ADMINISTRATIVE COURT OF KARLSRUHE

In the name of the people

Judgment

In the Administrative Court Case of

Steven Robert WHITSETT,
[Plaintiff's Home Address Omitted], Germany
- Plaintiff –

authorized to sue:
Lawyers Kugler u. Kollegen,
Landhausstr. 68, 70190 Stuttgart, Germany, Case No.: 1198118 HF09

against

Federal Republic of Germany,
represented by the Federal Minister of the Interior and Home Affairs,
represented by the Head of the Federal Office for Migration and Refugees,
- Karlsruhe Branch Office -
- Building F - Pfizerstr.1,76139 Karlsruhe, A2.7491406-368

because of asylum application

The Karlsruhe Administrative Court - 5th Chamber - by Judge Friedrich, Administrative Court, as a single judge at the oral hearing on 13.09.2022, found in favor of the defendant:

Insofar as the action was withdrawn, the proceedings are discontinued. The defendant is ordered to pay the costs of the proceedings, annulling clauses 3 to 6 of the decision of the Federal Office for Migration and Refugees of 02.08.2018, to grant the plaintiff subsidiary protection status. In all other respects, the action is dismissed. The plaintiff and the defendant shall each pay half of the costs of the proceedings.

Facts

The plaintiff seeks the granting of refugee status, alternatively the granting of subsidiary protection status, and the determination of prohibitions of deportation pursuant to § 60 par. 5 and § 60 par. 7 sentence l AufenthG.

The plaintiff, who was born in Florida on 16.02.1972, is an American citizen. On 09.05.2018, the plaintiff entered Germany coming from Denmark, where he filed an application for asylum on 13.06.2018.

On 13.06.2018, the plaintiff was personally heard by the Federal Office for Migration and Refugees (hereafter, Bundesamt). In this interview, he stated that he had recently lived in Lake City, Florida. His parents and his brother still lived in Florida. In addition, he had a sister, who lives in Massachusetts. In 1990, he graduated from a private high school in Hollywood, Florida. He then joined the military. He initially studied religion at [Palm beach] Atlantic University. In the first Gulf War, he was initially deployed as a medic. After that, he studied [psychology] at Nova Southeast University to study [psychology]. He continued to study medicine until November 1994, when he was imprisoned. While incarcerated, he received his law degree from the Blackstone Career Institute. He had also intended to work in this profession but was unable to do so in the United States because of his conviction. He wants to practice this profession here in Germany if he is allowed to stay in Germany. As to the reasons for his escape, he essentially stated that he had completed his prison sentence on September 13.09.1999. However, he had been kept in prison for longer and told that he might never be released because of his sexual offenses. Therefore, he was placed in the Martin Treatment Center. With the help of a helicopter, he managed to escape from the facility at 1:00 p.m. on June 5, 2000. He and his friend were then on the run for 40 hours and were caught in a swamp. They even made a movie about it which was called Prison Break. He was then sentenced to another 20 years in prison

and was in solitary confinement for 3651 days. In June 2010, he was finally transferred to a high-security prison, where he was housed with murderers, rapists and other persons. He was finally released on 21.04.2016. His family had supported him throughout this time. He had been in custody for a total of 22 years in prison. After his release, he initially lived with his family members. With regard to the situation of sex offenders in the United States he stated that the victim's statements did not have to be proven in order to be convicted as a sex offender. The victim's testimony was enough, he said, and if the jury believed the victim, then one would be convicted. Also, the age for consensual sex is different in the U.S. than in Germany. The age limit is 16 years. After a conviction as a sex offender, the data would be published forever. Anyone could see this, such as name, phone number, address. Even your driver's license will say that you are a sex offender. You can tell by the number on the bottom right of the driver's license. In this way, the police can immediately see that you are a sex offender.

In addition, every six months you have to update your data, such as your Facebook account and data from other social networks. You are also not allowed to leave your house for more than 72 hours without a permit from the local sheriff's office. If you make even one small mistake, you can go to jail for at least five years. In most cases sentences of up to 15 years or more. ln the data bank for sex offenders, there are about some 800,000 registered offenders. The law also forbids people to stay within 500 meters of schools, kindergartens, cinemas, bus stops, or parks. This practically forces people to stay […] to live outside of sites. He himself had not complied with this and lived in the city of Lake City. He did not know why nothing happened to him because of this and this had not been followed up. He does not understand so many things. He could not find a job for this reason either. If he applied somewhere, then his convictions would be known [because of the] background check. He wanted to further his education and applied for [entry] at Florida Gateway College. Because of his criminal record, however, he was rejected. He then applied to Florida State University and even submitted four letters of recommendation. Despite these recommendations, his application was rejected. Virtually every opportunity for further education, on the job market,

and also on the housing market were blocked. In principle, he had been under house arrest until the end of his life. The worst thing was that he had had to suffer this for something that is not even a crime in Germany. After many unsuccessful attempts, he finally got a job at KFC in August 2016. Despite his university degree, he initially worked there as a cleaner. The owner of the store had always hired sex offenders because he could treat and pay them as he wished. He had only paid the minimum wage because he knew that these people had no other possibility to find a job. After only three months there, he was promoted to manager. Nevertheless, he only received the minimum wage. About three weeks before his [immigration to Germany] he was discriminated against by a cook because of his homosexuality. He reported the incident to the district manager, who, after talking to the cook, disclosed it to the staff that [he] was homosexual. Therefore, he had to accept being called that.

Before he left the country, the International Megan's Law was passed, according to which sexual offenders are required to surrender their passports. Sex offenders receive a new passport with a mark that they could be identified as a sex offender. In the U.S., he had not been able to live in a city, and now he was virtually forbidden to leave the country. His situation in the U.S. is no different than that of Jews in Germany in the 1930s. Shortly before the law came into force, he left the USA. According to the new law, he was threatened with ten years' imprisonment if he returned to the country, since he had left the country without permission. If it became known in the USA that he had left the country, an international arrest warrant would be issued.

To establish his credibility, the plaintiff submitted to the federal office, among other things, his registration as a sex offender (registration number 839059) dated 21.04.2016, along with instructions on his duties.

By decision dated 02.08.2018, the plaintiff's application for recognition of refugee status and subsidiarity protection status was rejected. (items 1 to 3).

Under point 4, it was determined that deportation prohibitions on deportation pursuant to § 60 (5) and § 60 (7) sentence 1 of the Residence Act do not apply. In paragraph 5, the plaintiff was ordered to leave the Federal Republic of Germany within 30 days of the notification of the decision; in the case of the

the time limit for departure ends 30 days after the incontestable conclusion of the asylum proceedings. If the plaintiff did not comply with the departure deadline, he would be deported to the USA. He could also be deported to another state to which he would be allowed to enter; or which would be obligated to take him back. The entry and residence ban was limited to 30 months from the date of deportation. The decision was served on 04.08.2018.

On 14.08.2018, the plaintiff filed a lawsuit. In support of his claim, he states that he was [sentenced] on 22.02.1995, pursuant to title Xl.Vl, chapter 827.071.3 of the Florida Statutes, and on the basis of chapter 800.04.3, Florida Statutes, to a term of imprisonment of eight years. However, shortly before he was to be released from custody, he was [transferred] to the Martin Treatment Center. For the escape attempt from this he was sentenced to a further 20 years in prison. Based on his conviction from 1995, he was a so-called "sexual offender". As such, he is subject to a number of statutory requirements. Since the enactment of the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators Treatment and Care Act, he was subject to the requirement that, prior to release from custody, it be determined whether and to what extent he would be at risk of reoffending. For the duration of such an examination, the person in question would be placed in an appropriate facility, despite the expiry of the term of imprisonment. This was his case when he was transferred to the Martin Treatment Center. He was also still subject to these regulations. In addition, his personal data would be published on the basis of Megan's Law as part of a community notification. This applies to all personal data, such as his name, place of residence, gender, body weight, and body height. Also the current address is also published. Furthermore, he is subject to the legal obligation to register as a sex offender. Within 48 hours of moving into a municipality, he must register with the local police in person within 48 hours of moving into a municipality and appear at the driver's license office within 48 hours of moving to the community, that he was a sexual offender could be entered on his driver's license at the earliest opportunity. He would also have to register 48 hours before leaving the

State of Florida to report to the local police department in order to reside in another state.

Also before using internet services, such as an e-mail address, he would have to contact the local police authorities. Finally, he must report regularly twice a year to the local police to compare his data. He would have these obligations for the rest of his life. Violations of these obligations would be punishable by law and would be fundamentally punished. First-degree violations would be punishable by imprisonment of up to 30 years, second-degree violations would be punishable by imprisonment of up to 15 years, and third-degree offenses, in turn, would be punishable by imprisonment of up to 5 years, and in some circumstances up to 15 years, with a minimum sentence of at least 5 years. Directly triggering the escape [from the USA] for him was the International Megan's Law, which came into force on 31.10.2017. According to this, the State Department is prohibited from issuing a passport to a sex offender without having it a so-called unique clarifier being affixed to the passport. Further, any passport issued to date shall be revoked if it has been issued to a sex offender. According to the law, all sex offenders are required to give notice of a trip abroad at least 21 days before the planned start of the trip. A violation of this requirement constitutes at least a federal offense and would be prosecuted accordingly by the federal authorities. By his departure from the U.S. without having notified the responsible sheriff's office, accordingly, he would face a sentence of up to 15 years in prison in the event of his return. He also faces criminal prosecution by federal authorities for failing to surrender his passport. Therefore, he faces a further prison sentence of up to ten years. Due to the identification in his driver's license and passport as a sexual offender, he is to be regarded as a member of a social group. On the basis of the restrictions, he should be granted refugee status or recognized as a person entitled to asylum. Furthermore, in the event of his return […] prison sentence, so that at least the conditions for an inhumane and degrading treatment are met within the meaning of section 4(1) sentence 2 no. 2 of the Asylum Act. In his home country, he was subject to an extensive system of surveillance and control by state authorities. Due to the fact, that violations of this system to the extent described are punishable by law, he had to live with a constant danger of prosecution and punishment.

In addition, due to the publication of his biography, he is not only subject to state control, but also to the control of his private environment. He could not prevent anyone from being informed about his biography. As a result, he is confronted with the breaking off of private contacts, discrimination, assaults, loss of his job, or even his home. His right to self-determination is severely restricted. He can neither temporally nor spatially escape this system, since he is subject to it for the rest of his life. The numerous restrictions violate his right to private life in the sense of Art. 8 of the ECHR.

According to the documents sent by the Columbia County Sheriff s Office, he is currently being prosecuted for four violations of the reporting requirements and the obligation to surrender his passport. These are third-degree offenses. At the hearing on August 3, 2020, the plaintiff filed a motion to dismiss the complaint with regard to paragraph 2 of the decision of the Federal Office for Migration and Refugees of 02.08.2018.

The plaintiff requests:

> That the defendant be obliged to grant the plaintiff refugee status or, alternatively, subsidiary protection or, in the further alternative, a ban on deportation pursuant to § 60 para. 5 or para. 7 sentence 1 AufenthG, and to annul the decision of the Federal Office for Migration and Refugees dated 02.08.2018 insofar as it is contrary to this.

The defendant applies for

> Dismissal of the action

In justification, the Federal Office states that, pursuant to Section 60 (6) of the Residence Act, in general, that a foreigner is at risk of prosecution and punishment in another state and the concrete danger of a punishment that is lawful according to the legal system of another of another state does not in principle preclude deportation. This provision emphasizes the neutrality of the Federal Republic of Germany vis-à-vis other legal systems. This principle has applied for decades. In principle, therefore, a threat of punishment would be neither

relevant to refugees nor of significance for the granting of subsidiary protection, unless the aim is, for example, the suppression of a political opinion and a harsher punishment than in the case of comparable other criminal offenses in the sense of a political malus. This was not evident in the present case. The plaintiff does not have to fear liability under the Jimmy Ryce Act with a considerable likelihood. The plaintiff was already not considered a person in the category of "the person is likely" after his detention in April 2016. The plaintiff was not classified as a person in the category "the person is likely to engage in acts of sexual violence." For a continuation of the Jimmy Ryce Act rules or a renewed imminent classification in this category with the consequence that the Plaintiff would again have to fear incarceration. On the other hand, the preventive nature of the standard, which is intended solely to protect the public from sex offenders, as long as they pose a further danger. The law, however, does not contain any repressive punishment to sanction injustice. Therefore, placement in such a facility is a measure of danger, also results from the register excerpt of 30.07.2019 of the US Department that violations of the plaintiff's registration requirements, and whether and to what extent the plaintiff would actually be punished for a violation of the registration requirements in case of his return to the U.S. is not clear from the excerpt from the […] and must be clarified in proceedings under the rule of law. The mere naming of a maximum sentence is in this respect no indication of a considerably probable violation of the ECHR. Moreover, a possible punishment of the plaintiff had no relevance for refugees since this is not linked to any asylum- and refugee-relevant [provisions]. The reporting requirements, the storage of personal data and the provisions of the International Megan's Law do not constitute an act of persecution. There were no indications that the interference with the informational self-determination by the U.S. authorities was outside the legal framework provided for by law and that the laws applied in each case were not enacted in accordance with the rule of law in a democratic state with a legitimate purpose.

By order dated 03.07.2020, the Board transferred the proceedings to the single judge. By letter dated 30.07.2020, the Federal Bureau of Investigation submitted a registry excerpt from the U.S. Department of Homelands Security dated 30.07.2019. The applicant has

also submitted a registry extract from the Columbia County Sheriff's Office dated 23.10.2018, stating that he was charged with a violation of 943.0435.14a. ,,third degree, fail to register as required biannually", the sexual offender shall also produce his or her passport, if he or she has a passport," for a violation of 943.0435.4b ,,third degree, fail to report vacating permanent residence," and for a violation of Provision 943.0435.7 ,,third degree, fail to report residence change other state juris.".

On 08.03.2020, the court held an informal hearing with the plaintiff. By order of 07.07.2021, the court took evidence by obtaining official information from the German Foreign Office. The Foreign Office informed the court in a letter dated letter dated 27.04.2022 that, according to research by the cooperating attorney, the plaintiff had been convicted on several counts of sexual offenses against minors on 22.02.1995. The research had revealed that he had been sentenced to eight years' imprisonment. On 02.06.2010, the applicant was then sentenced to a further 18 years of imprisonment after he had attempted to escape from prison at gunpoint. Convicted sex offenders, according to information provided by the Cooperating Lawyer, are required by Florida law to report twice a year to their local police departments. This would include providing information on the offender's personal data (date of birth, address, or notification of a new address in the event of a change of address, telephone number, e-mail address, all motor vehicles in his possession, passport data and all certificates of completed vocational training).

According to the research, the plaintiff is currently being sought for violating the registration requirements. He had not informed the authorities about the possession and data of his passport. Furthermore, he did not inform the authorities that he had left his place of residence or what his new address was. At present, no charges have been filed, but a warrant has been issued for his arrest. This would be issued by the State of Florida until the wanted person is in custody. There is a search warrant for the plaintiff. According to information from the cooperating attorney, the sentence for violating the reporting requirement for convicted sex offenders is generally at least 219 months. The specific sentence depends on the individual judge. Whether or not placement in a treatment center would result

depends, among other things, on the final sentence or the assessment of psychological experts. It is possible to be heard on the matter and to appeal. In the case of placement in a treatment center, there is a regular [evaluation] to see whether the person's behavior has changed and whether he or she can be released. For further details of the facts and the dispute, reference is made to the file submitted by the Federal Office and the court file which were the subject of the oral proceedings.

Reasons for the decision

Pursuant to Section 76 (1) of the Asylum Act, the decision is made by the single judge. Insofar as the action with respect to recognition as a person entitled to asylum has been withdrawn, the proceedings shall be discontinued pursuant to section 92(3) VwGO.

Insofar as the Federal Office for Migration and Refugees, by contacting the applicant by telephone after the oral proceedings and bypassing the plaintiff, the Federal Office attempted to influence the judicial decision-making process [regarding] the information provided by the Foreign Office on 27.04.2022 for the first time in terms of its content. These statements are not taken into account in the present proceedings, as the oral proceedings have already been closed and the operative part concluding the instance was already published on 13.09.2022 and was already deposited at the Registry.

The admissible action is well-founded to the extent shown in the operative part. The refusal to grant refugee status by the decision of the Federal Office of the Federal Office of 02.08.2018 is lawful and does not violate the plaintiff's rights. (Section 1 13 (5) sentence 1 VwGO).

However, the plaintiff has a claim to the granting of subsidiary protection status pursuant to section 4(1) sentence 2 no. 2 of the Asylum Act. Consequently, points 3 to 6 of the decision of the Federal Office of 02.08.2018 are unlawful and violate the rights of the plaintiff.

1. the plaintiff has no right to be granted refugee status pursuant to Section 3 (1), (4) Asylum Act.

a) Pursuant to Section 3 (4) of the Asylum Act, a foreigner who is a refugee pursuant to Section 3 (1) of the Asylum Act shall be [granted]refugee status, unless he or she fulfills the requirements of § 60(8) sentence 1 of the Residence Act. A foreigner is a refugee pursuant to Section 3 (1) Asylum Act within the meaning of the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 ll p. 559, 560), if he or she has a well-founded fear of persecution on account of his race, religion, nationality, political conviction or membership of a particular to a certain social group, he is outside the country (country of origin), of which he or she is a national and for which he or she cannot claim protection, or does not wish to do so because of this fear, or in which he or she had his or her previous habitual residence as a stateless person. Naöh § 3a para. 1 AsylG (cf. also Art. 9 para. 1 RL 20111951EU - QRL -) the following are considered as persecution within the meaning of § 3 para I AsylG are acts which, due to their nature or are so serious that they constitute a serious violation of fundamental human rights, in particular the rights from which the asylum seeker is according to Art. 15 para. 2 of the Convention of 4.11.1950 for the Protection of Human Rights and Fundamental Freedoms (Federal Law Gazette 1952 ll p.685,953), or in an accumulation of different measures, including a violation of human rights which is so serious that a person is affected by it in a manner similar to that described in paragraph 1. According to section 3a (2) of the Asylum Act, persecution within the meaning of paragraph 1 may include, inter alia, the following actions: the use of physical or psychological violence, including sexual violence; legal, administrative, police violence; legal, administrative, police or judicial measures which as such are discriminatory or in discriminatory or applied in a discriminatory manner; disproportionate or discriminatory criminal prosecution or punishment; deprivation of legal judicial protection resulting in disproportionate or discriminatory punishment; punitive discriminatory punishment; prosecution or punishment for refusing to perform military service in a conflict when military service would include crimes or acts that would fall under the exclusion clauses of Section 3(2) of the Asylum Act.

According to § 3a (3) AsylG, a distinction must be made between the reasons for persecution and the acts classified as persecution. According to § 3c Asylum Act, the persecution may originate from

1. the state,

2. parties or organizations that control the state or a substantial part of the state's territory, or

3. non-state actors, provided that the actors mentioned in numbers 1 and 2, including international organizations, are manifestly unable or unwilling to offer protection from persecution within the meaning of section 3d of the Asylum Act and this irrespective of whether there is a state power in the country or not.

The character of an act of persecution requires that the conduct of the actor concerned in the sense of being objectively directed at the violation of a legal interest protected under § 3a AsylG itself (cf. BVerurrG, judgment of20.02.2013 - 10 C 23.12 -, NVwZ 2013,936 m. w. N; Saxon OVG, judgment of '18.09.2014 - A 1 A 348113 -, marginal no. 38, juris). The prognosis standard to be used as a basis for the assessment is that of considerable probability, i.e., the relevant violations of legal rights must be threatened with considerable probability (cf. BVenruG, Urteil vom 20.02.2013 - 10 C 23.12 - loc. cit.; VGH Baden-Württemberg, judgment of 27 .08.2014 - A 11 S 1128114 -, juris; Sächsisches OVG, judgment of 18.09.2014 - A 1 A 348113 -, juris). Considerable probability requires that, in a summarized assessment of the entire relevant facts of life put forward for examination, circumstances that speak in favor of prosecution outweigh the facts to the contrary. A qualifying or evaluating approach in the sense of weighting and weighing of all established circumstances and their significance. The decisive factor is whether, from the point of view of a reasonably and not exaggeratedly fearful person in the situation of the concrete asylum seeker, after weighing all known circumstances, a return to the home country would be assessed as unreasonable (cf. VGH Baden-Württemberg, Judgment of 30.05.2017 - A I S 991115 -, juris marginal no. 25). The court makes its decision pursuant to Section 108 para.'l sentence 1 VwGO according to its free conviction derived from the overall result of the proceedings. Also in the

asylum proceedings, the required certainty of conviction must exist in such a way that the court is fully convinced of the truth (not only of the likelihood) of the individual fate of persecution alleged by the plaintiff. Due to the fact that the person concerned is in a typical state of evidentiary […] in particular with regard to the events he recounts in his home country, it is usually sufficient to establish credibility for these events. However, this does not exempt the court from forming a conviction within the meaning of Section 108 (1) of the VwGO. It is first of all the responsibility of the protection seeker to present the reasons for his or her fear of persecution in a conclusive manner. For this purpose, he must describe a coherent set of facts, giving precise details, from which it can be reasonably inferred that he or she is threatened with persecution in his or her home country. This includes that he must explain the events that fall within his sphere of responsibility, his personal experiences, which is suitable for filling in the gaps in the asserted claim. Significant contradictions and inconsistencies in the submission can stand in the way of this unless these can be convincingly resolved. In assessing the coherence of the facts of the case [the court] must take into account, among other things, the personality structure, level of knowledge, and origin of the person (cf. BVerwG, decision of 21.07.1989 - I B 239.89 -,NVwZ 1990, 171, juris marginal no. 3).b) On the basis of this, the plaintiff's submission is not suitable to justify the granting of refugee status. For in the present case, there is already no reason for persuasion within the meaning of § 3b Asylum Act.

Contrary to the plaintiff's opinion, as a convicted sex offender, he cannot be assigned to a social group within the meaning of § 3b para. 1 no. 4 AsylG. In this respect, the case law of the Federal Administrative Court has clarified that a group within the meaning of Section 3b (1) no. 4 of the Asylum Act is deemed to be a particular social group if the members of this group have innate characteristics or a common background that cannot be changed, or share characteristics or share a belief which is so significant for the identity or conscience that the person concerned that the individual cannot be compelled to renounce them, and the group has a clearly defined identity in the country concerned is regarded as different by the surrounding society. ln line

with Article 10(1)(d) of Directive 20111951EU and the case law of the Court of Justice of the European of the Court of Justice of the European Union (ECJ, judgments of 07.11.2013 - C-199/12, C-200112 -, juris and of 25.01.2018 - C-473116 -, juris), the prerequisites of Section 3b (1) No. 4 half of Section 1 of the Asylum Act must be fulfilled cumulatively. Art. 10 para. 1(d) of Directive 20111951EU in conjunction with the aforementioned case law of the of the ECJ referred to above, it is sufficiently clear that there is no specific social group in this sense [and] does not exist if the group in question does not form a clearly defined identity in the country concerned or is not perceived as different by the society surrounding it (BVerwG, Urteil of 19.04.2018 - 1 C 29.17 -, juris para.29 and 31). The independent requirement of the "clearly delimited identity" precludes an interpretation according to which a "social group" within the meaning of § 3b group" within the meaning of § 3b (1) No. 4 Asylum Act/Art. 10 (l) (d) Directive 20111951EU is established solely by the fact that a plurality or multitude of persons in a comparable manner from, for example, acts of persecution within the meaning of § 3a para. 1 or 2 of the Asylum Act; according to its unambiguous wording, § 3a para. wording, section 3b(2) of the Asylum Act/Art. 10(2) of Directive 20111951EU only applies in the case of an attributed affiliation to one of the reasons for persecution mentioned in the respective paragraph 1, not for the constitution of the "social group" itself. (BVerwG, decision of 28.08 .2019 - 1 B 63.19 -, juris marginal no. 9 f.). Measured against this, the group of sex offenders convicted in the United States of America do not qualify as a social group within the meaning of Section 3b (1) No. 4 of the Asylum Act, since this group of persons is neither characterized by a common characteristic from birth nor by another characteristic that is inherent to them from birth nor by any other communal characteristic that shapes identity to a particular degree. Rather, the connection derived by the [group] follows from the legal requirements applicable to sex offenders after their release. The state's categorization of a certain group of persons and the legal behavioral requirements that are linked to this as in this case under chapters 943.0435 and 775.215, Florida Statutes - cannot, however, in and of themselves establish a social group.

(2) Plaintiff is, however, entitled to be granted subsidiary protection status pursuant to § 4 para. '1 sentence 2 no. 2 AsylG.

a) According to § 4(1) of the Asylum Act, a foreigner is - subject to the exclusion of § 4(2) of the Asylum Act - entitled to subsidiary protection if he or she has substantiated reasons for the assumption that he is threatened with serious harm in his country of origin. Serious harm is deemed to be: (1.) the imprisonment or (2.) torture or inhuman or degrading treatment or punishment; or (3.) a serious individual threat to life or integrity of a civilian as a result of indiscriminate violence in the context of an international or internal armed conflict.

According to § 4 (3) Asylum Act, §§ 3c to 3e the Asylum Act is applied mutatis mutandis, with the following substitutes: protection from persecution or well-founded fear of persecution is replaced by the fear of persecution, the risk of serious harm, protection from serious harm or the actual risk of serious harm. The refugee status is replaced by subsidiary protection.

The concept of inhuman or degrading treatment within the meaning of § 4 para. 1 Salz2 No. 2 AsylG is not defined in more detail in the law. Since the provision serves to implement the QRL, it is to be interpreted in accordance with the corresponding term in Art. 15b QRL; for the criteria of inhuman or degrading treatment within the meaning of the QRL, it is not […]

For the criteria of inhuman or degrading treatment within the meaning of § 4 para. 1 sentence 2 no. 2 of the Asylum Act, as with § 60 para. 5 of the Residence Act in conjunction with § 60 para. 5 of the Asylum Act, it is necessary to define the criteria of inhuman or degrading treatment.

m. Art. 3 ECHR - the case law of the European Court of Human Rights (ECHR) is to be

human rights (ECHR) on Art. 3 ECHR (BVerwG, judgment dated 20.05.2020 - 1 C 11.19 -, juris para. 10; in detail also VGH Baden-Württemberg judgment of 12.10.2018 - A 11 S 316117 -, juris marginal no. 30 et seq.).

Under the concept of inhumane treatment, the intentional and consistent causing physical injury or physical or psychological suffering, whereas in the case of degrading, degrading treatment is not the infliction of pain, but rather the humiliation. Poor humanitary conditions can also constitute treatment within the meaning of Art. 3 ECHR (cf. VGH Baden-Württemberg, judgment of 24.07.2013 - A 11 S 697/13 -, juris marginal no. 71 m. w.N.). This is always to be assumed if these conditions are based wholly or predominantly on state action, on the actions of parties to an internal conflict or on actions of other, non-state actors that are attributable to the state, because it does not provide adequate protection for the civilian population.

ln the case law it is in this respect clarified that § 4(1) sentence 2 no. 2 of the Asylum Act is to be interpreted to the effect that a direct or indirect action by an actor is required, which causes the inhumane living situation in the sense of an attributability, which, beyond unintended side-effects, requires an action or effects or even intention, is responsible for the inhumane living situation (cf. BVenruG, judgment of 20.05.2020 - 1 C 11.19 -, juris).

In the context of subsidiary protection, the following applies to the assessment of the question of whether there is a threat of serious harm. This standard, which is derived from the factual criterion ".... actual danger..." of Art..2f QRL is based on the jurisprudence of the European Court of Human Court of Human Rights, which, when examining Art. 3 ECHR, focuses on the actual danger (,...), cf. BVerwG, judgment of 17 November 2011 - 10 C 13.10-, NVwZ 2012,454 Rn.20; cf. also BVerwG, judgment of 20.03.2013- 10 C23.12-, NVwZ 2013,936 marginal no.32).

According to the established case law of the German Federal Administrative of the Federal Constitutional Court (see only BVenruG, judgment of July 4, 2019 - 1 C 31.18 -, juris Rn. 16 m.w.N.) it is a prerequisite that, in a summarized assessment of the life for review, the facts of life put forward for individual persecution or for the threat of serious circumstances that speak in favor of an individual persecution or the threat of serious and therefore outweigh the facts that speak against it. This assessment is to be made on the basis of a "qualifying" approach in the sense of a weighting and weighing of the facts and their significance. According to Art. 4 (3) of the QRL, the following must be considered in addition to the information provided by the applicant and his or her individual situation, all refugee-relevant facts and circumstances, country of origin as well as all facts relevant to the refugee.

In order to make the necessary prognosis, the facts of the prognosis are to be objectified according to the general standards of the administrative court procedures and the court of appeal's standard of proof of certainty of conviction. These facts regularly lie partly in the past and partly in the present. They must then be combined in an overall view and, to a certain extent, projected into the future. Even if in this respect - as can already be seen from the

danger - a considerable probability is sufficient and therefore a "full proof" cannot be provided, this does not change the fact that the court must assume the correctness of its prognosis of imminent persecution, which was obtained without procedural error. (VGH Baden-Württemberg, Ur- of 30.05.2017 - A I S 991/15 -, juris marginal no. 27 and of 18.04.2017 - A I S 333/17 -, juris marginal no. 42).

The standard of probability on which the prognosis is to be based shall apply irrespective of whether the person concerned has already suffered serious damage before leaving the country within the meaning of Section 4 (1) sentence 1 of the Asylum Ac. The fact that a foreigner has already been persecuted or suffered other serious harm or is seriously threatened by such persecution or harm, or was seriously threatened by such persecution or damage is, however, a serious indication that the alien's fear of persecution is well-founded or that he or she is in fact in real danger of suffering serious harm; Art. 4(4) QRL privileges the person who has been persecuted or harmed by the (refutable) presumption that previous persecution or damage will be repeated in the event of a return to the country of origin. (BVerwG, Beschluss vom 17.09.2019 - 1 B 43.19 -, juris Rn.7; cf. also BVerwG, judgment of 04.07.2019 - 1 C 31.18-, juris marginal no.28 with further references). The circumstances lying in the past shall have probative evidential value for their repetition in the future. In this way, the previous injured party is relieved of the necessity of presenting valid reasons for the fact that the reasons that the circumstances giving rise to the persecution or causing the damage will be repeated upon return to the country of origin. This presumption can be rebutted, however; in order to do so, persecution or the occurrence of such damage must be substantiated.

b) Measured against this, [justified] the registration system applicable to sex offenders in Florida and the resulting statutory behavioral inhuman and degrading treatment at the expense of the plaintiff (aa). However, the plaintiff is threatened in the present individual case in the event of his return to the United States on account of the violations committed by him against the obligations incumbent on him pursuant to the reporting requirements of chapter 943.0435, Florida Statutes,

which cannot be reconciled with Art. 3 ECHR or Art. 4 GrCh, so that the requirements of § 4 par. 1 sentence 2 no.2 of the Asylum Act are met (bb).

-18-

aa) Contrary to the plaintiff's opinion, the regulations applicable to sex offenders in the USA do not constitute a violation of Article 3 ECHR or Article 4 GrCh.

(1) The legal situation of sex offenders in the U.S. is as follows:

In '94, the U.S. Congress passed the Jacob Wetterling Crimes against Children and Sexually Violent Children and Sexually Violent Offender Registration Act. Under the legislation, persons convicted of sexually abusing children or sexually violent crimes against children were required to maintain their current addresses for 10 years after their release into the community with local law enforcement. As a result, all states have now introduced their own regulations for the registration of sex offenders. States have since enacted their own sex offender registration regulations, in various forms. With the Adam Walsh Child Protection and Safety Act (SORNA) of 27.07.2008, an attempt was made through federal law attempted to achieve legal uniformity in sex offender registration law among the states. The SORNA established three tiers, or levels, of registrants, which are ultimately determined by the offense of conviction, with tier l crimes being the least serious and tier 3 crimes being the most serious. The levels determine the length of the registration requirement. The law also specifies the frequency with which an ex-offender must update registration information: Tier l sex offenders must do so every year. Tier II sex offenders must do so every six months, and Tier lll offenders must do so every three months. A registered sex offender must not only register with local law enforcement agency where he or she resides, but also in the jurisdiction in which he or she is employed or attends school. The law provides for the imposition of fines or imprisonment. These registration requirements apply to all sex offenders for the duration of their registration (for the whole: Human Rights Watch, No Easy Answers, Sex Offender Laws in the US, 11.09.2007). The

State of Florida has substantially adopted and implemented the SORNA. (see Human Rights Watch, raised on the registry dated 01.05.2013).

The lnternational Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Travelling Sex Offenders now requires, as the most recent federal tightening of sexual offender registration law, requires that a visual "unique identifier" be placed on the travel passport of registered sex offenders charged with sexual offenses with a minor. Passports that have already been issued must be surrendered. The law also requires sex offenders to notify law enforcement 21 days before traveling abroad. The relevant authorities are entitled to pass on the stored information about the about the registrant to the destination state.

Pursuant to chapter 943.0435.11, Florida Statutes, pertinent to the plaintiff, the Registration as a sex offender is maintained for life unless the sexual offender has received a full pardon or his or her conviction has been overturned in a retrial. A sex offender is thereby provided with all personal data, including fingerprints, palm prints, and a photograph. He shall, in accordance with his notification requirements under Chapter 943.0435.4, the offender shall report any change in permanent or temporary username, e-mail addresses and other Internet services (social networking sites), home telephone number and cellular telephone number, employment and any change in status at an institution of higher education to the appropriate sheriff's office. Pursuant to chapter 943.0435.3, Florida Statutes, the sex offender must report to the driver's license office within 48 hours of registration, to be issued a driver's license with the appropriate registration endorsement on the driver's license. The sex offender is also required to register semi-annually to the appropriate sheriff's office. Pursuant to chapter 943.0435.7 of the Florida Statutes, any sex offender must notify the appropriate sheriff's office at least 48 hours prior to an intended change of permanent or temporary residence. Foreign travel must be notified 21 days prior to departure.

Federal and state registration laws give the public easy access to important information about registered sex offenders. All 50 states have online sex offender registries that anyone with access to the internet can view. The accessible information in the registry typically includes the offense that triggered the registration requirement, name, photograph, physical description, date of birth, and current address of the offender (although some state online registries may only provide the person's zip code). Some states provide additional personal data for certain offenders, including the address of the offender's employer, and the make and license plate number of any vehicle that the offender drives. Even the home telephone number is sometimes published (cf. Human Rights Watch, No Easy Answers, Sex Offender Laws in the US as of 11.09.2007). Users of online registries can search by name to see if a particular person is registered, or they can find out if there are any registered offenders in a particular neighborhood. The user does not have to live in the state whose registry is being searched. Those who search state and national databases can do so anonymously in any state with the exception of New York and Vermont, where those who wish to search the site must provide their names and addresses (see Human Rights Watch, No Easy Answers, Sex Offender Laws in the US, 11.09.2007).

Public identification through online registries as sex offenders affects both the housing and employment opportunities of a registered person in several ways. Because some employers are required to check the sex offender register, and most other businesses conduct the checks as part of their business policy, many sex offenders are often able to obtain employment only with considerable difficulty. Colleges […] to sex offenders must, by law, disclose their convictions. Private landlords are also increasingly requiring criminal background checks on potential tenants and are refusing to rent to people with a criminal record. Registered sex offenders have a particularly difficult time finding landlords willing to rent to them. (see Human Rights Watch, No Easy Answers, Sex Offender Laws in the US, 11.09.2007). Since rarely is anyone willing to rent to sex offenders, especially if the registered offender has received a lot of media attention, many registered sex offenders are left with homelessness

with some law enforcement agencies attempting to offer assistance to those affected (cf. Human Rights Watch, No Easy Answers, Sex Offender Laws in the U.S., 11.09.2007; Human Rights Watch, Raised on the Registry, 01.05.2013).

States have also imposed sex offender residency and zoning restrictions in divergent forms. In addition, numerous municipalities and cities have enacted their own restrictions. The regulations are are so far-reaching that sex offenders can only legally reside in a few areas of a city. (cf. Human Rights Watch, No Easy Answers, Sex Offender Laws in the US, 11.09.2007, Human Rights Watch, raised on the registry, 01.05.2013). In Florida, sex offenders are prohibited from coming within 1,000 feet of schools, daycares, playgrounds, or parks, or from establishing of approaching or taking up residences there (Chapter 775.215, Florida Statutes).

As a result of freely available information on registered sex offenders, according to Human Rights Watch's research, many of these offenders are subject to public pressure. The documented spectrum ranges from hostility, incitement of the neighborhood, physical assaults, blockades, and calls for boycotts of employers (see Human Rights Watch, No Easy Answers, Sex Offender Laws in the US, 11.09.2007, and Human Rights Watch, raised on the registry of 01.05.2013).

(2) Based on this, the single judge is unable to find in the statutory provisions either intentional and continuous infliction of psychological suffering nor severe humiliation of registered sex offenders by a state actor.

According to the case law of the European Court of Human Rights (ECtHR), a (lifelong) registration obligation of a convicted sex offender, together with the obligation to communicate personal data and to keep them and its constant updating vis-à-vis state authorities pursues a legitimate aim, i.e. to prevention of criminal offences and the protection of the rights and freedoms of the offender.

ln view of the seriousness of the harm that could be caused to victims of sexual offenses and the fact that States have an obligation to take the necessary measures to protect individuals from such serious forms of violence, an obligation to register and provide information is proportionate and therefore legally unobjectionable (see ECtHR, Judgment of 26.0L 1999, Adamson v. United Kingdom -422g3tg8 - (lifelong registration and information obligation); ECtHR, Judgment of 17.12.2009, B.B. v. France - 5335/06 - (creation of a database for sex offenders and storage of personal data for up to 30 years), available at https.//hudoc.echr.coe.int). Accordingly, the registration requirement under chapter 943.0435.11, Florida Statutes do not constitute a violation of Art. 3 ECHR or Art. 4 GrCh. The same applies in this respect to the restrictions on residence and stay pursuant to chapter 775.215 of the Florida Statute. For these also pursue the protection of minors and thus of a particularly vulnerable person. Moreover, the scope of the regulation is limited to places and locations where a large number of children are regularly encountered, such as playgrounds, schools and parks, so that even from this point of view the single judge cannot recognize inhuman and degrading treatment.

Nor does anything to the contrary result from the public's unrestricted access to sex offender databases in the USA and the resulting indirect social consequences. It is true that the plaintiff is in agreement in this respect, that the consequences of a lifelong registration as a sex offender can be without differentiation according to the possible dangerousness of the sex offender in combination with the unlimited access of the public to all personal data of the sex offender and the prevailing social attitude towards them. Given the prevailing social climate in the U.S., it would be difficult to reconcile this with Article 8 ECHR. However, a possible infringement of the right to privacy is not relevant to the decision in the present case, but only a violation of Art. 3 ECHR or Art. 4 GrCh. However, since these legal regulations also do not pursue the goal of deliberately inflicting physical or psychological suffering on sex offenders, nor do they inflict psychological suffering to sex offenders, nor to humiliate them, but rather to protect residents and employers from potential dangers,

a violation of Art. 3 ECHR can only be considered in exceptional cases. This presupposes community notification - even if only indirectly caused by state action - such precarious living conditions for the plaintiff as a registered sex in the event of his return to the USA that would place him in a situation of extreme material hardship, that would not allow him to satisfy his most basic needs, such as, in particular, to feed himself, and shelter, and which would affect his physical or mental health or place him in a state of health or places him in a state of destitution, which would be incompatible with human dignity (see ECJ, judgment of 19.03.2019 – C 163/17 -, juris para. B0 et seq.).

Such a risk of impoverishment due to the legal regulations existing for the plaintiff as a sex offender the single judge is not able to recognize. It rather assumes that in the event of his return to the USA, the plaintiff, after overcoming initial difficulties, the plaintiff should be able to meet his elementary needs by taking up a livelihood. The plaintiff has a high school education (high school diploma) and study experience in the subjects of religion and medicine. In addition, he has a degree in law and professional experience as a paramedic. In addition, the plaintiff has also managed to obtain employment after his release from prison and he has been an activist for the rights of sex offenders. He also has a certain degree of notoriety. So it is to be expected that, despite the adverse social circumstances in the USA after overcoming initial difficulties, he should be able to make a new professional start. In addition, the plaintiff still has a functioning family support network, so that there is no apparent risk of the plaintiff becoming destitute. As far as he claims that it is impossible for him to study in the U.S. due to his registration, this does not constitute a violation of Art. 3 ECHR, since this is not an extreme danger in the defined sense that the plaintiff should be prevented from carrying out what he considers to be a low-value activity.

bb) However, the plaintiff is at risk of being convicted of violating reporting requirements specific to sex offenders. After considering all the circumstances of the individual case, the plaintiff is at risk of a grossly disproportionate punishment and therefore a violation of Article 3 ECHR or Article 4 GrCh exists.

(1) In principle, the appropriateness of a prison sentence does not fall within the scope of application of the ECHR. In exceptional cases, however, a grossly disproportionate imprisonment may constitute a violation of Art. 3 of the ECHR (ECtHR, Judgment of 10.04.2012, Barbar Ahmad - 24027107 -, NVwZ 2013,925, para. 238). According to the case-law of the ECtHR, the decision of a Convention State in favor of a particular system of criminal procedure, including the review of sentencing and release modalities, is in principle not subject to monitoring by the ECtHR.

Questions of just and proportionate punishment are subject to rational debate and respectable opinion. Therefore, the Convention States in deciding on the appropriate length of custodial sentences for criminal offences. It is not for the Convention to decide what is the appropriate term of imprisonment for a particular offence or the appropriate length of imprisonment or other punishment to be served by a person after conviction by the competent court. It must also be borne in mind that sentencing practices vary widely from state to state and that there are often legitimate and reasonable differences between the states in the length of custodial sentences imposed, even for comparable crimes. Therefore, a violation of Art. 3 ECHR will regularly only occur in extra-ordinary cases (see ECtHR, judgment of 09.07.2013, Vinter v. USA - 66069/09 -, NJOZ 2014, 1582, para. 105; Judgment of 10.04.2012, Barbar Ahmad - 24027107 -, NVwZ 2013,925, para.239).

The ECHR has not yet conclusively clarified the point at which the threshold of grossly disproportionate imprisonment is reached. However, it is recognized in the case law of the Federal Constitutional Court that an unbearably harsh imprisonment can lead to a [constitutional] ban on deportation. It is part of the principle of proportionality, which is derived from the rule of law, that the seriousness of a criminal act and the culpability of the offender must be taken into account when the punishment threatened by law or the punishment imposed must be in a just proportion. A threat of punishment or conviction must not be disproportionate in nature and degree to the

conduct that is the subject of the punishment. The core of these requirements is one of the indispensable principles of the constitutional legal order of the Federal Republic of Germany must therefore always be observed. The threshold of an unbearably harsh prison sentence is reached when it appears unreasonable from every point of view. The facts of the case and the legal consequences must be appropriately coordinated with each other (BVerfG, Beschluss vom 28.02.2016 - 2 BvR 1468116 -, BeckRS 2016, 49757, marginal no. 43; order dated 24.06.2003 - 2 BvR 685/03 -, juris; VGH Baden-Württemberg, Beschluss vom 20.11.2007 - 11 S 2364107 -; decision of 30.03.1993 -11 S 529/93-, juris). Likewise, it ranks because of article 1 exp. 1 GG and Nt.2 exp. 'l GG among the indispensable German constitutional order that a threatened or imposed punishment is not cruel, inhuman or degrading (see BVerfG, order of 28.02 .2016- 2 BvR 1468t16 -, BeckRS 201 6,49757, para. 43.

In this situation, the principle that the concrete danger of an infringement of the law according to the legal system of another state does not stand in the way of deportation. (cf. § 60 para. 6 AufenthG) is not prevented. (VGH Baden-Württemberg, decision of 20.11.2007 - 11 S 2364107 -, juris). Something else applies, if the sentence to be enforced is merely to be regarded as highly severe and would no longer be considered reasonable if assessed solely on the basis of German constitutional law. Since the Basic Law [Germany's version of the Constitution] speaks of the incorporation of Germany into the international legal order of the community of states (cf. Preamble, Art. 1 para. 2, Art. I para. 2, Art. 23 to Art. 26 GG), it at the same time requires that even structures and contents of foreign legal systems and views, even if they do not coincide in detail with German domestic views. Courts may only consider violations of the indispensable principles of the German constitutional order as an unassailable obstacle to extradition or deportation. (BVerfG, decision of 28.02.2016-2 BvR 1468116-, BeckRS 2016,49757, para.44). This case law developed for the Federal Constitutional Court, which has been developed for the law on aliens (cf. VGH Baden-Württemberg, Beschluss vom 20.11.2007 - 11 S 2364t07 - ; decision of 30.03.1993 - 11 S 529/93 -, juris). These principles, which have been developed for the law on extradition and transferred to the law on aliens, must be applied to asylum proceedings,

and in particular in the context of the examination of § 4 para. 1 sentence 2 no. 2 AsylG, the threatened or imposed punishment is not inhumane according to the principles of constitutional law. (similarly: VG FrankfurUOder, Beschluss of 02.05.2013 - 1 L 108113.A -, juris).

(2) On the basis of these principles, the information obtained by the court from the German Foreign Office dated April 27, 2022, the minimum prison sentence to be expected for the plaintiff in the event of his deportation to the USA of 219 months (18.25 years) for the violations he committed against the laws that are incumbent on him as a sex offender: he is subject to information and notification requirements (violation of chap. 943.0435.14a, Florida Statutes, for failure to report semiannually to the Sheriff s office, violation of the new residence notification requirement under chapter 943.0435.4a, Florida Statutes, violation of the duty to report the temporary leaving his or her residence 48 hours before he or she plans to leave, or violation of the obligation to report an out-of-state trip 21 days before leaving the country pursuant to chapter 943.0435.7, Florida Statutes, and violation of the requirement to present of his passport under chapter 943.0435.2b, Florida Statutes) as an intolerably harsh and therefore in violation of Article 3 of the ECHR.

In the Federal Republic of Germany, too, a violation of the management supervision pursuant to Section 68b et seq. of the German Criminal Code (StGB) is punishable under Section 145a of the StGB. The offense, which can only be prosecuted upon application, provides for a penalty of up to 3 years' imprisonment or a fine. The object of protection of the norm can only be functional relationship to the measure of supervision of conduct. This legal institution can only fulfill its task as a measure of correction and security only if the instructions issued for its purpose can also be enforced. (cf. Bernhard/Kretschmer, in. Kindhäuser/Neumann/Paeffgen, SIGB, 5th ed. Aufl. 2017, § 145a, Rn. 3). In this respect, the criminal penalization of information and reporting requirements under the Florida Statute with the protection of the public pursues a legitimate purpose in principle. However, the wrong alleged by the plaintiff done by the violation of the information and notification requirements applicable to sex offenders is relatively minor. This is because the violations committed relate only to

general behavioral obligations (change of residence, failure to report every six months, and the semiannual report and leaving the permanent residence without prior notification) and are therefore not related to a potential and more serious endangerment of persons in need of protection, as for example in the case of a violation of a ban on approaching or contacting minors. Furthermore, it must be taken into account that all of the violations of the reporting requirements are ultimately due to the plaintiff's departure from the country and in this respect are based on only one single act of the plaintiff. Against this backdrop, in the event of a similar violation of management supervisory instructions in Germany, the most that could be expected would be the imposition of a fine.

This is offset by an expectation of punishment if the plaintiff is convicted under the sentencing guidelines set forth in the communication of the Columbia County Sheriff's Office dated 23.10.2018, and confirmed by the information from the State Department dated 04/27/2022 of at least 219 months (18.25 years). This threat of punishment appears to the single judge to be not only extremely harsh, but also unreasonable from every conceivable point of view and exceeds the maximum term of imprisonment permissible under German law (cf. § 38 para.2 SIGB). Even the sentence imposed in the USA on 22.02.1995 for the offense which led to the registration of the plaintiff is exceeded to a considerable extent. Even if one considers that the goal of curbing and preventing sexual offenses is of great importance, the present sentence cannot be considered more than acceptable with the minimum principles of constitutional law (cf. on a comparable case constellation: OLG Hamm, order dated22.10.2020 -2 Ausl 1 04120 -, juris). In this respect, the single judge also took into account that under U.S. law, a suspended sentence after part of the sentence has been served (in contrast to German law, in particular after 213 months of the sentence has been served) does not appear possible. Under the rules governing the execution of sentences there is only a prospect of reducing the term of imprisonment to 85% of the

sentence if the U.S. Bureau of Prisons determines that the defendant has complied with the institutional disciplinary rules in an exemplary manner. Whether and to what extent the realistically hope for such a reduction in his sentence by up to 15% in the event of a conviction is unclear and would - even if a realistic chance could be assumed - would not be sufficient due to the amount of the sentence to be served would also not be sufficient to justify a different result (cf. OLG Hamm, Beschlrs ,oÄ 22.10.2020 - 2Ausl 1 O4t2O -, juris marginal no. 32). In view of the plaintiff's previous convictions and the handling of sexual offenses in the state of Florida, it seems more than questionable whether the plaintiff's early release from prison would be considered in favor of the plaintiff at all.

Contrary to the opinion of the Federal Office of Justice, the plaintiff is also not to be entitled to the outcome of the proceedings in the U.S. and to use legal means to defend himself against a conviction. It is true, as stated by the German Foreign Office in the information dated 27.04.2022 that the specific sentence would be determined by the competent judge. However, this is in the nature of things and can therefore not be assessed to the detriment of the plaintiff. The only decisive factor for the prognosis is the minimum sentence determined by the Foreign Office with the assistance of the cooperating attorney, which in the case of convicted sex offenders who violate reporting requirements is generally at least 219 months. Accordingly, it is clear to the conviction of the single judge that, in the event of deportation to the United States, the plaintiff would, with considerable probability, suffer the imposition of an unbearably long prison sentence and that it would be unacceptable for him to wait for the outcome of the trial. There are no doubts as to the accuracy of the information provided by the Federal Foreign Office on April 27, 2022. No substantiated objections to this were raised by the parties at the relevant time of the oral proceedings.

Against this background, the single judge, taking into account all the circumstances of the individual case, assumes a violation of Art. 3 ECHR or Art. 4 GrCh by an expected unbearably harsh prison sentence. Consequently, the plaintiff

is likely to suffer serious harm in the event of his deportation to the U.S. pursuant to § 4 para. 1 salt2 no. 2 AsylG by the state as a state actor (§§ 4 para. 3, 3c no. 1 AsylG). In this respect, the plaintiff can also not refer to a domestic flight alternative pursuant to § 4 Para. 3 in conjunction with § 3e Asylum Act. For according to the information provided by the Foreign Office dated 27.04.2022, the plaintiff has been summoned by the criminal prosecution authorities for the named violations and it is after the transfer of the plaintiff to the law enforcement authorities of the State of Florida. A warrant for his arrest is expected to be issued. In view of the restrictive entry conditions in the U.S. at the airport, it can also be assumed that the plaintiff will be taken into custody upon entry. Reasons for exclusion in the sense of § 4 para. 2 AsylG are not apparent. In particular he has not been convicted of a serious criminal offense that has not already been fully served (cf. Kluth, in: Beck'scher Online-Kommentar zum Ausländerrecht, as of 01.07.2022, § 3 AsylG, marginal no. 20 f.), nor does he endanger the security of the Federal Republic of Germany.

The decision on costs is based on Section 155 (1) sentence 1, Section 155 (2) VwGO. Legal costs are not charged § B3b AsylG.

NOTICE OF APPEAL

The parties have the right to appeal against this judgment in the Baden-Württemberg Administrative Court. The application for permission to appeal must be filed with the Administrative Court of Karlsruhe within one month of service of the judgment. The application must specify the judgment appealed against. The application must state the grounds on which the appeal is to be allowed. The appeal shall only be allowed if the case is of fundamental importance or if the judgment differs from a decision of the Administrative Court, the Federal Administrative Court, the Joint Senate of the Supreme Courts of the Federation or the Federal Constitutional Court and is based on this deviation or a procedural defect specified in Section 138 VwGO is asserted and is present.

Before the Administrative Court, each party, except in legal aid proceedings, must be represented by a legal representative. This shall also apply to procedural acts, by which proceedings before the Administrative Court are initiated. As authorized representatives, lawyers or law teachers at a state or state-recognized higher education institution of a member state of the European Union, of another state party to the Agreement on the European Economic Area or Switzerland who are qualified to hold judicial office. Public authorities and legal entities under public law, including the associations formed by them to perform their public duties, may be represented by their own employees who are qualified to hold judicial office or from other public authorities or legal entities under public law, including their legal persons under public law, including associations formed by them for the performance of their public duties.

Friedrich

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Urku Office

Administrative Court Karlsruhe, 13.09.2022

zd. administrative case

Steven Robert WHITSETT

v. Federal Republic of Germany

because of asylum application

RaVG Friedrich as single judge

A clerk of the court was not called.

Start:

End:

11:10 a.m.

12:00 p.m.

\The following were present when the meeting was called:

the plaintiff

representing the plaintiff: Mr. Hünefeld, attorney-at-law

representing the defendant: Mr. Merkel

as interpreter: Mrs. Sonnen, with reference to her generally taken oath for the language

English.

When asked, the plaintiff stated: I withdraw the application for legal aid.

- Dictated aloud and approved -

The single judge introduced the facts and the dispute and comprehensively explained the legal situation and the expected operative part of the decision.

The parties were given the opportunity to comment on this.

The single judge closed the oral proceedings with the pronouncement of the decision: The decision will be issued in writing and served on the parties.