

Germany, Supreme Administrative Court, Judgment of 31 March 2011

Deciding bodies and decisions

Supreme Administrative Court of Germany, Judgement of 31 May 2011

Area of law

EU asylum law

Subject matter

Scope of application of Article 12(2)(c) Qualification Directive to non-state actors- different domestic jurisprudence – German Federal Administrative Court establishing the personal scope of application of Article 12(2)(c) Qualification Directive on the basis of both CJEU rulings and domestic judgments (UK Immigration Appeal Tribunal and Supreme Court of Canada) Reason for exclusion - war crimes - non-state actors - terrorism - UN Resolutions - crimes against humanity - priority of EU law - revocation - purposes and principles of the United Nations

The case concerns issues the revocation of the asylum recognition of a war criminal. The applicant is a Rwandan citizen and belongs to the Hutu ethnic group. In March 2000 he was recognised as a person entitled to asylum in Germany on the basis of the danger of political persecution. In mid-2001 he became President of the Forces Démocratiques de Libération du Rwanda (FDLR), a Hutu exile organisation which commits war crimes in the eastern part of the Democratic Republic of the Congo. The Sanctions Committee of the United Nations Security Council imposed sanctions against the FDLR and the applicant as its President. The German Supreme Administrative Court had to decide whether the applicant could be excluded from refugee status and national constitutional asylum because he has committed war crimes as well as actions that contravene the purposes and principles of the United Nations. This judgment is particularly important since, it is the first Supreme Court judgment in Germany on exclusion based on war crimes and actions against the principles of the UN. It was cited in follow-up judgments.

Summary Facts Of The Case

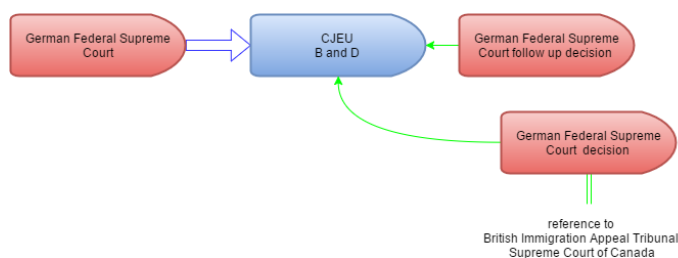
The applicant is a Rwandan citizen and belongs to the Hutu ethnic group. In March 2000 he was recognised as a person entitled to asylum in Germany on the basis of the danger of political persecution. In mid-2001 he became President of the Forces Démocratiques de Libération du Rwanda (FDLR), a Hutu exile organisation which commits war crimes in the eastern part of the Democratic Republic of the Congo. The Sanctions Committee of the United Nations Security Council imposed sanctions against the FDLR and the applicant as its President. The German revoked the applicant's refugee status and national constitutional asylum because he has committed war crimes as well as actions that contravene the purposes and principles of the United

Nations. The applicant challenges the revocation order and appealed to the administrative court - with success only in the first instance. In the end he lost. The Supreme Administrative Court denied the applicant's final revision.

Relation to the scope of the Charter

The case falls within the scope of the Charter as it implies a national implementing act of a EU secondary law source, namely the EU Qualifications Directive, which is assessed in the light of the right to asylum as enshrined in Article 18 EU Charter.

Diagram



Sources - EU and national law

- Article 18 - Right to asylum

The Supreme Administrative Court regards the right to asylum guaranteed under Article 18 of the Charter as a guarantee that EU provisions afford effective protection of fundamental rights against the sovereign power of the Union and can insofar be considered substantially equal to the protection of the German Constitution. This allows the supremacy of the EU Directive over German Constitutional law which is narrower in excluding a foreigner from refugee status than EU law. In this particular case, the right to asylum is restricted by the right to protect nationals of threats to international peace in case of a war criminals acting against the principles of the UN.

Sources - CJEU Case Law

- Joined Cases C-57/09, (B) and C-101/09, (D), ECLI:EU:C:2010:661
 - Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat*, ECLI:EU:C:2008:461
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