

Belgium: Council for Alien Law Litigation, 31 March 2020, n° 234 709

Country of Decision:

Belgium

Country of Applicant:

Turkey

Date of Decision:

31-03-2020

Citation:

Belgian Council for Alien Law Litigation, 31 March 2020, n° 234 709

Court Name:

Council for Alien Law Litigation (CALL)

Keywords:

Assessment of facts and circumstances

Burden of proof

Exclusion from protection

Individual assessment

Political Opinion

Procedural guarantees

Terrorism

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [3] > [Art 1F\(b\)](#) [3]European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [4] > [Article 12](#) [5]European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [4] > [Article 17](#) [6]

Headnote:

Well-grounded information is of central importance to any decision to exclude a person convicted for criminal matters from international protection in accordance with Article 1 F of the 1951 Refugee Convention.

Facts:

The applicant is a Turkish national, of Kurdish origin, considered as a PKK activist. After he fled Turkey, he has been involved in PKK-related activism around Europe.

In July 1995, the applicant was arrested and convicted for participating in a formed group or an alliance established with the aim of preparing the terrorist acts mentioned in Article 421-1 of the French Criminal Code. He was sentenced to 3 years' imprisonment.

In 2007, he filed a second asylum application in Belgium, which is the subject of this case. The Commissioner General for Refugees and Stateless Persons (CGRS) issued a negative decision on his application for international and subsidiary protections based on the exclusion clause of Article 1F (b) of the 1951 Refugee Convention, transposed in Article 55/2 and 55/4 of the 15 December 1980 Law (Belgium), claiming that its former conviction of a 'serious non-political crime' was of enough 'serious reasons' to deny him international protection.

The applicant appealed this decision to the CALL.

Decision & Reasoning:

The Council started by assessing the legal reasoning of the CGRS based on the exclusion criteria.

The Council recalled that regarding the exclusion criteria, the burden of proof is on the defendant, the CGRS. Therefore, the CGRS had to justify that the elements of the case reached the threshold of sufficient proof to establish that there are 'serious reasons to believe' that he had committed a criminal offence as defined under Article 1 F of the Refugee Convention and Article 55/4 of the 15 December 1980 law.

Moreover, the CALL concluded that the CGRS interpreted the exclusion criteria too restrictively due to the lack of proof in the judicial documents issued by the French authorities and on the concrete acts charged against the applicant. As pointed out by the CALL, and in accordance to the UNHCR Guidelines on International Protection No. 5, it is not sufficient that the applicant has been convicted for a criminal offence. There is an obligation from the authorities to submit 'clear and credible evidence, an obligation that has not been fulfilled in this case.

Consequently, there were no serious reasons to believe that the applicant was guilty of a 'non-political crime' or a 'criminal offence' that could lead to the exclusion from international protection. There were sufficient reasons to believe that the applicant has well-founded fear of persecution if returning to his country of origin, due to his political activities.

The applicant was granted refugee status.

Outcome:

Appeal granted.

Observations/Comments:

The summary was written by Clementine Le Roy, LLM student at Gent University.

Attachment(s):



[Case 1 CALL French 31 March 2020.pdf](#)[7]

Other sources cited:

Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 convention relating to the Status of Refugees

Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees - Paragraph 152/153/155

Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees

National / Other Legislative Provisions:

[Art 421-1 Criminal Code \(France\)](#) [8]

[Articles 39/2](#) [9]

[48/3](#) [10]

[48/4](#) [11]

[51/4](#) [12]

[52](#) [13]

[55/4 - 15 December 1980 Law \(Loi du 15 décembre 1980 sur l'accès au territoire](#) [14]

[le séjour](#) [15]

[l'établissement et l'éloignement des étrangers\)](#) [16]

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#1f>

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

[5] https://www.asylumlawdatabase.eu/node/4038#toc_176

[6] https://www.asylumlawdatabase.eu/node/4038#toc_216

[7]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Case%201%20CALL%20French%2031%20>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/art-421-1-criminal-code-france>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/articles-392>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/483>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/484>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/514>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/52>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/554-15-december-1980-law-loi-du-15-d%C3%A9cembre-1980-sur-l%E2%80%99acc%C3%A8s-au>

[15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/le-s%C3%A9jour>

[16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/l%E2%80%99%C3%A9tablissement-et-l%E2%80%99%C3%A9loignement-des-%C3%A9trangers>