



C/2024/6924

25.11.2024

**Request for a preliminary ruling from the Bundesverwaltungsgericht (Austria) lodged on
16 September 2024 – F.XXX K.XXX v Bundesamt für Fremdenwesen und Asyl**

(Case C-596/24, Hama) ⁽¹⁾

(C/2024/6924)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: F.XXX K.XXX

Respondent authority: Bundesamt für Fremdenwesen und Asyl

Questions referred

1. Is Article 9(2)(e) of Directive 2011/95/EU ⁽²⁾ to be interpreted as meaning that the possibility of paying a fee, as provided for by law in a country of origin, that would secure an actual exemption from the obligation to perform military service, within the meaning of that provision, precludes the possibility of an act of persecution if the payment of such a fee is the only means of avoiding conscription for that military service?
- 1.a. If question 1 is to be answered in the affirmative: Is Article 9(2)(e) of Directive 2011/95 to be interpreted as meaning that the possibility of paying a fee, as provided for by law in a country of origin, that would secure, for nationals living abroad, an exemption from the obligation to perform military service for that country of origin precludes the possibility of an act of persecution if the payment of such a fee is the only means of avoiding conscription for that military service in the event of a return to that country of origin, and that fee is calculated on the basis of the duration, in years, of the stay abroad, whereby 10 000 United States dollars (USD) are payable in the case of a one-year stay abroad, USD 9 000, in the case of a two-year stay abroad, USD 8 000, in the case of a three-year stay abroad, and USD 7 000, in the case of a four-year stay abroad, and then, in respect of each additional year, a fee of USD 200 is payable in each case?
- 1.b. If question 1 is to be answered in the affirmative: Is Article 9(2)(c) of Directive 2011/95 also to be interpreted as meaning that the possibility of paying a fee, as provided for by law in a country of origin, that would secure an actual exemption from the obligation to perform military service precludes the possibility of an act of persecution if the payment of such a fee is the only means of avoiding conscription for that military service?
2. If at least question 1 is to be answered in the affirmative: Is Article 9(2)(e) and – in so far as question 1.b. is to be answered in the affirmative – Article 9(2)(c), read in conjunction with Article 4(3)(b) and (c), of Directive 2011/95 to be interpreted as meaning that the possibility of paying a fee, as provided for by law in a country of origin, that would secure an actual exemption from the obligation to perform military service does not preclude the possibility of an act of persecution if an applicant, as defined in Article 2(i) of that directive, does not wish to pay that fee because of a religious or moral stance or a political opinion, view or belief that he or she holds?

⁽¹⁾ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

⁽²⁾ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ 2011 L 337, p. 9).

3. If at least question 1 is to be answered in the affirmative: Is Article 9(2)(e) and – in so far as question 1.b. is to be answered in the affirmative – Article 9(2)(c), read in conjunction with Article 4(3)(a) and Article 5(1) of Directive 2011/95, as well as Article 46(3) of Directive 2013/32/EU, ⁽³⁾ to be interpreted as meaning that, for the purposes of determining whether the possibility of paying a fee, as provided for by law in a country of origin, that would secure an actual exemption from the obligation to perform military service precludes the possibility of an act of persecution, the determinative factor is the date of the administrative decision on the application for international protection or, as the case may be, the date of the judicial decision on an appeal against the administrative decision on the application for international protection?
4. Do the EU law provisions laid down in Regulation (EU) No 36/2012, ⁽⁴⁾ as amended, mean that it cannot be assumed that the possibility of paying a fee provided for under Syrian law that would secure, for Syrian nationals living abroad, an exemption from the obligation to perform military service for the country of origin precludes the possibility of an act of persecution as defined in Article 9(2)(e) or (c) of Directive 2011/95 if the payment of such a fee is the only means of avoiding conscription for that military service in the event of a return to Syria, and that fee is calculated on the basis of the duration, in years, of the stay abroad, whereby USD 10 000 are payable in the case of a one-year stay abroad, USD 9 000, in the case of a two-year stay abroad, USD 8 000, in the case of a three-year stay abroad, and USD 7 000, in the case of a four-year stay abroad, and then, in respect of each additional year, a fee of USD 200 is payable in each case?

⁽³⁾ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ 2013 L 180, p. 60).

⁽⁴⁾ Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 (OJ 2012 L 16, p. 1).