B. The Court's assessment

385. The Court has already found that the applicant's expulsion to Greece by the Belgian authorities amounted to a violation of Article 3 of the Convention (see paragraphs 359 and 360 above). The applicant's complaints in that regard are therefore "arguable" for the purposes of Article 13.

386. The Court notes first of all that in Belgian law an appeal to the Aliens Appeals Board to set aside an expulsion order does not suspend the enforcement of the order. However, the Government pointed out that a request for a stay of execution could be lodged before the same court "under the extremely urgent procedure" and that unlike the extremely urgent procedure that used to exist before the *Conseil d'Etat*, the procedure before the Aliens Appeals Board automatically suspended the execution of the expulsion measure by law until the Board had reached a decision, that is, for a maximum of seventy-two hours.

387. While agreeing that that is a sign of progress in keeping with the *Čonka* judgment, cited above (§§ 81-83, confirmed by the *Gebremedhin* judgment, cited above, §§ 66-67), the Court reiterates that it is also established in its case-law (paragraph 293 above) that any complaint that expulsion to another country will expose an individual to treatment prohibited by Article 3 of the Convention requires close and rigorous scrutiny and that, subject to a certain margin of appreciation left to the

States, conformity with Article 13 requires that the competent body must be able to examine the substance of the complaint and afford proper reparation.

388. In the Court's view the requirement flowing from Article 13 that execution of the impugned measure be stayed cannot be considered as a subsidiary measure, that is, without regard being had to the requirements concerning the scope of the scrutiny. The contrary would amount to allowing the States to expel the individual concerned without having examined the complaints under Article 3 as rigorously as possible.

389. However, the extremely urgent procedure leads precisely to that result. The Government themselves explain that this procedure reduces the rights of the defence and the examination of the case to a minimum. The judgments of which the Court is aware (paragraphs 144 and 148 above) confirm that the examination of the complaints under Article 3 carried out by certain divisions of the Aliens Appeals Board at the time of the applicant's expulsion was not thorough. They limited their examination to verifying whether the persons concerned had produced concrete proof of the irreparable nature of the damage that might result from the alleged potential violation of Article 3, thereby increasing the burden of proof to such an extent as to hinder the examination on the merits of the alleged risk of a violation. Furthermore, even if the individuals concerned did attempt to add more material to their files along these lines after their interviews with the Aliens Office, the Aliens Appeals Board did not always take that material into account. The persons concerned were thus prevented from establishing the arguable nature of their complaints under Article 3 of the Convention.

390. The Court concludes that the procedure for applying for a stay of execution under the extremely urgent procedure does not meet the requirements of Article 13 of the Convention.

391. The fact that a few judgments, against the flow of the established case-law at the time, have suspended transfers to Greece (see paragraph 149 above) does not alter this finding as the suspensions were based not on an examination of the merits of the risk of a violation of Article 3 but rather on the Appeals Board's finding that the Aliens Office had not given sufficient reasons for its decisions.

392. The Court further notes that the applicant also faced several practical obstacles in exercising the remedies relied on by the Government. It notes that his request for a stay of execution under the extremely urgent procedure was rejected on procedural grounds, namely his failure to appear. Contrary to what the Government suggest, however, the Court considers that in the circumstances of the case, this fact cannot be considered to reveal a lack of diligence on the applicant's part. It fails to see how his counsel could possibly have reached the seat of the Aliens Appeals Board in time. As to the possibility of requesting assistance from a round-the-clock service, the Court notes in any event that the Government have supplied no proof of the existence of such a service in practice.

393. Regarding the usefulness of continuing proceedings to have the order to leave the country set aside even after the applicant had been transferred, the Court notes that the only example put forward by the Government (see paragraphs 151 and 382) confirms the applicant's belief that once the person concerned has been deported the Aliens Appeals Board declares the appeal inadmissible as there is no longer any point in seeking a review of the order to leave the country. While it is true that the Aliens Appeals Board did examine the complaints under Article 3 of the Convention in that judgment, the Court fails to see how, without its decision having suspensive effect, the Aliens Appeals Board could still offer the applicant suitable redress even if it had found a violation of Article 3.

394. In addition, the Court notes that the parties appear to agree to consider that the applicant's appeal had no chance of success in view of the constant case-law, mentioned above, of the Aliens Appeals Board and the *Conseil d'Etat*, and of the impossibility for the applicant to demonstrate *in concreto* the irreparable nature of the damage done by the alleged potential violation. The Court reiterates that while the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant, the lack of any prospect of obtaining adequate redress raises an issue under Article 13 (see *Kudla*, cited above, § 157).

395. Lastly, the Court points out that the circumstances of the present case clearly distinguish it from the *Quraishi* case relied on by the Government. In the latter case, which concerns events dating back to 2006 and proceedings before the Aliens Appeals Board in 2007, that is to say a few months after the Board began its activities, the applicants had obtained the suspension of their expulsion through the intervention of the courts. What is more, they had not at that stage been expelled when the Court heard their case and the case-law of the Aliens Appeals Board in Dublin cases had not by then been established.

396. In view of the foregoing, the Court finds that there has been a violation of Article 13 taken in conjunction with Article 3. It follows that the applicant cannot be faulted for not having properly exhausted the domestic remedies and that the Belgian Government's preliminary objection of non-exhaustion (see paragraph 335 above) cannot be allowed.

397. Having regard to that conclusion and to the circumstances of the case, the Court considers that there is no need to examine the applicant's complaints under Article 13 taken in conjunction with Article 2.