OPINION OF ADVOCATE GENERAL MAZÁK

delivered on 15 September 2009[1]

I — Introduction

1. These references for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court), Germany, concern the interpretation of certain provisions 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 ('Directive 2004/83').[2] The references concern the conditions in accordance with which refugee status ceases pursuant to Article 11(1)(e) of Directive 2004/83. The Bundesverwaltungsgericht seeks, in particular, to ascertain whether a refugee ceases to have refugee status under Article 11(1)(e) of Directive 2004/83 if the well-founded fear of persecution, on the basis of which that 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. In the event that the Court considers that refugee status does not cease under the aforementioned circumstances, the referring court requests a ruling from the Court on whether and to what extent certain additional requirements are imposed in order for that status to cease. The referring court also seeks clarification on the manner in which new, different circumstances founding persecution must be assessed in the context of cessation of refugee status where the previous circumstances, on the basis of which the person concerned was granted refugee status, have ceased to exist.

II — Legal context

A — *International law — Convention relating to the Status of Refugees*

2. The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951,[3] entered into force on 22 April 1954. The version applicable to the dispute in the main

1 — Original language: English.

2 — OJ 2004 L 304, p. 12.

3 — United Nations Treaty Series, Vol. 189, p. 150, No 2545 (1954).

proceedings is that resulting from the Protocol relating to the Status of Refugees, adopted on 31 January 1967 in New York and which entered into force on 4 October 1967 ('the Geneva Convention').

3. Article 1(A)(2) of the Geneva Convention provides that the term 'refugee' shall 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; …'

4. Article 1(C) of the Geneva Convention provides that '[t]his 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 connexion 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; …'

…

B — *Community law*

5. Article 2(c) of Directive 2004/83 provides that '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.

6. Article 2(e) of Directive 2004/83 provides that a 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.'

7. Article 4 of Directive 2004/83, entitled 'Assessment of facts and circumstances', provides in its fourth paragraph that '[t]he fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.'

8. Article 7, entitled 'Actors of protection', provides that:

'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.

3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.'

9. Article 11 of Directive 2004/83, entitled 'Cessation', provides:

'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 points (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.'

10. Article 14 of Directive 2004/83, entitled 'Revocation of, ending of or refusal to renew refugee status', provides:

'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 governmental, administrative, judicial or quasi-judicial 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 …'

11. Article 15 of Directive 2004/83, entitled 'Serious harm', provides:

'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.'

C — *National law*

12. Paragraph 3(1) of the Asylum Procedure Act (Asylverfahrensgesetz) provides that:

'An alien is a refugee within the meaning of the [Geneva Convention] when he is threatened by the dangers provided by Paragraph 60(1) of the Residence Act [Aufenthaltsgesetz] in his state of nationality …'

13. Paragraph 60(1) of the Aufenthaltsgesetz contains a list of the circumstances in

accordance with which an alien may not be deported.

14. On 19 August 2007, the Federal Republic of Germany adopted a law implementing the directives of the European Union on residence and asylum [4] which amended, inter alia, Paragraph 73(1) of the Asylverfahrensgesetz in order to transpose into national law Articles 11 and 14 of Directive 2004/83. Paragraph 73(1) of the Asylverfahrensgesetz provides:

'The grant of asylum and 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 in accordance with which that right to asylum or refugee status were granted to an alien having ceased to exist, he can no longer continue to refuse to avail himself of the protection of his country of nationality …'

4 — Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, BGBl. I p. 1970. This law entered into force on 28 August 2007.

III — The main proceedings and the order for reference

15. The parties to the proceedings before the referring court travelled to Germany between 1999 and 2002 and applied for asylum there. Aydin Salahadin Abdulla, the appellant in Case C-175/08, is an Iraqi national of Turkmen ethnicity and Sunni faith. In support of his application for asylum he submitted that he had stabbed a member of the Baath Party in desperation over the imprisonment of his brother. Kamil Hasan, the appellant in Case C-176/08 is an Iraqi national of Arab ethnicity and Sunni faith. In support of his application for asylum he submitted that a cousin had hidden documents of a banned opposition party and a pistol at his home, which were later found during a house search. Ahmed Adem and Hamrin Mosa Rashi, the appellants in Case C-178/08, are a married couple with Iraqi nationality and of Muslim faith. Mr Adem is of Arab ethnicity while Ms Mosa Rashi is of Kurdish ethnicity. In support of their applications for asylum they submitted

that, as a result of Mr Adem's activity for an opposition party (Hisb-Al-Schaab-Al-Dimoqrati), he was wanted by the secret police. Dler Jamal, the appellant in Case C-179/08, is an Iraqi national of Kurdish ethnicity and Muslim faith. In support of his application for asylum he claimed that he had problems with two members of the Baath Party. [5]

16. The appellants were recognised as refugees pursuant to Paragraph 51(1) of the Aliens Act (the Ausländergesetz) (now: Paragraph 3(1) of the Asylverfahrensgesetz in conjunction with Paragraph 60(1) of the Aufenthaltsgesetz) by the Bundesamt für die Anerkennung ausländischer Flüchtlinge, now the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) ('the Bundesamt') in 2001 and 2002. That recognition was revoked by the Bundesamt between January 2005 and August 2005 as a result of the changed circumstances in Iraq. The appellants challenged those revocation decisions before the Verwaltungsgericht (Administrative Court). The revocation decisions were annulled by the Verwaltungsgericht in the light, inter alia, of the unstable situation in Iraq.

17. As a result of appeals lodged by the Federal Republic of Germany before the superior administrative courts (the Oberverwaltungsgericht and the Verwaltungerichtshof), the rulings of the Verwaltungsgericht were overturned and the appellants actions for annulment were dismissed between March and August 2006. The superior administrative courts based their decisions on the fact, inter alia, that the previous regime under Saddam Hussein had definitively lost its military and political authority over Iraq and that the appellants were now sufficiently safe from persecution under the Saddam Hussein regime. The courts in question also considered that the appellants were not under any significantly likely threat of further persecution of any kind. In addition, the superior administrative courts held that in so far as terrorist attacks and fighting between militant opposition and ordinary security and coalition forces were ongoing, it was not evident how such events had asylum-related characteristics which affected the appellants. According to the courts in question, general dangers do not fall within the scope of protection of Paragraph 60(1) of the Aufenthaltsgesetz nor within Article 1(C)(5) of the Geneva Convention. Moreover, the decisions revoking refugee status did not give rise to any legal misgivings in relation to Directive 2004/83, since that directive did not

5 — The appellants in Cases C-175/08 (Aydin Salahadin Abdulla), C-176/08 (Kamil Hasan), C-178/08 (Ahmed Adem and Hamrin Mosa Rashi) and C-179/08 (Dler Jamal) shall be collectively referred to as the 'appellants' in these proceedings.

become directly effective until after the expiry of the transposition period. The courts in question also considered that Directive 2004/83 did not alter the main substance of Paragraph 60(1) of the Aufenthaltsgesetz.

18. The appellants lodged appeals to the referring court on a point of law against the judgments of the superior administrative courts.

19. The referring court considers that it is necessary that the circumstances in a refugee's country of origin should have changed in a significant and non-temporary manner and that the refugee's well-founded fear of persecution, on the basis of which refugee status was recognised, has ceased to exist and he has no other reason to fear persecution. If a refugee claims that he will be the object of a new or different persecution if returned to his country of origin, a real risk of such persecution occurring must be established. The 'protection of that country' referred to in Article 1(C)(5) of the Geneva Convention has the same meaning as 'protection of the country' contained in Article 1(A)(2) of that convention and refers to protection from persecution only. According to the referring court, in accordance with its settled case-law and in the light of the wording and purpose of Article 1(A)(2) of the Geneva Convention, general dangers do not fall within the protection of that provision nor within the first clause of Article 1(C)(5) of that convention. The question of whether an alien must return to his country of origin if he faces general dangers cannot be examined in the context of cessation of refugee status in accordance with Paragraph 73(1) of the Asylverfahrensgesetz but rather must be examined under Paragraph 60(7) and the first sentence of Paragraph 60(a)(1) of the Aufenthaltsgesetz. The referring court also notes that the cessation of refugee status does not necessarily lead to the loss of a person's right to reside in Germany.

20. The referring court has however doubts as to the correctness of this position in the light of the Commission's proposal [6] which led to the adoption of Directive 2004/83 and certain documents issued by the Office of the United Nations High Commissioner for Refugees ('UNHCR'). In its proposal, the Commission, in addition to identifying the need to assess whether there has been such a fundamental change of political or social significance in the country of origin as to produce stable power structures, considered that there must be objective and verifiable evidence that human rights are generally respected within that country thereby perhaps

6 — COM(2001) 510 final, p. 26.

indicating that the cessation of refugee status is dependent on further conditions. The referring court also notes that the UNHCR's comments on the provisions of the Geneva Convention governing cessation of refugee status are somewhat unclear. [7]

21. In the event that the Court considers that refugee status does not cease pursuant to Article 11(1)(e) of Directive 2004/83 if the refugee's well-founded fear of persecution [8] on the basis of which refugee status was granted, no longer exists and he also has no other reason to fear persecution, [9] the referring court seeks clarification on whether the cessation of refugee status presupposes the existence of an actor of protection within the meaning of Article 7(1) of Directive 2004/83 and whether protection is available if it can only be assured with the help of multinational troops. The referring court also queries whether refugee status ceases if a refugee is in danger, on returning to his country of origin once the well-founded fear of persecution ceases to exist, of suffering serious harm within the meaning of Article 15 of Directive 2004/83 thereby making him eligible for subsidiary protection under Article 18 of that directive. According to the referring court, subsidiary protection is an independent protection status to be distinguished from refugee status. Consequently, with the cessation of refugee status the third country national loses only his classification as a refugee. If, instead, he satisfies all the requirements for subsidiary protection under Article 18 of Directive 2004/83, he is granted the relevant protection in Germany in the form of a corresponding prohibition of deportation (see Paragraph 60(2) and (3) and the second sentence of Paragraph 60(7) of the Aufenthaltsgesetz), in conjunction with a residence permit under Paragraph 25(3) thereof. The referring court also considers that the cessation of refugee status should also not depend on whether, generally speaking and irrespective of a risk of persecution, the security situation in the country of origin is stable and the general living conditions guarantee a minimum standard of living.

7 — According to the referring court, the UNHCR in its Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees clearly assumes that, to a large extent, the conditions for the granting and revocation of refugee status should be identical. By contrast, the comments of the UNHCR in its Guidelines on International Protection: Cessation of Refugee Status under Article 1(C)(5) and (6) of the 1951 Convention relating to the Status of Refugees of 10 February 2003 give the impression that, even after the fear of persecution has ceased to exist, the cessation of refugee status is also contingent on further conditions which are unrelated to persecution. Thus in accordance with points 15 and 16 of the guidelines in question, in addition to physical security or safety there is a need, in particular, for the existence of a functioning government and fundamental administrative structures, as evidenced by a functioning system of law and justice, as well as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood. An important indicator in this respect is the general human rights situation.

8 — Within the terms of Article 2(c) of that directive.

9 — Within the terms of Article 2(c) of that directive.

22. The referring court notes that the Geneva Convention and Directive 2004/83 do not provide when a fear of persecution is

well-founded or can no longer be regarded as well-founded in cessation cases. In cessation cases the referring court has, to date, considered that a refugee's fear of persecution can no longer be regarded as well-founded if, in his country of origin, the circumstances have changed significantly and not only temporarily in such a way that a repetition of the persecutory measures which caused him to flee can be ruled out with a sufficient degree of certainty for the foreseeable future and he will not be threatened, to any high degree of probability, for any other reason by any new or different form of persecution on his return. The referring court considers that new, different circumstances must be assessed in accordance with the same standard of probability as those for the recognition of refugees.

23. The referring court also notes that pursuant to Article 4(4) of Directive 2004/83, the fact that an applicant has already been subject, inter alia, to persecution or serious harm is a serious indication of that applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated. The referring court considers however that the restrictive formulation 'solcher Verfolgung', which is also reflected in the English ('such persecution') and French versions ('cette persécution'), indicates that the relaxation of the burden of proof does not apply in all cases where a person has been, inter alia, subject to persecution but requires an inherent nexus between the fact of having been subject to persecution and the circumstances in which a return to the country of origin could lead to further persecution. If, on the contrary, Article 4(4) of Directive 2004/83 also applies in cases where there is no inherent nexus, further clarification is necessary as to whether the provision is also applicable to the cessation of refugee status or whether Article 14(2) of Directive 2004/83 contains a special rule which overrides the general rule in Article 4(4) of that directive.

24. On the basis of those considerations, the Bundesverwaltungsgericht decided, by decisions of 7 February 2008 (Cases C-176/08 and C-179/08) and 31 March 2008 (Cases C-175/08 and C-178/08), to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 to be interpreted as meaning that — apart from the

second clause of Article 1(C)(5) of the Convention of 28 July 1951 relating to the Status of Refugees (Geneva Convention on Refugees) — 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 Directive 2004/83?

(2) If Question 1 is to be answered in the negative: does the cessation of refugee status under Article 11(1)(e) of Directive 2004/83 also require that, in the country of the refugee's nationality,

(a) an actor of protection within the meaning of Article 7(1) of Directive 2004/83 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 Directive 2004/83, 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 Directive 2004/83?'

IV — The proceedings before the Court of Justice

25. Written observations were submitted by the appellants, the Federal Republic of Germany, the Italian Republic, the Republic of Cyprus, the United Kingdom of Great Britain and Northern Ireland, and the Commission of the European Communities. A hearing was held on 2 June 2009.

V — Admissibility

26. The referring court notes that in the cases in question pending before it, the revocation of refugee status does not come directly within the scope of Article 14(1), in conjunction with Article 11, of Directive 2004/83 since the applications for international protection were made before that directive entered into force. The referring court considers however that the revocation of the refugee status of the appellants should be assessed in the light of the new version of Paragraph 73 of the Asylverfahrensgesetz, which entered into force on 28 August 2007 as the German legislature transposed Articles 14 and 11 of Directive 2004/83 without restricting the applicability of the new provision in time. According to the referring court, in similar cases, the Court has accepted that it has jurisdiction to rule on a reference concerning a transposition of law at national level that is not required by Community law.

27. It is settled case-law that within the framework of the cooperation between the Court and national courts established by Article 234 EC, it is solely for the national court to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. The Court can refuse a request submitted by a national court only where it is quite obvious that the ruling sought by that court on the interpretation of Community law bears no relation to the actual facts of the main action or its

purpose or where the problem is general or hypothetical. [10]

28. Consequently, 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. Moreover, where domestic legislation adopts the same solutions as those adopted in Community law it is clearly in the Community interest that, in order to forestall future differences of interpretation, provisions or concepts taken from Community law should be interpreted uniformly, irrespective of the circumstances in which they are to apply. [11]

29. As regards the application of the abovementioned case-law to the present references for a preliminary ruling, it is clear from the terms of Article 14(1), in conjunction with, Article 39 of Directive 2004/83, that Article 11 of that directive is not applicable to the appellants as their applications for international protection [12] were filed before the entry into force of the Directive. [13] However, it would appear from the order for reference that while Directive 2004/83 does not directly govern the situation in issue, Paragraph 73 of the Asylverfahrensgesetz was amended in order to transpose Articles 11 and 14 of Directive 2004/83 and to provide from 28 August 2007 the same solutions as those adopted in Community law irrespective of when an application for refugee status was filed in Germany.

30. In the light of the above case-law and circumstances and given that there is nothing in the file to indicate that the referring court is empowered to depart from the interpretation of the provisions of Directive 2004/83 that the Court shall give, I consider that the Court has jurisdiction to adjudicate on the reference for a preliminary ruling.

10 — See, inter alia, Case C-415/93 *Bosman and Others* [1995] ECR I-4921, paragraphs 59 to 61; Case C-369/95 *Somalfruit and Camar* [1997] ECR I-6619, paragraphs 40 and 41; Case C-36/99 *Idéal tourisme* [2000] ECR I-6049, paragraph 20; Case C-306/99 *BIAO* [2003] ECR I-1, paragraph 88; and Case C-17/03 *VEMW and Others* [2005] ECR I-4983, paragraph 34.

11 — See by analogy, Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 32, and Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraph 16; see also Case C-280/06 *ETI and Others* [2007] ECR I-10893, paragraph 23.

12 — See point 15 above.

13 — Directive 2004/83 entered into force on 10 October 2004.

VI — Substance

A — *First and second questions*

31. By its first two questions, which it is appropriate to examine together, the referring court asks, essentially, for guidance on the conditions [14] which must be met in order for refugee status to cease pursuant to Article 11(1)(e) of Directive 2004/83.

1. Main arguments of the parties

32. The appellants consider that the first question of the referring court should be answered in the negative. The appellants and the Commission claim that there is no identity between the conditions which must be fulfilled in order to obtain refugee status and those necessary for cessation of that status. They consider that the absence of a well-founded fear of persecution is not sufficient for refugee status to cease and that additional conditions must be met. According to the appellant in Case C-175/08, Member States are obliged pursuant to Article 11(2) of Directive 2004/83 to examine whether the change in circumstances in the country of nationality is sufficiently significant and non-temporary. Protection within the meaning of Article 1(C)(5) of the Geneva Convention not only relates to protection from persecution, but requires a functioning government with basic administrative structures. In accordance with Article 8(2) of the Directive, the general conditions in the country of origin as well as the personal situation of the applicant must be taken into account in order to verify the availability of protection. The appellants in Cases C-176/08 and C-179/08 consider that Article 1(C)(5) of the Geneva Convention cannot be interpreted as reflecting Article 1(A)(2) of that convention. Article 1(C)(5) expressly requires the condition that the refugee must no longer be able to continue to refuse to avail himself of the protection of the country of origin, and may thus be reasonably expected to return to that country. Article 11(1)(e) of Directive 2004/83, interpreted in the light of Article 1(C)(5) of the Geneva Convention, supposes that for the cessation of the status of refugee not only must persecutions have ceased in the country of origin, additionally changes in the latter must enable the State to provide protection and to guarantee refugees living conditions of a minimum standard. The replacement of one regime by another is not sufficient in order for refugee status to cease pursuant to Article 11(1)(e) of Directive 2004/83 if it is not accompanied by fundamental and durable change leading to the establishment or reestablishment of essential structures guaranteeing national protection. The appellants in Case C-178/08 consider that it is not sufficient for a person to lose their refugee

14 — In this section of the Opinion the substantive conditions which must be met in order for refugee status to cease pursuant to Article 11(1)(e) of Directive 2004/83 will be examined. As regards the procedural standards and conditions which must be met in order for cessation to occur, reference must be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13). See Articles 37 and 38 of Directive 2005/85. There is no indication in the orders of reference as to whether Directive 2005/85 has been transposed into German law and thus whether it is applicable rationae temporis to the proceedings before the referring court. It should be noted that in accordance with Article 44 of that directive, Member States shall apply the laws, regulations and administrative provisions necessary to comply, inter alia, with Articles 37 and 38 of that directive to procedures for the withdrawal of refugee status started after 1 December 2007. The procedures for withdrawal of refugee status from the appellants were commenced prior to the aforementioned date. See point 16 above.

status pursuant to Article 11(1)(e) of Directive 2004/83 that the circumstances which justified 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 exist and he also has no other reason to fear persecution within the terms of Article 2(c) of Directive 2004/83. In that regard, the appellants in Case C-178/08 rely in particular on the UNHCR Guidelines on International Protection: Cessation of Refugee Status under Article 1(C)(5) and (6) of the 1951 Convention relating to the Status of Refugees of 10 February 2003.

33. The Federal Republic of Germany considers that Article 11(1)(e) of Directive 2004/83 must be interpreted as meaning that a person looses his status as a refugee if the well-founded fear of persecution within the terms of Article 2(c) of that directive, on the basis of which his 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 Directive 2004/83. Therefore other circumstances such as general dangers in the country of origin cannot be taken into consideration. While the Federal Republic of Germany recognises that the wording of Article 11(1)(e) of Directive 2004/83 could be read as requiring an additional condition for the cessation of refugee status, namely the possibility for a refugee to avail himself of the protection of his country of origin, that Member State considers that the interpretation of that provision in accordance with the Geneva Convention does not permit such a solution. The Federal Republic of Germany considers that while the French language version of Article 1(C)(5) of the Geneva Convention is not clear, the English language version of that provision clearly establishes a causal link between the removal of the circumstances justifying a fear of persecution and the availability of protection in the country of origin. The Federal Republic of Germany considers that the availability of protection in the country of origin is not an independent, supplementary condition. The Federal Republic of Germany also emphasises the symmetry between the acquisition of refugee status and the loss of that status both under Directive 2004/83 and the Geneva Convention. Due to the symmetry in question, circumstances which would not justify the grant of refugee status cannot be taken into consideration when examining cessation of that status. In addition, the Federal Republic of Germany considers that Directive 2004/83 draws a clear distinction between the status of refugee and subsidiary protection.

34. The Italian Republic considers that Article 11(1)(e) of Directive 2004/83 should be interpreted as meaning that a person loses the status of refugee when the well-founded fear of persecution ceases to exist, provided that a concrete assessment is made of the possible appearance of new circumstances justifying the same fear.

35. The Republic of Cyprus refers to principles of administrative law, according to which an administrative act, such as the grant of refugee status, may be revoked if the circumstances upon which it was based have changed. Article 11(1)(e) of Directive 2004/83 must be interpreted as meaning that a person loses refugee status when the circumstances which justified a fear of being persecuted within the terms of Article 2(c), and thus the recognition of refugee status, have ceased to exist. According to the Republic of Cyprus, where a person fears persecution within the terms of Article 2(c) of Directive 2004/83 for other reasons than those on which he was originally granted refugee status, he must submit a new application for refugee status on the basis of these new reasons.

36. The United Kingdom considers that the clear intention of the Community legislature was that the Directive would, in so far as material, reflect the provisions of the Geneva Convention. The only legal test established under Article 1(C)(5) of the Geneva Convention for the loss of refugee status is that 'the circumstances in connexion with which he has been recognised as a refugee have ceased to exist'. In order to be recognised as a refugee, a person must satisfy the well-founded fear of persecution test. Thus, a person who ceases to have a well-founded fear of persecution loses the status of refugee, both under the Geneva Convention and under Article 11(1)(e) of Directive 2004/83. The question whether a person has a well-founded fear of persecution is one of fact which must be assessed by national authorities with regard to all relevant circumstances. The relevant facts are likely to vary greatly from one case to another and the legal test must thus be broad. The United Kingdom claims that the considerations under Article 11(2) of Directive 2004/83 form

part of the factual assessment of the well-founded fear of persecution. Moreover, according to the United Kingdom, the UNHCR Guidelines are not binding on Member States as a matter of international law and have not been incorporated into Community law.

37. The Commission considers that Article 11(1)(e) of Directive 2004/83 must be interpreted as meaning that a person does not lose his status as a refugee if the well-founded fear of persecution within the terms of Article 2(c) of that directive, on the basis of which his 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 Directive 2004/83. In accordance with Article 11(2) of Directive 2004/83, the change of circumstances in connection with which a person has been recognised as refugee must be significant and non-temporary. Significant change within the meaning of Article 11(2) of Directive 2004/83 refers not only to the circumstances justifying a fear of persecution under Article 2(c) of that directive but also concerns the general political and social environment, and in particular the human rights situation. A non-temporary change within the terms of Article 11(2) of Directive 2004/83 not only relates to the fact that the circumstances justifying a fear of persecution have ceased to exist. It concerns in particular the question whether there has been a change of such a fundamental nature as to ensure a durable solution for the persons concerned. The application of the cessation clause in the Geneva Convention should not lead to a situation that might again produce flight and a need for refugee status. According to the Commission, the fact that the circumstances in connection with which refugee status was granted have ceased to exist is a necessary but insufficient condition for the cessation of refugee status. It is equally crucial to examine whether the refugee can effectively re-avail himself of the protection of the country of his nationality. This protection must be effective and available. Therefore the protection of the country of origin mentioned in Article 11(1)(e) and Article 11(2) of Directive 2004/83 concerns not only protection against persecution in connection with which the status of refugee was granted, but also an effective and available protection assured by a functioning government.

38. In response to the second question the appellant in case C-175/08 considers that the cessation of the status of refugee requires that an actor of protection within the meaning of Article 7(1) of Directive 2004/83 be present, and that protection can not only be assured

with the help of multinational troops. The fact that a State can only ensure protection with the help of multinational troops is an indication that the change of situation in the country of origin is not profound and durable. There is no effective protection against new persecutions and no possibility for the refugee to live in dignity and safety, if the refugee is exposed to a risk of serious harm within the meaning of Articles 15 and 18 of Directive 2004/83. There is no effective protection of the refugee if the country of origin is unable to ensure minimum living conditions. The appellants in Cases C-176/08 and C-179/08 consider that given the absence of actors of protection within the meaning of Article 7(1)(b) of Directive 2004/83, the cessation of refugee status under Article 11(1)(e) of that directive necessitates the existence of an Iraqi State. In addition, Article 7(2) of Directive 2004/83 requires that the Iraqi State take reasonable steps to prevent persecution or serious harm and that the applicant has access to such protection. If protection can only be assured with the help of multinational troops, the appellants consider that this is an indication of the State's weakness and instability, and implies that steps are not taken in accordance with Article 7(2) of Directive 2004/83. In the light of Articles 7(2) and 2(e) of Directive 2004/83, only persons who do not meet the conditions to be recognised as refugees benefit from subsidiary protection under Articles 15 and 18 of that directive. The right to subsidiary protection does not put an end to the status of refugee but is a legal status granted to those who do not qualify for refugee status. In addition, cessation of refugee status requires a stable security situation and a guarantee of minimum living conditions. The appellants in Case C-178/08 consider that cessation of refugee status requires the existence of an actor of protection within the meaning of Article 7(1) of Directive 2004/83 and it is not sufficient that protection can only be assured with the help of multinational troops. The risk of serious harm which would lead to the grant of subsidiary protection status pursuant to Article 18 of Directive 2004/83, an unstable security situation or the lack of general living conditions ensuring a minimum standard of living prevent the cessation of refugee status.

39. The Federal Republic of Germany considers in the alternative that cessation of refugee status requires the existence of an actor of protection within the meaning of Article 7(1) of Directive 2004/83. It is sufficient that protection can only be assured with the help of multinational troops. Cessation of refugee status does not require that the refugee should not be threatened with serious harm within the meaning of Article 15 of Directive 2004/83. Cessation of refugee status in accordance with Article 11(1)(e) of Directive 2004/83 does not require that the security situation in the country of nationality is stable

and that general living conditions ensure a minimum standard of living. The Italian Republic considers that a quasi-State actor in the form of multinational troops may be an actor of protection pursuant to Article 7(1) of Directive 2004/83. Refugee status does not cease where the person is exposed to the threat of serious harm, in which case a specific rule applies. The stability of the security situation and living conditions in the country of origin are not relevant at all to the cessation of refugee status. The Republic of Cyprus considers that cessation of refugee status does not require firstly, the existence of an actor of protection within the meaning of Article 7(1) of Directive 2004/83, secondly, that the refugee should not be threatened with serious harm within the meaning of Article 15 of Directive 2004/83, thirdly, that the security situation be stable, unless refugee status was granted on the basis of this situation or fourthly, general living conditions ensuring a minimum standard of living.

40. In the event that the Court determines that there are additional conditions which must be satisfied before a person can lose the status of refugee, the United Kingdom considers, in the alternative, that firstly a person may cease to be a refugee where protection from persecution can be assured only with the help of multinational troops. Secondly, the assessment of entitlement to, and grant of subsidiary protection pursuant to Article 15 of Directive 2004/83 is independent of the question whether a person qualifies for protection as a refugee. Accordingly the threat of serious harm does not of itself preclude the loss of refugee status. Thirdly, there is no precondition to the cessation of refugee protection in respect of the stability of the security situation in the state of origin, or requirement that living conditions should ensure the refugee a minimum standard of living, although these factors may be relevant on the facts of a particular case.

41. The Commission considers that the condition for the cessation of refugee status, according to which the refugee's fear of persecution can no longer be regarded as well-founded and he can no longer continue to refuse to avail himself of the protection of his country, can be satisfied when protection is only possible with the help of multinational troops. Cessation of refugee status requires that a refugee should not be threatened with serious harm within the meaning of Article 15 of Directive 2004/83. The competent authorities must take into account the security situation and general living conditions when applying the cessation clause contained in Directive 2004/83.

2. Assessment

42. The main objective of Directive 2004/83 is to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection and provide a minimum level of benefits for these persons. [15] In pursuing that objective, Directive 2004/83 respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. Moreover, Directive 2004/83 seeks in particular to ensure full respect for human dignity and the right to asylum of, inter alia, applicants for asylum. [16]

43. It is clear from the third recital in the preamble to Directive 2004/83 and indeed from the observations of the parties to the proceedings before this Court that that directive must be interpreted in the light of the Geneva Convention. The recital in question provides that the Geneva Convention is 'the cornerstone of the international legal regime for the protection of refugees'. Given however that the wording of Article 11(1)(e) of Directive 2004/83 tends to mirror the terms of Article 1(C)(5) of the Geneva Convention on cessation of refugee status, [17] the text alone of that convention is of little guidance. I consider that the question of cessation of refugee status in accordance with Article 11(1)(e) of Directive 2004/83 should therefore be interpreted in the light of the scheme and purpose of that directive as a whole, while respecting the terms of Article 1(C)(5) of the Geneva Convention.

15 — See the sixth recital in the preamble to Directive 2004/83.

16 — See the 10th recital in the preamble to Directive 2004/83.

17 — There are a number of disparities between Article 11(1)(e) of Directive 2004/83 and Article 1(C)(5) of the Geneva Convention. Firstly, in accordance with Article 11(2) of Directive 2004/83 a Member State, when assessing cessation of refugee status pursuant, inter alia, to Article 11(1)(e) of that directive, must take into consideration whether the change of circumstances in connection with which the refugee was recognised as a refugee 'is of such a *significant and non-temporary* nature that the refugee's fear of persecution can no longer be regarded as well-founded' (emphasis added). Such an obligation is not specifically found in Article 1(C)(5) of the Geneva Convention. Secondly, Article 1(C)(5) of the Geneva Convention contains a proviso, the factual relevance of which the referring court has specifically excluded from the cases pending before it, whereby a refugee may invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality. That proviso is not specifically contained in the text of Directive 2004/83. Perhaps however the most significant difference between these two texts, which is not limited to the cessation of refugee status, is the fact that Directive 2004/83 creates a second pillar of international protection, namely subsidiary protection which is not referred to in the Geneva Convention.

44. I would note that the referring court indicated in the order for reference that in accordance with German law a refugee may, after the lapse of a certain period of time, maintain his residence permit and may not in fact be required to return to his country of nationality in the event of cessation of refugee status. In my view, the national practice in question cannot influence or alter the minimum criteria required for the cessation of refugee status established pursuant to Directive 2004/83. It is of course open to a Member State to apply higher standards more favourable to refugees provided those standards are compatible with Directive 2004/83. [18]

45. Despite the fact that a refugee has had a well-founded fear of being persecuted in his country of nationality, it is evident from Article 11 of Directive 2004/83 that refugee status is not, in principle**,** a permanent status and that a third country national may cease to be a refugee in certain circumstances. In addition, both Article 11(1)(e) and Article 11(1)(f) of Directive 2004/83 permit the cessation of refugee status irrespective of the volition of the refugee in question. [19] Given however that the cessation of refugee status pursuant to Article 11(1)(e) of Directive 2004/83 may, in certain circumstances, require a person who has feared or indeed actually suffered persecution in his country of nationality to return there against his will, the terms of that provision must be interpreted in a cautious manner, fully respecting human dignity. [20]

46. It is clear from the wording of Article 11(1)(e) of Directive 2004/83 that that provision imposes two requirements which are intrinsically linked and which must be examined together in order for refugee status to cease. It must thus be established that the circumstances in connection with which the refugee was recognised as such have ceased and that the refugee's country of nationality is both able and willing to protect the refugee in question.

47. All the language versions of Article 11(1)(e) of Directive 2004/83 require, as a pre-condition for the cessation of refugee status, that a refugee be able to avail himself of the

18 — See Article 3 of Directive 2004/83, entitled 'More favourable standards'.

19 — See by contrast Article 11(1)(a), Article 11(1)(b) and Article 11(1)(d) of Directive 2004/83 which explicitly use the word 'voluntarily'.

20 — It would appear that there is relatively little state practice in relation to the cessation clause contained in Article 1(C)(5) of the Geneva Convention. In my view, the past reticence of contracting states to the Geneva Convention to avail of the cessation clause contained in Article 1(C)(5) thereof supports the cautious approach to the application of Article 11(1)(e) of Directive 2004/83 I have advocated.

protection of his country of nationality. [21] If it were sufficient to establish that the circumstances in connexion with which a person has been recognised as a refugee no longer exist in order for refugee status to cease in accordance with Article 11(1)(e) of Directive 2004/83, the words 'continue to refuse to avail himself or herself of the protection of the country of nationality' contained in that provision would be entirely superfluous. [22]

48. Thus while it is indeed necessary pursuant to Article 11(1)(e) of Directive 2004/83 to establish that a refugee no longer has a well-founded fear of persecution on the grounds which led to his recognition as a refugee, this, in my view, is merely a truncated analysis and is insufficient in order for refugee status to cease. The cessation of refugee status is premised on a change in circumstances in the refugee's country of nationality which permits the refugee to in fact avail himself of the protection of that country. [23]

49. The question of availability of protection in the country of nationality requires an assessment of the nature and scope of protection which must be available to a refugee. In that regard, Article 7(2) of Directive 2004/83 establishes that 'protection' is generally provided when, inter alia, the State takes reasonable steps to prevent 'persecution or suffering of serious harm'. The question therefore arises as to whether the term 'protection' contained in Article 11(1)(e) of Directive 2004/83 is limited to protection from persecution or also extends to protection from 'suffering serious harm', a concept which forms part of the definition of a 'person eligible for subsidiary protection' in accordance with Article 2(e) of that directive.

21 — It should be noted that Article 11(1)(e) of Directive 2004/83 states that a third country national shall cease to be a refugee, if he or she '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*' (emphasis added). In my view, the pre-condition that a person can no longer continue to refuse to avail himself or herself of the protection of the country of nationality requires that the protection of the country in question is in fact available and the refugee is able to avail of it.

22 — See, for example, the terms 'ако той не може повече да продължи да отказва получаването на закрила от страната, чието гражданство има,' in the Bulgarian language version; 'nemůže dále odmítat ochranu země své státní příslušnosti,' in the Czech language version; 'es nicht mehr ablehnen kann, den Schutz des Landes in Anspruch zu nehmen, dessen Staatsangehörigkeit er besitzt;' in the German language version; 's'il ne peut plus continuer à refuser de se réclamer de la protection du pays dont il a la nationalité,' in the French language version; 'non possa più rinunciare alla protezione del paese di cui ha la cittadinanza,' in the Italian language version, 'nie może dłużej kontynuować odmawiania skorzystania z ochrony państwa, którego jest obywatelem;' in the Polish language version; 'Não puder continuar a recusar valer-se da protecção do país de que tem a nacionalidade,' in the Portuguese language version; 'nu mai poate continua să refuze solicitarea protecției țării al cărui cetățean este;' in the Romanian language version; and 'nemôže ďalej odmietať ochranu štátu, ktorého štátne občianstvo má,' in the Slovakian language version.

23 — See Article 7(2) of Directive 2004/83 which specifically refers to individual access to protection.

50. A correct interpretation of the provisions of Directive 2004/83 concerning refugee status, including the cessation of that status in accordance with Article 11(1)(e) of Directive 2004/83, requires a proper understanding of the concept 'refugee' as defined by Article 2(c) of that directive. I consider that there is a link between the legal criteria for granting refugee status and the criteria which must be met in order for that status to cease.

51. In my view, Directive 2004/83 draws a clear distinction between refugees and persons eligible for subsidiary protection. This can be seen from, inter alia, the definitions contained in Article 2(c) and (e) of that directive, the distinct criteria imposed for qualifying for refugee status and subsidiary protection in accordance, inter alia, with Chapters III and V of that directive respectively and the disparate protection granted to refugees and persons eligible for subsidiary protection in accordance with Chapter VII of that directive. Thus an assessment of whether a person faces a real risk of suffering serious harm in his country of nationality does not form part of the legal criteria applicable for the granting of refugee status pursuant to Article 13 of Directive 2004/83 nor for the cessation of that status pursuant to Article 11(1)(e) of that directive. To find otherwise would lead to an unacceptable distortion of the definitions of 'refugee' and a 'person eligible for subsidiary protection' contained in Article 2(c) and (e) of Directive 2004/83 respectively together with the entire scheme of that directive which is based on two separate pillars of international protection. [24]

52. The fact however that the refugee status of a person has ceased does not exclude the possibility that he may face a real risk of suffering serious harm as defined by Article 15 of Directive 2004/83 in his country of nationality. In such circumstances a former refugee must be given a fair and ample opportunity to submit an application for subsidiary protection status. Thus if the national authorities of the Member States determine that a person's refugee status ceases to exist in accordance with Article 11(1)(e) of Directive 2004/83, all the necessary steps must be adopted in order to ensure that the person in question has an

24 — The two pillar system of international protection provided by Directive 2004/83 is in my view open to criticism as it may in fact undermine or weaken refugee status. Member States may since the entry into force of Directive 2004/83 opt to grant subsidiary protection to individuals to whom, in the absence of that form of protection, refugee status would have been granted. See in particular Article 15(b) and Article 15(c) of Directive 2004/83 concerning serious harm and which may considerably overlap from a factual perspective with acts of persecution as defined by Article 9 of that directive. Despite such possible criticism, the existence of the two pillar system of international protection pursuant to Directive 2004/83 cannot be negated.

effective opportunity to apply for subsidiary protection [25] and that his procedural rights in that respect are fully guaranteed. Moreover subsidiary protection status must be granted pursuant to Article 18 of Directive 2004/83 where the person in question is eligible for subsidiary protection in accordance with Chapters II and V of that directive.

53. While it is thus clear that the cessation of refugee status in accordance with Article 11(1)(e) of Directive 2004/83 does not require that a refugee be protected from the risk of suffering serious harm in his country of nationality, Articles 11(1)(e) and 7(2) of that directive unequivocally require that protection from persecution be available in that country through the adoption of 'reasonable steps' to prevent persecution. These obligations require the presence of an actor of protection that is both willing and capable of providing such protection. In that regard, I would stress that the requirement of protection imposed pursuant to Articles 11(1)(e) and 7(2) of Directive 2004/83 does not exist in the abstract but rather in concrete, tangible and objective terms. Given the positive, concrete steps which must be adopted in order to provide protection, in the absence of an actor of protection, protection from persecution cannot be said to exist. [26] Moreover, in my view, an actor of protection cannot be considered to have adopted reasonable steps to prevent persecution if, in a refugee's country of nationality, actors of persecution as defined by Article 6 of Directive 2004/83 and which includes in certain circumstances non-State actors, threaten [27] or perpetrate acts of persecution in that country thereby striking terror into the civilian population or elements of that population.

54. It is thus necessary to examine the level of protection from persecution which must be available in the country of nationality of a refugee in order for his refugee status to cease in accordance with Article 11(1)(e) of Directive 2004/83. In the present context, an actor of protection must, in accordance with Article 7(2) of Directive 2004/83, take reasonable steps to prevent persecution 'by operating an effective legal system for the detection, prosecution and punishment of acts constituting

25 — If he so wishes.

26 — See the first part of the second question.

27 — The threat in question must be serious or grave in nature thereby creating the belief amongst the civilian population that acts of persecution will in fact be perpetrated.

persecution'.[28] These non-negligible, concrete requirements entail the presence of an actor of protection which has the authority, organisational structure and means, inter alia, to maintain a minimum level of law and order in the refugee's country of nationality. The actor of protection must thus objectively have a reasonable level of capacity and the willingness to prevent acts of persecution as defined by Article 9 of Directive 2004/83.

55. It must also be noted that Article 11(2) of Directive 2004/83 imposes on the Member States when examining whether refugee status has ceased pursuant to Article 11(1)(e) of Directive 2004/83 an obligation to have regard to whether the change of circumstances in connection with which a person was recognised as a refugee is significant and non-temporary in nature. Article 11(2) of Directive 2004/83 is designed in my view to ensure that cessation decisions pursuant to Article 11(1)(e) are not adopted in a precipitous manner without an in-depth analysis of the situation that prevailed in the refugee's country of nationality at the time he was granted refugee status and the general situation[29] currently prevailing, and which is likely to prevail in the future, in that country together with an analysis of the refugee's individual situation. I consider that the purpose of Article 11(2) of Directive 2004/83 is to ensure that a person who has acquired refugee status due to a well-founded fear of persecution does not find themselves in a situation whereby that status ceases against his volition in accordance with Article 11(1)(e) of that directive but no other stable and durable solution free from persecution is available in his country of nationality.

56. While it is not possible to predict all eventualities, given the momentous impact that the cessation of refugee status pursuant to Article 11(1)(e) of Directive 2004/83 may have on a refugee, cessation may only occur,

28 — Protection need not be absolute in nature, a result which is in any event unobtainable in any society.

29 — While perhaps not of temporal relevance in the cases currently pending before the referring court, Article 38(1)(c) of Directive 2005/85 requires Member States to ensure, inter alia, that within the framework of a procedure for the withdrawal of refugee status 'the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the UNHCR, as to the *general situation prevailing in the countries of origin of the persons concerned*' (emphasis added). The withdrawal procedures in question apply to cessation pursuant to Article 11(1)(e) of Directive 2004/83. See the 26th recital in the preamble to Directive 2005/85 together with Article 38(4) thereof. See also the 15th recital in the preamble to Directive 2004/83 which provides that '[c]onsultations with the [UNHCR] may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention'.

in my view, when it is reasonable to assume that a lasting solution free from persecution is available for the refugee in his country of nationality.

57. If the situation in the country of nationality is unsettled or unpredictable or there are severe violations of basic human rights which could lead the individual in question to seek once again refugee status, the change in circumstances cannot, in my view, be considered significant and non-temporary in nature and indeed the level of protection mandated by Article 7(2) of Directive 2004/83 is clearly unavailable or ineffective. [30]

58. As regards the question of the referring court whether it is sufficient that protection can be assured only with the help of multinational troops, [31] it should be noted that in accordance with Article 7(1) of Directive 2004/83, protection can be provided by the State or by parties or organisations, including international organisations, [32] controlling the State or a substantial part of the territory of the State. It would thus appear that a body other than a State may be an actor of protection [33] provided that the requisite level of control over the State is exercised and the objective standard of protection imposed by Article 7(2) of Directive 2004/83 is fulfilled. In my view, where the assistance of multinational troops is employed by a State such employment could be viewed as a reasonable step to prevent persecution in the country of nationality of a refugee. I consider however that in order to comply with the terms of Article 7 of Directive 2004/83, a State may only rely on the assistance of multinational troops provided such troops operate under the mandate of the international community, for example under the auspices of the United Nations.

59. It cannot therefore be excluded that an actor of protection pursuant to Article 7(1) of Directive 2004/83 operates in a refugee's country of nationality despite the fact that protection can be assured by the State only

30 — The facts which must be examined by the national court in order to establish whether the legal requirements of a change in circumstances and the availability of protection have been met may, in certain circumstance, overlap considerably. Thus the presence of an actor of protection which has the authority, organisational structure and means, inter alia, to maintain a minimum level of law and order in a refugee's country of nationality may, but not necessarily, be an indication of change in circumstances which is significant and non-temporary in nature.

31 — See the first part of the second question.

32 — But not limited to international organisations.

33 — Either on its own, or, in my view, in conjunction with the State.

with the help of multinational troops. The existence of an actor of protection and the availability, effectiveness and enduring nature of the protection provided by that actor in the refugee's country of nationality are questions of fact which must be assessed by the national court in the light of the above considerations.

60. As regards the second part of the second question, the referring court seeks in my view to ascertain whether refugee status may cease pursuant to Article 11(1)(e) of Directive 2004/83 if the person concerned is currently threatened with serious harm as defined by Article 15 of Directive 2004/83 rather than persecution in his country of nationality. In my view, a person's eligibility for subsidiary protection status does not form part of the legal criteria applicable to the cessation of refugee status. [34]

61. By the third part of the second question, the referring court asks the Court whether the cessation of refugee status under Article 11(1)(e) of Directive 2004/83 requires that, in the country of the refugee's nationality, the security situation is stable and the general living conditions ensure a minimum standard of living.

62. The stability of the security situation in the refugee's country of nationality should be assessed as an integral part of the availability of protection from persecution mandated by Articles 7(2) and 11(1)(e) of Directive 2004/83. There must therefore be an actor of protection which has the authority, organisational structure and means, inter alia, to maintain a minimum level of law and order in a refugee's country of nationality. The security situation in the refugee's country of nationality must, in my view, be such that a refugee does not face a situation in which he may become eligible for refugee status in the foreseeable future.

63. As regards the question of general living conditions and the availability of a minimum standard of living in the country of nationality, it must be stressed at the outset that Directive 2004/83 does not grant refugee or subsidiary protection status to economic migrants. Moreover, persons in

34 — See points 46 to 48 above.

need of compassionate or humanitarian relief, other than those who qualify for international protection [35] fall outside the scope of Directive 2004/83. The question of general living conditions and the availability of a minimum standard of living in the refugee's country of nationality is not, in my view and as stated by the Commission in its pleadings, an independent relevant criterion when assessing cessation pursuant to Article 11(1)(e) of Directive 2004/83, but must however be taken into consideration as part of the assessment of whether the change in circumstances there can be considered significant and non-temporary in nature in accordance with Article 11(2) of that directive. [36] I would note also that given that Articles 7 and 11(1)(e) of Directive 2004/83 require a minimum level of protection to be available in the country of nationality, it is at least questionable whether the country in question will have the organisational structure and means [37] to provide such protection if it cannot ensure a minimum standard of living for its citizens.

64. I consider that the availability of a minimum standard of living in the refugee's country of nationality and its relevance in the context of the cessation of refugee status in accordance with Article 11(1)(e) of Directive 2004/83 is a matter which must be determined by the national court in the light of the above considerations.

B — *Third question*

1. Main arguments of the parties

65. The appellant in Case C-175/08 considers that where the initial persecution has

35 — As defined by Article 2(a) of Directive 2004/83. See the 9th recital in the preamble to Directive 2004/83.

36 — See Article 11(2) of Directive 2004/83.

37 — See point 49 above.

been removed but there are new circumstances the relaxation of the burden of proof in accordance with Article 4(4) of Directive 2004/83 must be applied as that provision makes no distinction based on the time of the former persecution. By placing the burden of proofon the Member State to demonstrate that the person no longer qualifies as a refugee, Article 14(2) of Directive 2004/83 imposes stricter conditions for the revocation of refugee status than those that apply when persecution is feared but has not taken place. Article 14(2) of Directive 2004/83 thus mirrors Article 4(4) of that Directive. The appellants in Cases C-176/08 and C-179/08 claim that the standard of probability in the procedure for revocation of the status of refugee is not the same as the one applied in the procedure for recognition of the status. During the procedure for recognition of refugee status, the conditions for the grant of that status must be examined globally. In that framework, Article 4(4) of Directive 2004/83 should be applied. During the procedure for revocation of the refugee status, new and different circumstances founding persecution must however be measured against the standard contained in Article 11(1)(e) of Directive 2004/83, namely an assessment of the reasonable expectancy of a person's return to the country of origin, the circumstance in accordance with which he was recognised as a refugee having ceased to exist. In this context as well, Article 4 of Directive 2004/83 also applies in cases where the applicant has already been subject to persecution or to direct threats of persecution. Article 14(2) of Directive 2004/83 is not a special rule which supplants Article 4 of that directive. The appellants in Case C-178/08 consider that where the initial reasons for persecution no longer exist, the burden of proof is placed on the Member State who granted refugee status to demonstrate that the refugee has also no other reason to fear persecution pursuant to Article 2(c) of Directive 2004/83. The standard of probability to be applied is the same as the one required for the exclusion of the recognition of refugee status, that is to say that there must be serious reasons for considering that the person concerned is not exposed to a risk of new persecution.

66. According to the Federal Republic of Germany, where the circumstances in accordance with which a person was recognised as a refugee have disappeared, new and different circumstances founding persecution must be measured against the standard of probability applied for recognising refugee status. Moreover such new and different circumstances should not be assessed having regard to the relaxation of the burden of proof under Article 4(4) of Directive 2004/83. The Italian Republic considers, inter alia, that possible new and different circumstances founding persecution must be assessed in accordance with the criterion of 'real risk' and the relaxation of the burden of proof pursuant to Article 4(4) of Directive 2004/83 is not limited to those cases where there is a link between the new circumstances and those which justified the grant of refugee status. According to the Republic of Cyprus, where the circumstances in connection with which a refugee was recognised as such have ceased, the new or different circumstances must be assessed in accordance with Chapters II and III of Directive 2004/83. This requires that the new

request be examined in good faith, without removing the burden of proof from the applicant, save in respect of the presumption contained in Article 4(4) of Directive 2004/83 which applies in any event. The United Kingdom considers that where the circumstances on the basis of which a person was granted refugee status have ceased to exist, and new and different circumstances are advanced as giving rise to a well-founded fear of persecution, it is for the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection in accordance with Article 4(1) of the Directive.

67. The Commission considers that Article 14(2) of Directive 2004/83 contains the relevant rules concerning the procedure for revoking refugee status. In accordance with Article 14(2) of Directive 2004/83 and without prejudice to the obligation of a refugee in accordance with Article 4(1) of that directive to indicate all the relevant facts and submit all relevant elements at his disposal, the Member State which granted refugee status is obliged to prove on a case by case basis that the person concerned has ceased to be or never was a refugee. The State in question must thus prove that the refugee may no longer refuse to avail of the protection of his country of nationality. Thus the cessation of refugee status is assessed according to different criteria than that used for the recognition of that status. The Commission considers that Article 4(4) of Directive 2004/83 which relaxes the burden of proof in favour of an applicant when recognising refugee status is not applicable to the revocation of that status, where the burden of proof is borne by the competent authority.

2. Assessment

68. By its third question the referring court seeks clarification on the manner in which new, different circumstances founding persecution must be assessed where the previous circumstances, on the basis of which the person concerned was granted refugee status, have ceased to exist.

69. In order to give a useful response to the question of the referring court, I consider that it is necessary to clarify what is meant by the new, different circumstances in question.

70. I consider that the terms 'new, different circumstances founding persecution' used by the referring court relate to entirely novel circumstances which have no link, even partial, to the previous circumstances, on the basis of which the person concerned was granted refugee status.

71. Where the circumstances in connection with which a person was granted refugee status have changed to some extent but certain factors which are linked, even partially, to those circumstances persist, in my view, the change of circumstances may not be of a significant and non-temporary nature as required by Article 11(2) of Directive 2004/83.

72. Moreover, if in cessation proceedings it would appear that despite the fact that the circumstances, on the basis of which a person was granted refugee status, have changed to some extent but certain factors which are linked, even partially, to those circumstances persist, the Member State in question must demonstrate in accordance with Article 14(2) of Directive 2004/83 that the refugee does not have a well-founded fear of persecution based on those linked factors.

73. Where a refugee relies on entirely new, different circumstances founding persecution, I consider that the person in question is making a new application for refugee status and that those circumstances must be assessed in order to establish whether that person has a well-founded fear of being persecuted in accordance with Article 2(c) of Directive 2004/83. The standard of probability to be applied is thus the standard applicable to the grant of refugee status pursuant to Article 13 of Directive 2004/83.

74. The fact that a person was granted in the past refugee status owing to a well-founded fear of persecution based on entirely different circumstances does not in my view amount to a serious indication in accordance with Article 4(4) of Directive 2004/83 of the applicant's current well-founded fear of persecution.

75. The relaxation of the rules of assessment contained in Article 4(4) of Directive 2004/83 requires in my view a link, if only partial, between past persecution or direct threats of such persecution and new, different circumstances founding persecution.

76. It is for the national court to assess, inter alia, whether the circumstances in question are novel or linked to the circumstances, on the basis of which the person concerned was granted refugee status.

VII — Conclusion

77. Accordingly the questions referred in this case should in my opinion be answered as follows:

'(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 in the light, inter alia, of the definition of "refugee" contained in Article 2(c) of that directive. It must therefore be established pursuant to Article 11(1)(e) of Directive 2004/83, that the circumstances in connection with which the refugee was recognised as such have ceased and that the refugee's country of nationality is both able and willing to protect the refugee in question. Refugee status may cease to exist if a lasting solution free from persecution is available for the refugee in his or her country of nationality. The protection provided by a refugee's country of nationality will comply with Article 7 of Directive 2004/83 if there is an actor of protection which takes reasonable steps to prevent persecution inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution. In the event that the protection from persecution can be assured only with the help of multinational troops, such assistance may be

considered a reasonable step to prevent persecution pursuant to Article 7(2) of Directive 2004/83 provided that such troops operate under the mandate of the international community.

(2) A person's eligibility for subsidiary protection status pursuant to Chapter V of Directive 2004/83 does not form part of the legal criteria applicable to the cessation of refugee status. If however national authorities determine that a person's refugee status ceases to exist in accordance with Article 11(1)(e) of Directive 2004/83, all the necessary steps must be adopted in order to ensure that the person in question has an effective opportunity to apply for subsidiary protection and that his procedural rights are fully guaranteed.

(3) The security situation in the refugee's country of nationality must be such that a refugee should not become eligible for refugee status in the foreseeable future. The stability of the security situation in the refugee's country of nationality must be assessed by the national court as an integral part of the availability of protection from persecution mandated by Articles 7(2) and 11(1)(e) of Directive 2004/83.

(4) The availability of a minimum standard of living in the refugee's country of nationality is not an independent relevant legal criterion to be applied when assessing cessation pursuant to Article 11(1)(e) of Directive 2004/83, but must however be taken into consideration as part of the assessment of whether the change in

circumstances there can be considered significant and non-temporary in nature in accordance with Article 11(2) of that directive and whether the refugee may avail himself of the protection of his country of nationality.

(5) In a situation in which the previous circumstances, on the basis of which the person concerned was granted refugee status, have ceased to exist, entirely new, different circumstances founding persecution pursuant to Article 9 of Directive 2004/83 must be assessed in accordance with the standard of probability applicable to the grant of refugee status pursuant to Article 13 of that directive and Article 4(4) of Directive 2004/83 is not applicable to such an assessment.'