

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection — Judicial review of Refugee Protection Division (RPD) decision finding applicant complicit in crimes against humanity, therefore excluded pursuant to *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can. T.S. No. 6 (Convention), Art. 1F(a), *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), s. 98 — Moreover, RPD retroactively applying *Rome Statute of the International Criminal Court*, July 17, 1998, [2002] Can. T.S. No. 13, 2187 U.N.T.S. 3 (Rome Statute) — Applicant, citizen of Haiti, voluntarily enlisting in army, working from 1984 to 1989 as guard at Casernes Dessalines, political prison — Specifically requesting assignment at Casernes Dessalines — Promoted from private to private first class while stationed there — At Canada Border Services Agency hearing, testifying not aware of torture in prison during time in service — Alleging fear of persecution because of political opinions — RPD concluding applicant's contribution to torture voluntary, knowing, significant — Also concluding applicant's testimony lacking credibility, serious reasons to believe applicant complicit in crimes of torture — Stating [TRANSLATION] "torture constitutes a crime against humanity" in accordance with Rome Statute, *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24 — Applicant submitting not complicit in generalized, systematic torture committed at Casernes Dessalines between 1984, 1989 because torture not then recognized as international crime under Rome Statute — Whether RPD coming to unreasonable conclusion by finding applicant complicit in crimes against humanity, therefore excluded from application of Convention under Convention, Art. 1F(a), IRPA, s. 98, whether RPD erring by finding torture was crime against humanity at time of atrocities committed at Casernes Dessalines — RPD clearly stating no evidence produced to establish applicant himself directly participated in acts of torture — As result, question for RPD whether applicant complicit in torture committed at Casernes Dessalines — RPD's conclusion applicant's contribution to torture voluntary reasonable — *Ezokola v. Canada (Citizenship and Immigration)*, 2010 FC 662, [2011] 3 F.C.R. 377 involves presumed knowledge of person in fairly high position — Principle could apply to lower members in hierarchy meeting criterion of complicity based on contribution — In such case, requisite link with torture can be established by presumption — When applicant submitted not aware of atrocities committed, contrary to simple logic — Applicant's position allowed him to aid in, abet, conceal crimes in question — Nothing unreasonable in RPD's conclusion on issue — RPD not truly applying Rome Statute retroactively — RPD noting, rather, torture recognized internationally, including in Canada, as crime against humanity — Torture recognized as crime against humanity since at least 1945 — Several legal sources aligning with argument torture recognized as crime against humanity before implementation of Rome Statute — Not necessary here to rule on issue as RPD not truly applying Rome Statute retroactively — RPD establishing new consequences for acts committed prior to implementation of *Crimes Against Humanity Act*, Rome Statute — Therefore retrospective, not retroactive, application of Act — RPD's interpretation not unreasonable — Application dismissed.

ELVE V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-3363-19, 2020 FC 454, Pamel J., reasons for judgment dated March 30, 2020, 41 pp.)