

## Switzerland ? Federal Administrative Court, 8 February 2018, D-635/2018

**Country of Decision:**

Switzerland

**Country of Applicant:**

Turkey

**Date of Decision:**

08-02-2018

**Citation:**

D-635/2018

**Court Name:**

Federal Administrative Court (Bundesverwaltungsgericht)

**Keywords:**

Assessment of facts and circumstances

Effective access to procedures

Individual assessment

Obligation to give reasons

Procedural guarantees

Safe third country

Terrorism

**Headnote:**

In cases of deportation to a third country, the competent authority is required to assess, on a case-by-case basis, if the third country offers effective legal protection against deportation to the state of origin.

In the case of a Turkish journalist of Kurdish origin, the competent authority had only insufficiently assessed if the applicant enjoys sufficient legal protection in Brazil against refoulement to Turkey. It therefore violated her right to be heard.

**Facts:**

The applicant is a Turkish national of Kurdish origin. In January 2018 she travelled via diverse

countries to Brazil and from there to Switzerland, to request asylum at the airport of Zurich. She was refused entrance into the country and had to stay at the transit area of the airport.

In her hearing, the applicant said she was a journalist and had been arrested because of her job in Turkey in 2009. The police had tortured her and she had to spend two years and three months in custody. A Turkish court had sentenced her to seven years and six months of imprisonment because of membership in a terrorist organization.

The Swiss authority issued a decision, not to examine the merits of the asylum application (?Nichteintretensentscheid?) on 23 January 2018. It explained, that it was bearable for the applicant to return to Brazil and apply for asylum there. It declined the asylum application in Switzerland and ordered the expulsion of the applicant.

The applicant appealed against the decision at the Federal Administrative Court on 30 January 2018, attaching the Turkish judgement issued against her, a copy of the Agreement of mutual legal assistance in criminal matters between Turkey and Brazil, diverse letters of journalist organizations, a medical certificate, a report by Amnesty International and asylum statistics of Brazil. She claims to be an internationally known Kurdish journalist who was sentenced wrongly to several years of imprisonment in Turkey. It had been her plan from the beginning on to apply for asylum in Switzerland, where friends of hers live, and only pass through Brazil for a couple of days. In Brazil, it was not safe for her as a woman and she had been sexually harassed there. Brazil has no functioning asylum system and refugees are left on their own. She also risks being deported back to Turkey. The applicant claims that her right to be heard was violated, because the Swiss authority had not assessed properly if Brazil offers effective legal protection against refoulement to Turkey.

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### **Decision & Reasoning:**

The Federal Administrative Court examines, only, if the decision of the Swiss authority, not to consider the merits of the asylum application, is justified. It is not an issue of this judgement if the applicant is entitled to enter Switzerland.

According to Section 31a Asylum Act the competent authority does not have to consider the merits of an asylum application, if the applicant is able to return to a third country. This rule does not apply on a case-by-case basis if the third country does not offer effective legal protection against forced deportation to a country that poses a danger to life and freedom of the person concerned.

In its reasoning, the Court examines if the right to be heard of the applicant had been violated. The inquisitorial principle (?Untersuchungsgrundsatz?) governs the asylum procedure, meaning that the competent authority has to find all the facts on its own initiative. The applicant is obliged to cooperate.

Swiss law distinguishes between third countries that the Federal Council has declared safe and other third countries. Brazil is a so called ?other third country?. In this case the competent authority is required to assess on a case-by-case basis, if the third country concerned offers effective legal protection against deportation to the state of origin.

In its statement the competent authority comments only rudimentarily on legal protection against deportation in Brazil. It does not carry out a case-by-case assessment, although this would have been obvious because of the political profile of the applicant.

Consulting reports about Brazil by the Heinrich Böll Foundation, UNHCR and Amnesty

International, the Court observes that there have been deportations to other countries despite an asylum application being lodged in Brazil and an overload of the asylum system. The Swiss authority is required to consider these findings in its reassessment of the applicant's asylum application.

In conclusion, the Court finds that the previous instance had examined inadequately the facts and the question if the third country Brazil offers effective legal protection against deportation. This results in a violation of the right to be heard of the applicant.

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**Outcome:**

Appeal granted; Reassessment by previous instance.

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**Observations/Comments:**

This case summary was written by Lisa-Marie Lührs, PhD-student at Cologne University.

**Attachment(s):**

[D-635\\_2018 - STC \(Brazil\) Turkish journalist 08.02.2018.pdf](#)[1]

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**Other sources cited:**

**Camila Asano, Pétalla Timo, Heinrich Böll Foundation, 'Das neue brasilianische Migrationsgesetz und die Menschenrechte' (The new Brazilian migration law and human rights), 3. July 2017, <https://www.boell.de/de/2017/07/03/das-neue-brasilianische-migrationsgesetz-und-die-menschenrechte> [2]**

**UN High Commissioner for Refugees (UNHCR), Submission by the United Nations High Commissioner for Refugees; For the Office of the High Commissioner for Human Rights' Compilation Report; Universal Periodic Review: 3rd Cycle, 27th Session; Brazil, 09.2016, <http://www.refworld.org/docid/59197d644.html>[3]**

**Amnesty International, Annual Report 2016/2017 ? Brazil, 22.02.2017, [https://www.amnesty.org/en/countries/\[4\] americas/brazil/report-brazil/](https://www.amnesty.org/en/countries/americas/brazil/report-brazil/)**

**National / Other Legislative Provisions:**

[Switzerland ? Section 29 BV \(Federal Constitution\)](#) [5]

[Switzerland ? Sections 31](#) [6]

[32](#) [7]

[33](#) [8]

[37 VGG \(Administrative Court Act\)](#) [9]

[Switzerland ? Sections 3](#) [10]

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[6a](#) [13]

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[31a](#) [15]

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[111a AsylG \(Asylum Act\)](#) [19]

[Switzerland ? Sections 5](#) [20]

[12](#) [21]

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[52](#) [25]

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[64 VwVG \(Administrative Procedure Act\)](#) [28]

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### Links:

[1] [https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/D-635\\_2018%20-%20STC%20%28Brazil%29%20Turkish%20journalist%20%2008.02.2018.pdf](https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/D-635_2018%20-%20STC%20%28Brazil%29%20Turkish%20journalist%20%2008.02.2018.pdf)

[2] <https://www.boell.de/de/2017/07/03/das-neue-brasilianische-mig-rationsgesetz-und-die-menschenrechte>

[3] <http://www.refworld.org/docid/59197d644.html>

[4] <https://www.amnesty.org/en/countries/>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-%E2%80%93-section-29-bv-federal-constitution>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-%E2%80%93-sections-31>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/32-0>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/33>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/37-vgg-administrative-court-act>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-%E2%80%93-sections-3>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/5>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/6>

[13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8153>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/8-0>

[15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/31a>

[16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/105>

[17] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/106>

[18] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/108>

[19] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/111a-asylg-asylum-act>

[20] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-%E2%80%93-sections-5>

[21] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/12>

[22] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/29>

[23] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/48>

[24] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/49>

[25] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/52>

[26] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/61>

[27] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/63>

[28] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/64-vwvg-administrative-procedure-act>