

France - National Asylum Court, 5 April 2012, M.Z., No. 10004811

Country of Decision:

France

Country of Applicant:

Iran

Date of Decision:

05-04-2012

Citation:

CNDA, 5 avril 2012, M.Z., n° 10004811

Court Name:

National Asylum Court (CNDA)

Keywords:

Acts contrary to the purposes and principles of the UN

Exclusion from protection

Terrorism

Well-founded fear

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [3] > [Art 1F\(c\)](#) [3]International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [3]

Headnote:

The exclusion of a person who had belonged to a terrorist organisation depended on a personal examination to see whether there were genuine grounds to attribute to him a personal responsibility as organiser, author or accomplice to serious crimes under ordinary law or actions contrary to the purposes and principles of the United Nations.

Facts:

The Applicant, of Iranian nationality, had for many years held high office in the ?Quds? contingent

of the Revolutionary Guards. He had then left this movement and denounced certain abuses of the regime. The Ofpra rejected his asylum application and he appealed to the CNDA.

Decision & Reasoning:

Firstly, the CNDA held that the Applicant's desertion of the Revolutionary Guards paramilitary organisation exposed him to a real and serious risk of being persecuted by the Iranian regime should he return to Iran. Therefore his fear of persecution in the event of a return was well-founded.

Secondly, reiterating the terms of Article 1F(c) of the 1951 Refugee Convention, the CNDA examined the applicability of the exclusion clause. The Court underlined that the mere fact that a person has belonged to a group known to commit crimes or acts of terrorism does not automatically lead to his exclusion from refugee status.

The Court specified that such a person *is subject to an individual examination to establish whether there are genuine grounds for attributing to him personal responsibility as organiser, author or accomplice to serious crimes under ordinary law or actions contrary to the purposes and principles of the United Nations?* In this regard, it was advisable in particular to examine the functions that the person carried out within the organisation and his degree of personal responsibility, the size of the organisation and the extent to which it was structured and for there to be a sufficient connection established between criminal facts proven against or imputed to the organisation and the personal situation of the person concerned at the time these facts were perpetrated.

In this case, the CNDA held that the Applicant's level of responsibility, knowledge of the organisation and activity necessarily meant that he was, at the very least, aware of the terrorist attacks and acts to which the 'Quds' contingent was a party. In addition, having been present at scenes of torture and rape in secret detention centres, he could not be unaware of the abuses committed by the regime. His defection could not exonerate him from personal responsibility due to its belatedness and the duration of his involvement.

The CNDA concluded that there were genuine reasons to believe that the Applicant had inevitably authorised actions contrary to the purposes and principles of the United Nations and that it was appropriate to exclude him from refugee status in accordance with Article 1F(c) of the 1951 Refugee Convention.

Outcome:

The Applicant's appeal was rejected.

Observations/Comments:

Implied application of the CJEU's judgment of 9 November 2010 in *Germany -v- B. (C-57/09) and D. (C-101/09)*

Attachment(s):



[Original Judgment CNDA 10004811.pdf](#)[4]

National / Other Legislative Provisions:

[France - Ceseda \(Code of the Entry and Stay of Foreigners and Asylum Law\)](#) [5]

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/sites/default/files/aldfiles/Original%20Judgment%20CNDA%20100048>

[5] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1035>