

Session 4: Highlights of contentious procedural and material law issues of European character in national case law on migration and/or asylum

Germany (by Holger Böhmann):

1. Syria, military draft evaders/refusal to perform military service

Art. 9 par. 3 of the Qualification Directive 2011/95/EU

CJEU judgment of 19 November 2020 - C-238/19, EZ, reference for a preliminary ruling by the Administrative Court Hannover: strong presumption for a connection between reasons and acts of persecution

Trials scheduled at the Federal Administrative Court for 17 November 2022 (cases no. 1 C 21.21 and others)

2. Subsequent applications (Art. 2 lit. q APD), Artt. 33 (2) lit d, 40 (2) and (3) and 46 (1) lit a.ii. of the Asylum Procedures Directive 2013/32/EU,

Reference for a preliminary ruling by the Administrative Court Sigmaringen, decision of 22.02.2022, CJEU C-216/22 pending: Is an interpretative judgment of the CJEU a new element which justifies a secondary application and a decision on the substance?

CJEU, judgment of 9 September 2021 C-18/20, Austrian case; two steps assessment under Art. 40 (2) APD

Federal Administrative Court, case no 1 C 26.21: Is the granting of a protection status by one Member State (here: Greece) binding for another Member State (here: Germany) for a decision on a secondary application? Is the other Member State obliged to grant protection status a second time (if the requirements are fulfilled), although under Art. 3 (1) 2 of the Dublin III Regulation (EU) 604/2013 there is only one decision?

3. Diverging assessment of facts (on the situation in countries of origin or EU Member States) by the instance courts, no means to unitize under German procedural law, revision only on questions of law (Sec. 137 (2) of the Code of Administrative Court Procedure - VwGO)

Latest series of cases; appeals of the Federal Office for Migration and Refugees (BAMF) against the jurisprudence of the High Administrative Court Northrhine-Westfalia (Münster), no inadmissibility decisions in cases of return to Italy: latest e.g. Federal Administrative Court, decision of 30 August 2022 - 1 B 54.22 -, appeal dismissed

Proposal by the current German government coalition for the introduction of a revision on facts in asylum cases, coalition agreement 2021-2025, page 111: unification of jurisprudence