
EU court decision on asylum for religious persecution

Facts: In January 2004 and August 2003 Y and Z, respectively, entered Germany and applied for asylum and protection as refugees. They claimed that their membership of the Muslim Ahmadiyya community, which is an Islamic reformist movement, had forced them to leave their country of origin. In particular, Y stated that on several occasions he had been beaten in his home village by a group of people and had stones thrown at him at his community's place of prayer. Those people threatened to kill him and reported him to the police for insulting the Prophet Mohammed. Z claimed that he was mistreated and imprisoned as a result of his religious beliefs.

Procedural History: By its decisions of 4 May and 8 July 2004, the Federal Office for Migration and Refugees ('Bundesamt') rejected Y's and Z's applications for asylum as unfounded, finding that the requirements for being granted refugee status were not satisfied. It also held that there were no obstacles to Y's and Z's deportation to Pakistan under the applicable national law and declared them liable to deportation to that country. The Bundesamt justified its decisions essentially on the ground that there was insufficient evidence to support the contention that the applicants in question had left their country of origin on account of a well-founded fear of persecution there.

Y brought an action against before the Administrative Court, Leipzig, which, by judgment of 18 May 2007, annulled the Bundesamt's decision and ordered the Bundesamt to place on the record that, as a refugee, Y satisfied the requirements for a prohibition of his deportation to Pakistan.

Z challenged the Bundesamt's decision before the Administrative Court, Dresden. By judgment of 13 July 2007, that court dismissed his application, taking the view that he had not left his country of origin on account of a well-founded fear of persecution.

By judgements of 13 November 2008, the Higher Administrative Court of the Land Sachsen, respectively: (1) Dismissed the appeal brought by the Federal Delegate for Asylum ('the Bundesbeauftragter') against the judgement in the case concerning Y, and (2) Following an appeal lodged by Z against the judgment concerning him, ordered the Bundesamt to place on the record that Z satisfied the requirements as laid down in Paragraph 60(1) of the Aufenthaltsgesetz and that it was therefore prohibited from deporting him, as a refugee, to Pakistan. The court considered that, for a devout Ahmadi in Pakistan, whose religious convictions include the belief that that faith should be lived in public, the situation in that country constitutes a serious violation of religious freedom. In view of the threat of severe punishment as well as the numerous unimpeded attacks by extremist groups, common sense would suggest that an Ahmadi should refrain from all public acts of worship. Accordingly, Y and Z are deeply committed to their faith and their life was actively shaped by it in Pakistan.

Issue: The Bundesamt and the Bundesbeauftragter lodged an appeal before the Federal Administrative Court, arguing that the appeal court had interpreted the scope of Articles 9 and 10(1)(b) of the Directive too broadly. Referring to the case-law in Germany before the transposition of the Directive in 2007, according to which there could be deemed to be persecution relevant for the purposes of the right of asylum only where there was interference with the ‘core areas’ of religious freedom, but not where there were restrictions on the public practice of faith, they consider that the restrictions on Ahmadi’s in Pakistan, which concern the practice of their faith in public, do not constitute interference with those ‘core areas’. Moreover, according to the Bundesamt and the Bundesbeauftragter, there is nothing in the findings on how Y and Z practise their faith in Germany to establish that they cannot refrain from certain activities that do not form part of the ‘core areas’ of religious practice.

Holding: Subsequently, on September 5th 2012, this court found in favour of Y and Z, granting them refugee status. In doing so, the court held that for the purpose of determining which acts may be regarded as constituting persecution within the meaning of Article 9(1)(a) of the Directive, it is unnecessary to distinguish acts that interfere with the ‘core areas’ of the basic right to freedom of religion, which do not include religious activities in public, from acts which do not affect those purported ‘core areas’. The court stated that such a distinction is incompatible with the broad definition of ‘religion’ given by Article 10(1)(b) of the Directive, which encompasses all its constituent components, be they public or private, collective or individual. Acts which may constitute a ‘severe violation’ within the meaning of Article 9(1)(a) of the Directive include serious acts which interfere with the applicant’s freedom not only to practice his faith in private circles but also to live that faith publicly.

Accordingly, a violation of the right to freedom of religion may constitute persecution within the meaning of Article 9(1)(a) of the Directive where an applicant for asylum, 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 the Directive. Further, in regards to whether Y and Z showed a well founded risk of persecution, the court stated that where it is established that, upon his return to his country of origin, the person concerned will follow a religious practice which will expose him to a real risk of persecution, he should be granted refugee status. The fact that he could avoid that risk by abstaining from certain religious practices is, in principle, irrelevant.

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