

Finland - Supreme Administrative Court, 30 Dec 2010, KHO:2010:3964

Country of Decision:

Finland

Country of Applicant:

Iraq

Date of Decision:

30-12-2010

Citation:

KHO:2010:3964

Court Name:

Supreme Administrative Court

Keywords:

Subsidiary Protection

Serious harm

Indiscriminate violence

Internal armed conflict

Country of origin information

Humanitarian considerations

Personal circumstances of applicant

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 3](#) [4]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 2](#) [6]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [8] > [Art 2 \(e\)](#) [8]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [8]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 4](#) [9]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 4](#) [9] > [Art 4.4](#) [10]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 8](#) [11]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 15](#) [12]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 16](#) [13]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 19](#) [14]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 18](#) [15]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 19](#) [16]

Headnote:

The case considered whether the security situation in central-Iraq, and particularly in Baghdad, met the prerequisites for granting a residence permit on the grounds of subsidiary protection. It was confirmed that the need for international protection must be evaluated not only on points of law but also on points of fact. Both the applicant's account of prior events in the country of origin, as well as current country of origin information regarding the security situation, must be taken into account in the risk assessment. As such, the evaluation is tied to a particular individual and to a particular time and place.

Facts:

The applicant was from Baghdad. The Immigration Service rejected the application for international protection holding that despite UNHCR guidelines to the contrary, Baghdad was safe. The Administrative Court overturned the decision and held that the applicant must be granted a residence permit on grounds of subsidiary protection. The Immigration Service applied for leave to appeal to the Supreme Administrative Court. The Immigration Service, inter alia, stated that as UNHCR did not provide information on the current conditions in Iraq, or as the information they did provide was out of date, there were grounds to depart from UNHCR's position regarding current country of origin information. The applicant's claim for asylum was based mainly on the prevailing security situation in Baghdad, rather than on experiences of individual persecution.

Decision & Reasoning:

The Supreme Court stated:

Both collective and individual factors play a part in determining the need for subsidiary protection. In order to be granted subsidiary protection, the European Court of Justice has stated that the better the applicant can show compelling reasons for harm precisely due to factors related to his/her personal circumstances, the less need there will be to prove harm at the level of indiscriminate violence. (*Elgafaji v Staatssecretaris van Justitie* C-465/07)

Personal factors have not played a part in the applicant's problems in his country of origin. This must be kept in mind when evaluating the safety situation in Baghdad, and particularly to what extent the occurring unquestionable acts of violence may be targeted at random individuals.

When assessing current country information from Baghdad as a whole, and also taking into consideration the nature and duration of the violence taking place, the Administrative Court's assessment of the applicant's need for subsidiary protection must be upheld. This is despite the fact that there have recently been reports of positive developments in the region. Thus the case does not require an assessment of the humanitarian protection laid out in Article 88 of the Aliens Act.

In the current conditions, the internal flight alternative is neither possible nor reasonable, taking into account also the applicant's personal circumstances.

The Supreme Administrative Court found there was not in the applicant's case at that time, grounds for changing the outcome of the Administrative Court's decision.

Outcome:

The Supreme Administrative Court allowed for leave to appeal and examined the case. The Court held that the applicant should be granted a residence permit on grounds of subsidiary protection.

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/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [4] https://www.asylumlawdatabase.eu/node/195#toc_12
- [5] <https://www.asylumlawdatabase.eu/node/453>
- [6] https://www.asylumlawdatabase.eu/node/453#toc_17
- [7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>
- [9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>
- [10] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD>
- [11] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 8 QD>
- [12] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 15 QD>
- [13] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2016%20QD>
- [14] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#QD%20Art%2019>
- [15] https://www.asylumlawdatabase.eu/node/453#toc_85
- [16] https://www.asylumlawdatabase.eu/node/453#toc_88