

CJEU - C-71/11 and C-99/11 Germany v Y and Z

Country of Applicant:

Pakistan

Date of Decision:

05-09-2012

Citation:

C-71/11 and C-99/11

Court Name:

Grand Chamber of the CJEU

Keywords:[Assessment of facts and circumstances](#) [1][Standard of proof](#) [2][Persecution Grounds/Reasons](#) [3][Religion](#) [4][Serious harm](#) [5]**Relevant Legislative Provisions:**International Law > [1951 Refugee Convention](#) [6] > [Art 1A \(2\)](#) [7]

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Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [16] > [Article 15](#) [19]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Art 1](#) [20]

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Headnote:

This case concerns the interpretation of Article 2(c) and Article 9(1)(a) of the Qualification Directive in a case where the two Applicants are Pakistani nationals who are members of the Ahmadi religious community and fear persecution there on the basis of religion.

Facts:

In 2004 and 2003 Y and Z, respectively, entered Germany and applied for asylum. They claimed that their membership of the Muslim Ahmadi community forced them to leave their country of origin. They both experience past incidents of persecution and the Pakistani Criminal Code provides that members of the Ahmadi religious community may face imprisonment of up to three years or may be punished by death or life imprisonment or a fine. The Bundesamt refused their claims and both appealed to the Courts in Germany. Eventually, the Bundesverwaltungsgericht decided to stay the proceedings and submitted a preliminary reference to the CJEU.

The questions asked to the court were as follows:

Is Article 9(1)(a) of [the] Directive ? to be interpreted as meaning that not every interference with religious freedom which infringes Article 9 of the ECHR constitutes an act of persecution within the meaning of [the former provision], and that a severe violation of religious freedom as a basic human right arises only if the core area of that religious freedom is adversely affected?

2. If Question 1 is to be answered in the affirmative:

(a) Is the core area of religious freedom limited to the profession and practice of faith in the areas of the home and neighbourhood, or can there be an act of persecution, within the meaning of Article 9(1)(a) of [the] Directive ?, also in cases where, in the country of origin, the observance of faith in public gives rise to a risk to life, physical integrity or freedom and the Applicant accordingly abstains from such practice?

(b) If the core area of religious freedom can also comprise the public observance of certain

religious practices:

? Does it suffice in that case, in order for there to be a severe violation of religious freedom, that the Applicant feels that such observance of his faith is indispensable in order for him to preserve his religious identity,

? or is it further necessary that the religious community to which the Applicant belongs should regard that religious observance as constituting a central part of its doctrine,

? or can further restrictions arise as a result of other circumstances, such as the general conditions in the country of origin?

3. If Question 1 is to be answered in the affirmative:

Is there a well-founded fear of persecution, within the meaning of Article 2(c) of [the] Directive ?, if it is established that the Applicant will carry out certain religious practices ? other than those falling within the core area ? after returning to the country of origin, even though they will give rise to a risk to his life, physical integrity or freedom, or can the Applicant reasonably be expected to abstain from such practices?

Decision & Reasoning:

The Court first highlighted that the Directive must be interpreted in light of its general scheme and purpose and in a manner consistent with the Geneva Convention and other relevant Treaties as well as the EU Charter. The right to religious freedom enshrined in Article 10(1) of the Charter corresponds to the right guaranteed by Article 9 of the ECHR. It cannot be that any interference with the right to religious freedom constitutes an act of persecution requiring a grant of refugee status (Para. 58). Article 9(1) indicates that it must be a ?severe violation? having a significant effect on the person concerned. Para 62: For the purposes of determining, specifically, which acts may be regarded as constituting persecution, it is unnecessary to distinguish acts that interfere with the ?core areas? (?forum interum?) of the basic right to freedom of religion, which do not include religious activities in public (?forum externum?), from acts which do not affect these purported ?core areas?. Such a distinction would be incompatible with the broad definition of religion under Article 10. National authorities need to assess all kinds of acts which interfere with the basic right of freedom of religion in order to determine whether, by their nature or repetition, they are sufficiently severe as to be regarded as amounting to persecution. Acts which on account of their intrinsic severity as well as the severity of their consequences for the person concerned, may be regarded as constituting persecution must be identified, not on the basis of the particular aspect of religious freedom that is being interfered with but on the basis of the nature of the repression inflicted on the individual and its consequences (Para. 65). It is severity of the measures and sanctions adopted or liable to be adopted against the person concerned which will determine whether a violation of the right guaranteed by the Charter constitutes persecution. The Court also called for an individual assessment of the risk in accordance with Article 4(3) and declared that a number of factors both objective and subjective needed to be taken into account (Para 68-70). Given the concept of religion also includes participation in formal worship in public, the prohibition of such participation may constitute a sufficiently serious act within the meaning of Article 9(1)(a).

The Court then addressed the question of whether a person can avoid exposure to persecution by abstaining from certain religious practices. A distinction was made between the circumstances in the present proceedings and when a person has already experienced past persecution under Article 4(4) (Para. 75). In assessing whether an applicant has a well-founded fear of being

persecuted, the competent authorities are required to ascertain whether or not the circumstances established constitute such a threat that the person concerned may reasonably fear, that he will in fact be subject to acts of persecution. That assessment must be carried out with vigilance and care. None of the EU rules state that it is necessary to take account of the possibility open to the Applicant of avoiding the risk of persecution by abstaining from religious practice in question (Para 78). Therefore the fact that a person could avoid the risk of persecution by abstaining from religious practices is, in principle, irrelevant. The authorities cannot reasonably expect the Applicant to abstain from those religious practices.

Outcome:

The CJEU Court Ruling held:

1. Articles 9(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:

? not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union is capable of constituting an ?act of persecution? within the meaning of that provision of the Directive;

? there may be an act of persecution as a result of interference with the external manifestation of that freedom, and

? for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an ?act of persecution?, the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of Directive 2004/83.

2. Article 2(c) of Directive 2004/83 must be interpreted as meaning that the Applicant?s fear of being persecuted is well founded if, in the light of the Applicant?s personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the Applicant to abstain from those religious practices.

Observations/Comments:

Intervening Parties: Verterer des Bundesinteresses beim Bundesverwaltungsgericht, Bundesbeauftragter für Asylangelegenheiten beim Bundesamt für Migration und Flüchtlinge

This case is important in not only the context of religious asylum claims but for claims related on any of the Convention grounds under Article 10 of the Directive and according to the refugee definition. Particularly important is the clarity from the Court that national authorities and Courts cannot expect Applicants to be ?discrete? upon return to avoid risk of persecution or serious harm.

Media links and commentary of this case:

<http://eutopialaw.com/2013/07/24/case-comment-ags-opinion-in-x-y-and-z-v-minister-voor-immigratie-integratie-en-asiel-c%E2%80%91c%E2%80%91c%E2%80%91>

[26]

<http://asadakhan.wordpress.com/2012/09/19/cjeu-public-manifestation-of-religion-and-persecution/>

[27]

Case Law Cited:

CJEU - C-411/10 and C-493/10 N.S. v Secretary of State for the Home Department and ME (UP)

[CJEU - C-31/09 Nawras Bolbol v Hungary - resource](#) [28]

[CJEU - C-175/08; C-176/08; C-178/08 & C-179/08 Salahadin Abdulla & Ors v Bundesrepublik Deutschland - resource](#) [29]

Attachment(s):



[Original judgment - C-71.11 and C-99.11.odt](#)[30]

Authentic Language:

German

Country of preliminary reference:

Germany

National / Other Legislative Provisions:

TFEU - Art 267

Germany - Grundgesetz (Basic Law) - Art 16(1)

Germany - AsylVfG (Asylum Procedure Act) - § 1

Germany - Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union (Law implementing EU Residence Directive of 19.08.2007)

Links:

- [1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A10
- [2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A76
- [3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A55
- [4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A198
- [5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A74
- [6] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [7] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>
- [8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%202>
- [10] <https://www.asylumlawdatabase.eu/node/453>
- [11] https://www.asylumlawdatabase.eu/node/453#toc_17
- [12] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%2016>
- [13] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%2017>
- [14] https://www.asylumlawdatabase.eu/node/453#toc_29
- [15] https://www.asylumlawdatabase.eu/node/453#toc_32
- [16] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [17] https://www.asylumlawdatabase.eu/node/195#toc_49
- [18] https://www.asylumlawdatabase.eu/node/453#toc_53

- [19] https://www.asylumlawdatabase.eu/node/195#toc_64
- [20] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%201%20QD>
- [21] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>
- [22] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%203%20QD>
- [23] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>
- [24] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%206%20QD>
- [25] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%209%20QD>
- [26] <http://eutopialaw.com/2013/07/24/case-comment-ags-opinion-in-x-y-and-z-v-minister-voor-immigratie-integratie-en-asiel-c%E2%80%9119912-c%E2%80%91120012-and-c%E2%80%91120112/>
- [27] <http://asadakhan.wordpress.com/2012/09/19/cjeu-public-manifestation-of-religion-and-persecution/>
- [28] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-3109-nawras-bolbol-v-hungary-resource>
- [29] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-17508-c-17608-c-17808-c-17908-salahadin-abdulla-ors-v-bundesrepublik-deutschland>
- [30] <https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/Original%20judgment%20-%20C-71.11%20and%20C-99.11.odt>