHR judgment of 7 August 1996, no. 17383/90, LJN AB9924, point 64, as quoted in the said judgment in the case of Scozzari and Giunta v. Italy, ECtHR 13 July 2000, LJN AP0786, point 72). Thus, it follows from the ECtHR judgment of 12 October 2006, no. 13178/03, LJN AZ4343 concerning the expulsion of an unaccompanied minor after detention at the border lasting two months, that Member States must take account of the vulnerability and special needs of children (in particular young children) (see ECtHR 19 January 2012, no. 39472/07 and 39474/07, LJN BW0609), and that the authorities seeking to expel these children have an obligation to unite these children with their family, wherever possible. The ECtHR considered in the context of article 3 ECHR (point 53) that 'Steps should be taken to enable effective protection to be provided, particularly to children and other vulnerable members of society, and should include reasonable measures to prevent ill-treatment of which the authorities have or ought to have knowledge . . .'. In addition, in the context of article 8 of the ECHR (point 81), it considered as follows: 'the States' interest in foiling attempts to circumvent immigration rules must not deprive aliens of the protection afforded by these conventions or deprive foreign minors, especially if unaccompanied, of the protection their status warrants. The protection of fundamental rights and the constraints imposed by a State's immigration policy must therefore be reconciled'. The ECtHR ruled that the right to family life, of which, according to established case law,

the mutual enjoyment by parent and child of each other's company constitutes a fundamental element (see point 75), had been violated in the circumstances concerned, since the authorities had exerted themselves insufficiently to unite the minor child with her mother. In this connection, the ECtHR took into account that the minor child could not be held responsible for misconduct on the part of family members (see point 84).

3.5.4 As far as the position of Member States is concerned, it is relevant that they have the right, 'as a matter of well-established international law', to control aliens' entry into, and residence in, their country (see ECtHR 12 October 2006, quoted in section 3.5.3 above, point 81). Aliens without a valid right of residence who confront the authorities of a Member State with their presence in the country as a fait accompli are not entitled to expect that they will be granted the right of residence (see ECtHR 31 January 2006, no. 50435/99, LJN AV3568, point 43). Furthermore, aliens who are eligible for expulsion are not in principle entitled to continue their residence in order to receive medical, social or other assistance or services from the expelling State (see ECtHR 27 May 2008, no. 26565/05, LJN BD6647, point 23).

3.5.5 Finally, it must be taken into account that the Member States that are party to the revised ESC have an obligation, according to the European Committee of Social Rights (ECSR), under article 31, opening words and paragraph 2 of the ESC, 'to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction. Any other solution would run counter to the respect for their human dignity and would not take due account of the particularly vulnerable situation of the children' (ECSR 20 October 2009, quoted in 3.2.1 above, point 64). According to the Committee, any violation of this obligation by the Netherlands would also constitute a violation of the obligation under article 17, opening words and paragraph 1 (c) of the ESC, to provide protection and special aid from the state to children and young persons temporarily or definitively deprived of their family's support. In its interpretation of the ESC, the Committee attaches significance to the ICRC (point 28). In particular, it considers itself to be bound by 'the internationally recognised requirement to apply the best interests of the child principle' (point 29). In response to this decision, the Committee of Ministers of the Council of Europe adopted a resolution on 7 July 2010 stating that the limitation of the scope of the revised ESC does not relieve states of their responsibility to prevent homelessness of persons unlawfully present in their jurisdiction, 'more particularly when minors are involved' (Resolution CM/ResChS(2010)6, no. 47/2008).

3.6 In cassation proceedings, the basic premises are that the mother and the children were no longer lawfully resident in the Netherlands, that they were obliged to return to Angola, and that the mother refused to cooperate in their expulsion. There is no dispute concerning the question of whether the State provided the mother and the children with adequate facilities and support to make their return possible. The question of law at issue in the cassation proceedings relates to the period after the period in which the mother and the children were provided with reception facilities in accordance with the Reception Directive and the Return Directive, pending the final decision on their asylum application and, after this application was denied, pending their return.

3.7.1 Sections 1.1 and 1.2 reject as incorrect the view, as set forth in considerations 3.8 and 4.1 of the interim judgment and consideration 3 of the final judgment, that the State has a legal obligation to make adequate provision for the children's everyday care, accommodation, medical care, and schooling as long as they are in the Netherlands. Essentially it is claimed that in its ruling, the court of appeal lost sight of the mutual rights, obligations, and responsibilities of the State and the mother. In support of this assertion, it is argued that the termination of residence is a

consequence of the mother's failure to cooperate in the return procedure, and that the duty of care for the children in principle rests with the mother, and only rests with the State if a situation arises that poses a serious threat to the physical or emotional interests of the children (section 1.1). It is further argued that circumstances in which a parent does not evidently possess sufficient means of subsistence in advance, and in which no other form of reception has been guaranteed for the children at the moment of terminating access to reception facilities, do not (immediately) call into being any such legal obligation (section 1.2).

3.7.2 These claims are untenable. The court of appeal did not fail to recognise the fact that the termination of residence was directly related to the mother's decision not to cooperate with her return to Angola, nor that the duty of care for the children rests primarily with the mother. It ruled that the children cannot be blamed or held responsible for the mother's decision not to cooperate in her return to Angola, since they had no choice in the matter. The court of appeal further ruled that the primary responsibility of parents for their children's welfare does not alter the fact that where parents fail to take that responsibility, or to do so sufficiently, the State has an obligation to ensure that the rights and interests of the children are nonetheless protected and guaranteed and to take whatever steps may be necessary to that end (considerations 3.7 (c) and (d), interim judgment). The interpretation of the law on which these conclusions are based is correct. The State has an obligation to watch over the rights and interests of minors who are present within its territory, including minor aliens without a valid right of residence, partly because they cannot be held responsible for the conduct of their family members. This view derives support from the case law of the ECtHR, the principles underlying the Reception Directive and the Return Directive, and the position adopted by the ECSR and Committee of Ministers on the basis of the ESC, as set forth above in points 3.5.1-3.5.3 and 3.5.5 above.

3.7.3 Nor does the importance attached by the court of appeal, in arriving at its disputed judgment, to the fact that the mother herself does not possess the financial means to provide her children with adequate care and accommodation, and to the absence of guarantees of any other reception facilities for the children, reflect an incorrect interpretation of the law. The court of appeal manifestly took the view that it was foreseeable that the children would not receive adequate care if the reception facilities were terminated. In these circumstances, the court of appeal had well-founded reasons to assume that turning the children out into the street would lead to incompatibility with the duty of care that the State has with regard to the children and that further measures therefore had to be taken in the children's interests. In this context it must be borne in mind that the court of appeal did not pronounce on the way in which the State should arrange for reception facilities and care for the children. However, it did not consider the child protection measures mentioned by the State, which would be taken in the event of a humanitarian emergency, an acceptable alternative to the continuation of the children's residence and reception in Ter Apel. As is clear from consideration 2 of its final judgment, it attached importance to the fact that these measures would not necessarily follow on from the removal of the mother and the children from Ter Apel reception centre, since they would require the mobilisation of the Child Protection Board and/or a decision by a children's judge, and that it was moreover uncertain whether the measures proposed by the State could lead to the children having access to reception facilities and receiving further care, since this would depend on circumstances beyond the State's control such as a decision by a children's judge. The court of appeal further considered it an important point that the measures would lead to the children being separated from their mother, for which there was insufficient justification, according to the considerations set forth in section 3.9.2 below.

3.7.4 The plea of inadequate or incorrect reasoning (motiveringsklacht) in section 9.1 is untenable on the same grounds. This plea refutes the point made in consideration 3.7 (g) of the interim judgment, namely that there is no indication that any local authority, or any institution involved in protecting the interests of unsuccessful asylum-seeker children (and parents), was able and willing to take on responsibility for the children's practical or financial interests if they were removed from Ter Apel reception centre by the State. It is argued that this conclusion is unreasonable, since in its motion following the interim judgment, the State had enumerated the measures that could be taken by the State (and other institutions) to protect the children's practical or financial interests. This line of argument must be rejected. The court of appeal took the proposed measures into account in consideration 2 of its final judgment, but found them to be insufficient. This conclusion is closely related, as follows from the points made above, to the uncertainties surrounding the said measures, which uncertainties are not challenged by the section concerned. For the rest, the passages in the State's motion following the interim judgment that are quoted in the grounds for appeal do not refer to any modes of reception other than the child protection measures that the court of appeal took into account in its assessment of the case in consideration 2.

3.7.5 The plea of inadequate or incorrect reasoning in section 1.2 is also untenable. The argument that it was impossible to establish in advance, with (sufficient) certainty, what financial resources the mother might be able to obtain after her residence in Ter Apel had been terminated, ignores the fact that it is precisely the lack of sufficient certainty regarding the reception facilities for the children – following their residence in Ter Apel – that led the court of appeal to order that their residence at the reception centre be continued (for the time being), which position is not unreasonable.

3.7.6 It follows from the above that there is no evidence that the court of appeal applied an incorrect interpretation of the law in the opinion underlying its conclusion – in consideration 5 of the final judgment, set forth in point 3.2.3 above – that the State has a legal obligation (in the circumstances at hand) to provide the children with adequate reception facilities and care.

The Supreme Court would add – purely for the record, since the grounds for appeal do not contain any claims relating to the standard of reception and care – that insofar as the court of appeal proceeded on the assumption that the State has a legal obligation to provide unsuccessful minor asylum seekers with reception facilities and care of the same standard as that which they have received in the country of residence thus far, or that exceeds the standard necessary to prevent the occurrence of a humanitarian emergency, the court of appeal expressed an opinion that is not supported by law. If a parent obstructs expulsion, as in the present case, it cannot be accepted that such conduct may successfully exact the same standard of reception facilities and care as that enjoyed previously in respect of minors – and still less, by inference, in respect of the parent him- or herself – with no entitlement to lawful residence in the Netherlands. The court of appeal rightly linked the State's legal obligation in relation to the children to their minority, so that the prolongation of access to reception facilities and care could continue for years, certainly if the children are still young, if expulsion proves impossible for a long period of time. This would place too great a burden on the State (in this connection, see also point 44 of the ECtHR judgment of 27 May 2008, quoted in 3.5.4 above), and fails to recognise the primary responsibility of the parents, as expressed inter alia in article 3, paragraph 2 and article 27, paragraph 2 of the ICRC. In organising and providing emergency reception facilities, the State must however take into account as much as possible the special interests of children, especially young children, and their family ties (see the case law of the ECtHR, referred to in section 3.5.3 above).

3.8 The claims in sections 2.1 and 2.2 objecting to considerations 3.6 and 3.8 of the interim judgment and consideration 6 of the final judgment must be denied on the grounds explained in the advisory opinion of the Advocate-General, set forth in sections 3.27-3.28.

3.9.1 Sections 3.1-3.4 and 3.8 contain claims challenging the view – in considerations 4.3 and 6 of the final judgment – that the measures proposed by the State, in the circumstances of this case, constitute an unjustified violation of article 8 of the ECHR and cannot be seen as providing an acceptable alternative to the continuation of residence in Ter Apel reception centre.

3.9.2 It follows from the opinion set forth in consideration 4.3 regarding the invocation by the mother and the children of article 8 of the ECHR, given in point 3.2.3 above, that the court of appeal rightly proceeded on the assumption that in organising the reception facilities and care of the children, the State must respect, as far as is possible, their family life with their mother. In seeking to answer the question as to what extent this family life must be respected by the State, the court of appeal considered it important that the children's reception should be continued only pending their expulsion. The court of appeal further noted that it had neither been argued, nor had it become evident, that the mother had to date ever fallen short in her care for her children, and thus pointed out that the lack of adequate care after the termination of access to reception facilities would be attributable solely to a lack of financial resources. Taking into account the above considerations in section 3.7.3, the disputed judgment essentially amounts to the conclusion that in the circumstances at hand, a child protection measure is not the appropriate instrument for an interim period in which children must be offered accommodation and care pending their expulsion, or at any rate that such a measure is insufficiently attuned to the nature of their residence as is at issue in this case, namely (emergency) reception facilities and care for minor aliens, pending their expulsion. This view is not incorrect or unreasonable. A measure of this kind would not necessarily follow immediately the termination of their residence in Ter Apel, besides which it would lead to the separation of the children from their mother, for which insufficient justification exists in this case. On the one hand, in the interests of the State, the standard of reception facilities and care, as noted in section 3.7.6 above, should be attuned to the nature of their residence. On the other hand, as long as expulsion cannot be achieved, it can scarcely be maintained that the children's best interests – to which interests the court of appeal attached crucial importance in consideration 4.3 of its final judgment – would be served by an interference in family life such as the measures proposed by the State would entail.
The said sections must be rejected on the above grounds.

3.10.1 Sections 4.1 and 4.2 challenge consideration 3 of the final judgment, in which the court of appeal took as its point of departure that the mother and the children have been definitively refused admission to the Netherlands, that they are not entitled to stay in the Netherlands any longer, and that their presence here is therefore temporary, pending their departure, whether voluntarily or enforced by the State. It is claimed that the court of appeal failed to recognise the ambit of the legal dispute or in any case that it made an unacceptable and unexpected decision, and furthermore that its opinion needs to be furnished with more detailed reasons, since the parties did not argue that the presence of the mother and children was temporary, nor that the State had at its disposal some means of compelling them to return to Angola.

3.10.2 The order for continued residence (for the time being) in Ter Apel reception centre is supported by the opinion, which has been found to be correct, as set out in sections 3.7.6 and 3.9.2 above, that the State has a legal obligation – where it is foreseeable that the mother will not have the means to care for the children – to

provide the children with adequate reception facilities and care, and in so doing to respect, as far as possible, the children's right to family life with their mother. The order is further based on the opinion, which has been unsuccessfully challenged, that the measures proposed by the State do not constitute an acceptable alternative to the continuation (for the time being) of the children's residence and access to reception facilities in Ter Apel. It follows from the considerations set forth in sections 3.7.3-3.7.5 and 3.9.2 above that besides the temporary nature of the residence, which the court of appeal states that it took as a point of departure, the opinion is also based on other considerations, which constitute a sufficient independent basis for it. It follows from the above that the claims cannot lead to cassation, owing to lack of interest.

3.11 Nor can the other sections lead to cassation. Pursuant to section 81 of the Judiciary (Organisation) Act, no further reasons need be given for this judgment since the grounds of appeal do not raise questions of law that need to be answered in the interests of the uniform application or development of the law.

4. Decision

The Supreme Court:
dismisses the appeal;
orders the State to pay the costs of the cassation proceedings, estimated to amount on the mother's side, up to the present judgment, to €365.34 in expenses and €2,200 in salary.

This judgment was given by vice-president E.J. Numann as presiding judge, vice-president F.B. Bakels and justices A.M.J. van Buchem-Spapens, C. Drion and M.V. Polak, and pronounced in open court by justice J.C. van Oven on 21 September 2012.