



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
co-financed by the European Commission*

## Case Summary

Country of Decision/Jurisdiction	<b>Germany</b>
Case Name/Title	
Court Name <i>(Both in English and in the original language)</i>	Federal Administrative Court (Bundesverwaltungsgericht)
Neutral Citation Number	9 C 118/90
Other Citation Number	
Date Decision Delivered	5/11/1991
Country of Applicant/Claimant	Turkey
Keywords	Persecution
Head Note (Summary of Summary)	Case concerning the danger of forced male circumcision of Christians liable to military service in Turkey.
Case Summary (150-500)	The applicant is a Syrian-orthodox Christian from Turkey born in 1970. After his family had resettled to Istanbul from their village of origin, the applicant and other relatives had travelled to Germany in 1980, where they respectively filed applications for asylum on the grounds of facing persecution in Turkey for their religious affiliation. Upon return to Turkey he would have <i>inter alia</i> gotten drafted for military service, in the course of which he would have had to expect forced circumcision.
<i>Facts</i>	The asylum authority rejected the applications of the applicant as well as those of his father and brother. The Administrative Court ruled in favour of the applicant. The Higher Administrative Court rejected the appeal of the Federal Commissioner for Asylum concerning the applicant in May 1990. According to the findings, most of the drafted Christians were subjected to forced circumcision between 1980 and 1986 in certain Turkish garrisons. Those were held to be grave encroachments upon personal self-determination, physical integrity as well as degrading treatments, attributable to the Turkish State.
<i>Decision &amp; Reasoning</i>	The Federal Administrative Court principally accepted the Higher Administrative Court argument.  It decided that forced circumcision of Turkish Christians liable to military service during military service constitutes political persecution under Article 16(2)(2) of the Basic Law.  It also decided that reasonableness of return constitutes the primary qualitative criterion for the assessment of whether the probability of a danger is "considerable" (" <i>beachtlich</i> ")



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The Federal Administrative Court found that the applicant was liable for military service upon return to Turkey. This fact was considered relevant as an objective (i.e. not self-created) ground of persecution subsequent to flight (*"Nachfluchtgrund"*). The Court confirmed the assumption of a widespread practice of forced male circumcisions against Christian soldiers from 1980 onwards, which generally took place in military hospitals during basic training, as basis for its reasoning. Such treatments were partly ordered, partly performed with the consent of the affected persons in order to evade constant beatings. It was not put into doubt that these acts performed against the will of the affected persons were of an intensity relevant in the context of asylum, constituting significant encroachments upon physical and mental integrity as well as degrading treatments in disregard of religious and personal self-determination. Such forced circumcision of Christians is deemed to target the affected person's religious convictions. They were attributable to the Turkish State, which is deemed to be in a guarantors position (*"Garantenstellung"*) towards members of the Christian Minority within its armed forces, as a result of which it is responsible for incidents such as politically motivated assaults, which it has to prevent. The respective practice could not be concealed from the military leadership, which has not been held accountable. The deciding senate confirmed the Higher Administrative Courts finding that the applicant would have to face a respective fate upon return to Turkey.

Departing from some considerations concerning the concept of group persecution in the context of the German fundamental right to asylum, the Federal Administrative Court restated its consolidated jurisprudence concerning requirements of the danger of persecution:

"According to the consolidated jurisprudence of the Federal Administrative Court, a danger of persecution is present when an asylum-seeker, upon careful and objective assessment of the totality of circumstances, would face with considerable probability a threat of political persecution rendering it unreasonable for him to return to or remain in his home country. It is necessary to determine whether, regarding such circumstances, a fear of persecution could be inspired in a reasonable thinking, sober-minded human being in the position of the asylum-seeker. A well-founded fear of persecution of an event can, accordingly, also be present when the probability of its realisation is below 50 percent from a quantitative or numerical point of view. Considerable probability of persecution is accordingly to be assumed, when after a summarizing assessment of the facts (*"zusammenfassenden Bewertung des zur Prüfung gestellten Lebenssachverhalts"*), the circumstances indicating persecution are of a greater weight and therefore prevail over the reasons speaking against it. What is decisive is therefore the criterion of reasonableness, constituting the primary qualitative criterion for the assessment of whether the probability of a danger is "considerable" (*"beachtlich"*)" (para. 17).

*"Nach ständiger Rechtsprechung des Bundesverwaltungsgerichts liegt eine Verfolgungsgefahr vor, wenn dem Asylsuchenden bei verständiger, nämlich objektiver, Würdigung der gesamten Umstände seines Falles politische Verfolgung mit beachtlicher Wahrscheinlichkeit droht, so dass ihm nicht*



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	<p><i>zuzumuten ist, im Heimatstaat zu bleiben oder dorthin zurückzukehren. Dabei ist eine "qualifizierende" Betrachtungsweise im Sinne einer Gewichtung und Abwägung aller festgestellten Umstände und ihrer Bedeutung anzulegen. Es kommt darauf an, ob in Anbetracht dieser Umstände bei einem vernünftig denkenden, besonnenen Menschen in der Lage des Asylsuchenden Furcht vor Verfolgung hervorgerufen werden kann. Eine in diesem Sinne wohlbegründete Furcht vor einem Ereignis kann deshalb auch dann vorliegen, wenn aufgrund einer "quantitativen" oder mathematischen Betrachtungsweise weniger als 50 % Wahrscheinlichkeit für dessen Eintritt besteht. Beachtliche Wahrscheinlichkeit einer Verfolgung ist deshalb dann anzunehmen, wenn bei der vorzunehmenden "zusammenfassenden Bewertung des zur Prüfung gestellten Lebenssachverhalts" die für eine Verfolgung sprechenden Umstände ein größeres Gewicht besitzen und deshalb gegenüber den dagegen sprechenden Tatsachen überwiegen [...]Maßgebend ist in dieser Hinsicht - wie der Senat im Urteil vom 23. Juli 1991 - BVerwG 9 C 154.90 - (DVBl. 1991, 1089, &lt;1092&gt;) ausgeführt hat - damit letztlich der Gesichtspunkt der Zumutbarkeit. Die Zumutbarkeit bildet das vorrangige qualitative Kriterium, das bei der Beurteilung anzulegen ist, ob die Wahrscheinlichkeit einer Gefahr "beachtlich" ist. "</i></p> <p>Within this consideration, a prudent third person in the position of the asylum-seeker would also include the gravity of a relevant encroachment in the necessary balancing of all circumstances. Against this background, being drafted to military service in Turkey is held to be considered unreasonable in application of the named criteria.</p>
<i>Outcome</i>	The appeal was rejected.