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2.5.3 Assessment of prosecution or punishment for refusal to perform military service

The CJEU interpreted the recast Qualification Directive, Article 9(2e) and (3) in *EZ* v *Federal Republic of Germany* (C 238/19) and ruled that, in the context of a civil war, there is a strong presumption that a refusal to perform military service is connected to a reason which may give rise to refugee protection. The particular case concerned an applicant who fled Syria to avoid military service and fighting in the war. The Federal Office for Migration and Refugees (BAMF) in Germany granted him subsidiary protection in 2017 based on the circumstances at that time, noting that grounds for refugee status did not apply to him since he had not been persecuted in Syria. He challenged this conclusion and argued that his flight from Syria and fleeing military service would expose him to a risk of persecution.

The CJEU held that, where the country of origin does not provide a legal possibility to refuse military service, the recast Qualification Directive, Article 9(2e) does not preclude a refusal to perform military service in a conflict even if the refusal was not done formally through a procedure. Regarding the situation in April 2017, it should be assumed that, irrespective of the field of operation, military service will involve the commission of crimes if the military service is performed during a civil war which involves crimes committed systematically by the army. The court also noted that, in accordance with the recast Qualification Directive, there must be a connection between the grounds of persecution and the refusal to perform military service. According to the court, the existence of such a connection cannot be deemed to be established and an examination cannot be circumvented by the national authorities responsible for assessing the application for international protection. There was a strong presumption that the refusal of military service in the particular circumstances of the case submitted to the court relates to one of the five reasons included in the recast Qualification Directive, Article 10. The court added that the competent national authorities must ascertain, in light of all the circumstances, whether the connection was plausible.

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