Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 30 June 2022 [1]

Case C-280/21

P.I.
the other party to the proceedings being
Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos

(Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania))

(Reference for a preliminary ruling – Asylum policy – Refugee status or status conferred by subsidiary protection – Directive 2011/95/EU – Conditions of eligibility for refugee status – Risk of persecution – Reasons for persecution – Concept of 'political opinion' – Resistance to a corrupt group with influence at State level)

I. Introduction

1. This case concerns the interpretation of the concept of 'political opinion', defined in 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. [2]

2. In answering the question referred to it, the Court will have the opportunity to clarify to what the political opinion that may serve as the basis for an application for refugee status corresponds, where that opinion is not asserted by the applicant but attributed to him or her by the actor of persecution.

3. I shall propose that the Court's answer should be that that attributed political opinion must correspond to the definition given in Article 10(1)(e) of Directive 2011/95, must be established under the conditions provided for in Article 4 of that directive and must be such as to lead to retaliatory action on the part of the State authorities.

[1] Original language: French.

[2] OJ 2011 L 337, p. 9.

II. Legal framework

A. International law

4. The Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951,[3] as supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967,[4] ('the Geneva Convention'), provides, in Chapter I, in the first subparagraph of Article 1(A)(2), that the term 'refugee' is to apply to any person who, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [or her] nationality and is unable or, owing to such fear, is unwilling to avail himself [or herself] of the protection of that country; or who, not having a nationality and being outside the country of his [or her] former habitual residence … is unable or, owing to such fear, is unwilling to return to it'.

B. European Union law

5. Recital 12 of Directive 2011/95 states:

'The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.'

6. Article 2 of that directive, entitled 'Definitions', provides:

'For the purpose of this Directive the following definitions shall apply:

…

(d) "refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

…'

[3] *United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954). The Convention entered into force on 22 April 1954.

[4] The Protocol entered into force on 4 October 1967.

7. Article 4(5) of that directive provides:

'Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.'

8. Article 6 of that directive, entitled 'Actors of persecution or serious harm', provides:

'Actors of persecution or serious harm include:

(a) the State;

…

(c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.'

9. Article 9 of Directive 2011/95, entitled 'Acts of persecution', is worded as follows:

'1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; [5] or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

…

5 Signed in Rome on 4 November 1950, 'the ECHR'.

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;

…

3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.'

10. Article 10 of Directive 2011/95, entitled 'Reasons for persecution', provides, in paragraph 1(e) and in paragraph 2:

'1. Member States shall take the following elements into account when assessing the reasons for persecution:

…

(e) the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.'

C. Lithuanian law

11. In Lithuania, refugee status and subsidiary protection are governed by the Lietuvos Respublikos įstatymas 'Dėl užsieniečių teisinės padėties' Nr. IX-2206 (Law of the Republic of Lithuania on the legal status of foreigners No IX-2206)[6] of 29 April 2004, in the version applicable in the present case, which transposes, inter alia, Directive 2011/95 into domestic law.

12. Article 71(3)(4) of that law provides:

'[It is for] the asylum applicant to present, when his or her application is examined, all the documents in his or her possession together with detailed and accurate explanations of the reasons for his or her asylum application, his or her identity and the circumstances of his or her entry into and residence in the Republic of Lithuania; the applicant shall also be required to cooperate with the staff and officials of the competition authorities.'

[6] Žin., 2004, No 73-2539.

13. Article 83 of that law, which governs the assessment of the asylum application, provides, in paragraphs 1, 2 and 5:

'1. The asylum application and the information provided by the applicant in support of his or her application shall be assessed with the assistance of the asylum applicant.

2. Where it is established, in the course of the examination of the application, that evidence relating to the decision on the status of the applicant for asylum cannot be substantiated by written evidence, despite his or her genuine efforts, that evidence shall be assessed in the applicant's favour and the application for asylum shall be considered to be well founded if that application was made at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; if all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding any lack of other relevant elements; and if the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case.

…

5. Paragraph 2 of this article shall not apply and the elements that cannot be confirmed by written evidence shall be rejected if, during the examination of the asylum application, the applicant perverts the inquiry, delays it by his or her acts or omissions or attempts to divert it, or if inconsistencies having a decisive effect on the grant of asylum are found in the facts relied on by the applicant.'

14. Article 86(1) of that law provides:

'Refugee status shall be granted to an asylum applicant who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the State of his or her nationality and who is unable or afraid to avail himself or herself of the protection of that State, or who, not having the nationality of any foreign State, is outside the State of his or her habitual residence and, for the reasons set out above, is unable or afraid to return there, provided that he or she is not covered by the grounds of exclusion laid down in Article 88(1) and (2) of this Law.'

III. The facts of the dispute in the main proceedings and the question referred for a preliminary ruling

15. P.I. brought proceedings against the refusal, by decision of 21 September 2020, of the Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos (Migration Department under the Ministry of the Interior of the Republic of Lithuania, 'the Migration Department') to grant him refugee status in Lithuania on the ground that he did not meet the conditions for the grant of such status, laid down in Article 86 of the Law of the Republic of Lithuania on the legal status of foreigners No IX-2206 and in Article 1(A) of the Geneva Convention.

16. Following the dismissal of his action on 21 January 2021 by the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania), P.I. lodged an appeal against that decision before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania).

17. The referring court states that the applicant filed an application for asylum on 15 July 2019, in which he explained that he had entered into a contract in 2010, in a third country whose nationality he possesses, with an undertaking belonging to an individual connected with the spheres of power and the intelligence services, under which he had paid that undertaking the sum of 690 000 United States dollars (USD) (around EUR 647 000), of which he had claimed repayment, as the other party to the contract had failed to transfer the shares representing consideration for that payment.

18. The referring court further states that in October-November 2015 the applicant was the subject of active measures in the context of a criminal investigation, opened at the initiative of the individual who owned the undertaking with which he had entered into a contract; that, for that reason, he had given up the main part of his project in December 2015 in unfavourable conditions; and that control of his undertaking passed to undertakings belonging to two other individuals. The referring court specifies that the criminal proceedings were suspended in January 2016 and that the applicant attempted to defend himself in the courts against the illegal appropriation of his project. It observes that, in April 2016, following the testimony given against him by a man connected with the new owners of his undertaking, the criminal proceedings were resumed, culminating in December 2016 and January 2017 in orders convicting him and placing him in provisional custody, and that he was deprived of the share of the project that he still owned.

19. The referring court explains, first, that the applicant disputes the finding of the Migration Department that there is no likelihood that he will be persecuted on the ground of his political opinion, when he is the subject of criminal proceedings in a case artificially staged by persons belonging to the highest kleptocratic circle, who had decided to seize his undertaking and strip it of its assets, and, second, that he is unable to defend his right of property when his freedom, security and life are in danger. The referring court adds that the applicant states that he is not involved in politics, only in business, and that, in that context, he opposed persons with close connections to the authorities, and as a result was threatened with criminal proceedings by reason of his political opinion. According to that court, the applicant disputes the Migration Department's analysis, according to which the system of which he is the victim is a civilised judicial and political system and there is no connection between the owner of the undertaking who failed to honour the contract and a violation of human rights, although the applicant is faced with corrupt criminal proceedings and although one of the persons involved is working with the officials of the prison system.

20. The referring court states that the Migration Department considered that the applicant did not meet the conditions to obtain refugee status or the conditions to benefit from subsidiary protection, on the ground that the risk of criminal proceedings can give access to refugee status only if those proceedings are based on one of the reasons set out in the Geneva Convention and therefore, in the present case, on actual or attributed political opinion. It adds that the Migration Department reports that its investigation established that the reasons identified and considered plausible are economic interests, financial advantages or connections with corruption.

21. After observing that, under Article 9(3) of Directive 2011/95, there must be a connection between the reasons mentioned in Article 10 of that directive and the acts of persecution, the referring court is uncertain as to what is to be meant by 'political conviction' within the meaning of that directive.

22. The referring court observes that the applicant had consistently asserted throughout the investigation that individuals with corrupt connections with the authorities had appropriated his assets in circumstances that were unfavourable for him; that, after he objected to those transactions, criminal proceedings had been opened against him at the initiative of one of those businessmen and that, after being suspended, those proceedings had been resumed, following an attempt by the applicant to assert his rights before the courts, culminating in procedural decisions and in an order placing him in provisional custody.

23. The referring court states that, according to national legislation, criminal proceedings or criminal penalties constitute persecution if they are disproportionate and discriminatory, that is to say, based, in particular, on political opinion, and that in its view it is more likely than not that the applicant is in danger of being persecuted.

24. That court adds that persecution is not sufficient and that it must be based on one of the reasons set out in the Geneva Convention, having a causal link with the acts of persecution. The court makes clear that, according to the applicant, that reason takes the form of his political opinion, a concept defined in broad terms in Article 10(1)(e) of Directive 2011/95.

25. The referring court observes that the European Asylum Support Office (EASO) states that political opinion should be interpreted broadly in order to give full effect to the Geneva Convention and that that concept may cover any opinion on any matter in which the machinery of the State, Government and policy may be involved. The referring court infers that, within the framework of Directive 2011/95, actions may be deemed political in the country of origin, even though they may be low-level or even not overtly political.

26. The referring court adds that the Handbook of the United Nations High Commissioner for Refugees ('HCR') also promotes a broad interpretation of the concept of 'political opinion', as encompassing any opinion concerning matters on which the machinery of the State, Government or society is engaged and states that the key question is whether the opinion in question is tolerated by the authorities or by the community. The referring court states that a handbook,[7] edited and reissued by the HCR in February 2019, indicates that it is not always possible to establish a causal link between the opinions expressed by the applicant and the treatment he or she suffers or fears he would suffer, and that that treatment most often takes the form of a sanction for alleged criminal acts against the ruling power.

27. The referring court observes that according to the literature, Canadian case-law and the HCR, resistance to a group with influence because of corrupt links which is acting illegally, which oppresses the asylum applicant by means of the State machinery and against which it is impossible for an applicant to defend himself or herself legally owing to widespread corruption in the State, amounts to political opinion attributed to the applicant and that the victim of such persecution must be granted refugee status.

[7] See HCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, Geneva, 2019, p. 24, available at the following internet address: https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951.

28. In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is opposition to an illegally operating and corruptly influential group which oppresses an applicant for asylum through the machinery of the State and against which it is impossible to mount a legitimate defence due to extensive corruption in the State to be regarded as equivalent to attributed political opinion within the meaning of Article 10 of [Directive 2011/95]?'

29. Written observations have been lodged by P.I., the Lithuanian Government and the European Commission.

IV. Analysis

30. As a preliminary point, it should be borne in mind that, when an interpretation of Directive 2011/95 is sought, that interpretation must be given in the light of the general scheme and purpose of the directive and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. That directive must also be interpreted, as is apparent from recital 16, in a manner consistent with the rights recognised by the Charter of Fundamental Rights of the European Union. [8] Thus, freedom of opinion is protected by Article 11 of the Charter and Article 10 ECHR.

31. Article 2(d) of Directive 2011/95 defines 'refugee' as a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country.

32. It follows from Articles 9 and 10 of that directive that an act of persecution contains two elements, which must be connected:

– a material element, namely the 'act of persecution', defined in Article 9 of that directive, which gives rise to the applicant's fear and to his or her refusal or inability to avail himself or herself of the protection of the country of origin, and

– an intellectual element, namely the 'reason', defined in Article 10 of that directive, on which those acts of persecution are based.

33. Neither the first element nor the connection between the two elements is at issue in the present case, even though they will have to be established before the referring court. The referring court has asked the Court to interpret only the reason for the persecution, from a very specific angle, that is to say, that of the attributed political opinion.

34. Whereas the Geneva Convention is silent as to the definition of the 'political opinion' that constitutes one of the five reasons for which refugee status may be granted, Directive 2011/95 marked a step forward, allowing a more uniform assessment of that reason within the Member States. [9] First, it proposed a definition of 'political opinion' in Article 10(1)(e) and, second, in

[8] See judgment of 5 September 2012, *Y and Z* (C-71/11 and C-99/11, EU:C:2012:518, paragraph 48 and the case-law cited).

[9] See recital 25 of Directive 2011/95.

paragraph 2 of that article, it made clear that it is sufficient that that political opinion be attributed to the applicant by the actor of persecution, and that it does not have to be the applicant's genuine opinion.

35. The referring court's question will lead the Court to clarify the outlines of those two concepts and the way in which they interrelate.

36. As regards political opinion, Article 10(1)(e) of Directive 2011/95 provides a non-exhaustive definition, stating that that concept 'shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution … and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant'.

37. That definition contains four distinct, cumulative elements:

– an opinion, thought or belief on a matter that is related;

– to the actors of persecution, as defined in the directive;

– and to their policies and methods; and

– irrespective of whether it is acted on by the applicant.

38. It is for the national authority competent in such matters to verify and assess the evidence adduced before it in respect of each of those elements, in the conditions set out in Article 4 of Directive 2011/95.

39. In the literature, political refugees have been classified in two categories: first, political offenders, where account is taken of the motive for the offence, its seriousness and its political context [10] and, second, individuals who are persecuted for their dissenting political opinions. [11]

40. It is the latter category of applicants that has significantly increased owing to the recognition, by national case-law, and then by EU law, of the theory of attributed political opinion.

41. After being established in the case-law of, in particular, the United States, [12] Canada, [13] France [14] and Belgium, [15] the theory of the attribution of political opinion was introduced into EU law by Article 10(2) of Directive 2011/95 and applied by the Court in the judgment of 4 October 2018, *Ahmedbekova*. [16]

[10] See Tissier-Raffin, M., *La qualité de réfugié de l'article 1 de la Convention de Genève à la lumière des jurisprudences occidentales*, 1st ed., Bruylant, Brussels, 2016, pp. 94 to 99, paragraphs 58 to 60.

[11] See Tissier-Raffin, M., *La qualité de réfugié de l'article 1 de la Convention de Genève à la lumière des jurisprudences occidentales*, 1st ed., Bruylant, Brussels, pp. 100 to 107, paragraphs 61 to 64.

[12] See judgment of the United States Court of Appeals for the Ninth Circuit of 7 March 1988, *Desir v. Ilchert* (840 F.2d 723), concerning a Haitian fisherman tortured by the Haitian security forces, known as the 'Tonton Macoutes'.

[13] See judgment of the Supreme Court of Canada of 30 June 1993, *Canada (Attorney General) v. Ward* [(1993) 2 RCS 689], concerning a member of the Irish Republican Army who had secured the escape of civilian hostages in whose kidnapping he had been involved when he learned that they were to be executed.

[14] See judgment of Conseil d'État (Council of State, France) of 27 April 1998, 10/ 7 SSR (No 168335, published in the *Recueil Lebon*).

[15] See judgment of Conseil du Contentieux des Étrangers (Council for asylum and immigration proceedings, Belgium) of 18 December 2008 (No 20772), concerning an Afghan applicant thought to be a member of the Taliban.

[16] C-652/16, 'the judgment in *Ahmedbekova*', EU:C:2018:801. See also judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)* (C-238/19, EU:C:2020:945, paragraph 60).

42. In that judgment, the Court ruled that 'the involvement of an applicant for international protection in bringing a complaint against his country of origin before the European Court of Human Rights … must be regarded as a reason for persecution for "political opinion", within the meaning of Article 10(1)(e) of [Directive 2011/95], if there are valid grounds for fearing that involvement in bringing that claim would be perceived by that country as an act of political dissent against which it might consider taking retaliatory action'. [17]

43. The concept of 'political opinion' is reflected in the Court of Justice's decision, since the Court states that the action before the European Court of Human Rights ('the ECtHR') must be perceived by the country as an act of political dissent, which implies that not all nationals of that country who are applicants before the ECtHR can be classified as 'political opponents' in that country. Thus, the mere fact of bringing an action before the ECtHR cannot constitute a 'political opinion' within the meaning of Article 10(1)(e) of Directive 2011/95.

44. To my mind, the principle set out by the Court in the judgment in *Ahmedbekova* must be clarified in the present case.

45. Thus, the question put by the referring court makes it possible to define the outlines of 'act of political dissent', which the Court employed in the judgment in *Ahmedbekova* in a context very different from that of the present case.

46. An Azerbaijani national claimed that, in addition to an action before the ECtHR against Azerbaijan in which she was involved, she was involved in the defence of persons persecuted by the national authorities because of their activities in connection with defending fundamental rights and that she contributed to a television network active in a campaign against the governing regime. [18] It was those elements taken together that allowed the referring court to classify those activities as an 'act of political dissent'.

47. In the present case, however, according to the findings of the referring court, P.I. states that he entered into a contract which was not performed by the other party to the contract. He made a claim for performance of the contract a first time, by means which are not specified, then, a second time, in the courts. He abandoned his action because criminal proceedings were opened against him following his first claim. Those proceedings were resumed following his court action, at the instigation of the other party to the contract and the persons who had appropriated his assets. During those criminal proceedings, a decision ordering his provisional custody was taken. P.I. does not assert any political opinion, but submits that the fact of bringing legal proceedings for restitution of what is rightfully his constitutes resistance to a corrupt system. That resistance might be regarded as an act of political dissent by the actor of persecution, and therefore as a political opinion.

48. Once a political opinion is attributed to the applicant by the actor of persecution and constitutes, in the latter's eyes, an act of political dissent, it is immaterial, for the purpose of concluding that he or she is persecuted for that reason, that the applicant does not adhere to that political opinion.

49. Conversely, must political opinion meet the definition set out in Directive 2011/95?

[17] Judgment in *Ahmedbekova* (paragraph 90 and operative part).

[18] See judgment in *Ahmedbekova* (paragraph 41).

50. I am convinced that, since a definition of political opinion was drawn up in Directive 2011/95, that definition must be used in the same way to characterise political opinion, whether genuine or attributed. Thus, the four elements set out in point 37 of this Opinion, namely an opinion on a matter related to the actor of persecution or criticising the latter's policies and methods, whether or not it is acted on, must be substantiated in accordance with the rules laid down in Article 4 of that directive.

51. It is the fact that those four elements are satisfied that allows persecution for an attributed political opinion to be distinguished from a commercial dispute giving rise to criminal proceedings designed to put pressure on one of the parties to a contract, something that may happen outside any political opinion, including in a context of corruption. Not all victims of crime are political opponents, even via the attribution of opinions: the opinions in question must also be political opinions.

52. The Court has already acknowledged that it would be contrary to the general scheme and objectives of Directive 2011/95 to grant refugee status and subsidiary protection to third-country nationals in situations which have no connection with the rationale of international protection. [19] It has also stated that a refusal to perform military service could be based on political reasons or on other reasons unconnected with any of the reasons laid down in the directive, [20] which means that international protection will not be made available on that ground.

53. It is true, as the referring court observes, that in some countries the case-law has accepted that the denunciation of corruption might constitute an attributed political opinion [21] and that the HCR, in some of its guidelines, has indicated that drug cartels might, in addition to merely seeking to make money, have the aim of 'consolidating or expanding the group's powerbase in society', [22] which might allow resistance to their acts of violence to be classified as 'political'.

54. In both of those situations, however, the political nature is marked either by the active denunciation by the filing of a complaint alleging corruption which is recognised as being widespread, or by the finding that the armed group has political objectives such that resistance to its acts of violence is liable to be regarded as a political opinion. Thus, those situations would be liable to meet the conditions of the definition of political opinion in Directive 2011/95, which allows them to be distinguished from situations involving acts of violence based on financial interest alone.

55. In addition, the case-law, in some countries, has considered that 'the refusal to submit to corruption could be treated as a dissenting political opinion if the entire political system is based on corruption'. [23] Thus, a refusal to be involved in corruption, without an express act of denunciation, becomes 'political' only where the corruption is general and not merely the work of a few isolated individuals. In my view, that situation also meets the definition of 'political

19 See judgment of 23 May 2019, *Bilali* (C-720/17, EU:C:2019:448, paragraph 44 and the case-law cited).

20 See judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)* (C-238/19, EU:C:2020:945, paragraphs 47 and 48).

21 In Canada, see judgment of the Federal Court of 16 April 1998, *Klinko* v *Canada (Minister of Citizenship and Immigration)* [(1998) 148 F.T.R. 69 (TD)], concerning a public complaint denouncing the general corruption in the Ukrainian State system.

22 See HCR, 'Guidelines on International Protection No 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions', 2 December 2016 (HCR/GIP/16/12), paragraph 36, available at the following internet address: https://www.refworld.org/docid/583595ff4.html.

23 Tissier-Raffin, M., *La qualité de réfugié de l'article 1 de la Convention de Genève à la lumière des jurisprudences occidentales*, 1st ed., Bruylant, Brussels, p. 111, paragraph 66 and the case-law cited in footnotes 287 and 288.

opinion' in Directive 2011/95 and cannot be assimilated to a situation which merely concerned the protection of economic assets, including in court proceedings, without 'speak[ing] to a matter that has a broader societal or collective impact'. [24]

56. In all of those cases, it was established that there was a political reason. Thus, it is on the evidential plane that the difficulty arises.

57. Where political opinions are attributed to a person, it must be established that the actor of persecution regards the resistance or denunciation as a political opinion. The actor of persecution is not present in the procedure relating to the application for international protection and cannot be questioned. In order to ensure that the concept of 'attributed political opinion' does not lead to an inordinate expansion of the category of dissident political refugees, certain States, including the United States of America since 2005, have required the applicant to adduce direct proof that the actor of persecution attributes political opinions to him or her. [25]

58. However, that question of the extent of the evidence required has already been raised by the Court, which has interpreted the requirements of Article 4 of Directive 2011/95. It has held that 'first, … Article 4(1) of that directive allows only Member States to place the onus on the applicant "to submit as soon as possible all the elements needed to substantiate the application for international protection" and places on Member States the onus of assessing the relevant elements of the application. Second, … Article 4(5) of Directive 2011/95 acknowledges that an applicant may not always be able to substantiate his or her claim with documentary or other evidence and lists the cumulative conditions under which such evidence is not required. In that regard, the reasons for the refusal to perform military service and, consequently, the prosecution to which it exposes the conscript constitute subjective elements of the application in respect of which it may be particularly difficult to adduce direct evidence'. [26]

59. That reasoning may be transposed to the question of evidence of a reason for persecution. It is therefore for the referring court to assess, in the present case, in the light of all of the circumstances, the plausibility of the attributed political opinion in P.I.'s situation.

60. In fact, having to abandon court proceedings in connection with the non-performance of a contract relating to large-scale asset-stripping, because of criminal proceedings instigated by the other party to the contract, who has connections with the prison system, when active measures were ordered, is not sufficient to establish that the attributed opinions are of a political nature. It is also necessary that the court proceedings are seen by the actor of persecution as an act of political dissent which it will not tolerate, that is to say, as criticism of its methods and its policy. That implies that that actor is acting at a high political level or that corruption is widespread in the country in question and that that actor does not regard that action as a mere claim for performance of a contract. It is for the referring court to assess the situation before it in the light of those criteria.

[24] 'The Michigan Guidelines on Risk for Reasons of Political Opinion', *International Journal of Refugee Law*, Oxford University Press, Oxford, 2015, Vol. 27, No 3, pp. 508 to 511, paragraph 11.

[25] Tissier-Raffin, M., *La qualité de réfugié de l'article 1 de la convention de Genève à la lumière des jurisprudences occidentales*, 1st ed., Bruylant, Brussels, 2016, p. 107, paragraph 65 and the case-law cited in footnotes 245 and 284.

[26] Judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)* (C-238/19, EU:C:2020:945, paragraph 55).

61. Having regard to the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling as follows:

Article 10(1)(e) and (2) of Directive 2011/95 must be interpreted as meaning that court proceedings brought by a person against non-State actors to protect his assets may be regarded as a 'political opinion' if there are well-founded reasons to fear, which it is for the referring court to ascertain, that that action might be regarded as resistance and perceived by the State authorities as an act of political dissent against which they might envisage taking retaliatory action.

V. Conclusion

62. Having regard to the foregoing considerations, I propose that the Court answer the question for a preliminary ruling referred by the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) as follows:

Article 10(1)(e) and (2) of 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 must be interpreted as meaning that court proceedings brought by a person against non-State actors to protect his assets may be regarded as a 'political opinion' if there are well-founded reasons to fear, which it is for the referring court to ascertain, that that action might be regarded as resistance and perceived by the State authorities as an act of political dissent against which they might envisage taking retaliatory action.