Field: Asylum law

Sources in law:

Residence Act	Section 60(1)
Asylum Procedure Act	Section 73
Code of Administrative Court Procedure	Section 121
Administrative Procedure Act	Sections 48, 49
GRC	Article 1 C (5) and (6)
Directive 2004/83/EC	Article 2(c), Article 3, Article 4(4), Article 11(1)(e), Article 11(2)

Headwords:

Res judicata; prohibition on double jeopardy; reversal; revocation; revocation of refugee status (Algeria); discretionary powers; cessation of refugee status; cessation of circumstances; protection of the country; persecution; well-founded fear of persecution; likelihood of persecution; risk of persecution; standard of probability; considerable probability; sufficient probability; substantial change; permanent change.

Headnotes:

1. The prohibition on double jeopardy that proceeds from res judicata pertains only to administrative acts with the same content, i.e., that settle the same matter by providing for the same legal consequence (here: denied in regard to reversal and revocation of refugee status).

2. Revocation of refugee status under Section 73(1) sentence 1 and 2 of the Asylum Procedure Act in conjunction with Article 11(1)(e) of Directive 2004/83/EC presupposes that in view of a significant and non-temporary change in the circumstances in the country of origin, the circumstances that formed the basis of the individual's well-founded fear of persecution, and for his recognition as a refugee, have been eradicated (following ECJ, judgment of 2 March 2010 – Case C-175/08 et al., Abdulla et al. - NVwZ 2010, 505).

3. A significant change in the circumstances on which persecution was based exists if the actual circumstances in the country of origin have changed clearly and materially. New facts must have given rise to a significantly changed basis, material to a decision, for a determination of the likelihood of persecution, so that there is no longer any considerable probability of persecution (change from previous case law).

4. A change is permanent if a prognosis indicates that the change in circumstances is stable, i.e., that the factors on which persecution was based will remain eradicated for the foreseeable future.

Judgment of the 10th Division of 1 June 2011 - **BVerwG 10 C 25.10**

I. Stuttgart Administrative Court, 20 May 2008 – Case no.: VG A 5 K 111/08 –
II. Mannheim Higher Administrative Court, 15 December 2009 – Case no.: VGH A 9 S 3262/08 –

FEDERAL ADMINISTRATIVE COURT

IN THE NAME OF THE PEOPLE

JUDGMENT

BVerwG 10 C 25.10
VGH A 9 S 3262/08

Released
on 1 June 2011
Ms Werner
as Clerk of the Court

In the administrative case

Translator's Note: The Federal Administrative Court, or *Bundesverwaltungsgericht*, is the Federal Republic of Germany's supreme administrative court. This unofficial translation is provided for the reader's convenience and has not been officially authorised by the *Bundesverwaltungsgericht*. Page numbers in citations of international texts have been retained from the original and may not match the pagination in the parallel English versions.

The Tenth Division of the Federal Administrative Court
upon the hearing of 1 June 2011
by Presiding Federal Court Justice Prof. Dr Berlit and Federal Administrative Court Justices Prof. Dr Dörig, Richter, Prof. Dr Kraft and Fricke

decides:

On appeal by the Respondent, the judgment of the Baden-Württemberg Higher Administrative Court of 15 December 2009 is set aside.

The matter is remanded to the Higher Administrative Court for further hearing and a decision.

The disposition as to costs is reserved for the final decision.

Reasons :

I

1 The Complainant, an Algerian national born in 1960, has protested the revocation of his refugee status.

2 He applied for asylum in October 1992. After he had relocated to an unknown address, the Federal Office for the Recognition of Foreign Refugees (now the Federal Office for Migration and Refugees) – the ‘Federal Office’ – denied the application in a decision of 8 November 1993 as manifestly unfounded. The Federal Office denied a further application for asylum filed under an alias, in a decision dated 24 September 1993.

3 In November 1994 the Complainant was arrested by the French authorities on suspicion of preparing terrorist actions in Algeria. The Tribunal de Grande Instance de Paris sentenced him on 22 January 1999 to eight years of incarceration, on grounds that included membership in a criminal association.

4 After the Complainant had been released from French custody in March 2001, he filed a follow-up application for asylum in Germany in July 2001, citing as grounds the extraregional reporting of the criminal proceedings in France and the resulting risk of persecution in Algeria. He stated that he had never been active for a terrorist association; the trial in France, he claimed, had been a farce. In a decision of 15 October 2002, the Federal Office denied an entitlement to asylum, but found that the requirements under Section 51(1) of the Aliens Act were met with regard to Algeria. The Federal Office found that in view of the reporting on the criminal proceedings, it must be assumed that the Algerian foreign intelligence service had observed the proceedings and that the Complainant had come to the attention of Algerian authorities. In the event of his return to Algeria, therefore, there was a significant danger of torture and imprisonment.

5 In a decision dated 1 June 2005, the Federal Office reversed its recognition decision of 15 October 2002 with effect as to the future. The Federal Office held that the finding had been erroneous from the outset, in that it had failed to recognise the existence of the exceptional conditions under Section 51(3) sentence 1 alternative 2 and sentence 2 alternative 3 of the Aliens Act. In light of his unappealable conviction in France, the Federal Office said, it was clear that the Complainant represented a danger to the public. In a res judicata judgment dated 27 October 2006, the Administrative Court set aside the reversal decision because the Federal Office had exceeded the one-year period under Section 48 (4) of the Administrative Procedure Act.

6 In a letter dated 10 July 2007, the Federal Office instituted proceedings for the revocation of refugee status, in the course of which the Complainant denied that conditions in Algeria had changed in any way material to a judgment. In a deci-

sion dated 21 December 2007, the Federal Office revoked the finding from the decision of 15 October 2002 that the requirements under Section 51(1) of the Aliens Act were present. It furthermore ruled that the requirements for the recognition of refugee status under Section 60(1) of the Residence Act were not met, and that there were no prohibitions on deportation under Section 60(2) through (7) of the Residence Act. The Federal Office found that with the 'Charter for Peace and National Reconciliation' adopted by referendum in September 2005 and the regulations issued for its implementation, Algeria had introduced extensive amnesties for members of Islamist terrorist groups. It found that the amnesty provisions were being implemented systematically and generously, and continued to be applied even after the provided cut-off date. Therefore the Complainant did not have to fear a significant probability of politically motivated persecution upon his return to Algeria.

7 In a judgment of 20 May 2008, the Administrative Court set aside the Federal Office's decision on the grounds that the status of the judgment of 27 October 2006 as res judicata already opposed the revocation. The appealed revocation, the court found, ultimately proved to be a decision taking the place of the reversal dated 1 June 2005.

8 In a judgment of 15 December 2009, the Higher Administrative Court denied the Respondent's appeal. It ruled that although the res judicata status of the judgment suspending the original reversal did not stand in opposition to the later revocation – because the matters at issue in the two administrative actions were not identical – nevertheless the Administrative Court's decision ultimately proved correct, because the requirements for revocation of refugee status were not present. Under Section 73(1) sentence 1 of the Asylum Procedure Act, such a revocation would be possible only if the individual involved were sufficiently safe from future persecution because of changes that had taken place in his country of origin in the meantime. This, the court found, was not the case for the Complainant. He did not fall within the cut-off date provided under the amnesty rule; it was uncertain whether the practical application of the rule would also cover the Complainant's case. In view of the repressive structures still in exis-

tence, the court found, there was no adequate reason to believe in a general liberalisation in Algeria.

9 As grounds for its appeal to this Court, which has been allowed, the Respondent complains that the court below improperly adopted a lowered standard of probability. Under the terms of the Qualification Directive, it argues, even a person who has been persecuted previously is privileged only by the refutable presumption of persecution under Article 4(4) of the Directive. Under the case law of the ECJ as well, the standard of considerable probability is to be applied in revoking the status of a person who had not been persecuted previously.

10 The Complainant defends the appealed judgment on the same grounds as the original decision. In addition, he claims that in a decision on granting status, a recognised refugee is to be given greater protection than an applicant for asylum, because of his residence in the Federal Republic and his trust in his established status.

II

11 The Respondent’s appeal to this Court is procedurally permissible and has merit, because the appealed decision is founded on a contravention of federal law (Section 137(1) no. 1 Code of Administrative Court Procedure). (1.) This Court concurs that the court below was correct in reviewing the revocation decision as to the facts, and in not merely setting it aside on the basis of the prohibition on double jeopardy that would proceed from res judicata. However, (2.) the court below applied an improper standard of probability for the likelihood of persecution that it determined in reviewing the requirements for the revocation of refugee status. For lack of the findings of fact necessary for a final decision, this Court cannot itself decide the matter either positively or negatively. The matter must therefore be remanded to the Higher Administrative Court for further hearing and a decision (Section 144(3) sentence 1 no. 2 Code of Administrative Court Procedure).

12 1. It does not stand in opposition to the revocation decision at issue that the previous reversal of refugee status was set aside with the force of res judicata in the prior proceedings. According to Section 121 no. 1 of the Code of Administrative Court Procedure, final and absolute judgments are binding upon the parties and their successors to the extent that the matter at issue has been decided. To the extent that res judicata extends to the persons and facts concerned, an authority that does not prevail in earlier proceedings is barred from performing a new administrative act on the same grounds that the court had previously found wanting, provided that the situation of the facts and the law remains unchanged (see judgments of 8 December 1992 - BVerwG 1 C 12.92 - BVerwGE 91, 256 <257 f.> = Buchholz 310 Section 121 Code of Administrative Court Procedure no. 63, and of 28 January 2010 - BVerwG 4 C 6.08 - Buchholz 310 Section 121 Code of Administrative Court Procedure no. 99). However, the prohibition on repetition covers only administrative acts with the same substance, i.e., a disposition in the same matter with an order that has the same legal consequences (judgment of 30 August 1962 - BVerwG 1 C 161.58 - BVerwGE 14, 359 <362> = Buchholz 310 Section 121 Code of Administrative Court Procedure no. 4, and decision of 15 March 1968 - BVerwG 7 C 183.65 - BVerwGE 29, 210 <213 f.>).

13 Applying these criteria, reversing a decision to grant refugee status because mandatory reasons for exclusion had not been observed cannot regarded as equivalent in substance to revoking that status because the circumstances on which it was founded no longer exist. To be sure, the reversal in the Complainant’s case applied only with effect for the future, so that the two administrative acts were directed to the same legal consequences (see, from another perspective, the judgment of 24 November 1998 - BVerwG 9 C 53.97 - BVerwGE 108, 30 <35>). But the legal prerequisites for the two acts of suspension differ, as do the facts to be taken into account in this regard: while reversal is founded on arriving at a different legal assessment of a past set of circumstances, a revocation under Section 73(1) of the Asylum Procedure Act is founded on a change in the circumstances after the status was granted. Therefore the prohibition on double jeopardy does not apply in the present case.

14 2. A determinant factor in the legal assessment of the appealed revocation is Section 73 of the Asylum Procedure Act in the version that has been in force since the effective date of the Act to Implement Residence- and Asylum-Related Directives of the European Union of 19 August 2007 (BGBl I p. 1970) – The Directive Implementation Act – on 28 August 2007 (new version of the Asylum Procedure Act promulgated on 2 September 2008, BGBl I p. 1798). According to Section 73(1) sentence 1 of the Asylum Procedure Act, recognition of an entitlement to refugee status shall be revoked without delay if the conditions on which such recognition is based have ceased to exist. According to Section 73(1) sentence 2 of the Asylum Procedure Act, this is in particular the case if, after the conditions on which his recognition as being entitled to refugee status is based have ceased to exist, the foreigner can no longer refuse to claim the protection of the country of which he is a citizen.

15 In Section 73(1) sentence 2 of the Asylum Procedure Act, the legislators transposed into national law the requirements of Union law under Article 11(1)(e) and (f) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ EU L 304 of 30 September 2004 p. 12; corr. OJ EU L 204 of 5 August 2005 p. 24), with regard to the cessation of refugee status when the circumstances in connection with which the individual was recognised as a refugee have ceased to exist. Therefore the requirements for revocation under Section 73(1) sentence 1 and 2 of the Asylum Procedure Act must be construed in compliance with Union law, according to the corresponding provisions of the Directive, which in turn are based on Article 1 C(5) and (6) of the Geneva Convention on Refugees – the GRC. The same applies for cases in which the underlying applications for protection – as here – were filed before the Directive took effect (see judgment of 24 February 2011 - BVerwG 10 C 3.10 - juris at 9; to be published in the BVerwGE collection).

16 The appealed decision is not incompatible with the law on grounds that the Federal Office did not exercise discretionary power in its revocation decision. The clarifying new provision of Section 73(7) of the Asylum Procedure Act

makes clear that in cases such as the present one, where the decision on recognition of refugee status became final and absolute before 1 January 2005, review under Section 73(2a) sentence 1 of the Asylum Procedure Act must take place no later than 31 December 2008. Thus the legislators arrived at a transitional provision for old recognitions of status that became absolute before 1 January 2005, and defined the date by which these must be reviewed for revocation or reversal. It follows that no discretionary decision is required before such a review and a consequent denial of requirements for revocation and reversal in the procedure prescribed since 1 January 2005 (a negative decision) (judgment of 25 November 2008 - BVerwG 10 C 53.07 - Buchholz 402.25 Section 73 Asylum Procedure Act no. 31, at 13 et seq.).

17 However, with regard to the substantive requirements for revocation, and especially with regard to the standard of probability on which the likelihood of persecution was based, the appealed judgment is incompatible with Section 73(1) sentence 1 und 2 of the Asylum Procedure Act, which must be construed in the light of Directive 2004/83/EC. According to Article 11(1)(e) of the Directive, a third country national ceases to be a refugee if he or she can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality. In examining this reason for cessation of refugee status, Member States are to have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded (Article 11(2) of the Directive). Article 14(2) of the Directive governs the distribution of the burden of proof to the effect that without prejudice to the duty of the refugee in accordance with Article 4(1) of the Directive to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State must on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee.

18 a) The European Court of Justice, in its judgment of 2 March 2010 (Case C-175/08 et al., Abdulla et al. - NVwZ 2010, 505) further specified these requirements of Union law to the effect that the ‘protection’ of the country of origin

mentioned in Article 11(1) (e) of the Directive refers only to the same protection as that which has up to that point been lacking, namely protection against the acts of persecution envisaged by the Directive (ECJ, judgment of 2 March 2010, op. cit., at 67, 76, 78 et seq.). In this regard, the European Court of Justice pointed out that the termination of refugee status because of changes in the country of origin fundamentally has a symmetric relationship with recognition of that status. Article 11(1) (e) of Directive 2004/83/EC, in the same way as Article 1 C (5) of the GRC, provides that a person ceases to be classified as a refugee when the circumstances as a result of which he was recognised as such have ceased to exist, that is to say, in other words, when he no longer qualifies for refugee status (ECJ, judgment of 2 March 2010, op. cit., at 65). According to Article 2 (c) of the Directive, a refugee is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. If the circumstances on the basis of which that status was recognised change, and if the original fear of persecution within the meaning of Article 2 (c) of Directive 2004/83/EC therefore no longer seems to be well-founded, the individual can no longer refuse to avail himself or herself of the protection of the country of origin (ECJ, judgment of 2 March 2010, op. cit., at 66), unless the person has some other reason to fear being ‘persecuted’ within the meaning of Article 2(c) of the Directive (op. cit., at 76). The circumstances which lead to a recognition of refugee status, or conversely, to its termination, are therefore in a symmetric relationship with one another (ECJ, judgment of 2 March 2010, op. cit., at 68).

19 With regard to the standards for termination of refugee status according to Article 11(1)(e) and (2) of the Directive, the European Court of Justice has stated that the change of circumstances must be of such a significant and non-temporary nature that the refugee’s fear of persecution can no longer be regarded as well founded (ECJ, judgment of 2 March 2010, op. cit., at 72). For this purpose it must be established that the factors which formed the basis of the refugee’s fear of persecution, and which resulted in the recognition of refu-

gee status, may be regarded as having been permanently eradicated (ECJ, judgment of 2 March 2010, op. cit., at 73).

20 aa) A significant change in the circumstances giving rise to persecution presupposes that the actual circumstances in the country of origin must have changed clearly and materially with regard to the factors that gave rise to the risk of persecution from which the recognition of refugee status originally derived. In the comparative consideration of the circumstances at the time of recognition of refugee status, and of the circumstances of fact relevant to revocation under Section 77(1) of the Asylum Procedure Act, new facts must indicate a significant change, material to a decision, in the basis on which the likelihood future persecution is determined. A reassessment of an essentially unchanged situation of fact is not sufficient, because the mere passage of time per se does not bring about any change in the situation of fact. However, because the likelihood of future danger under asylum law is contingent on time and facticity, cases are conceivable in which the passage of a rather long period of time without special events in the persecutor state, when combined with other factors, might have a comparatively greater significance than in other fields of law (see judgments of 19 September 2000 - BVerwG 9 C 12.00 - BVerwGE 112, 80 <84> and 18 September 2001 - BVerwG 1 C 7.01 - BVerwGE 115, 118 <124 et seq.>).

21 Because of the symmetry of the standards for the recognition and termination of an entitlement to refugee status, since the transposition into national law of the Union law requirements set forth in Article 11 and Article 14(2) of Directive 2004/83/EC it has no longer been possible to follow the former case law of the Federal Administrative Court on Section 73 of the Asylum Procedure Act, inasmuch as that case law was founded on different standards for deciding likelihood. According to that case law, revocation of refugee status presupposed that the relevant circumstances at the time when the status was granted must have changed in the meantime in such a way that if the foreigner returned to his or her country of origin, there was a ‘sufficient’ probability that any repetition of the measures of persecution that had provoked his or her flight could be ruled out for the foreseeable future (judgments of 1 November 2005 - BVerwG 1 C 21.04 - BVerwGE 124, 277 <281> and of 12 June 2007 - BVerwG 10 C 24.07 -

Buchholz 402.25 Section 73 Asylum Procedure Act no. 28, at 18; so too, the court below in the appealed decision). This standard, lower by comparison to ‘considerable’ probability, was developed in the case law of the Federal Constitutional Court and the Federal Administrative Court concerning the fundamental right of asylum in cases of previous persecution. It was then transferred to apply to the protection of refugees, and finally also entered into the requirements for revocation, unless an entirely new or different persecution was asserted that was no longer connected in any way with the previous one (judgment of 18 July 2006 - BVerwG 1 C 15.05 - BVerwGE 126, 243, at 26).

22 This substantive-law concept of different standards of probability for the likelihood of persecution is unknown to Directive 2004/83/EC. Instead, the Directive adopts an evidentiary approach that applies a uniform standard of determining likelihood when establishing and terminating the entitlement to refugee status, as articulated in the Member States’ obligation to verify, under Article 14(2), and in the actual presumption of persecution under Article 4(4) of the Directive (judgments of 27 April 2010 - BVerwG 10 C 5.09 - BVerwGE 136, 377, at 20 et seq., and of 7 September 2010 - BVerwG 10 C 11.09 – juris, at 15). This proceeds not only from the wording of the latter provision but also from the legislative history, because the Federal Republic of Germany was unable to win acceptance for its suggestion of distinguishing between the different prognostic standards of ‘considerable’ probability and ‘sufficient’ probability (see the results of the deliberations of the ‘Asylum’ group of 25 September 2002, Council Document 12199/02 p. 8 f.). Accordingly, under Union law, a uniform standard of probability applies in assessing the likelihood of persecution in the protection of refugees, even if the applicant has already suffered persecution previously. This standard of probability, contained in the characteristic of ‘... a well-founded fear of being persecuted…’ under Article 2 (c) of the Directive, is based on the case law of the European Court of Human Rights. In the examination of Article 3 of the ECHR, that court focuses on the actual danger (‘real risk’; see ECtHR, Grand Chamber, judgment of 28 February 2008 - no. 37201/06, Saadi - NVwZ 2008, 1330 <at 125 et seq.>); this is equivalent to the standard of considerable probability (judgment of 18 April 1996 - BVerwG 9 C 77.95 - Buchholz 402.240 Section 53 Aliens Act 1990 no. 4; decision of 7 February 2008 - BVerwG 10 C

33.07 - ZAR 2008, 192 <juris at 37 et seq.>; judgment of 27 April 2010, op. cit., at 22).

23 From the structural symmetry between reviews for the purpose of either recognizing or terminating refugee status, in which the same question of the existence of a well-founded fear of persecution must be assessed within the meaning of Article 9 in conjunction with Article 10 of the Directive, it follows that the standard of materiality for the change in circumstances must be determined according to whether there is still a considerable probability of persecution (see ECJ, judgment of 2 March 2010, op. cit., at 84 et seq., 98 et seq.). This single standard of probability is the only one known to the Directive in assessing the risk of persecution, irrespective of the phase – whether recognition or termination of refugee status – in which that risk is being examined. There is much to argue that the Member States cannot deviate from this principle, to the individual's advantage, under Article 3 of the Directive. This is because the compelling reasons for termination may well count among the core provisions that are to be construed uniformly in all Member States, so as to avoid impairing the system established by Directive 2004/83/EC (see ECJ, judgment of 9 November 2010 – Cases C-57/09 and C-101/09, B and D - NVwZ 2011, 285 at 120, on reasons for exclusion). But we may set that question aside, because there is no apparent indication that in the Directive Implementation Act of 19 August 2007, the German legislator intended to hold firm to the different probability standards of national law, as set forth above, in cases of recognition of refugee status. Rather, the newly introduced Section 60(1) sentence 5 of the Residence Act, according to which Article 4(4) of the Directive, together with other provisions, is additionally to be applied in determining the existence of persecution within the meaning of Section 60(1) sentence 1 of the Residence Act, indicates that the legislator has adopted the Directive's approach to evidence.

24 bb) Furthermore, the change in the circumstances on which the recognition of refugee status was based cannot be merely temporary, according to Article 11(2) of Directive 2004/83/EC. Rather, it must be established that the factors which formed the basis of the refugee's fear of persecution and the recognition of refugee status may be regarded as having been permanently eradicated

(ECJ, Judgment of 2 March 2010, op. cit., at 72 et seq.). For the Member State to meet its obligation under Article 14(2) of the Directive to demonstrate that a person has ceased to be a refugee, it is not sufficient that a well-founded fear of persecution has recently ceased to exist as of the time in question. Rather, the required permanent change demands that the Member State must demonstrate the basis in fact for an expectation that the change in circumstances can be considered stable, or in other words, that the factors that formed the basis of persecution will remain eradicated for the foreseeable future. In one case in which a persecuting regime was overthrown (Iraq), this Court has previously decided that as a rule, a change may be regarded as permanent only if a state or other actor of protection within the meaning of Article 7 of Directive 2004/83/EC is present in the country of origin and has instituted suitable steps to prevent the persecution that formed the basis for the recognition of refugee status (judgment of 24 February 2011, op. cit., at 17). This is because a revocation of refugee status is justified only if the individual concerned is offered permanent protection in the country of origin against being (re)exposed, with a considerable probability, to measures of persecution. The assessment of probability in determining the likelihood of persecution requires a ‘qualifying’ mode of consideration, in the sense of weighing and balancing all ascertained circumstances and their significance from the viewpoint of a rational, judicious person in the same position as the individual concerned, not least of all with an added consideration of the severity of the feared encroachment; thus that assessment must also take due account of the aspect of what can be reasonably expected from a person (judgment of 5 November 1991 - BVerwG 9 C 118.90 - BVerwGE 89, 162 <169 f.>; decision of 7 February 2008, op. cit., juris at 37). Exactly the same mode of consideration applies for the criterion of permanence. The greater the risk of persecution, even if it remains below the threshold of a considerable probability, the more permanent, and the more accessible to forecasting as such, the stability of the change in circumstances must be. If – as in the present case – changes that are thought to result in the termination of refugee status must be assessed within a regime that still remains in power, a high standard must likewise be required for their permanence. Union law requires that the assessment of the risk must be carried out with vigilance and care, since the issues at stake relate to the integrity of the person and to individual liberties, mat-

ters which relate to the fundamental values of the Union (ECJ, judgment 2 March 2010 op. cit., at 90). Nevertheless, one also cannot demand a guarantee that the changed political circumstances will continue indefinitely into the future.

25 b) In the present case, the court below, in its determination of the likelihood of persecution, applied the standard of sufficient certainty. In so doing, it contravened Section 73(1) sentence 2 of the Asylum Procedure Act; the court's decision was founded on that contravention. Because the court below arrived at its findings of fact under a standard that is legally inapplicable, as explained above, the appealed decision must be set aside, and the matter must be remanded to the court below (Section 144(3) sentence 1 no. 2 Code of Administrative Court Procedure). It is the task of the court below, as the trier of fact, to assess conditions in the country of origin on the basis of an overall perspective, and to arrive at a likelihood of risk in view of the circumstances that formed the basis for the recognition of the individual's refugee status, while also considering the case law of other higher administrative courts.

26 The disposition as to costs is reserved for the final decision. No court costs will be charged, in accordance with Section 83b of the Asylum Procedure Act. The value at issue proceeds from Section 30 of the Attorneys' Compensation Act.

Prof. Dr Berlit Prof. Dr Dörig Richter

Prof. Dr Kraft Fricke