



# From the Court – Reasons for a license denial

**There is a discretion for Government with regard to reasons to be stated for denying a license**

In Germany, an applicant requested permission in 2019 to export 100 HK416 fully automatic rifles to the Republic of Korea ("South Korea"). The company is a manufacturer of small arms which it supplies to German security authorities and to numerous authorities of other states. The export was for the Korean National Police Swat Team - a special unit of the Korean police, with the mission to combat terrorism and personal protection of high-ranking officials of the country and international state guests.

The manufacture, transport and export of such weapons and their components are subject to approval by the Federal Government. In 2015 and 2016, the BMWi had approved applications from the applicant to supply weapons and weapons components to security agencies in South Korea. In this particular case, the BMWi rejected its application based on the "Political Principles of the Federal Government for the Export of War Weapons and Other Military Equipment" of 26 June 2019 which concretizes the discretion granted to the Federal Government.

South Korea is a third country within the meaning of Chapter III of the Political Principles, as it is neither a NATO country, nor an EU member state, nor a NATO-equivalent country. As a matter of principle, exports to third countries are not to be licensed unless, in individual cases, special foreign or security policy interests of the Federal Republic of Germany, taking into account the interests of the alliance, justify a license to be granted by way of exception. Such special interests were not present in this case. Nor were any aspects of the protection of legitimate expectations that would have to be taken into account in the decision.

In its legal action, the application stated that no reasons for the rejection had yet been provided. The general protection of secrets and the security interests of the Federal Republic of Germany did not constitute an exception to the obligation to state reasons. In the statement of reasons for the decision, a failure to exercise discretion or misuse of discretion is apparent, since it is essentially limited to a description of the political principles. An examination of the individual case had not taken place, and the legal framework had been disregarded in the rejection decision. The Political Principles of the Federal Government should not lead to a binding decision.

The German Government was of the opinion that the refusal of approval is based on the permissible discretionary considerations of the Political Principles applied to the specific individual case. The exceptional foreign and security policy interest required for approval was not present, and there was no need for a further list of conflicting interests. Applicants could not claim to be informed about foreign and security policy considerations of the Federal Government.

The Administrative Court in Berlin ruled in favor of the authorities. In order to comply with its duty to state reasons, the authority must, according to the judgment, indicate the legal basis on which it has based its decision and explain how it reached its decision on this basis. Furthermore, the requirements for the content and scope of a statement of reasons cannot be determined in general terms. Factors that determine the requirements for content and scope include the special features of the legal area, the complexity of the facts, which rights may be affected or the general level of knowledge of the parties involved as well as the question of whether the decision is a regular or an exceptional decision.

Measured against this standard, the Government had sufficiently substantiated the contested decision. It had explained that it sees no entitlement on the part of the plaintiff to the granting of a license, and in exercising its discretion it has avowedly referred to its Political Principles available, inter alia, on its website. The notice subsumes both the intended arms delivery and the intended country of export under this. In its statement of reasons, the defendant has thus made it clear on which fundamental principles it has based its decision and on which it has based its discretion. Nothing more could be demanded of it within the framework of the duty to state reasons.

It must also be taken into account that the applicant, as a company that is thoroughly familiar with the matter and has been an applicant for many years, had been informed about the amendment of the Political Principles in talks with the Governmental office prior to the decision in dispute.

Source: [Berliner Verwaltungsgericht, judgment of 2 November 2020](#)

