Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 September 2012*

(Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or for subsidiary protection status — Article (2)(c) — Classification as a 'refugee' — Article 9(1) — Definition of 'acts of persecution' — Article 10(1)(b) — Religion as ground for persecution — Connection between the reasons for persecution and the acts of persecution — Pakistani nationals who are members of the Ahmadiyya religious community — Acts by the Pakistani authorities designed to prohibit the manifestation of a person's religion in public — Acts sufficiently serious for the person concerned to have a well-founded fear of being persecuted on account of his religion — Individual assessment of the facts and circumstances — Article 4)

In Joined Cases C-71/11 and C-99/11,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Germany), made by decisions of 9 December 2010, received at the Court on 18 February and 2 March 2011 respectively, in the proceedings

Bundesrepublik Deutschland

v

Y (C-71/11),

Z (C-99/11),

intervening parties:

Vertreter des Bundesinteresses beim Bundesverwaltungsgericht,

Bundesbeauftragter für Asylangelegenheiten beim Bundesamt für Migration und Flüchtlinge,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, Presidents of Chambers, A. Rosas, R. Silva de Lapuerta, E. Levits, A. Ó Caoimh, L. Bay Larsen (Rapporteur), T. von Danwitz, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 February 2012,

* Language of the case: German.

after considering the observations submitted on behalf of:

— Y and Z, by C. Borschberg and R. Marx, Rechtsanwälte,

— the German Government, by T. Henze, N. Graf Vitzthum and K. Petersen, acting as Agents,

— the French Government, by G. de Bergues and B. Beaupère-Manokha, acting as Agents,

— the Netherlands Government, by C.M. Wissels and B. Koopman, acting as Agents,

— the European Commission, by M. Condou-Durande and W. Bogensberger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 April 2012,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Articles 2(c) and 9(1)(a) 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; addendum OJ 2005 L 204, p. 24) ('the Directive').

2 The references have been made in proceedings between, on the one hand, the Federal Republic of Germany, represented by the Bundesministerium des Inneren (Federal Ministry of the Interior), in turn represented by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) ('the Bundesamt'), and, on the other, Y and Z, Pakistani nationals, concerning the Bundesamt's rejection of their applications for asylum and recognition of refugee status.

Legal context

International law

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, concluded in New York on 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'.

The European Convention for the Protection of Human Rights and Fundamental Freedoms

5 Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), is entitled 'Freedom of thought, conscience and religion', and provides as follows:

'1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.'

6 Article 15 of the ECHR, entitled 'Derogation in time of emergency', is worded as follows:

'1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2 ("Right to life"), except in respect of deaths resulting from lawful acts of war, or from Articles 3 ("Prohibition of torture"), 4 (paragraph 1) ("Prohibition of slavery") and 7 ("No punishment without law") shall be made under this provision.

…'

European Union law

The Charter of Fundamental Rights of the European Union

7 Paragraph 1 of Article 10 of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Freedom of thought, conscience and religion', is worded in the same terms as Article 9(1) of the ECHR.

8 The rights from which there can be no derogation under Article 15(2) of the ECHR are those enshrined in Articles 2, 4, 5(1) and 49 of the Charter.

The Directive

9 Recital 3 in the preamble to the Directive states that the Geneva Convention provides the cornerstone of the international legal regime for the protection of refugees.

10 As follows from recital 10 in the preamble to the Directive, read in the light of Article 6(1) TEU, the Directive respects the rights, freedoms and principles recognised by the Charter. In particular, it seeks to ensure, on the basis of Articles 1 and 18 of the Charter, full respect for human dignity and the right to asylum of applicants for asylum.

11 Recitals 16 and 17 in 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.'

12 In accordance with Article 1 of the Directive, its purpose is to lay down minimum standards as regards, first, the requirements to be met by third country nationals or Stateless persons in order to receive international protection and, second, the content of the protection granted.

13 Article 2 of the Directive states that, for the purposes 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 …

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

...'

14 Article 3 of the Directive provides that Member States may introduce or retain more favourable standards for determining who qualifies as a refugee and for determining the content of international protection, in so far as those standards are compatible with the Directive.

15 Article 4, which is in Chapter II of the Directive, entitled 'Assessment of applications for international protection', sets out the conditions for the assessment of facts and circumstances and provides in paragraph 3 thereof as follows:

'The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution …

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution …

...'

16 Under Article 4(4) of the Directive, the 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 6 of the Directive, which is in Chapter II and is entitled 'Actors of persecution or serious harm', provides as follows:

'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.'

18 Article 9 of the Directive, which is in Chapter III of the Directive and is entitled 'Qualification for being a refugee', defines acts of persecution in paragraphs 1 and 2 thereof as follows:

'1. Acts of persecution within the meaning of Article 1A of the Geneva Convention must:

(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the [ECHR]; or

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

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

(a) acts of physical or mental violence …;

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

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

…'

19 In accordance with Article 9(3) of the Directive, there must be a connection between the reasons for persecution mentioned in Article 10 and the acts of persecution.

20 Article 10 of the Directive, entitled 'Reasons for persecution' and also in Chapter III, provides in paragraph 1 thereof as follows:

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

…

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

…'

21 Under Article 13 of the Directive, a Member State is to grant the applicant refugee status if that person meets, inter alia, the requirements laid down in Articles 9 and 10 of the Directive.

German law

22 Paragraph 16a(1) of the Grundgesetz (Basic Law) provides as follows:

'Persons persecuted on political grounds shall have the right of asylum.'

23 Paragraph 1 of the German Law on asylum procedure (Asylverfahrensgesetz), in the version published on 2 September 2008 (BGBl. 2008 I, p. 1798) ('the AsylVfG'), states that that Law applies to foreign nationals who apply for protection from political persecution in accordance with Paragraph 16a(1) of the Basic Law, or for protection from persecution in accordance with the Geneva Convention.

24 Paragraph 2 of the AsylVfG provides that, in the Federal territory, persons entitled to asylum are to have the legal status defined by the Geneva Convention.

25 Refugee status was initially governed by Paragraph 51 of the Law on the entry and stay of foreign nationals on Federal territory (Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet).

26 By the Law implementing European Union Directives on the right of residence and asylum of 19 August 2007 (Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union) (BGBl. 2007 I, p. 1970), which entered into force on 28 August 2007, the Federal Republic of Germany transposed, among others, the Directive into national law.

27 Currently, the conditions for qualifying as a refugee are laid down in Paragraph 3 of the AsylVfG. Under Paragraph 3(1) of the AsylVfG:

'A foreign national is a refugee within the meaning of [the Geneva Convention] if, in his State of nationality, he is exposed to threats within the meaning of Paragraph 60(1) of the Law on the residence, work and integration of foreign nationals on Federal territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet) in the version published on 25 February 2008 (BGBI. 2008 I, p. 162) ('the Aufenthaltsgesetz') ...'

28 The first and fifth sentences of Paragraph 60(1) of the Aufenthaltsgesetz, provide as follows:

'Pursuant to the [Geneva] Convention, a foreign national may not be deported to a State in which his life or liberty is under threat on account of his race, religion, nationality, membership of a certain social group or political convictions. … In order to determine whether there is persecution for the purposes of the first sentence, it is necessary to apply, … by way of complement, Article 4(4) and Articles 7 to 10 of the [Directive] …'

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

29 In January 2004 and August 2003 Y and Z, respectively, entered Germany and applied for asylum and protection there as refugees.

30 In support of their respective applications, they claimed that their membership of the Muslim Ahmadiyya community, which is an Islamic reformist movement, had forced them to leave their country of origin. In particular, Y stated that on several occasions he had been beaten in his home

village by a group of people and had stones thrown at him at his community's place of prayer. Those people threatened to kill him and reported him to the police for insulting the Prophet Mohammed. Z claimed that he was mistreated and imprisoned as a result of his religious beliefs.

31 It is apparent from the orders for reference that Article 298 C of the Pakistani Criminal Code provides that members of the Ahmadiyya religious community may face imprisonment of up to three years or a fine if they claim to be Muslim, describe their faith as Islam, preach or propagate their faith or invite others to accept it. Moreover, under Article 295 C of that code, any person who defiles the name of the Prophet Mohammed may be punished by death or life imprisonment and a fine.

32 By decisions of 4 May and 8 July 2004, the Bundesamt rejected Y's and Z's applications for asylum as unfounded, finding that the requirements for being granted refugee status were not satisfied.

33 In those decisions, the Bundesamt also held that there were no obstacles to Y's and Z's deportation to Pakistan under the applicable national law and declared them liable to deportation to that country. The Bundesamt justified its decisions essentially on the ground that there was insufficient evidence to support the contention that the applicants in question had left their country of origin on account of a well-founded fear of persecution there.

34 Y brought an action against before the Verwaltungsgericht Leipzig (Administrative Court, Leipzig), which, by judgment of 18 May 2007, annulled the Bundesamt's decision and ordered the Bundesamt to place on the record that, as a refugee, Y satisfied the requirements for a prohibition of his deportation to Pakistan.

35 Z challenged the Bundesamt's decision before the Verwaltungsgericht Dresden (Administrative Court, Dresden). By judgment of 13 July 2007, that court dismissed his application, taking the view that he had not left his country of origin on account of a well-founded fear of persecution.

36 By judgements of 13 November 2008, the Sächsisches Oberverwaltungsgericht (Higher Administrative Court of the Land Sachsen), respectively:

— dismissed the appeal brought by the Bundesbeauftragter für Asylangelegenheiten (Federal Delegate for Asylum) ('the Bundesbeauftragter') against the judgement at first instance in the case concerning Y, and

— following an appeal lodged by Z against the judgment concerning him at first instance, varied the judgment, obliging the Bundesamt to place on the record that Z satisfied the requirements laid down in Paragraph 60(1) of the Aufenthaltsgesetz and that it was therefore prohibited from deporting him, as a refugee, to Pakistan.

37 That court considered in particular that it was of little consequence whether the applicants had been personally threatened with persecution prior to leaving Pakistan. What was important was that, as active Ahmadis, they would in any event be at risk of collective persecution within the terms of Paragraph 60(1) of the Aufenthaltsgesetz in Pakistan.

38 In the event of their return to Pakistan, they could not continue to practice their religion in public without being exposed to a risk of persecution, a factor which must be taken into account in any asylum procedure to determine whether they should be granted refugee status.

39 In its judgments of 13 November 2008, the Sächsisches Oberverwaltungsgericht considered that, for a devout Ahmadi in Pakistan, whose religious convictions include the belief that that faith should be lived in public, the situation in that country constitutes a serious violation of religious freedom. In view of the threat of severe punishment as well as the numerous unimpeded attacks by extremist groups, common sense would suggest that an Ahmadi should refrain from all public acts of worship.

40 According to the findings of the Sächsisches Oberverwaltungsgericht, Y and Z are deeply committed to their faith and their life was actively shaped by it in Pakistan. They continue to practise their religion in Germany and consider that the public practice of their faith is essential in order for them to preserve their religious identity.

41 The Bundesamt and the Bundesbeauftragter lodged an appeal on a point of law against those judgments before the Bundesverwaltungsgericht (Federal Administrative Court), arguing that the appeal court had interpreted the scope of Articles 9 and 10(1)(b) of the Directive too broadly.

42 Referring to the case-law in Germany before the transposition of the Directive in 2007, according to which there could be deemed to be persecution relevant for the purposes of the right of asylum only where there was interference with the 'core areas' of religious freedom, but not where there were restrictions on the public practice of faith, they consider that the restrictions on Ahmadis in Pakistan, which concern the practice of their faith in public, do not constitute interference with those 'core areas'.

43 Moreover, according to the Bundesamt and the Bundesbeauftragter, there is nothing in the findings of the Sächsisches Oberverwaltungsgericht on how Y and Z practise their faith in Germany to establish that they cannot refrain from certain activities that do not form part of the 'core areas' of religious practice.

44 According to the referring court, the issue in the cases before it relates to which specific forms of interference with religious freedom, for the purpose of Article 9 of the ECHR, may confer recognition of refugee status within the meaning of Article 2(d) of the Directive. While it is of the view that interference with religious freedom may constitute a 'severe violation' of basic human rights within the meaning of Article 9(1)(a) of the Directive, it remains unsure whether forms of interference with religious freedom other than those affecting the essential elements of the religious identity of the person concerned may justify a presumption of persecution that is relevant for the purpose of granting refugee status.

45 In those circumstances, the Bundesverwaltungsgericht decided to stay the proceedings and to refer to the Court for a preliminary ruling the following questions, which are worded in almost identical terms in both Cases C-71/11 and C-99/11:

'1. Is Article 9(1)(a) of [the] Directive … to be interpreted as meaning that not every interference with religious freedom which infringes Article 9 of the ECHR constitutes an act of persecution within the meaning of [the former provision], and that a severe violation of religious freedom as a basic human right arises only if the core area of that religious freedom is adversely affected?

2. If Question 1 is to be answered in the affirmative:

(a) Is the core area of religious freedom limited to the profession and practice of faith in the areas of the home and neighbourhood, or can there be an act of persecution, within the meaning of Article 9(1)(a) of [the] Directive …, also in cases where, in the country of origin, the observance of faith in public gives rise to a risk to life, physical integrity or freedom and the applicant accordingly abstains from such practice?

(b) If the core area of religious freedom can also comprise the public observance of certain religious practices:

— Does it suffice in that case, in order for there to be a severe violation of religious freedom, that the applicant feels that such observance of his faith is indispensable in order for him to preserve his religious identity,

— or is it further necessary that the religious community to which the applicant belongs should regard that religious observance as constituting a central part of its doctrine,

— or can further restrictions arise as a result of other circumstances, such as the general conditions in the country of origin?

3. If Question 1 is to be answered in the affirmative:

Is there a well-founded fear of persecution, within the meaning of Article 2(c) of [the] Directive …, if it is established that the applicant will carry out certain religious practices – other than those falling within the core area – after returning to the country of origin, even though they will give rise to a risk to his life, physical integrity or freedom, or can the applicant reasonably be expected to abstain from such practices?'

46 By order of the President of the Court of 24 March 2011, Cases C-71/11 and C-99/11 were joined for the purposes of the written procedure, the oral procedure and the judgment.

Consideration of the questions referred

Preliminary observations

47 It appears from recitals 3, 16 and 17 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 of that status 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 (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 *Salahadin Abdulla and Others* [2010] ECR I-1493, paragraph 52, and Case C-31/09 *Bolbol* [2010] ECR I-5539, paragraph 37).

48 The Directive must, for that reason, be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 10 in the preamble thereto, the Directive must also be interpreted in a manner consistent with the rights recognised by the Charter (see, to that effect, *Salahadin Abdulla and Others*, paragraphs 53 and 54; *Bolbol*, paragraph 38; and Joined Cases C-411/10 and C-493/10 *N.S. and Others* [2011] ECR I-13905, paragraph 75).

Questions 1 and 2

49 By the first two questions referred in both cases, which it is appropriate to consider together, the Bundesverwaltungsgericht asks, in essence, whether Article 9(1)(a) of the Directive is to be interpreted as meaning that any interference with the right to religious freedom that infringes Article 10(1) of the Charter may constitute an 'act of persecution' within the meaning of that provision of the Directive and whether a distinction must be made between the 'core areas' of religious freedom and its external manifestation.

50 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.

51 The third country national concerned must therefore, on account of circumstances existing in his country of origin and the conduct of actors of persecution, have a well-founded fear that he personally will be subject to persecution for at least one of the five reasons listed in the Directive and the Geneva Convention, one such reason being that person's 'religion'.

52 Article 13 of the Directive provides that the Member State concerned is required to grant refugee status to the applicant if he qualifies under, inter alia, Articles 9 and 10 thereof.

53 Article 9 of the Directive defines the factors which make it possible to regard acts as constituting persecution. In that regard, Article 9(1)(a) of the Directive, to which the Bundesverwaltungsgericht refers in its first two questions, states that the relevant acts must be 'sufficiently serious' by their nature or repetition as to constitute a 'severe violation of basic human rights', in particular the unconditional rights from which there can be no derogation, in accordance with Article 15(2) of the ECHR.

54 Moreover, Article 9(1)(b) of the Directive states that an accumulation of various measures, including violations of human rights, which is 'sufficiently severe' as to affect an individual in a manner similar to that referred to in Article 9(1)(a) of the Directive, is also to be regarded as amounting to persecution.

55 Article 9(3) of the Directive provides that there must be a connection between the reasons for persecution, which include religion, as established in Article 10(1)(b) of the Directive, and the acts of persecution.

56 The right to religious freedom enshrined in Article 10(1) of the Charter corresponds to the right guaranteed by Article 9 of the ECHR.

57 Freedom of religion is one of the foundations of a democratic society and is a basic human right. Interference with the right to religious freedom may be so serious as to be treated in the same way as the cases referred to in Article 15(2) of the ECHR, to which Article 9(1) of the Directive refers, by way of guidance, for the purpose of determining which acts must in particular be regarded as constituting persecution.

58 However, that cannot be taken to mean that any interference with the right to religious freedom guaranteed by Article 10(1) of the Charter constitutes and act of persecution requiring the competent authorities to grant refugee status within the meaning of Article 2(d) of the Directive to any person subject to the interference in question.

59 On the contrary, it is apparent from the wording of Article 9(1) of the Directive that there must be a 'severe violation' of religious freedom having a significant effect on the person concerned in order for it to be possible for the acts in question to be regarded as acts of persecution.

60 Acts amounting to limitations on the exercise of the basic right to freedom of religion within the meaning of Article 10(1) of the Charter which are provided for by law, without any violation of that right arising, are thus automatically excluded as they are covered by Article 52(1) of the Charter.

61 Nor can acts which undoubtedly infringe the right conferred by Article 10(1) of the Charter, but whose gravity is not equivalent to that of an infringement of the basic human rights from which no derogation can be made by virtue of Article 15(2) of the ECHR, be regarded as constituting persecution within the meaning of Article 9(1) of the Directive and Article 1A of the Geneva Convention.

62 For the purpose of determining, specifically, which acts may be regarded as constituting persecution within the meaning of Article 9(1)(a) of the Directive, it is unnecessary to distinguish acts that interfere with the 'core areas' ('forum internum') of the basic right to freedom of religion, which do not include religious activities in public ('forum externum'), from acts which do not affect those purported 'core areas'.

63 Such a distinction is incompatible with the broad definition of 'religion' given by Article 10(1)(b) of the Directive, which encompasses all its constituent components, be they public or private, collective or individual. Acts which may constitute a 'severe violation' within the meaning of Article 9(1)(a) of the Directive include serious acts which interfere with the applicant's freedom not only to practice his faith in private circles but also to live that faith publicly.

64 That interpretation is likely to ensure that Article 9(1) of the Directive is applied in such a manner as to enable the competent authorities to assess all kinds of acts which interfere with the basic right of freedom of religion in order to determine whether, by their nature or repetition, they are sufficiently severe as to be regarded as amounting to persecution.

65 It follows that acts which, on account of their intrinsic severity as well as the severity of their consequences for the person concerned, may be regarded as constituting persecution must be identified, not on the basis of the particular aspect of religious freedom that is being interfered with but on the basis of the nature of the repression inflicted on the individual and its consequences, as observed by the Advocate General at point 52 of his Opinion.

66 It is therefore the severity of the measures and sanctions adopted or liable to be adopted against the person concerned which will determine whether a violation of the right guaranteed by Article 10(1) of the Charter constitutes persecution within the meaning of Article 9(1) of the Directive.

67 Accordingly, a violation of the right to freedom of religion may constitute persecution within the meaning of Article 9(1)(a) of the Directive where an applicant for asylum, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive.

68 It should be noted that where, in accordance with Article 4(3) of the Directive, the competent authorities carry out an assessment of an application for international protection on an individual basis, they are required to take account of all the acts to which the applicant has been, or risks being, exposed, in order to determine whether, in the light of the applicant's personal circumstances, those acts may be regarded as constituting persecution within the meaning of Article 9(1) of the Directive.

69 Given that the concept of 'religion' as defined in Article 10(1)(b) of the Directive also includes participation in formal worship in public, either alone or in community with others, the prohibition of such participation may constitute a sufficiently serious act within the meaning of Article 9(1)(a) of the Directive and, therefore, persecution where, in the country of origin concerned, it gives rise to a genuine risk that the applicant will, inter alia, be prosecuted or subject to inhuman or degrading punishment by one of the actors referred to in Article 6 of the Directive.

70 In assessing such a risk, the competent authorities must take account of a number of factors, both objective and subjective. The subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular importance to the person concerned in order to preserve his religious identity is a relevant factor to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned.

71 Indeed, it is apparent from the wording of Article 10(1)(b) of the Directive that the scope of protection afforded on the basis of persecution on religious grounds extends both to forms of personal or communal conduct which the person concerned considers to be necessary to him – namely those 'based on … any religious belief' – and to those prescribed by religious doctrine – namely those 'mandated by any religious belief'.

72 In the light of the foregoing considerations, the answer to the first two questions referred in both cases is that Article 9(1)(a) of the Directive must be interpreted as meaning that:

— not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter is capable of constituting an 'act of persecution' within the meaning of that provision of the Directive;

— there may be an act of persecution as a result of interference with the external manifestation of that freedom, and

— for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter may constitute an 'act of persecution', the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of the Directive.

Question 3

73 By the third question referred in both cases, the Bundesverwaltungsgericht seeks to ascertain, in essence, whether Article 2(c) of the Directive must be interpreted as meaning that the applicant's fear of being persecuted is well-founded where such a person can avoid exposure to persecution in his country of origin by abstaining from certain religious practices.

74 For the purpose of answering that question, it must be observed that it concerns a situation in which, as is the case in the main proceedings, the applicant has not already been subject to persecution or to direct threats of persecution on account of his religion.

75 It is the absence of such a 'serious indication of the applicant[s'] well-founded fear' within the meaning of Article 4(4) of the Directive which explains the need on the part of the referring court to ascertain the extent to which it may be open to the court, where the applicant cannot claim that his fear is based on the fact that he has already been subject to persecution on account of his religion, to require that on his return to his country of origin he should continue to avoid the real risk of being persecuted.

76 It should be noted in that regard that, in the system provided for by the Directive, when assessing whether, in accordance with Article 2(c) thereof, an applicant has a well-founded fear of being persecuted, the competent authorities are required to ascertain whether or not the circumstances established constitute such a threat that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subject to acts of persecution.

77 That assessment of the extent of the risk, which must, in all cases, be carried out with vigilance and care (*Salahadin Abdulla and Others*, paragraph 90), will be based solely on a specific evaluation of the facts and circumstances, in accordance with the rules laid down in particular by Article 4 of the Directive.

78 None of those rules states that, in assessing the extent of the risk of actual acts of persecution in a particular situation, it is necessary to take account of the possibility open to the applicant of avoiding the risk of persecution by abstaining from the religious practice in question and, consequently, renouncing the protection which the Directive is intended to afford the applicant by conferring refugee status.

79 It follows that, where it is established that, upon his return to his country of origin, the person concerned will follow a religious practice which will expose him to a real risk of persecution, he should be granted refugee status, in accordance with Article 13 of the Directive. The fact that he could avoid that risk by abstaining from certain religious practices is, in principle, irrelevant.

80 In the light of the above considerations, the answer to the third question referred in both cases is that Article 2(c) of the Directive must be interpreted as meaning that the applicant's fear of being persecuted is well-founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.

Costs

81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is 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. **Articles 9(1)(a) 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:**

   — **not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union is capable of constituting an 'act of persecution' within the meaning of that provision of the Directive;**

   — **there may be an act of persecution as a result of interference with the external manifestation of that freedom, and**

   — **for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an 'act of persecution', the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of Directive 2004/83.**

2. **Article 2(c) of Directive 2004/83 must be interpreted as meaning that the applicant's fear of being persecuted is well founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.**

[Signatures]