

France - Council of State, 7 April 2010, Mr. B., n°319840

Country of Decision:

France

Country of Applicant:

Iraq

Date of Decision:

07-04-2010

Citation:

CE, 7 avril 2010, M.B., n° 319840

Additional Citation:

Conseil d'Etat, 7 avril 2010, M.B., n° 319840

Court Name:

Council of State/Conseil d'Etat

Keywords:Exclusion from protection

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [3] > [Art 1F\(b\)](#) [3]International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [3]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [4] > [Art 4](#) [5] > [Art 4.3 \(c\)](#) [6]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [4] > [Art 4](#) [5]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [4] > [Art 6](#) [7]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [4] > [Art 7](#) [7]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [4] > [Art 12](#) [8]

Headnote:

Before applying the exclusion clause in a case of complicity in an honour killing, the Court should inquire whether, on the one hand family constraint might have lowered the free will of the applicant and, on the other hand whether his young age might justify that he was more vulnerable to this constraint.

Facts:

The applicant, from Iraq and of Kurdish origin, claimed that he should be granted asylum for two reasons: firstly, because he was a member of the PKK political party, which he quit after 8 years of activism and which attempted to track him; secondly, because he took part in an honour killing in a family context when he was 15 years old.

The French Office for the Protection of Refugees and Stateless Persons (Ofpra) rejected his application. This negative decision was confirmed by the Commission des Recours des Réfugiés (Refugee Appeals Commission) CRR/CNDA according to Article 1F(b) of the 1951 Refugee Convention. The applicant lodged an appeal against this decision before the Council of State.

Decision & Reasoning:

In its decision, the CRR/CNDA considered that the exclusion clause under Article 1F (b) of the 1951 Refugee Convention should be applied to the applicant because he took part in a serious non-political crime. While noting that the applicant might have acted under constraint, the CRR/CNDA found, however, that his young age at the time, did not exempt him from responsibility.

The Council of State found this decision to be irregular because of the contradiction in the above-mentioned reasoning, and because of a legal error resulting from the fact that the CRR/CNDA considered that the applicant was fully responsible without inquiring whether, on the one hand family constraint might have lowered his free will and, on the other hand whether his young age might justify that he was more vulnerable to this constraint. The Council of State concluded that the request of the applicant was well-founded.

On the substance of the claim, the Council of State considered that the applicant risked being tracked by the PKK upon his return to Iraq because he quit the party. Also his security in the North of Iraq could not be guaranteed by the Iraqi authorities. The Council of State concluded that the applicant had a well-founded claim for refugee status under Article 1 A (2) of the 1951 Refugee Convention.

However, the Council of State examined whether the applicant fell under Article 1 F (b) of the 1951 Refugee Convention, as an accomplice to a serious non-political crime committed by his brother. The Council of State considered that the applicant was an accomplice to this act because he was exposed to various pressures which, due to his young age at that time, he could not resist and which exclude any deliberate action on his part. Therefore, the Council of State concluded that the applicant could not be excluded from refugee status for this reason.

Outcome:

Refugee status was granted to the applicant.

Observations/Comments:

In this decision, the Council of State used an extensive notion of complicity which takes into

account both active and passive complicity, in the case of application of the Article 1F(b) exclusion clause.

In a subsequent decision relative to the application of the Article 1F(a) exclusion clause, the Council of State states that complicity of genocide can be active or passive, i.e. by abstention (cf. [CE, 26 janvier 2011, M.A., n°312833](#), [9] also summarised in this database.

NB: The CNDA (National Asylum Court) was called CRR (?Commission des recours des réfugiés?) until the Act n°2007-1631 of 20 November 2007.

Attachment(s):



[CE 20100407 n°319840.pdf](#)[10]

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] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>

[6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD>

[7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%206%20QD>

[8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 12 QD>

[9] <https://www.asylumlawdatabase.eu/en/case-law/france-council-state-26-january-2011-mr-n%C2%B0312833>

[10]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CE%2020100407%20n%C2%B0319840.pdf>