

## Sweden - Migration Court of Appeal, 22 February 2011, UM 10061-09

**Country of Decision:**

Sweden

**Country of Applicant:**

Somalia

**Date of Decision:**

24-02-2011

**Citation:**

UM 10061-09

**Court Name:**

Migration Court of Appeal

**Keywords:**

Subsidiary Protection

Internal armed conflict

Armed conflict

Exclusion from protection

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**Relevant Legislative Provisions:**European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 4](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 15](#) [3]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 17](#) [4]

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**Headnote:**

The Migration Court of Appeal held that internal armed conflict prevails in all parts of southern and mid Somalia.

**Facts:**

The applicant applied for asylum in Sweden for the second time in June 2008. He claimed that he was at risk of being killed by members of a rival clan, and also raised the difficult situation in Somalia in general. The Migration Board denied the application (28 January 2009) as the necessary link between the applicant and the "other severe conflicts" referred to in Chapter 4 Section 2 of the Aliens Act (as before January 1 2010) that prevailed at the time in his region of origin was not found to exist. The establishment of such a link is a prerequisite for being granted protection on this ground. The Stockholm Migration Court in its judgment on the appeal (22 November 2009) instead found that the applicant indeed was in need of subsidiary protection from an internal armed conflict (Aliens Act Chapter 4 Section 2, transposing Article 15 of the Qualification Directive). However, since the applicant had a previous conviction, the Migration Court concluded he could be excluded from being eligible for protection. The applicant appealed to the Migration Court of Appeal, relying on both the worsening security situation in Somalia and the fact that the nature of the crime for which he had been previously convicted did not fulfill the conditions for exclusion.

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### **Decision & Reasoning:**

The main issues in the case, the Migration Court of Appeal stated, were the present security situation in Somalia and the issue of exclusion. The judgment began with a thorough examination of country of origin information regarding security matters in Somalia.

The Migration Court of Appeal established that the applicant was neither eligible for protection as a refugee (Aliens Act Chapter 4 Section 1, transposing Article 1A2 of the Refugee Convention and Art 2 (c) of the Qualification Directive) nor subsidiary protection as outlined in the Aliens Act Chapter 4 Section 2, item 1. Regarding internal armed conflict, the Court stated that it had established the requirements for an internal armed conflict in its previous case law, and that such had been found to prevail in Mogadishu (MIG 2009:27). The Court then stated that the security situation at this point had worsened so that the internal armed conflict now had extended to all of Somalia, except Somaliland and Puntland. The Court based its conclusion on the extent of the conflict, its character, geography and the consequences for civilians as well as the lack of further information on the events in southern and mid part of Somalia.

The Migration Court of Appeal concluded that as the applicant is a resident of Mogadishu and has no previous connection to Somaliland or Puntland (and therefore cannot rely on internal protection in those regions) he must be found eligible for international protection and for subsidiary protection status in Sweden. His criminal record had no bearing on this decision as the Aliens Act, Chapter 4 Section 2 c (transposing Article 17.1 of the Qualification Directive) now states that exclusion from protection can apply only where there are particularly strong reasons to believe that the applicant has been guilty of a gross criminal offence. This requirement was not fulfilled in the present case.

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### **Outcome:**

The appeal was granted and the previous judgment revoked.

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### **Attachment(s):**



[UM 10061-09.pdf](#)[5]

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### **National / Other Legislative Provisions:**

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 4 Section 1](#) [6]

[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 4 Section 2](#) [7]

**Links:**

- [1] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [2] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>
- [3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 15 QD>
- [4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 17 QD>
- [5] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/UM%2010061-09.pdf>
- [6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1110>
- [7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1111>
- [8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1936>