

Belgium - Council for Alien Law Litigation, 11 March2008, No. 8512

Country of Decision:

Belgium

Country of Applicant:

Rwanda

Date of Decision:

11-03-2008

Citation:

CCE, arrêt no 8512

Court Name:

Council for Alien Law Litigation (BODART)

Keywords:

Genocide

Previous persecution

Well-founded fear

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 1C \(5\)](#) [3]European Union Law

Headnote:

Extremely serious previous persecution was sufficient to establish a well-founded fear of persecution even when it appeared unlikely to recur.

Facts:

The Applicant, a Rwandan of Tutsi ethnic origin, whose family had been murdered during the 1994 genocide, feared reprisals due to her refusal to testify before a *Gacaca* tribunal.

The Office of the Commissioner-General for Refugees and Stateless Persons (CGRS) refused to recognise her refugee status. It was unconvinced by the Applicant's account and found her

summons by a *Gacaca* tribunal to be lacking in credibility.

Decision & Reasoning:

The judge began his reasoning by emphasising that the reality of the persecution suffered by the Applicant during the genocide was not in any doubt.

This previous persecution would probably not recur, even if the Applicant returned to her country of origin.

However, 'well-founded fear' included a subjective element which had to be assessed taking into account the Applicant's psychological vulnerability.

The Applicant had suffered extremely serious persecution. Such persecution constituted a 'compelling reason' preventing the termination of refugee status within the meaning of Article 1C(5) of the Refugee Convention.

By analogy, such a 'compelling reason' was also sufficient to provide an objective basis for the purely subjective fear of persecution. The Applicant's refugee status was recognised.

Outcome:

Revision of the CGRS's decision.

Observations/Comments:

This decision illustrates the CALL's position that an 'increased subjective fear' caused by extremely serious persecution is sufficient to establish a well-founded fear of persecution even when the objective risk has disappeared.

Attachment(s):

 [CCE 8512.pdf](#)[4]

National / Other Legislative Provisions:

[Belgium - Vreemdelingenwet/loi sur les étrangers 15/12/1980 \(Aliens Act\) - Art 48/3](#) [5]

[Belgium - Vreemdelingenwet/loi sur les étrangers 15/12/1980 \(Aliens Act\) - Article 48/4](#) [6]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1c>

[4] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CCE%208512.pdf>

[5] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4575>

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4576>