

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 10 February 2009 — Bundesrepublik Deutschland v B, Other party to the proceedings: Der Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

(Case C-57/09)

(2009/C 129/04)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: B

Other party to the proceedings: Der Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Questions referred

1. Does it constitute a serious non-political crime or an act contrary to the purposes and principles of the United Nations within the meaning of Article 12(2)(b) and (c) of Council Directive 2004/83/EC of 29 April 2004 if the appellant was a member of an organisation which is included in the list of persons, groups and entities⁽¹⁾ annexed to the Council Common Position on the application of specific measures to combat terrorism and employs terrorist methods, and the appellant has actively supported that organisation's armed struggle?
2. If Question 1 is to be answered in the affirmative: does exclusion from recognition as a refugee under Article 12(2)(b) and (c) of Directive 2004/83/EC require that the appellant continue to constitute a danger?
3. If Question 2 is to be answered in the negative: does exclusion from recognition as a refugee under Article 12(2)(b) and (c) of Directive 2004/83/EC require that a proportionality test be undertaken in relation to the individual case?
4. If Question 3 is to be answered in the affirmative:
 - a) Is it to be taken into account in considering proportionality that the appellant enjoys protection against deportation under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or under national rules?

- b) Is exclusion disproportionate only in exceptional cases having particular characteristics?

5. Is it compatible with the directive, for the purposes of Article 3 of Directive 2004/83/EC, if the appellant has a right to asylum under national constitutional law even if one of the exclusion criteria laid down in Article 12(2) of the directive is satisfied?

⁽¹⁾ OJ L 304, p. 12.

Action brought on 23 February 2009 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-79/09)

(2009/C 129/05)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by D. Triantafyllou and W. Roels, acting as Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by granting exemption from VAT for the making available of personnel in the socio-cultural sector, the health sector and the education sector to so-called Euregios and for promotion of work mobility, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 2(1)(c), Article 24(1) and Article 132 of the VAT Directive;⁽¹⁾

— order Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Commission submits that the making available of staff in the socio-cultural sector, the health sector and the education sector must be subject to tax in accordance with Articles 2, 9 and 24 of the VAT Directive and that neither the exemptions under Article 132(1)(b), (c), (g) and (i) nor the exemption under Article 132(1)(n) is applicable to this provision of services

⁽¹⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 11).