



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
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## Case Summary

Country of Decision/Jurisdiction	<b>Germany</b>
Case Name/Title	
Court Name <i>(Both in English and in the original language)</i>	Hamburg Administrative Court (Verwaltungsgericht Hamburg)
Neutral Citation Number	4 A 123/10
Other Citation Number	
Date Decision Delivered	06/01/2011
Country of Applicant/Claimant	Guinea
Keywords	Persecution; Female Genital Mutilation; Sufficient protection
Head Note (Summary of Summary)	Complaint against the denial of refugee status on grounds of the risk of subjection to genital mutilation upon return to Guinea.
Case Summary (150-500)	The applicant is a Guinean national born in Germany in 2008. She did not present personal reasons for persecution, but, rather, joined the reasoning of her mother as subject to separate procedures. At a later stage of the proceedings she invoked a predominant probability of being subjected to genital mutilation upon return to Guinea.
<i>Facts</i>	The Federal Office for Migration and Refugees rejected the application in April 2010, arguing <i>inter alia</i> that there was no risk of political persecution on grounds of a danger of genital mutilation, as the element of membership of a particular social group was not fulfilled. According to the authority gender was not the only decisive issue in this context. The risk of being subjected to genital mutilation also depended on the family situation and had decreased to a probability of "only" 60 percent.
<i>Decision &amp; Reasoning</i>	The Administrative Court decided a risk of genital mutilation constitutes gender specific persecution. It also found that the practice of genital mutilation is still widespread in Guinea.  The Court found that the applicant qualified for refugee status for the following reasons:  The risk of genital mutilation constitutes gender specific persecution. It significantly encroaches upon the physical integrity, thereby causing great suffering to the woman. Genital mutilation would also affect the applicant as regards the element of membership of a particular social group, specifically concerning persecution, namely the unchangeable element of her female sex.  <i>„Eine drohende Genitalverstümmelung stellt einen Fall der geschlechtsspezifischen Verfolgung dar (vgl. VG Düsseldorf, Urt. v. 28.9.2007,</i>



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	<p><i>13 K 1441/05.A, juris, m.w.N.). Sie greift erheblich in die körperliche Integrität ein und fügt der Frau dabei schwere physische Leiden zu. Die Genitalverstümmelung würde die Klägerin auch in einem verfolgungserheblichen Merkmal, nämlich dem für sie unverfügbaren Merkmal des weiblichen Geschlechts im Sinne des § 60 Abs. 1 Satz 3 AufenthG betreffen (VGH Kassel, Beschl. v. 23.3.2005, 3 UE 3457/04.A, juris)."</i></p> <p>The Court argued that, contrary to the authorities opinion, genital mutilation constitutes persecution of a particular social group, as the German legislator has determined in Article 60(1)(3) of the Residence Act, that a link of acts of persecutions to gender fulfils the criterion of membership of a particular social group.</p> <p>The Administrative Court also found that the applicant would face a significant probability of being subjected to genital mutilation upon return to Guinea. It <i>inter alia</i> referred to present data, according to which 99 percent of all Guinean women aged 15-49 were respectively mutilated at present. The applicant was also found to face genital mutilation in the near future despite her very young age. She would also not be free from the respective risk because her parents were against the practice, as she would run the risk of abduction by older relatives. Even though genital mutilation has become prohibited in Guinea, the Guinean State is held to not be able to provide protection against such gender specific persecution by non-state actors.</p>
<p><i>Outcome</i></p>	<p>The Federal Offices decision was repealed. The authority was obliged to determine that the conditions for granting refugee status, i.e. protection from removal, according to Article 60(1) of the Residence Act were fulfilled.</p>