

Germany - High Administrative Court Hessen, 11 December 2008, 8 A 611/08.A

Country of Decision:

Germany

Country of Applicant:

Afghanistan

Date of Decision:

11-12-2008

Citation:

8 A 611/08.A

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asyl.net/M14810

Court Name:

High Administrative Court Hessen

Keywords:

Subsidiary Protection

Serious harm

Individual threat

Indiscriminate violence

Internal armed conflict

Humanitarian considerations

Internal protection

Revocation of protection status

Relevant Legislative Provisions:European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Recital 26](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 1](#) [3]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 4](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 4](#) [4] > [Art 4.4](#) [5]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 8](#)

[6]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 15](#) [7] > [Art 15 \(c\)](#) [8]

Headnote:

The situation in Paktia province in Afghanistan meets the requirements of an internal armed conflict in terms of Section 60 (7) (2) Residence Act / Art 15 (c) of the Qualification Directive. An internal armed conflict does not necessarily have to affect the whole of the country of origin. The concept of internal protection does not apply if the applicant cannot reasonably be expected to reside in another part of the country because of an illness, even if that illness is not life-threatening (epilepsy in the case at hand).

Facts:

The applicant applied for asylum in Germany in 2001. He stated that he had been in conflict with the Taleban and had been at risk of forced recruitment by the Taleban. In July 2001 the authorities refused to grant refugee status but granted another form of protection - a so called impediment to deportation/"Abschiebungshindernis" - under the provision of the Alien Act (old version).

In 2006 the authorities initiated a revocation procedure. The applicant argued in response that the Taleban were still active in his home province Paktia and therefore still presented a risk. Furthermore, he was suffering from epilepsy. Since the entry into force of the Qualification Directive the legal definition of "extreme risks" which form the precondition for the "protection from deportation" status had to be re-evaluated. He was entitled to protection from deportation since he would face severe health risks upon return because of his illness, destitution and a lack of family support.

In May 2006 the authorities revoked the former decision and declared that the protection from deportation status no longer applied, as the risk of persecution by the Taleban had ceased to exist. Furthermore, Kabul offered an internal protection alternative against possible other risks since the applicant would be able to safeguard his means of existence and also would have access to medical treatment.

An appeal to the Administrative Court did not meet with success. In his further appeal to the High Administrative Court the applicant argued that the decisions by the authorities and by the Administrative Court had not sufficiently taken into account the fact that he had been persecuted by the Taleban before. Accordingly, the reduced standard of probability of Art 4.4 of the Qualification Directive had to be applied when examining subsidiary protection status. Furthermore, his medical condition would not enable him to stand up to the struggle to survive in Afghanistan.

Decision & Reasoning:

The further appeal to the High Administrative Court was successful and it was found that the Administrative Court's rejection of the appeal was unlawful.

It was held that the facts of the case have to be examined at present (i.e. at the time of the decision-making on the further appeal). The relevant legal issue is the protection of deportation under Section 60 (7) (2) Residence Act/Art 15 (c) of the Qualification Directive. The reasons for subsidiary protection under Art 15 of the Qualification Directive have to be treated separately and

as a matter of priority in comparison to the other forms of protection as foreseen by national legislation. This is necessary since protection from deportation under European law (i.e. subsidiary protection) results in additional rights in comparison to the other forms of protection under national legislation.

To fulfill the needs of an effective legal system the High Administrative Court primarily decided upon the matter of protection from deportation under Section 60 (7)(2) Residence Act/Art 15 (c) of the Qualification Directive. In this context, the term "internal armed conflict" has to be interpreted in line with the case law of the Federal Administrative Court in the light of the Geneva Conventions of 1949 including their Additional Protocols. If a conflict is not typical of a civil war situation or of guerilla warfare, especially as concerns the degree of organisation of the parties to the conflict, they must be marked by a certain degree of durability and intensity in order to establish protection from deportation under Art 15 (c) of the Qualification Directive. However, the conflict does not necessarily have to affect the whole territory of the state. This is clearly evident from the fact that subsidiary protection is not granted if an internal protection alternative exists.

The requirements for subsidiary protection are met for the applicant as an internal armed conflict takes place in his home province Paktia which takes the form of a civil war-like conflict and of guerilla warfare with the Afghan government forces, ISAF and NATO units on one side and the Taliban on the other. This conflict results in risks for a high number of civilians, which would be concentrated in the applicant's person in a manner that he would face a serious and individual threat upon return which could take the form of punishment and/or forced recruitment.

As a result of what happened to the applicant before he left Afghanistan, and in any case because he is a male Pashtun who could be recruited for armed service, there is a sufficient degree of individualisation of a risk of punishment and/or forced recruitment which might even make the granting of refugee status applicable. Therefore, it is not necessary to clarify in this decision other open questions in this context, which might have to be clarified by a European Court in any case. This includes the exact requirements of individualisation of risk which generally affect the civilian population. This would include a more concrete definition of the term "indiscriminate violence", which is part of Art 15 (c) of the Qualification Directive but has not been included in Section 60 (7) (2) of the Residence Act. It also has not been clarified whether it is necessary in the context of Art 15 (c) of the Qualification Directive to identify a certain "density of danger" (as in the concept of group persecution) or whether it is sufficient to establish a close connection in time and space to an armed conflict.

The applicant cannot avail of internal protection in other parts of Afghanistan. This is because the issue of whether he can be reasonably expected to stay in another part of his country of origin does not only involve risks related to persecution. It must also be taken into account whether he could safeguard at least a minimum standard of means of existence (minimum subsistence level). As a result of the poor security and humanitarian situation this is not the case in Afghanistan in general, and Kabul in particular. In contrast to its former judgement (decision of 7 February 2008, 8 UE 1913/06) the court is now convinced that Kabul does not provide an internal protection alternative even to young single male returnees, unless they are well educated, have assets or may rely on their families. In this context it has to be considered as questionable that the concept of internal protection is not applied only in cases of extreme risk such as starvation or severe malnutrition. Furthermore, the applicant is able to work in a limited way only due to his epilepsy and he would not be able to secure the necessary medication.

Outcome:

The decision of the Administrative Court was overruled, the authorities were obliged to grant

protection from deportation under Section 60 (7) (2) Residence Act/Art 15 (c) of the Qualification Directive.

Subsequent Proceedings :

This decision was quashed by the Federal Administrative Court (27.04.2010 - 10 C 4.09, asyl.net/M17350), the matter was referred back to the High Administrative Court. The outcome of the new procedure is unknown.


Observations/Comments:

This decision was quashed by the Federal Administrative Court (27.04.2010, 10 C 4.09, asyl.net/M17350). The Federal Administrative Court decided to refer the matter back to the High Administrative Court in order to re-examine the following points:

- whether an internal nexus exists between the serious harm or threats of serious harm suffered in the past, and the risk of a future harm;
- whether the level of indiscriminate violence (or "density of danger") is sufficient to pose a real risk to any civilian simply by his or her presence in the country or region which is affected by the violence.

The Federal Administrative Court did not decide on the substance of the matter but sent the case back to the High Administrative Court in order to reassess the case. The case was selected to demonstrate that there is an ongoing debate over the definition of 15 (c) of the Qualification Directive.

Attachment(s):

 [12810.pdf](#)[9]

Other sources cited:

- Lindner, Christoph and Hruschka, Constantin (2007) Der internationale Schutz nach Art. 15b und c Qualifikationsrichtlinie im Lichte der Maßstäbe von Art. 3 EMRK und § 60 VII AufenthG, in: Neue Zeitschrift für Verwaltungsrecht 26 (6), pp. 645-650,
- Funke-Kaiser, Michael, Der Prognosemaßstab des Art. 15 lit. c Qualifikationsrichtlinie und die allgemeine Gefahr, in: Informationsbrief Ausländerrecht 2008, S. 90ff.,
- Markard, Nora, Subsidiärer Schutz gegen allgemeine Kriegsgefahren (Bespr. von BVerwG, Urt. v. 24. 6. 2008 - 10 C 43/07), in: NVwZ 2008, 1206-1209

National / Other Legislative Provisions:

[Fourth Geneva Convention 1949](#) [10]

[Additional Protocol I 1977](#) [11]

[Additional Protocol II 1977](#) [12]

Links:

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

[2] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%2026>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%201%20QD>

- [4] [http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD)
- [5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD>
- [6] [http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 8 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%208%20QD)
- [7] [http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 15 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2015%20QD)
- [8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2015%20QD>
- [9] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/12810.pdf>
- [10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/704>
- [11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/850>
- [12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/706>