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Court of Justice of the European Union

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Judgment in Joined Cases C-57/09 and C-101/09
Germany v B and Germany v D

A person can be excluded from refugee status if he is individually responsible for acts committed by an organisation using terrorist methods

The sole fact that a person has been a member of such an organisation cannot mean that he is automatically excluded from refugee status

The aim of Directive 2004/83/EC¹ is to lay down minimum standards as regards the conditions to be met by third country nationals or stateless persons in order to receive international protection and as regards the content of the protection granted. In that connection, the Directive provides, inter alia, for the exclusion of a person from refugee status where there are serious reasons for considering that he has committed a 'serious non-political crime' or has been guilty of 'acts contrary to the purposes and principles of the United Nations'.

B and D are Turkish nationals of Kurdish origin. While B had supported the armed guerrilla warfare waged by the DHKP/C, D had been a guerrilla fighter and senior official in the PKK. Both the PKK and the DHKP/C are organisations on the EU list of persons, groups and entities involved in terrorist acts, drawn up in the context of the measures launched by a UN Security Council Resolution to combat terrorism. Whereas B applied for asylum and protection as a refugee, D had already been granted refugee status by the German authorities. Both stated that they had left the DHKP/C and the PKK respectively and feared persecution both from the Turkish authorities and from their respective organisations. The Bundesamt für Migration und Flüchtlinge (German Federal Office for migration and refugees) rejected B's application for asylum as unfounded and held that the conditions for recognition of refugee status were not met. It also revoked the refugee status and the right of asylum previously granted to D. The Bundesverwaltungsgericht (Federal Administrative Court, Germany) asks the Court of Justice, in each of those cases, to interpret the clauses laid down in Directive 2004/83 under which a person is excluded from refugee status.

The Court considers first whether a case where the person concerned has been a member of an organisation on the list and has actively supported the armed struggle waged by that organisation – and perhaps occupied a prominent position within that organisation – is a case of 'serious non-political crime' or 'acts contrary to the purposes and principles of the United Nations' within the meaning of Directive 2004/83. In that regard, the Court states that the exclusion from refugee status of a person who has been a member of an organisation which used terrorist methods is conditional on an individual assessment of the specific facts, making it possible for the competent authority to determine whether there are serious reasons for considering that, in the context of his activities within that organisation, that person has committed a serious non-political crime or has been guilty of acts contrary to the purposes and principles of the United Nations, or that he has instigated such a crime or such acts, or participated in them in some other way, within the meaning of the Directive.

It follows, first, that **the mere fact that the person concerned has been a member of such an organisation cannot automatically mean that that person must be excluded from refugee status**. The inclusion of an organisation on the list makes it possible to establish the terrorist

¹ 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 (OJ L 304, p. 12).

nature of the group to which the person concerned had belonged, but the circumstances in which that organisation was placed on the list cannot be assimilated to the individual assessment of the specific facts, which must be undertaken before any decision is taken to exclude a person from refugee status pursuant to Directive 2004/83. Secondly, according to the Court, participation in the activities of a terrorist group is not, in itself, such as to trigger the automatic application of the exclusion clauses laid down in the Directive, which presuppose a full investigation into all the circumstances of each individual case.

Before a finding can be made that the grounds for exclusion apply, the Court finds that **it must be possible for the competent authority to attribute to the person concerned a share of individual responsibility** for the acts committed by the organisation in question while that person was a member. To that end, one of the things that the competent authority must do is to assess the true role played by the person concerned in the perpetration of the terrorist acts; his position within the organisation; the extent of the knowledge he had, or was deemed to have, of its activities; any pressure to which he was exposed; or other factors likely to have influenced his conduct. Any authority which finds, in the course of that assessment, that the person concerned has – like D – occupied a prominent position within an organisation which uses terrorist methods is entitled to presume that that person has individual responsibility for acts committed by that organisation during the relevant period. Nevertheless, it is still necessary to examine **all the relevant circumstances before a decision excluding that person from refugee status can be adopted**.

The Court goes on to hold that exclusion from refugee status pursuant to one of the exclusion clauses concerned is not conditional upon the person concerned representing a present danger to the host Member State. The penalty element of the exclusion clauses is intended only for acts committed in the past. There are other provisions within the system of the Directive which enable the competent authorities to take the necessary measures where a person represents a present danger.

Lastly, the Court interprets Directive 2004/83 as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to one of the exclusion clauses laid down in that Directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the Directive.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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