

## Germany ? High Administrative Court Sachsen-Anhalt, 31 July 2008, 2 L 33/06

**Country of Decision:**

Germany

**Country of Applicant:**

Russia

**Date of Decision:**

31-07-2008

**Citation:**

2 L 33/06

**Additional Citation:**

asyl.net/M14181

**Court Name:**

High Administrative Court Sachsen-Anhalt

**Keywords:**

Burden of proof  
Previous persecution  
Standard of proof  
Protection

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**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 4](#) [2] > [Art 4.4](#) [3]

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**Headnote:**

There are "good reasons" within the meaning of Art 4.4 of the Qualification Directive to consider that the persecution of ethnic Chechens from Chechnya which was solely based on membership of the group will not be repeated. The standard of Art 4.4 of the Qualification Directive has now replaced the concept of "sufficient safety from persecution" as developed in German case law for refugees who had been subject to persecution before they left their

country of origin.

**Facts:**

The applicants are a family from the Russian Federation and of Chechen ethnicity. They applied for asylum in Germany in 2003. In their statement they claimed to have been persecuted by Russian security forces for supporting Chechen rebel fighters. The German authorities rejected the asylum application in April 2003 and found that no other form of protection was to be granted.

Upon appeal, the Administrative Court of Magdeburg overturned the authorities' decision in August 2005 and asked the authorities to grant refugee status to the applicants. The authorities asked for leave for a further appeal which the High Administrative Court granted.

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**Decision & Reasoning:**

Art 4.4 of the Qualification Directive distinguishes between asylum applicants who had been persecuted and those who had not been persecuted before they left their country of origin.

In comparison to the approach formerly taken in Germany the standards for the assessment of possible future persecution have changed. According to Art 4.4 of the Qualification Directive the fact that an applicant has already been subject to persecution or serious harm (cf. Art 15) or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

This court agrees with the High Administrative Court of Hessen (decision of 21 February 2008 ? 3 UE 191/07.A) that in the case of people who have not suffered persecution before they left their country of origin, it has to be examined (as before) whether they would face persecution or serious harm or direct threats of persecution or serious harm, if they were to return today. The relevant standard for these cases is the standard of "considerable probability" which is in line with the British case law on "real risk". Within this definition even a risk of persecution which is below 50 per cent can be considered to form a risk of considerable probability.

For refugees who have been subject to persecution before their exit from their country of origin, the standard of "sufficient safety from persecution" as developed in German case law is now replaced by the standard of Art 4.4 of the Qualification Directive (in agreement with High Administrative Court of Hessen, cf. above; the High Administrative Court of Bavaria disagrees, holding that the standards developed by German case law still apply; decision of 31 August 2007 ? 11 B 02.31724). Criteria of the concept of "sufficient safety from persecution" may still be drawn upon for an interpretation of Art 4.4 of the Qualification Directive, however, it has to be noted that an interpretation must not fall short of the minimum standards as specified by the Qualification Directive.

It is not necessary in these proceedings to decide whether the applicants were persecuted solely for being members of the group of ethnic Chechens from Chechnya at the time of their exit from the Russian Federation (March 2003). In any case, there are good reasons within the meaning of Art 4.4 of the Qualification Directive to consider that persecution or serious harm will not be repeated upon return to Chechnya today.

For an assessment of the possible risks in the context of the exception clause of Art 4.4 of the Qualification Directive, it is decisive to establish whether the returnee belongs to one of the

particularly vulnerable groups. In particular, these include persons who are suspected by the security forces to have connections to former or current members of the rebel organisation. If there are indications for this, the "serious indication" of Art 4.4 of the Qualification Directive applies and it has to be assumed that this group of persons could face persecution upon return, which may go as far as torture or "disappearances". If there are no such indications, there are "good reasons" within the meaning of Art 4.4 of the Qualification Directive to consider that returnees will not again be subjected to persecution, especially since they share the fate of many other returnees.

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**Outcome:**

The decision by the Administrative Court was overturned, the applicants were not entitled to refugee status, nor was ?prohibition of deportation? (i.e. other forms of protection) granted.

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**Attachment(s):**

 [Germany\\_011.pdf](#)[4]

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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%204%20QD>
- [4] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Germany\\_011.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Germany_011.pdf)