

JUDGMENT OF THE COURT (Grand Chamber)

2 March 2010*

In Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08,

REFERENCES for a preliminary ruling under Articles 68 EC and 234 EC from the Bundesverwaltungsgericht (Germany), made by decisions of 7 February and 31 March 2008, received at the Court on 29 April 2008, in the proceedings

Aydin Salahadin Abdulla (C-175/08),

Kamil Hasan (C-176/08),

Ahmed Adem,

Hamrin Mosa Rashi (C-178/08),

Dler Jamal (C-179/08)

* Language of the cases: German.

v

Bundesrepublik Deutschland,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, J.-C. Bonichot, R. Silva de Lapuerta and P. Lindh, Presidents of Chambers, C.W.A. Timmermans, A. Rosas, K. Schiemann, P. Kūris, A. Ó Caoimh, L. Bay Larsen (Rapporteur), T. von Danwitz and A. Arabadjiev, Judges,

Advocate General: J. Mazák,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 2 June 2009,

after considering the observations submitted on behalf of:

— Mr Salahadin Abdulla, by A. Lex, Rechtsanwältin,

— Mr Hasan and Mr Jamal, by T. Grüner, Rechtsanwalt,

gives the following

Judgment

- 1 These references for a preliminary ruling concern the interpretation of Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12) ('the Directive'), read in conjunction with Article 2(c) of that directive.

- 2 The references have been made in the course of proceedings between the Iraqi nationals Mr Salahadin Abdulla, Mr Hasan, Mr Adem and his wife, Ms Mosa Rashi, and Mr Jamal (collectively, 'the appellants in the main proceedings') and the Bundesrepublik Deutschland (Federal Republic of Germany), represented by the Bundesministerium des Innern (Federal Ministry of the Interior), itself represented by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) ('the Bundesamt'), regarding the latter's revocation of their refugee status.

Legal context

The Convention relating to the Status of Refugees

- 3 The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), entered into force

on 22 April 1954. It was supplemented by the Protocol relating to the Status of Refugees of 31 January 1967, which entered into force on 4 October 1967 ('the Geneva Convention').

- 4 The first subparagraph of Article 1(A)(2) of the Geneva Convention provides 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 nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'.

- 5 Article 1(C)(5) of the Geneva Convention provides that:

'This Convention shall cease to apply to any person falling under the terms of section A if:

...

5. He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.’

European Union legislation

- 6 The first subparagraph of Article 6(1) TEU provides:

‘The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.’

- 7 Article 18 of the Charter of Fundamental Rights of the European Union (‘the Charter’) states:

‘The right to asylum shall be guaranteed with due respect for the rules of the [Geneva Convention] and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union.’

8 Recitals 2 and 3 of the preamble to the Directive state:

‘(2) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention ..., thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.

(3) The Geneva Convention ... [provides] the cornerstone of the international legal regime for the protection of refugees.’

9 Recital 10 of the preamble to the Directive states:

‘This Directive respects the fundamental rights and observes the principles recognised in particular by the [Charter]. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members.’

10 Recitals 16 and 17 of the preamble to the Directive are worded as follows:

‘(16) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

- (17) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.’

¹¹ Article 1 of the Directive provides:

‘The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.’

¹² Under Article 2(a), (c) to (e) and (g) of the Directive:

‘(a) “international protection” means the refugee and subsidiary protection status as defined in (d) and (f);

...

(c) “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;

(d) “refugee status” means the recognition by a Member State of a third country national or a stateless person as a refugee;

(e) “person eligible for subsidiary protection” means a third country national ... who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin ..., would face a real risk of suffering serious harm as defined in Article 15 ... and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

...

(g) “application for international protection” means a request made by a third country national ... for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status ...’

¹³ Articles 13 and 18 of the Directive state that Member States are to grant refugee status or subsidiary protection status to third country nationals who satisfy the conditions laid down respectively in Chapters II and III or II and V of that directive.

- 14 Article 4 of the Directive, which is contained in Chapter II thereof ('Assessment of applications for international protection'), sets out the conditions governing the assessment of facts and circumstances. Article 4(1) provides:

'Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.'

- 15 Article 4(3) of the Directive specifies the matters to be taken into account for the purpose of assessing an application for international protection on an individual basis.

- 16 Under Article 4(4) of the Directive, '[t]he fact that an applicant has already been subject to persecution ... or to direct threats of such persecution ... is a serious indication of the applicant's well-founded fear of persecution ..., unless there are good reasons to consider that such persecution ... will not be repeated.'

- 17 Article 5(1) of the Directive, which also features in Chapter II thereof, adds that a well-founded fear of being persecuted may be based on events which have taken place since the applicant left the country of origin.

- 18 Article 6 of the Directive, which is contained in Chapter II and is entitled 'Actors of persecution or serious harm', states:

'Actors of persecution or serious harm include:

- (a) the State;

- (b) parties or organisations controlling the State or a substantial part of the territory of the State;

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

¹⁹ Article 7(1) and (2), which is contained in Chapter II and is entitled 'Actors of protection', provides:

1. Protection can be provided by:

(a) the State; or

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.

2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by

operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.’

²⁰ Article 9(1) and (2) of the Directive, which is contained in Chapter III (‘Qualification for being a refugee’), defines acts of persecution. Article 9(3) requires that there be a connection between the reasons for persecution mentioned in Article 10 of the Directive and those acts of persecution.

²¹ Article 10(1) of the Directive, which is also contained in Chapter III and is entitled ‘Reasons for persecution’, determines the elements which must be taken into account in the assessment of each of the five reasons for persecution.

²² Article 11 of the Directive, which also features in Chapter III and is entitled ‘Cessation’, provides:

‘1. A third country national ... shall cease to be a refugee if he or she:

...

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;

...

2. In considering [point] (e) ... of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well founded.'

²³ Article 14 of the Directive, which is entitled 'Revocation of, ending of or refusal to renew refugee status' and features in Chapter IV ('Refugee status'), provides as follows:

'1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the refugee status of a third country national ... granted by a [competent] body, if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State which has granted refugee status shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.

...'

²⁴ Article 15 of the Directive, which is entitled ‘Serious harm’ and features in Chapter V (‘Qualification for subsidiary protection’), states:

‘Serious harm consists of:

(a) death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.’

²⁵ In accordance with its Articles 38 and 39, the Directive entered into force on 20 October 2004 and had to be transposed by 10 October 2006 at the latest.

National legislation

- ²⁶ Paragraph 3(1) of the Law on asylum procedure (Asylverfahrensgesetz) ('the AsylVfG') provides that:

'A foreign national is a refugee within the meaning of the [Geneva Convention] when he is exposed to the threats referred to in Paragraph 60(1) of the Law on the residence of foreign nationals [Aufenthaltsgesetz] in his State of nationality ...'

- ²⁷ Paragraph 60 of the Law on the residence of foreign nationals, which is contained in the chapter dealing with cessation of residence and entitled 'Prohibition of deportation', provides in subparagraph (1):

'Under the [Geneva] Convention, a foreign national cannot be deported to a State in which his life or freedom are threatened for reasons of his race, religion, nationality, membership of a particular social group or political opinion ...'

- ²⁸ The first and second sentences of Paragraph 73(1) of the AsylVfG, as amended by the Law implementing the directives of the European Union on rights of residence and asylum (Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union) of 19 August 2007 (BGBl. 2007 I, p. 1970), state:

'The grant of the right to asylum and of refugee status shall be revoked without delay when the conditions on which they were based have ceased to exist. This is particularly

the case when, the circumstances which led to that right to asylum or refugee status being granted to him having ceased to exist, the foreign national can no longer continue to refuse to avail himself of the protection of his country of nationality ...'

- 29 Pursuant to the third sentence of Paragraph 73(1) of the AsylVfG, the grant of the right to asylum and of refugee status may not be revoked 'when the foreign national is able to invoke compelling reasons, arising out of persecution to which he has been subject in the past, for refusing to avail himself of the protection of his country of nationality ...'

The disputes in the main proceedings and the questions referred for a preliminary ruling

- 30 The appellants in the main proceedings travelled to Germany between 1999 and 2002 and there applied for asylum.
- 31 In support of their respective applications, they submitted a variety of reasons which made them fear being persecuted in Iraq by the regime of Saddam Hussein's Baath Party.
- 32 The Bundesamt granted them refugee status in 2001 and 2002.
- 33 In 2004 and 2005 the Bundesamt, as a result of the changed circumstances in Iraq, initiated procedures to revoke the recognition as refugees which had been granted to the appellants.

- 34 As a result of those procedures, the Bundesamt revoked that recognition by decisions adopted between January and August 2005.
- 35 By decisions delivered between July and October 2005, the competent administrative courts set aside the revocation decisions. They held, in essence, that, given the extremely unstable situation in Iraq, it could not be concluded that there had been a durable and lasting change in the situation such as to justify revocation of the recognition as refugees which had been granted.
- 36 Following appeals lodged by the Federal Republic of Germany, the higher administrative courts having jurisdiction in the matter, by rulings delivered in March and August 2006, overturned the first-instance decisions and dismissed the actions for annulment which had been brought against the revocation decisions. Referring to the fundamental change in the situation in Iraq, those courts held that the appellants in the main proceedings were now safe from the persecution suffered under the previous regime and that they were not under any significantly likely threat of further persecution on any other grounds.
- 37 The appellants in the main proceedings lodged appeals on a point of law (“Revision”) against the appellate rulings before the Bundesverwaltungsgericht (Federal Administrative Court), seeking confirmation of the decisions delivered at first instance.
- 38 The referring court takes the view that there is a cessation of refugee status when, first, the situation in a refugee’s country of origin has changed in a significant and non-temporary manner and the circumstances justifying his fear of persecution, on the basis of which he was recognised as a refugee, have ceased to exist and when,

secondly, he has no other reason to fear being 'persecuted' within the meaning of the Directive.

- 39 According to the referring court, the expression 'protection of the country' referred to in Article 11(1)(e) of the Directive has the same meaning as the expression 'protection of that country' used in Article 2(c) of the Directive and refers solely to protection against persecution.
- 40 General dangers do not, in the view of the referring court, come within the scope of the protection of that directive or of the Geneva Convention. The question whether a refugee may be forced to return to his country of origin even though dangers of a general nature exist there cannot be examined in the context of the revocation of refugee status pursuant to Paragraph 73(1) of the AsylVfG. That question may be examined only subsequently, when a decision has to be taken on whether the person concerned must be returned to his country of origin.
- 41 The referring court maintains that, according to the findings made at the stage of the appeal proceedings by which it is bound, the appellants in the main proceedings cannot rely upon the effects of previous acts of persecution for the purpose of refusing to return to Iraq. It deduces from this that the 'compelling reasons' arising out of previous persecution referred to in the third sentence of Paragraph 73(1) of the AsylVfG and in the second clause of Article 1(C)(5) of the Geneva Convention cannot be relied upon before it.
- 42 It notes, however, that the revocation of refugee status does not necessarily lead to the loss of a person's right to reside in Germany.

43 In those circumstances, the Bundesverwaltungsgericht decided to stay the proceedings and to refer, in each of the cases in the main proceedings, the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Is Article 11(1)(e) of [the] Directive ... to be interpreted as meaning that — apart from the second clause of Article 1(C)(5) of the [Geneva] Convention — refugee status ceases to exist if the refugee’s well-founded fear of persecution within the terms of Article 2(c) of that directive, on the basis of which refugee status was granted, no longer exists and he also has no other reason to fear persecution within the terms of Article 2(c) of [that directive]?’
- (2) If Question 1 is to be answered in the negative: does the cessation of refugee status under Article 11(1)(e) of [the] Directive also require that, in the country of the refugee’s nationality,
- (a) an actor of protection within the meaning of Article 7(1) of [the Directive] be present, and is it sufficient in that regard if protection can be assured only with the help of multinational troops,
 - (b) the refugee should not be threatened with serious harm, within the meaning of Article 15 of [the Directive], which leads to the granting of subsidiary protection under Article 18 of that directive, and/or
 - (c) the security situation be stable and the general living conditions ensure a minimum standard of living?

(3) In a situation in which the previous circumstances, on the basis of which the person concerned was granted refugee status, have ceased to exist, are new, different circumstances founding persecution to be:

(a) measured against the standard of probability applied for recognising refugee status, or is another standard to be applied in favour of the person concerned, and/or

(b) assessed having regard to the relaxation of the burden of proof under Article 4(4) of [the] Directive ...?’

⁴⁴ By order of the President of the Court of 25 June 2008, Cases C-175/08 to C-179/08 were joined for the purposes of the written and oral procedure and of the judgment. By order of the President of the Court of 4 August 2008, Case C-177/08 was subsequently disjoined from those cases and removed from the register of the Court.

Jurisdiction of the Court

⁴⁵ In the cases in the main proceedings, the appellants filed their applications for international protection before the Directive entered into force, that is to say, before 20 October 2004.

⁴⁶ In the case where a person has ceased to hold refugee status under Article 11 of the Directive, Article 14(1) thereof provides for revocation of that status only if the application for international protection was filed after that directive had entered into force.

47 The applications for international protection which have given rise to the questions referred by the Bundesverwaltungsgericht are not therefore covered *ratione temporis* by the Directive.

48 However, it must be borne in mind that where questions submitted by national courts concern the interpretation of a provision of Community law, the Court is, in principle, obliged to give a ruling. Neither the wording of Articles 68 EC and 234 EC nor the aim of the procedure established by Article 234 EC indicates that the framers of the EC Treaty intended to exclude from the jurisdiction of the Court requests for a preliminary ruling on a directive where the domestic law of a Member State refers to the provisions of that directive in order to determine the rules applicable to a situation which is purely internal to that State. In such a case it is clearly in the Community interest that, in order to forestall future differences of interpretation, provisions taken from Community law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraphs 15 and 16 and the case-law cited).

49 In the present cases, the referring court maintains that the Law transposing the directives on rights of residence and asylum, which entered into force on 28 August 2007 and from which the new wording of Paragraph 73(1) of the AsylVfG stems, transposed Articles 11 and 14 of the Directive without imposing temporal limits on the applicability of its provisions, with the result that those national provisions are applicable to applications for international protection which were filed before the Directive entered into force.

- 50 In those circumstances, the questions referred for a preliminary ruling should be answered.

The questions referred

Preliminary observations

- 51 The Directive was adopted on the basis of, inter alia, point (1)(c) of the first paragraph of Article 63 EC, which required the Council of the European Union to adopt measures on asylum, in accordance with the Geneva Convention and other relevant treaties, within the area of minimum standards with respect to the qualifications of nationals of third countries as refugees.
- 52 It is apparent from recitals 3, 16 and 17 in the preamble to the Directive that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of the Directive for determining who qualifies for refugee status and the content thereof were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria.
- 53 The provisions of the Directive must for that reason be interpreted in the light of its general scheme and purpose, while respecting the Geneva Convention and the other relevant treaties referred to in point (1) of the first paragraph of Article 63 EC.

54 Those provisions must also, as is apparent from recital 10 in the preamble to the Directive, be interpreted in a manner which respects the fundamental rights and the principles recognised in particular by the Charter.

The first question

55 By its first question, the referring court asks, in essence, whether Article 11(1)(e) of the Directive is to be interpreted as meaning that refugee status ceases to exist if the circumstances which justified the refugee's fear of persecution for one of the reasons referred to in Article 2(c) of the Directive, on the basis of which refugee status was granted, no longer exist and the refugee has no other reason to fear being 'persecuted' within the meaning of Article 2(c) of the Directive.

56 In that regard, it must be borne in mind that, under Article 2(c) of the Directive, the term 'refugee' refers, in particular, to a third country national who is outside the country of his nationality 'owing to a well-founded fear of being persecuted' for reasons of race, religion, nationality, political opinion or membership of a particular social group and is unable or, 'owing to such fear', unwilling to avail himself of the 'protection' of that country.

57 The national concerned must therefore, on account of circumstances existing in his country of origin, have a well-founded fear of being personally the subject of persecution for at least one of the five reasons listed in the Directive and the Geneva Convention.

- 58 Those circumstances will indicate that the third country does not protect its national against acts of persecution.
- 59 Those circumstances form the reason why it is impossible for the person concerned, or why he justifiably refuses, to avail himself of the 'protection' of his country of origin within the meaning of Article 2(c) of the Directive, that is to say, in terms of that country's ability to prevent or punish acts of persecution.
- 60 They are therefore determinant factors in respect of the granting of refugee status.
- 61 Under Article 4(1) of the Directive, the facts and circumstances are to be assessed, for the purposes of the granting of refugee status, in cooperation with the applicant.
- 62 Under Article 13 of the Directive, the Member State is required to grant refugee status to the applicant if he qualifies under, inter alia, Articles 9 and 10 thereof.
- 63 Article 9 of the Directive defines the elements which make it possible to regard acts as constituting persecution. In that regard, Article 9(1) states that the relevant facts must be 'sufficiently serious' by their nature or repetition as to constitute a 'severe violation of basic human rights' or be an accumulation of various measures which is 'sufficiently severe' as to affect an individual in a manner similar to a 'severe violation of basic human rights'.

- 64 Article 9(3) of the Directive adds that there must be a connection between the reasons for persecution mentioned in Article 10 of the Directive and the acts of persecution.
- 65 Article 11(1)(e) of the Directive, in the same way as Article 1(C)(5) of the Geneva Convention, provides that a person ceases to be classified as a refugee when the circumstances as a result of which he was recognised as such have ceased to exist, that is to say, in other words, when he no longer qualifies for refugee status.
- 66 By stating that, because those circumstances ‘have ceased to exist’, the national ‘can no longer ... continue to refuse to avail himself or herself of the protection of the country of nationality’, that article establishes, by its very wording, a causal connection between the change in circumstances and the impossibility for the person concerned to continue to refuse and thus to retain his refugee status, in that his original fear of persecution no longer appears to be well founded.
- 67 In so far as it provides that the national ‘can no longer ... continue to refuse’ to avail himself of the protection of his country of origin, Article 11(1)(e) of the Directive implies that the ‘protection’ in question is the same as that which has up to that point been lacking, namely protection against the acts of persecution envisaged by the Directive.
- 68 In that way, the circumstances which demonstrate the country of origin’s inability or, conversely, its ability to ensure protection against acts of persecution constitute a crucial element in the assessment which leads to the granting of, or, as the case may be, by means of the opposite conclusion, to the cessation of refugee status.

- 69 Consequently, refugee status ceases to exist where the national concerned no longer appears to be exposed, in his country of origin, to circumstances which demonstrate that that country is unable to guarantee him protection against acts of persecution against his person for one of the five reasons listed in Article 2(c) of the Directive. Such a cessation thus implies that the change in circumstances has remedied the reasons which led to the recognition of refugee status.
- 70 In order to arrive at the conclusion that the refugee's fear of being persecuted is no longer well founded, the competent authorities, by reference to Article 7(2) of the Directive, must verify, having regard to the refugee's individual situation, that the actor or actors of protection of the third country in question have taken reasonable steps to prevent the persecution, that they therefore operate, *inter alia*, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status.
- 71 That verification means that the competent authorities must assess, in particular, the conditions of operation of, on the one hand, the institutions, authorities and security forces and, on the other, all groups or bodies of the third country which may, by their action or inaction, be responsible for acts of persecution against the recipient of refugee status if he returns to that country. In accordance with Article 4(3) of the Directive, relating to the assessment of facts and circumstances, those authorities may take into account, *inter alia*, the laws and regulations of the country of origin and the manner in which they are applied, and the extent to which basic human rights are guaranteed in that country.

72 Furthermore, Article 11(2) of the Directive provides that the change of circumstances recorded by the competent authorities must be ‘of such a significant and non-temporary nature’ that the refugee’s fear of persecution can no longer be regarded as well founded.

73 The change of circumstances will be of a ‘significant and non-temporary’ nature, within the terms of Article 11(2) of the Directive, when the factors which formed the basis of the refugee’s fear of persecution may be regarded as having been permanently eradicated. The assessment of the significant and non-temporary nature of the change of circumstances thus implies that there are no well-founded fears of being exposed to acts of persecution amounting to severe violations of basic human rights within the meaning of Article 9(1) of the Directive.

74 It must be pointed out that the actor or actors of protection with respect to which the reality of a change of circumstances in the country of origin is to be assessed are, under Article 7(1) of the Directive, either the State itself or the parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.

75 As regards the latter point, it must be acknowledged that Article 7(1) of the Directive does not preclude the protection from being guaranteed by international organisations, including protection ensured through the presence of a multinational force in the territory of the third country.

76 In view of all the foregoing considerations, the answer to the first question is that Article 11(1)(e) of the Directive is to be interpreted as meaning that:

- refugee status ceases to exist when, having regard to a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the person's fear of persecution for one of the reasons referred to in Article 2(c) of the Directive, on the basis of which refugee status was granted, no longer exist and that person has no other reason to fear being 'persecuted' within the meaning of Article 2(c) of the Directive;

- for the purposes of assessing a change of circumstances, the competent authorities of the Member State must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in Article 7(1) of the Directive have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status;

- the actors of protection referred to in Article 7(1)(b) of the Directive may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.

The second question

- 77 Having regard to the answer given to the first question and the information provided in paragraphs 74 and 75 of this judgment, there is no need to answer the second question.
- 78 Nevertheless, as regards Question 2(b), it is important to point out, in any event, that, in connection with the concept of ‘international protection’, the Directive governs two distinct systems of protection, that is to say, firstly, refugee status and, secondly, subsidiary protection status, in view of the fact that Article 2(e) of the Directive states that a person eligible for subsidiary protection is one ‘who does not qualify as a refugee’.
- 79 Therefore, as there would otherwise be a failure to have regard for the respective domains of the two systems of protection, the cessation of refugee status cannot be made conditional on a finding that a person does not qualify for subsidiary protection status.
- 80 Within the system of the Directive, the possible cessation of refugee status occurs without prejudice to the right of the person concerned to request the granting of subsidiary protection status in the case where all the factors, referred to in Article 4 of the Directive, which are necessary to establish that he qualifies for such protection under Article 15 of the Directive are present.

The third question

Preliminary observations

- 81 The third question relates to the situation in which it is assumed that a finding has already been made that the circumstances on the basis of which refugee status was granted have ceased to exist.
- 82 It concerns the conditions under which the competent authorities then verify, if necessary, before finding that that status has ceased to exist, whether there are other circumstances which may give rise to a well-founded fear of persecution on the part of the person concerned.
- 83 That verification therefore implies an assessment analogous to that carried out during the examination of an initial application for the granting of refugee status.

Question 3(a)

- 84 By Question 3(a) the referring court asks, in essence, whether, when the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of the Directive, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.

85 In that regard it must be borne in mind that:

- that standard of probability applies to the assessment of the extent of the risk of actually suffering acts of persecution in a particular situation, as established in the context of the cooperation between the Member State and the person concerned, to which Articles 4(1) and 14(2) of the Directive refer;

- under Article 9(1) of the Directive, the relevant facts examined must be sufficiently serious.

86 It must be acknowledged that the level of difficulty encountered, first, in gathering the relevant elements for the purposes of the assessment of the circumstances may, solely from the perspective of the relevance of the facts, prove to be higher or lower from one case to another.

87 In that regard, a person who, after having resided for a number of years as a refugee outside of his country of origin, relies on other circumstances to found a fear of persecution does not normally have the same opportunities to assess the risk to which he would be exposed in his country of origin as does an applicant who has recently left his country of origin.

88 By contrast, the standard which must then guide the assessment of the elements present does not vary, either at the stage of the examination of an application for refugee status or at the stage of the examination of the question of whether that status should be maintained, when, after the circumstances which led to the granting of that status have ceased to exist, other circumstances which may have given rise to a well-founded fear of acts of persecution are assessed.

- 89 At both of those stages of the examination, the assessment relates to the same question of whether or not the established circumstances constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subjected to acts of persecution.
- 90 That assessment of the extent of the risk must, in all cases, be carried out with vigilance and care, since what are at issue are issues relating to the integrity of the person and to individual liberties, issues which relate to the fundamental values of the Union.
- 91 The answer to Question 3(a) is therefore that, when the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of the Directive, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.

Question 3(b)

- 92 By Question 3(b) the referring court asks, in essence, whether, in so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of the Directive applies when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of the Directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee.

93 In that regard, it must be stated that Article 4(4) of the Directive applies when the competent authorities have to assess whether the circumstances which they are examining justify a well-founded fear of persecution on the part of the applicant.

94 That is the situation, first and foremost, at the stage of the examination of an initial application for the granting of refugee status, when the applicant relies on earlier acts or threats of persecution as indications of the validity of his fear that the persecution in question will recur if he returns to his country of origin. The evidential value attached by Article 4(4) of the Directive to such earlier acts or threats will be taken into account by the competent authorities on the condition, stemming from Article 9(3) of the Directive, that those acts and threats are connected with the reason for persecution relied on by the person applying for protection.

95 In the situation envisaged by the question referred, the assessment to be carried out by the competent authorities as to the existence of circumstances other than those on the basis of which refugee status was granted is, as has been pointed out in paragraph 83 of the present judgment, analogous to that carried out during the examination of an initial application.

96 Consequently, in that situation, Article 4(4) of the Directive may be applicable where there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage.

97 That may be the case, in particular, where the refugee relies on a reason for persecution other than that accepted at the time when refugee status was granted and:

- prior to his initial application for international protection, he suffered acts or threats of persecution on account of that other reason, but did not then rely on them;

— he suffered acts or threats of persecution for that reason after he left his country of origin and those acts or threats originate in that country.

⁹⁸ By contrast, where the refugee, relying on the same reason for persecution as that accepted at the time when refugee status was granted, submits to the competent authorities that the cessation of the facts which gave rise to the granting of that status was followed by the occurrence of other facts which gave rise to a fear of persecution for that same reason, the assessment to be carried out will normally be covered, not by Article 4(4) of the Directive, but by Article 11(2) thereof.

⁹⁹ It is under Article 11(2) of the Directive that the competent authorities must assess whether the alleged change of circumstances — for example, the disappearance of one actor of persecution followed by the appearance of another actor of persecution — is of such a significant nature that the refugee's fear of persecution can no longer be regarded as well founded.

¹⁰⁰ The answer to Question 3(b) is therefore that:

— in so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of the Directive may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of the Directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee;

- however, that may normally be the case only when the reason for persecution is different from that accepted at the time when refugee status was granted and only when there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage.

Costs

- ¹⁰¹ Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decisions on costs are a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:**
 - **refugee status ceases to exist when, having regard to a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the person's fear of per-**

secution for one of the reasons referred to in Article 2(c) of Directive 2004/83, on the basis of which refugee status was granted, no longer exist and that person has no other reason to fear being 'persecuted' within the meaning of Article 2(c) of Directive 2004/83;

- for the purposes of assessing a change of circumstances, the competent authorities of the Member State must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in Article 7(1) of Directive 2004/83 have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status;**

- the actors of protection referred to in Article 7(1)(b) of Directive 2004/83 may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.**

- 2. When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially**

at issue or for one of the other reasons set out in Article 2(c) of Directive 2004/83, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.

- 3. In so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of Directive 2004/83 may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of that directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee. However, that may normally be the case only when the reason for persecution is different from that accepted at the time when refugee status was granted and only when there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage.**

[Signatures]