

**Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 13 March 2009 — Federal Republic of Germany v D, other parties: The Representative of the Federal Interest at the Bundesverwaltungsgericht, The Federal Commissioner for Asylum Matters at the Bundesamt für Migration und Flüchtlinge**

(Case C-101/09)

(2009/C 129/11)

*Language of the case: German*

**Referring court**

Bundesverwaltungsgericht

**Parties to the main proceedings**

*Applicant:* Federal Republic of Germany

*Defendant:* D

*Other parties:* The Representative of the Federal Interest at the Bundesverwaltungsgericht

The Federal Commissioner for Asylum Matters at the Bundesamt für Migration und Flüchtlinge

**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<sup>(1)</sup> of 29 April 2004 if a foreign national was for many years involved as a combatant and an official — including for a time as a member of its governing body — in an organisation (in this case, the PKK) which repeatedly employed terrorist methods in its armed struggle against the state (in this case, Turkey) and is included in the list of persons, groups and entities annexed to the Council Common Position on the application of specific measures to combat terrorism, and the foreign national thereby actively supported its armed struggle in a prominent position?
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 foreign national 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 foreign national 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 foreign national continues to be recognised as having 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 and refugee status under Article 14(3) of the directive is revoked?

<sup>(1)</sup> OJ 2004 L 304, p. 12.

**Reference for a preliminary ruling from the Tribunale di Firenze, lodged on 13 March 2009 — Camar Srl v Presidente del Consiglio dei Ministri**

(Case C-102/09)

(2009/C 129/12)

*Language of the case: Italian*

**Referring court**

Tribunale di Firenze

**Parties to the main proceedings**

*Claimant:* Camar Srl

*Defendant:* Presidente del Consiglio dei Ministri

**Questions referred**

1. Did Article 14 of the First Yaoundé Convention preclude the introduction by a Member State of an internal tax on bananas originating in Somalia, which was not in practice applied to domestically produced bananas (the production of which was totally non-existent or insignificant) and was not applicable to any other type of domestically produced fruit?
 

In the event of an affirmative answer to the foregoing question:
2. Did the Protocol on Bananas annexed to the Lomé Convention then in force preclude collection of a tax that was incompatible with Article 14 of the First Yaoundé Convention in respect of imports into Italy of Somali bananas effected in 1990, having regard to the combined provisions of that protocol and of the like protocols annexed to the earlier Lomé Conventions, and also Article 5 of the Second Yaoundé Convention?

In the event of a negative answer: