

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court:</b> <b>Korkein hallinto-oikeus (Supreme Administrative Court)</b>	
<b>Date of the decision:</b>	<b>16/11/2016</b>
<b>Case number:</b>	<b>KHO:2016:181</b>
<b>Parties to the case:</b>	
<b>Decision available on the internet?</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201604831">http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201604831</a>	
<b>Language(s) in which the decision is written:</b> <b>Finnish</b>	
<b>Official court translation available in any other languages?</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> A summary translation is available in Swedish at: <a href="http://www.finlex.fi/sv/oikeus/kho/vuosikirjat/2016/201604831">http://www.finlex.fi/sv/oikeus/kho/vuosikirjat/2016/201604831</a>	
<b>Country of origin of the applicant:</b> <b>Iraq</b>	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant:</b> <b>Finland</b>	
<b>Any third country of relevance to the case:</b> -	
<b>Is the country of asylum or habitual residence party to:</b>	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Relevant articles of the Convention on which the decision is based: Article 1 F
<b>(Only for cases with statelessness aspects)</b> The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Relevant articles of the Convention on which the decision is based:
<b>(Only for cases with statelessness aspects)</b> The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Relevant articles of the Convention on which the decision is based:
<b>(For AU member states):</b> The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	Relevant articles of the Convention on which the decision is based:
<b>For EU member states:</b> please indicate which EU instruments are referred to in the decision: Directive 2011/95/EU	Relevant articles of the EU instruments referred to in the decision:  Article 12 (2)

**Topics / Key terms:**

Asylum

Refugee status

Exclusion

**Key facts**

The Finnish Immigration Service had denied an Iraqi citizen A's application for international protection on 30.6.2014.

The Finnish Immigration Service and the Administrative Court have accepted A's testimony regarding his service in Saddam Hussein's Military Intelligence Division and that he was a supporter of the Ba'ath Party. A had worked in Diplomatic Security for three years, as an interpreter at interrogations for six months and as guard and in transportation for three years. Later on, A had protected the officials of the Ba'ath Party and participated in the war against the coalition led by the United States.

The Finnish Immigration Service and the Administrative Court considered that A had a well-founded fear of persecution pursuant to the reasons outlined in Section 87 (1) of the Aliens Act. The Finnish Immigration Service and the Administrative Court had, however, considered that there were serious reasons for considering that he had committed acts pursuant to Section 87 (2) of the Aliens Act, and therefore he was not granted asylum. Under these circumstances, it was necessary to assess whether it was demonstrated that the preconditions for exclusion, as laid down in Section 87 (2) of the Aliens Act, were fulfilled in this case.

## Key considerations of the court

The Supreme Administrative Court stated that, in the case, it had not been claimed that A had committed any act as referred to in Article 87(2) of the Aliens Act, but the question is whether there are serious reasons to consider that A had committed such an act. The Supreme Administrative Court stated that a mere suspicion or speculation is not sufficient to exceed the threshold in the presentation of evidence, but instead, the authorities must demonstrate that there are reasonable or serious grounds to suspect that the person has committed an act referred to in Section 87 (2) of the Aliens Act.

According to the decision of the Finnish Immigration Service, it is generally known that crimes against humanity were committed during the administration of the previous regime (1979-2003). Referring to the country of origin information, the Finnish Immigration Service states that it is unlikely that A would not have been involved in arrests, detentions or tortures or that his actions would have not led to civilian victims, considering his position and job functions. The decision is based on a common evaluation without a specific analysis on the organization of the Ba'ath Party and a reflection of A's position in it. Even though A was a member of the Ba'ath Party during the previous regime and worked in the Military Intelligence Division, it does not in itself give rise to serious reasons to consider that A has also committed crimes against humanity. According to the publicly available sources, there were almost four (4) million members in the Ba'ath Party at the end of 2002, supporters included, of which a large number was at a lower level in the party's hierarchy (see for example Joseph Sassoon, Saddam Hussein's Ba'ath Party, Inside an Authoritarian Regime, Cambridge University Press, 2012, pp. 45-53 and 286). Also, no precise assessment was made on the facts in order to determine whether there were serious reasons to consider that A is personally responsible of any of the acts referred to in Section 87, Subparagraphs 1, 2 or 3 of the Aliens Act.

Referring to and agreeing with UNHCR, UK Home Office and the Court of Justice of the European Union and different national courts, The Supreme Administrative Court states, that exclusion clauses must be interpreted restrictively and that their application always requires the authorities to establish that the exclusion ground can be applied to the individual in question. The authorities' view that it is unlikely, considering A's position and service in the Military Intelligence Division for eleven years, that the person had not perpetrated acts that are laid down in the exclusion clause, was not sufficient to apply the exclusion clause. Particularly, the application of the exclusion clause was not sufficient when taking into consideration inter alia that it had been established that A had been in a relatively low position in the hierarchy of the Ba'ath Party that was governing Iraq as well as in the Military Intelligence Division. A had denied committing acts as laid down in Section 87, Paragraph 2, Subparagraphs 1, 2 or 3 of the Aliens Act, and the Finnish Immigration Service had not demonstrated that there were serious reasons to consider that A had committed any of the acts mentioned in this provision.

The Supreme Administrative Court considers that it was not established there would be serious reasons to consider that A had committed acts referred to in Section 87 (2) of the Aliens Act and Article 1 F of the 1951 Convention.

Based on the above-mentioned reasons, the decisions of the Finnish Immigration Service and the Administrative Court must be revoked in relation to the application of the exclusion clause and the case must be referred back to the Finnish Immigration Service for new consideration.

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## References made by the Court

### International and regional legal instruments

European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20 December 2011, 2011/95/EU

UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6

United Nations, *Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis ("London Agreement")*, 8 August 1945

### International, regional and domestic case law

Court of Justice of the European Union, *Germany v B and D (C-57/09 and C-101/09)*

The Federal Administrative Court (Bundesverwaltungsgericht), Germany, BverwG 10 C 26.12, 19 November 2013

The Supreme Administrative (Verwaltungsgerichtshof), Austria, Ra 2014/01/0154, 24 April 2015

The Migration Court of Appeal (Migrationsöverdomstolen), Sweden, MIG 2012:14

The Supreme Court of the United Kingdom, *Al-Sirri and DD v Secretary of State for the Home Department*, UKSC 54, 2 November 2012

Rechtbank 's-Gravenhage, the Netherlands, 22 June 2011

Supreme Administrative Court, Finland, *KHO:2008:21*, 3 April 2008 t. 670; and *KHO:2014:131*, 25 August 2014 t. 2473

### Miscellaneous

UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3

UN High Commissioner for Refugees (UNHCR), *UNHCR public statement in relation to cases Bundesrepublik Deutschland v. B and D pending before the Court of Justice of the European Union*, July 2009 (*UNHCR statement on Article 1 F of the 1951 Convention*)

UN High Commissioner for Refugees (UNHCR), *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003

UN High Commissioner for Refugees (UNHCR), *UNHCR Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003

UK Home Office, *Asylum Instruction: Exclusion: Article 1 F of the Refugee Convention*, 1 June 2016

