

## Germany - Federal Administrative Court, 31 January 2013, 10 C 15.12

**Country of Decision:**

Germany

**Country of Applicant:**

Afghanistan

**Date of Decision:**

31-01-2013

**Citation:**

10 C 15.12

**Court Name:**

Federal Administrative Court

**Keywords:**

Humanitarian considerations

Inhuman or degrading treatment or punishment

Internal armed conflict

Internal protection

Subsidiary Protection

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**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]

Council of Europe Instruments

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 4](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 4](#) [4] > [Art 4.4](#) [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 8](#) [7]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 15](#) [8]

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**Headnote:**

In order to determine whether an Applicant is exposed to a significant, specific risk stemming from an armed conflict, reference should be made to the actual target location of the foreign national upon return in the case of a localised armed conflict. This is often the region of origin of the Applicant. If the region of origin cannot be considered as the target location due to the risk facing the claimant, the latter may only be referred to another region in the country subject to the requirements of Article 8 of the Qualification Directive.

With regard to the evaluation as to whether extraordinary circumstances exist which do not come under the direct responsibility of the target deportation state and which prohibit the deporting state from deporting the foreign national according to Article 3 of the European Convention on Human Rights, reference should be made to the target deportation state as a whole in order to verify whether these circumstances exist in the location in which the deportation ends.

**Facts:**

The Applicant arrived in Germany in February 2009. In March 2010 his asylum application was declined. In response to his claim, the Administrative Court established that the requirements for subsidiary protection had been fulfilled. The authorities appealed against this decision.

In its decision of 27 April 2012, the High Administrative Court agreed with the authorities and stated that the requirements for subsidiary protection did not exist according to Article 15(c) of the Qualification Directive. Since there is no country-wide armed conflict in Afghanistan, an individual threat would only apply if the conflict extended to the actual target location of the Applicant upon return. This would be the location in which he last lived or to which he would be likely to return. In the Applicant's case, this would not be his home region of Helmand, but rather Kabul where he most recently lived. There is no longer any internal armed conflict in that region. With the exception of a few spectacular attacks, the security situation in Kabul is considered relatively stable as a whole and significantly calmer than it was around ten years ago.

The Applicant has appealed to the Federal Administrative Court for a review.

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**Decision & Reasoning:**

The Applicant's review was valid and well-founded. In verifying the requirements for subsidiary protection, the High Administrative Court did not refer to the Applicant's region of origin but rather to the circumstances in Kabul as the only potential target deportation location at present. In general, however, reference is made to the Applicant's region of origin and not to the region which a detached observer might reasonably choose or the region to which the foreign national concerned would like to go from a subjective point of view. Deviation from the rules cannot be justified by the claim that the foreign national would be exposed to risks in the region of origin which the Qualification Directive is intended to protect against with subsidiary protection. This can be determined from the systematic context of the deportation bans under EU law in the provisions concerning internal protection (Article 8 of the Qualification Directive). If the region of origin is not taken into account as the target location because of the risks facing the foreign national, the latter may only be referred to another region in the country subject to the limited requirements of Article 8 of the Qualification Directive. The concept of the 'actual target location of return' is therefore not a purely empirical concept in which the most probable or subjectively desirable region of return is to be applied.

A departure from the region of origin can also not be justified by the fact that the foreign national has lost his personal connection with his region of origin as the result of an armed conflict in which family members have been killed or have also left the region. Insofar as the declining subjective connection with the region of origin has been justified by circumstances which are a direct consequence of armed conflict (e.g. impairment of the social and economic infrastructure, continued worsening of the supply situation) and reluctance to return to the region of origin is understandable due to poor living conditions and a lack of future prospects, these aspects are considered relevant from the point of view of protection. However, the region of origin is not / no longer the point of reference if the foreign national had already been released from this region prior to his departure, irrespective of the circumstances triggering the latter, and had moved to another part of the country with the intention of living there for an unlimited period. The region of origin is not considered to be the point of contact for the examination of subsidiary protection in the case of a voluntary departure of this kind. However, the Federal Administrative Court cannot reach a conclusive decision in this respect and the proceedings have to be referred back to the High Administrative Court.

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**Outcome:**

The Applicant's review was upheld.

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**Subsequent Proceedings :**

Unknown.

**Attachment(s):**



[Original Judgment - Germany, Federal Admin Court - 10 C 15.12.pdf](#)[9]

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**National / Other Legislative Provisions:**

- [Germany - Grundgesetz \(Basic Law\) - Art 1\(1\)](#) [10]
  - [Germany - Grundgesetz \(Basic Law\) - Art 2\(2\)\(1\)](#) [11]
  - [Germany - Grundgesetz \(Basic Law\) - Art 101\(1\)\(2\)](#) [12]
  - [Germany - AufenthG \(Residence Act\) - § 60 Abs. 2](#) [13]
  - [Germany - AufenthG \(Residence Act\) - § 60 Abs. 5](#) [14]
  - [Germany - AufenthG \(Residence Act\) - § 60 Abs. 7\(1\)](#) [15]
  - [Germany - AufenthG \(Residence Act\) - § 60 Abs. 7\(2\)](#) [16]
  - [Germany - AufenthG \(Residence Act\) - § 60 Abs. 7\(3\)](#) [17]
  - [Germany - AufenthG \(Residence Act\) - § 60 Abs. 11](#) [18]
  - [TFEU - Art 267](#) [19]
  - [TFEU - Art 288](#) [20]
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**Links:**

- [1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [2] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)
- [3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>
- [5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD>
- [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 15 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2015%20QD)
- [9] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20Judgment%20-%20Germany%2C%20Federal%20Admin%20Court%20-%2010%20C%2015.12.pdf>
- [10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7843>
- [11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7844>
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- [13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4364>
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- [15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7846>
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- [17] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7848>
- [18] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7849>
- [19] <https://www.asylumlawdatabase.eu/en/taxonomy/term/403>
- [20] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2463>