

The German Constitutional Court may challenge EU asylum law

On 28 October, the Federal Constitutional Court in Karlsruhe started considering a complaint brought by an Iraqi who had asked for asylum in Germany. The complainant was deported from Germany to Greece, where he submitted his first asylum application. The Court's ruling to be passed in spring 2011 challenging the principle of automatic expulsion from Germany for asylum seekers who come from 'safe third countries' would mean a need to amend German asylum law. This would be contrary to the regulation of the Council of the European Union regarding asylum issues.

The complaint the Court is considering concerns a decision passed by the Federal Office for Migration and Refugees in Nuremberg. The Iraqi emphasised in his complaint the difficulties related to the launch of the asylum granting procedure in Greece and described the appalling conditions in which refugees awaiting the decision have to live. Pursuant to article 16a of the German constitution and the Dublin II Regulation of the Council of the European Union, individuals who come from 'safe third countries' have no right to seek asylum in Germany and must be automatically expelled to that third country. Statements from the Court's judges so far, as well as recommendations from the European Court of Human Rights and decisions by some member states (including Denmark, Holland and the United Kingdom) to withhold the implementation of the Dublin II regulation, have given grounds to expect that the Iraqi's complaint will be considered positively. The Court's decision would be another instance in which the supremacy of EU law over German law is challenged. <zawil>