

Germany - Federal Administrative Court, 31 March 2011, 10 C 2.10

Country of Decision:

Germany

Country of Applicant:

Rwanda

Date of Decision:

31-03-2011

Citation:

10 C 2.10

Additional Citation:asyl.net/M18634**Court Name:**

Federal Administrative Court

Keywords:

Exclusion from protection

Crime against humanity

Acts contrary to the purposes and principles of the UN

War crimes

Revocation of protection status

Standard of proof

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 3](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 12](#) [5] > [Art 12.2](#) [6]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 12](#) [5]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 14](#) [7] > [Art 14.3](#) [7]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [3] > [Art 14](#) [7]

Headnote:

For the exclusion ground of war crimes or crimes against humanity to be applicable it is not necessary to establish to the point of utmost certainty that a refugee has committed such crimes, it is sufficient if serious reasons justify this assumption. A revocation of refugee status is also possible if war crimes or crimes against humanity have been committed after refugee status was granted.

Facts:

The applicant came to Germany in 1989 as a student. Since 1994 he was active in political organisations of Rwandan expatriates, mostly in leading positions. In March 2000 he was granted refugee status because of a risk of political persecution due to his political activities in exile. In 2001 the applicant became president of the Forces Démocratiques de Libération du Rwanda (FDLR), a Hutu organisation which had armed forces at its command in the Eastern regions of the Democratic Republic of the Congo.

On 1 November 2005 the Sanctions Committee of the Security Council of the United Nations added the applicant's name to the list of persons and institutions against which restrictions were declared because of an arms embargo in place for the territory of the DR Congo. Thereupon the German authorities revoked the applicant's refugee status. They argued that as president of the FDLR, the applicant could be assumed to have committed war crimes and crimes against humanity as well as acts which were contrary to the purposes and principles of the United Nations.

The Administrative Court annulled the authorities' decision in December 2006. According to the Administrative Court the authorities had failed to sufficiently establish that exclusion grounds were applicable. The information on the FDLR was considered to be rather vague and not sufficiently reliable. This was the more true for the information on responsibility of the applicant.

The High Administrative Court of Bavaria in turn annulled the decision of the Administrative Court in January 2010 and ruled that the authorities' revocation of the refugee status was lawful (decision of 11 January 2010, 9 B 08.30233).

Decision & Reasoning:

The further appeal (Revision) to the Federal Administrative Court was not considered to be substantiated. The High Administrative Court had correctly decided that the revocation of refugee status was lawful.

The High Administrative Court used the correct standard of proof for its assessment of whether the exclusion ground of a war crime or a crime against humanity (Section 3 (2) no. 1 of the Asylum Procedure Act) is applicable. The High Administrative Court came to the conclusion that there are serious reasons to assume that the FDLR has committed such crimes. To justify this assumption it is not necessary to use a standard of proof as it is used, for example, in criminal law.

The Federal Administrative Court has ruled on earlier occasions that the Statute of the International Criminal Court is the main source for an assessment of whether certain acts constitute war crimes or crimes against humanity (Federal Administrative Court, 24 November 2009, 10 C 24.08). The High Administrative Court was right to leave open the question of whether the fighting in Eastern Congo had to be defined as an international or as a non-international armed conflict. In both cases the recorded acts of murder, rape, mutilation, looting and forced recruitment of child soldiers had

to be regarded as war crimes within the meaning of Art. 7 (a) and Art. 7 (g) of the ICC Statute.

The High Administrative Court correctly concluded from the applicant's position as president of the FDLR and from the influence upon the acts of the organisation's combatants, which is associated with this position, that he is responsible for the crimes committed by the FDLR. The findings in the High Administrative Court's decision lead to the conclusion that the applicant had to be regarded as perpetrator of the crimes committed by the FDLR and not only as a person otherwise participating in such crimes (as in Art 12.3 of the Qualification Directive). This is because a military commander is responsible for the crimes committed by combatants under his command and control (Art. 28 (a) ICC Statute).

The applicant's responsibility also has to be assumed if the examination is based on the decision by the Court of Justice of the European Union on exclusion from refugee status under Art. 12.2 (b) and 12.2 (c) of the Qualification Directive (CJEU, 9 November 2010, Rs. C-57/09, (B) und Rs. C-101/09, (D)). According to this decision a member of an organisation can be partly responsible for acts which have been committed during the time of his or her membership. It is especially relevant in this context which position the person concerned had within the organisation and how much knowledge this person had or should have had of the organisation's actions. In the present case the applicant, being president and military commander of the organisation, had an elevated position in the organisation. He knew about the crimes that were committed and did not undertake any appropriate measures to prevent those acts.

Since the applicant's refugee status had to be revoked on the basis of the exclusion ground ?war crime or crime against humanity?, it does not have to be decided whether the exclusion ground ?acts contrary to the purposes and principles of the United Nations? was also applicable in the present case. In certain limited circumstances it is possible that this exclusion ground becomes applicable to non-state actors. There are many indications that this might be the case here.

Outcome:

The further appeal to the Federal Administrative Court (Revision) was not substantiated. The revocation of refugee status was lawful.

Observations/Comments:

In this decision the Federal Administrative Court upholds the decision of the [High Administrative Court of Bavaria, 11 January 2010, 9 B 08.30223](#) [8]

An [English translation](#) [9] (commissioned by the Federal Administrative Court, but not officially authorised) is available at:

http://www.bverwg.de/enid/66a35fdfa2d8765b8f63470efcf8b44f,0/Decisions_i... [9]

Attachment(s):

[18634.pdf](#)[10]

Other sources cited:

UN High Commissioner for Refugees, Guidelines on International Protection No. 3: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), 10 February 2003, HCR/GIP/03/03

National / Other Legislative Provisions:

- [Fourth Geneva Convention 1949](#) [11]
 - [Fourth Geneva Convention 1949 - Art 3](#) [12]
 - [UN Charter](#) [13]
 - [UN Charter - Art 1](#) [14]
 - [UN Charter - Art 24](#) [15]
 - [UN Charter - Art 39](#) [16]
 - [Rome Statute of the ICC](#) [17]
 - [Rome Statute of the ICC - Art 5](#) [18]
 - [Rome Statute of the ICC - Art 7](#) [19]
 - [Rome Statute of the ICC - Art 8.2](#) [20]
 - [Rome Statute of the ICC - Art 25](#) [21]
 - [Rome Statute of the ICC - Art 28](#) [22]
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Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1f>
- [3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%203%20QD>
- [5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 12 QD>
- [6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2012%20QD>
- [7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2014%20QD>
- [8] <https://www.asylumlawdatabase.eu/en/case-law/germany-high-administrative-court-bavaria-11-january-2010-9-b-0830223>
- [9] http://www.bverwg.de/enid/66a35fdfa2d8765b8f63470efcf8b44f,0/Decisions_in_Asylum_and_Immigration
- [10] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/18634.pdf>
- [11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/704>
- [12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/705>
- [13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2297>
- [14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2299>
- [15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2324>
- [16] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2325>
- [17] <https://www.asylumlawdatabase.eu/en/taxonomy/term/807>
- [18] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2322>
- [19] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1995>
- [20] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1059>
- [21] <https://www.asylumlawdatabase.eu/en/taxonomy/term/808>
- [22] <https://www.asylumlawdatabase.eu/en/taxonomy/term/2078>