

CASE LAW COVER PAGE TEMPLATE

| | |
|---|---|
| Name of the court ¹ (English name in brackets if the court's language is not English): Court of Zwolle | |
| Date of the decision: | (yyyy/mm/dd) 2013/05/17 |
| Case number: ² | AWB 12/11727, 12/11734 and 12/11741 |
| Parties to the case: four Iraqi nationals and the State Secretary of Security and Justice | |
| Decision available on the internet? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| If yes, please provide the link: (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): Iraq | |
| Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): The Netherlands | |
| Any third country of relevance to the case: ³ No | |
| 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 1F (c) |
| (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: |

| | |
|--|--|
| <p>For EU member states: please indicate which EU instruments are referred to in the decision</p> | <p>Relevant articles of the EU instruments referred to in the decision: -Council Directive 2004/83/EC -Preamble 31 of the (recast) Qualification</p> |
|--|--|

Topics / Key terms: (see attached 'Topics' annex):

Applicant, an Iraqi asylum seeker is denied asylum and considered to have performed acts as mentioned in article 1F(c) of the Refugee Convention. According to the State Secretary the applicant has acted in breach of the Oil for Food Programme (OFFP) of the UN by selling oil during the period the OFFP was applicable.

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

Applicants (IC and his family) have handed over two letters written by UNHCR The Netherlands on 18 April and 6 July 2012, concerning the specific situation of the applicant. In these letters UNHCR provides an argumentation as regards Article 1 F (c) of the Refugee Convention. UNHCR argues this provision is to be interpreted and applied highly restrictively. UNHCR emphasizes that in Preamble 31 of the (recast) Qualification Directive, specific mention is made to terrorism and that the preamble does not contain a reference to UN- Resolutions in general. Further reference is made to paragraph 163 of the UNHCR Handbook in light of the appeal for a restrictive independent application of article 1F (c) of the Refugee Convention (meaning an application of Article 1F c while not applying Article 1F (a) and/or Art 1F (b) of the Refugee Convention) .

The Court of Zwolle sees itself for the question whether or not the acts performed by the applicant can be deemed to fall under the scope of Article 1 F (c) of the Refugee Convention. The Court first considered that the applicant knew that he was acting in breach with the OFFP resolution.

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]

Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original.

The Court Zwole does however not follow the stance of the State Secretary for the following reasons:

-Resolution 986 (1995) of the UN (OFFP) does not mention any principles of the UN. The State Secretary was not able to motivate how applicant was acting in breach of a principle or purpose of the UN by acting in breach of the OFFP. The State Secretary admitted during the Court session that the principles and purposes of the UN are broadly phrased and that acting in contravention of a resolution not always constitutes a breach with a purpose or principle.

-The Court states the following:

“Also UNHCR, a recognized authoritative organization, has mentioned in its letter of 18 April 2012 that an independent application of Article 1 F (c) (meaning an application not in relation to Article 1F (a) and/or 1 F (b)) should take place restrictively...The State Secretary has not elaborated how he took into account the recommendation to be restrictive with regard to the application of Article 1F (c) refugee Convention.

According to paragraph 15 of the preamble of the Qualification Directive the UNHCR Handbook contains valuable instructions for the application of EU law. “ Further reference is made in this context to paragraph 22 of the Preamble, which reads as follows:-

(22) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism, which declare that «acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations» and that «knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations.”

The Court considers that the given examples with regards to terrorist acts are not be equated with the acts performed by applicant.

-The Court further deems that the State Secretary did not clarify the reasons behind the amendment to the Aliens Circular, which removed the link between the applicability of Article 1 F (c) and Articles 1F (a) and 1F (b) Refugee Convention. In this light the Court refers to paragraph 162 of the UNHCR Handbook, which mentions that acts falling under article 1 F (c) Refugee Convention “(..) must also be of a criminal nature.”

-The Court also refers to the following section from the Background Note of UNHCR on the Application of Exclusion Clauses: “Article 1 F (c) should be reserved for situations where the act and consequences meet a high threshold defined in terms of gravity of the act in question”

- The State Secretary considered the applicant did not perpetrate human rights violations but had deemed the acts of applicant of a criminal nature. The Court decides that the State Secretary failed to mention where these acts are mentioned as being of a criminal nature.

The Court considers that Article 1F (c) Refugee Convention has been applied unjustifiably.

Appeal of applicant grounded

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.

Please submit this form to:

Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org