

## Court of The Hague, 19 March 2018, NL 17.11921

**Country of Decision:**

Netherlands

**Country of Applicant:**

Iraq

**Date of Decision:**

19-03-2018

**Citation:**

NL 17.11921

**Court Name:**

Court of The Hague (Hearing location Zwolle), (H.T. Masmeyer)

**Keywords:**

Assessment of facts and circumstances

Credibility assessment

Medical Reports/Medico-legal Reports

Membership of a particular social group

Personal circumstances of applicant

Sexual orientation

Well-founded fear

**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 10](#) [3]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 13](#) [4]**Headnote:**

In assessing the credibility of a sexual orientation-related claim, personal circumstances have to be taken into account. That a person is not able to elaborate on his awareness and acceptance of his sexual orientation, is not sufficient to conclude that the applicant's story lacks credibility, when the personal circumstances that explain this inability are considered credible.

**Facts:**

The applicant is an Iraqi man. When he was thirteen, he was caught committing sexual acts with a boy. He was subsequently mistreated by his father and family for years. This caused him to renounce the Islamic faith and become an atheist. His request for international protection (Vreemdelingenwet, art. 28) was refused by the State Secretary of Justice and Security, who acknowledged that homosexuality is not accepted and punishable in Iraq, but questioned the credibility of the man's claim that his sexual orientation led to mistreatment by his family and serious problems in Iraqi society in general. The applicant appealed against the refusal.

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**Decision & Reasoning:**

The court found that the State Secretary had not correctly applied the guidelines on the assessment of the credibility of sexual orientation claims in asylum cases (Immigratie- en Naturalisatiedienst Werkinstructie 2015/9).

According to these guidelines, (in accordance with the interpretation by the Council of State in ABRvS (Afdeling bestuursrechtspraak Raad van State) 15 June 2016, nr. 201509454/1/V2), an asylum seeker has to be able to elaborate on when he became aware of his sexual orientation, what this meant in practice and how this influenced the way this was expressed. The State Secretary accepted the man's story of mistreatment as credible and took his personal circumstances into account in how the interviews were conducted. But given that the applicant could not elaborate on his awareness and acceptance of his sexual orientation, the State Secretary concluded that his account of mistreatment by his father and family and the problems he experienced in Iraq were not credible.

The court found that the State Secretary failed to take the individual's personal circumstances into account in the general credibility assessment. The applicant had been forced to suppress his feelings and emotions for years and had been abused and isolated. These circumstances and the way they impacted the applicant's psychological condition can reasonably be expected to have influenced the way the applicant could elaborate on his sexual orientation.

The court concluded that the State Secretary's decision to refuse international protection therefor lacked sufficient motivation and had been taken without due diligence.

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**Outcome:**

Appeal granted.

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**Observations/Comments:**

In this judgement, the court offers a useful interpretation on the guidelines for the credibility assessment of sexual orientation for the immigration services when determining refugee status (Immigratie- en Naturalisatiedienst, Werkinstructie 2015/9). When assessing credibility during a refugee status determination, it is important to consider how the applicant became aware of his sexual orientation, what this meant in practice and how this influenced their expression. But in this assessment, according to the court, the individual circumstances, in particular the psychological

condition of the applicant, have to be taken into account. From the mere fact that an applicant can not elaborate on these private details, it cannot be concluded that his story is not credible.

**Other sources cited:**

ABRvS (Afdeling bestuursrechtspraak Raad van State) 15 June 2016, nr. 201509454/1/V2 (ECLI:NL:RVS:2016:1630)

**National / Other Legislative Provisions:**

[Aliens Act](#) [5]

[article 31](#) [6]

[Immigratie- en Naturalisatiedienst](#) [7]

[Werkinstructie 2015/9](#) [8]

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**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%2010%20QD>

[4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 13 QD>

[5] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/aliens-act>

[6] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/article-31>

[7] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/immigratie-en-naturalisatiedienst>

[8] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/werkinstructie-20159>