

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Afdeling Bestuursrechtspraak van de Raad van State (Dutch Council of State, Administrative Jurisdiction Division)	
Date of the decision: 28/5/2014	Case number:² 201303363/1/V1
Parties to the case: Applicant (Liberian national) v. State Secretary for Security and Justice	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: http://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=79345 ; (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Dutch	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): Liberia	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):	
Any third country of relevance to the case:³ Sierra Leone	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based: Article 1(F)
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision: European Convention on Human Rights	Relevant articles of the EU instruments referred to in the decision: Article 3 ECHR

Topics / Key terms: (see attached ‘Topics’ annex):

1951 Refugee Convention
Exclusion clauses

Key facts (as reflected in the decision): [No more than 200 words]

The applicant is a man from Liberia, brother-in-law of ex-President Taylor. The case concerns a repeated asylum application. This asylum application was rejected by the State Secretary of Security and Justice on 28 February 2012. In its decision of 3 August 2012, the District Court of The Hague gave the State Secretary the opportunity to remedy the flaws identified in his decision of 28 Feb 2012. A new decision by the State Secretary was issued on 3 December 2012. The applicant appealed against the 3 December 2012 decision (replacing the 28 Feb 2012 decision); on 13 March 2013 the District Court decided that the appeal was grounded.

The State Secretary appealed the Districts Court’s decisions of 3 August 2012 and 13 March 2013 at the Administrative Jurisdiction Division of the Council of State. The State Secretary argued that the District Court wrongly considered that he had improperly motivated his contention that there was a "knowing participation" within the meaning of section C4/3.11.3.3 of the Aliens Circular 2000. The State Secretary argued that the Court unjustifiably took into account the fact that according to the State Secretary the applicant had not worked for the Revolutionary United Front (RUF) but for the regime of former president Taylor of Liberia, while the State Secretary did not hold the applicant responsible for the acts committed by Taylor’s regime but by the RUF. The State Secretary claimed there was a "weapons for diamonds trade" between the Taylor’s regime and the RUF and that it was widely known that crimes were committed by the RUF. In this respect the State Secretary inter alia pointed to UN Security Council resolutions 1132 and 1306 and the judgment of the Special Court for Sierra Leone dated 18 May 2012. Taylor and his regime facilitated the crimes that were committed by delivering the weaponry. The fact that the applicant was not working for the RUF does not mean there was not a “knowing participation” as defined in the Aliens Circular and in paras 25, 27-33 of the Statute of Rome.

The Council of State held that in order to determine whether an applicant falls within the scope of article 1(F) of the 1951 Refugee Convention the “personal and knowing participation test” is relevant. It needs to be investigated whether the applicant was aware or should have been aware of the crimes in question and whether he personally participated in committing these crimes. The Council of State considered that given the applicant’s own statements that he travelled to Sierra Leone between ten and 15 times to provide the RUF with weapons in exchange for diamonds, the applicant was actively involved in the “weapons for diamond trade”. While it is true that the applicant did not work for the RUF, the District Court failed to recognize that the State Secretary has rightly taken the position, in view of the applicant’s statements and the information cited by the State Secretary, that the applicant was aware or should have been aware of the crimes committed by the RUF in Sierra Leone. Therefore the appeal of the State Secretary was deemed grounded.

The Council of State ordered the State Secretary to decide again on the application, taking into account the ruling of the Council of State and the rulings of the District Court as far as they are not contested. The State Secretary will need to decide whether Article 3 ECHR forms an impediment for the applicant’s return to Liberia.

In this case Article 1F was applied without any specification.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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2.1. According to paragraph C4/3.11.3.3 of the Aliens Circular 2000 the State Secretary of Security and Justice must demonstrate that there are 'serious reasons' to believe that an applicant falls within the scope of Article 1(F) of the 1951 Refugee Convention. The assumption that Article 1(F) applies does not require a motivation according to the evidence standard used in criminal law, but must nevertheless be motivated carefully. If there are 'serious reasons' to assume that an applicant has committed an act referred to in Article 1(F), the applicant must provide good reasons to refute the assumption, in order to avoid having Article 1(F) declared applicable to him. To decide whether an applicant falls within the scope of Article 1(F) of the 1951 Refugee Convention, use must be made of the "personal and knowing participation test" as referred to in Articles 25 and 27 to 30 of the Rome Statute of the International Criminal Court. It needs to be investigated whether an applicant was aware or should have been aware of the crimes in question ("knowing participation") and whether he has personally participated in these crimes in any way ("personal participation"). If this is the case, Article 1(F) can be invoked.

2.4 The Judgment of the Special Court for Sierra Leone (SCSL) as cited in the decision of 28 February 2012 and in the decision of 3 December 2012, shows that the Taylor regime supported the RUF in Sierra Leone between 1997 and 2001, by means of delivering weapons in exchange for diamonds from Sierra Leone. It is also evident from this source that the RUF used the weaponry supplied by the Taylor regime in committing crimes within the meaning of Article 1(F) of the 1951 Refugee Convention in Sierra Leone. The report of the second interview of 8 January 2012 states that the applicant indicated that he, at the request of Taylor, travelled to Sierra Leone ten to fifteen times in trucks with weapons, to collect diamonds from the RUF rebels. It follows that he has been actively involved in the "weapons for diamonds trade" between the RUF and Taylor and his regime. Although it is not in dispute that the applicant has not been working for the RUF, the Court wrongly failed to acknowledge that the State Secretary was correct, in light of the applicant's statements and the information from the sources cited by the Secretary of State, in finding that the applicant was aware or should have been aware of the crimes committed by the RUF in Sierra Leone and had thus properly motivated his decision that the applicant was guilty of "knowing participation" in the crimes committed by the RUF.

2.5. The complaint succeeds, but it cannot lead to the annulment of the appealed decision. After all, the State Secretary has not contested the District Court's decision that in his decisions of 28 February 2012 and 3 December 2012 the State Secretary had inadequately motivated his decision that the applicant had failed to make plausible that he would run a real risk of treatment in contravention with Article 3 ECHR upon return in Liberia.

3. The appeal is grounded. The State Secretary must decide again on the application, taking into account the ruling of the Council of State and the rulings of the District Court as far as they are not contested.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

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