

Germany - Administrative Court München, 10 December 2008, M 8 K 07.51028

Country of Decision:

Germany

Country of Applicant:

Iraq

Date of Decision:

10-12-2008

Citation:

M 8 K 07.51028

Additional Citation:asyl.net/M15273**Court Name:**

Administrative Court München

Keywords:

Gender Based Persecution
Persecution Grounds/Reasons
Membership of a particular social group
Subsidiary Protection
Real risk
Serious harm
Indiscriminate violence
Armed conflict
Non-state actors/agents of persecution
Subsequent application

Relevant Legislative Provisions:

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 6](#) [2] > [Art 6 \(c\)](#) [2]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 6](#) [2]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 8](#) [3]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 9](#)

[4]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 10](#) [5]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 10](#) [5] > [Art 10.1 \(d\)](#) [5]

Headnote:

The applicant was not granted refugee status or protection against deportation in accordance with Section 60 (2) through (7) of the Residence Act. The court found:

1. A single woman with a 'Western' lifestyle is not at risk of gender-based political persecution by non-State actors in Iraq.
2. The risk of the applicant becoming a victim of an honour killing (or respectively a weaker, non-life threatening disciplinary measure by her clan) because of her moral conduct, disapproved by her clan, constitutes an increased individual risk. However, this risk is not the result of arbitrary violence, but constitutes a typical general risk.

Facts:

The applicant is Iraqi citizen of Arab ethnicity and Sunnite belief. She came to Germany in December 2002 and applied for asylum. The application was rejected; her appeal against that decision was dismissed by decision of 21 December 2004.

The applicant remained in Germany and in August 2007 she filed a subsequent application for refugee status, under Section 60 (1) of the Residence Act, and alternatively for protection against deportation under Section 60 (2) through (7) of the Residence Act. She argued, inter alia, since her initial application she had adopted a 'German' lifestyle; in particular, she had adopted an independent way of life. This had not been accepted by her widowed father. Therefore, she could not expect any help from him in case of return. During the court procedure, she added she would be threatened with violence, permanent restrictions on her freedom and risks to her life, originating from her family-members living in Kirkuk. Her family has been informed by her brother, who lives in Germany, about her moral conduct and her relationships with men. Her family would not refrain from honour killing.

Decision & Reasoning:

The applicant failed to successfully establish persecution by (mainly male) members of her extended family, because of her Western life style involving contact with men, since this threat to life or freedom was not related to her race, religion, nationality, her membership to a particular social group or her political conviction.

The applicant's attempt to link her fear of persecution to the fact of being a (single) woman was not successful. Harassment perpetrated by members of her clan were, according to the court, obviously not related to her inalienable characteristic as a woman, but to the fact that she does not want to behave according to the moral standards of her clan. This, however, is not protected under Section 60 (1) of the Residence Act. The court stated:

Furthermore, the applicant cannot claim protection from deportation under Section 60 (2) through (7) of the Residence Act. Deportation of Iraqi citizens is currently prohibited by decree; there are no indications that this might be changed in the near future.

Beyond this, the court cannot establish a nationwide specific individual threat to the applicant, (only a general risk) despite her status as a possible returnee. A different assessment does not even follow from the new case law of the Federal Administrative Court, according to which the provision of Section 60 (7) (3) of the Residence Act, (referring to protection from deportation by the suspension of deportation in case of general risks) has to be applied in line with the Qualification Directive, which means that the provision in German law does not include those cases in which, on the basis of an individual assessment, the conditions of granting subsidiary protection under Art 15 (c) of the Qualification Directive are fulfilled (Federal Administrative Court, 24 June 2008, 10 C 43.07). The distinguishing characteristics of 'substantial individual danger to life and limb' are equivalent to those of a 'serious and individual threat to life or person' within the meaning of Art. 15 (c) of the Qualification Directive. It must be examined whether the threat arising for a large number of civilians resulting from an armed conflict, and thus a general threat, is so aggregated in the person of the applicant as to represent a substantial individual danger within the meaning of Section 60 (7) (2) of the Residence Act. Such individual circumstances that aggravate the danger may be caused by one's membership of a group. In this context in Iraq, lower courts' decisions have mentioned membership in one of the political parties, for example, or membership in the occupational group of journalists, professors, physicians and artists.

As already established above, the applicant is not at risk due to her membership to a particular group, which, at the same time, excludes the existence of risk aggravating circumstances for the same reason.

Another condition for assuming an individually aggravated threat, taken from the statements of reasons for the Residence Act¹, is that the applicant must be threatened with danger as a consequence of 'indiscriminate violence'. General dangers of life, which are simply a consequence of armed conflicts, for example due to the deterioration of the supply situation, cannot be considered for the assessment of the density of risks.

As far as the applicant claims she will be a victim of an honour killing (or respectively a weaker, non-life threatening disciplinary measure by her clan) because of her moral conduct, disapproved by her clan, she is in fact subject to an increased individual risk. However, this risk is not a result of arbitrary violence, but is a target-oriented, predictable danger, aimed directly at the applicant, which is an expression of a criminal attitude among some individuals of her culture of origin, that even in Germany is noticeable. Like in any society characterised by anarchic circumstances, this risk may intentionally affect everybody who does not submit to "fist law"². This risk emerges and prospers in the absence of a functional constitutional order based on peace, providing for corresponding punishment and is, therefore, a typical general risk.

Outcome:

The appeal was dismissed.

Subsequent Proceedings :

Not known.

Observations/Comments:

1. This refers to the decision of the [Federal Administrative Court of 24 June 2008, 10 C 43.07](#) [6] (summarised on EDAL), mentioned above. This decision then again refers to the statements of reasons for the Residence Act. An English translation is available at:

http://www.bverwg.de/enid/1324d44ee0800e3af30831216bab03ce,0/Decisions_i... [7]. The

condition mentioned in the present decision can be found in paragraph 17 of the decision of the Federal Administrative Court.

2. The German term used in the decision is "Faustrecht des Stärkeren", which means "fist law" or "law of the jungle" or "right to private warfare".

Attachment(s):



[15273.pdf](#)[8]

Links:

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

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

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

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

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

[6] <https://www.asylumlawdatabase.eu/en/case-law/germany-federal-administrative-court-24-june-2008-10-c-4307>

[7]

http://www.bverwg.de/enid/1324d44ee0800e3af30831216bab03ce,0/Decisions_in_Asylum_and_Immigrat

[8] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/15273.pdf>