

Germany - Administrative Court Augsburg, 16 June 2011, Au 6 K 30092

Country of Decision:

Germany

Country of Applicant:

Afghanistan

Date of Decision:

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Au 6 K 30092

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Court Name:

Administrative Court Augsburg

Keywords:

Persecution Grounds/Reasons
Membership of a particular social group
Actor of persecution or serious harm
Actors of protection
Assessment of facts and circumstances
Credibility assessment
Gender Based Persecution
Internal protection
Non-state actors/agents of persecution

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 2](#) [4] > [Art 2 \(c\)](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 2](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 4](#) [5]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 6](#)

[6]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 7](#) [6]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 8](#) [7]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 9](#) [8] > [Art 9.1 \(b\)](#) [8]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 10](#) [9]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 10](#) [9] > [Art 10.1 \(d\)](#) [9]

Headnote:

The applicant was recognised as a refugee because of a threat of forced marriage in Afghanistan. The court found that rights violations resulting from forced marriage, including the use of physical and psychological violence, constitute severe violations of basic human rights according to Art. 9 (1) (b) of the Qualification Directive. The applicant belonged to the particular social group of "unmarried women from families whose traditional self-image demands a forced marriage." The Afghan State is neither willing nor able to protect women against persecution in case of forced marriage. Internal protection was not available to the applicant.

Facts:

The applicant, born in 1991, is an Afghan citizen and belongs to the Hazara ethnic group. She came to Germany in January 2011 and applied for refugee status. She went to school in Iran for six years, but had no vocational education and no work experience. She stated that her father had forced her to marry the friend of a paternal uncle in Iran. After the wedding ceremony she ran away to her aunt, who organised her departure to Germany. She financed her departure with the jewellery she got as presents on the occasion of her engagement. She has two sisters in Afghanistan. About 4 or 5 years ago, after her mother's death, she had tried again to live in Afghanistan, in Kabul.

The application was rejected by decision of 23 February 2011. The authorities, *inter alia*, explained that her narrative was not very descriptive, not detailed and contained some contradictions. It was not credible that she was actually threatened by forced marriage.

Decision & Reasoning:

The applicant was eligible for refugee status under Section 60 (1) of the Residence Act. The court stated:

Even assuming that the applicant had not been subject to persecution previously since the incident that caused her escape did not take place in Afghanistan but in Iran, one can assume with sufficient likelihood that in case of return to Afghanistan she would be at risk of persecution. The court is convinced that in this particular case it is sufficiently likely that the applicant would be at risk of forced marriage.

A forced marriage exists when a woman is married against her declared intention and is forced through pressure and threats to do so. A forced marriage affects both the woman's right to self-

determination and autonomous living, as well as her right to sexual self-determination. Therefore violations of rights connected with the forced marriage, particularly the use of physical and psychological violence, involve a severe violation of basic human rights in terms of Art. 9 (1) (b) of the Qualification Directive. Furthermore, a forced marriage contradicts Art. 16 (2) of the Universal Declaration of Human Rights which prescribes that marriage should be entered into only with the free and full consent of the intending spouses (Administrative Court Stuttgart 14 March 2011, A 11 K 553/10). A forced marriage arranged by the family constitutes gender-based persecution, threatening life, and at the very least the physical integrity and liberty of the woman concerned (Administrative Court Saarland, 24 November 2010 - 6 K 90/10).

The applicant explained credibly that she was already threatened with forced marriage in Iran. She gave this as the reason for her escape from the very beginning, in her first police interrogation and during questioning by the asylum authorities. She gave an account of the same experience continuously and without contradiction. During the court hearing, she also gave a credible report of this.

Against this background, the court is also convinced that the applicant will be again at risk of a forced marriage because the father has to compensate for the dowry which he received. The court is convinced that even in Iran the father will come to know when his daughter returns to Kabul. Precisely because she would return as a single woman, this would get around sooner or later through tribal connections, in particular, since her sister is also living in Kabul.

The persecution threatening the applicant is linked to the persecution ground of her gender affiliation and the membership of a particular social group ? unmarried women from families whose traditional self-image also demands a forced marriage ? (Art. 10 Abs. 1 (d) of the Qualification Directive) imminently threatening her life, or at least her physical integrity and liberty.

The persecution threatening the applicant originates from non-State actors according to Section 60 (1) sentence (4) (c) of the Residence Act (Art 6 (c) of the Qualification Directive). Single persons are also classified as non-State actors and therefore so is the applicant's father. The applicant in case of return to Afghanistan would not be protected sufficiently against forced marriage. The Afghan State is neither able nor willing to protect women against persecution.

The applicant could not find internal protection in Afghanistan according to Section 60 (1) (4) of the Residence Act. In this context, Kabul has to be considered. Apart from the fact that the applicant has spent most of her lifetime in Iran and lived only one year in Kabul, she cannot live in Afghanistan as a single woman. Though her sister still lives in Kabul, she has her family and the sister's husband would not, in addition to his family, accommodate the applicant.

This finding is in line with information available to the court and was also credibly described by the applicant during the court hearing. She did not undertake vocational education and only helped with household chores. Being an uneducated, unqualified woman she will not be able to make a living in Kabul for a long period of time. Her relatives would not be ready to take her back, particularly because she ran away from her marriage and this is not tolerated by Afghan society.

Outcome:

The asylum authorities were ordered to grant the applicant refugee status under Section 60 (1) of the Residence Act.

Attachment(s):

National / Other Legislative Provisions:

[Universal Declaration of Human Rights](#) [11]

[Universal Declaration of Human Rights - Art 16.2](#) [12]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>

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

[6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%206%20QD>

[7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 8 QD>

[8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%209%20QD>

[9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2010%20QD>

[10] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/19031.pdf>

[11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1284>

[12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2439>