Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

30 January 2014*

(Directive 2004/83/EC — Minimum standards for granting refugee status or subsidiary protection status — Person eligible for subsidiary protection — Article 15(c) — Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of armed conflict — 'Internal armed conflict' — Interpretation independent of international humanitarian law — Criteria for assessment)

In Case C-285/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Belgium), made by decision of 16 May 2012, received at the Court on 7 June 2012, in the proceedings

Aboubacar Diakité

v

Commissaire général aux réfugiés et aux apatrides,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the Fourth Chamber, M. Safjan, J. Malenovský and A. Prechal, Judges,

Advocate General: P. Mengozzi,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 29 May 2013,

after considering the observations submitted on behalf of:

— Mr Diakité, by D. Caccamisi, avocate,

— the Belgian Government, by T. Materne and C. Pochet, acting as Agents,

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

— the French Government, by D. Colas, acting as Agent,

— the United Kingdom Government, by L. Christie and A. Robertson, acting as Agents, assisted by J. Simor, Barrister,

* Language of the case: French.

— the European Commission, by M. Condou-Durande, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 18 July 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15(c) 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, and – corrigendum – OJ 2005 L 204, p. 24).

2 The request has been made in proceedings between Mr Diakité, a Guinean national, and the Commissaire général aux réfugiés et aux apatrides (Commissioner General for Refugees and Stateless Persons) ('the Commissaire général') concerning the Commissaire général's decision not to grant Mr Diakité subsidiary protection.

Legal context

International law

3 Common Article 3 of the four Geneva Conventions of 12 August 1949 (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Convention (III) relative to the Treatment of Prisoners of War, and Convention (IV) relative to the Protection of Civilian Persons in Time of War) ('the four Geneva Conventions') provides:

'In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed "hors de combat" by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely …

To this end, the following acts are and shall remain prohibited … with respect to the above-mentioned persons:

(a) violence to life and person …;

…

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

…'

4 Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977 provides:

'1. This Protocol, which develops and supplements Article 3 common to the [four Geneva conventions] without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the [four Geneva Conventions], and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.'

European Union ('EU') law

5 Recitals 5, 6 and 24 in the preamble to Directive 2004/83 are worded as follows:

'(5) The Tampere conclusions … provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

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

…

(24) Minimum standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in 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))].'

6 Article 2(e) of Directive 2004/83 states that, for the purposes of that directive, the phrase '"person eligible for subsidiary protection" means a third country national or a stateless person 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, or in the case of a stateless person, to his or her country of former habitual residence, 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 15 of Directive 2004/83, entitled 'Serious harm', provides:

'Serious harm consists of:

…

(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.'

Belgian law

8 Article 48/4 of the Law of 15 December 1980 on the admission, residence, establishment and repatriation of foreign nationals ('the Law of 15 December 1980') provides:

'§ 1. Subsidiary protection shall be granted to any foreign national who cannot be accorded refugee status and who is not covered by Article 9b, and in respect of whom substantial grounds have been shown for believing that, if returned to his country of origin or, in the case of a stateless person, to his country of former habitual residence, he would face a real risk of suffering serious harm as defined in § 2, and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country …

§ 2. Serious harm consists of:

…

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

The dispute in the main proceedings and the question referred for a preliminary ruling

9 On 21 February 2008 Mr Diakité applied for asylum in Belgium, invoking the repression and violence that he had endured in his country of origin by reason of his participation in protest movements against the ruling regime.

10 The Commissaire général refused to recognise Mr Diakité as having refugee status or to grant him subsidiary protection. That twofold decision was upheld by the Conseil du contentieux des étrangers (Belgian asylum and immigration board).

11 On 15 July 2010, not having returned to his country of origin in the meantime, Mr Diakité applied again to the Belgian authorities for asylum.

12 On 22 October 2010, the Commissaire général once again refused to recognise Mr Diakité as having refugee status or to grant him subsidiary protection. The Commissaire général's refusal to grant subsidiary protection was based on the finding that there is no situation of indiscriminate violence or armed conflict in Guinea as referred to in paragraph 2 of Article 48/4 of the Law of 15 December 1980.

13 Mr Diakité brought an appeal against that twofold decision before the Conseil du contentieux des étrangers, which, by judgment of 6 May 2011, upheld the Commissaire général's twofold refusal.

14 In his appeal in cassation before the Conseil d'État (Council of State, Belgium) ('the referring court'), Mr Diakité contests the judgment of the Conseil du contentieux des étrangers in so far as that judgment relies on the definition of 'armed conflict' used by the International Criminal Tribunal for the Former Yugoslavia in order to find that the condition laid down in paragraph 2 of Article 48/4 of the Law of 15 December 1980 – that there must be an armed conflict – has not been met.

15 In that context, the referring court holds that, in view of the judgment in Case C-465/07 *Elgafaji* [2009] ECR I-921, it is possible that, as Mr Diakité asserts, the concept of 'armed conflict' as referred to in Article 15(c) of Directive 2004/83 may be interpreted independently of, and have a different meaning from, the concept of 'armed conflict' as defined in the case-law of the International Criminal Tribunal for the Former Yugoslavia.

16 In those circumstances, the Conseil d'État decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 15(c) of [Directive 2004/83] be interpreted as meaning that that provision offers protection only in a situation of "internal armed conflict", as interpreted by international humanitarian law, and, in particular, by reference to Common Article 3 of the four Geneva Conventions …?

If the concept of "internal armed conflict" referred to in Article 15(c) of [Directive 2004/83] is to be given an interpretation independent of Common Article 3 of the four Geneva Conventions …, what, in that case, are the criteria for determining whether such an "internal armed conflict" exists?'

Consideration of the question referred

17 By its question, the referring court asks in essence whether, on a proper construction of Article 15(c) of Directive 2004/83, the assessment as to whether an internal armed conflict exists is to be carried out on the basis of the criteria established by international humanitarian law and, if not, which criteria should be used in order to assess whether such a conflict exists for the purposes of determining whether a third country national or a stateless person is eligible for subsidiary protection.

18 In that regard, it should be borne in mind that the three types of serious harm defined in Article 15 of Directive 2004/83 constitute the qualification for subsidiary protection, where, in accordance with Article 2(e) of that directive, substantial grounds have been shown for believing that the applicant faces a real risk of such harm if returned to the relevant country of origin (*Elgafaji*, paragraph 31).

19 The type of harm specified in Article 15(c) of Directive 2004/83 consists in a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

20 In that regard, it should be noted that the EU legislature has used the phrase 'international or internal armed conflict', as opposed to the concepts on which international humanitarian law is based (international humanitarian law distinguishes between 'international armed conflict' and 'armed conflict not of an international character').

21 In those circumstances, it must be held that the EU legislature wished to grant subsidiary protection not only to persons affected by 'international armed conflicts' and by 'armed conflict not of an international character', as defined in international humanitarian law, but also to persons affected by internal armed conflict, provided that such conflict involves indiscriminate violence. In that context, it is not necessary for all the criteria referred to in Common Article 3 of the four Geneva Conventions and Article 1(1) of Protocol II of 8 June 1977, which develops and supplements that article, to be satisfied.

22 In addition, it should be noted that international humanitarian law governs the conduct both of international armed conflicts and of armed conflict not of an international character, which means that the existence of either type of conflict acts as a trigger for applying the rules established by such law (judgment of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia of 2 October 1995 in Case No IT-94-1-AR72 *Prosecutor* v *Dusko Tadic a/k/a 'Dule'*, paragraph 67).

23 While international humanitarian law is designed, inter alia, to provide protection for civilian populations in a conflict zone by restricting the effects of war on persons and property, it does not – by contrast with Article 2(e) of Directive 2004/83, read in conjunction with Article 15(c) of that directive – provide for international protection to be granted to certain civilians who are outside both the conflict zone and the territory of the conflicting parties. As a consequence, the definitions of

'armed conflict' provided in international humanitarian law are not designed to identify situations in which such international protection would be necessary and would thus have to be granted by the competent authorities of the Member States.

24 More generally, it should be pointed out that, as the Advocate General observed in points 66 and 67 of his Opinion, international humanitarian law, on the one hand, and the subsidiary protection regime introduced by Directive 2004/83, on the other, pursue different aims and establish quite distinct protection mechanisms.

25 Moreover, as the Advocate General noted in point 70 of his Opinion, certain breaches of international humanitarian law give rise to individual criminal liability. Because of this, international humanitarian law is very closely linked to international criminal law, whereas no such relationship exists in the case of the subsidiary protection mechanism provided for under Directive 2004/83.

26 Accordingly, it is not possible – without disregarding those two distinct areas, the one governed by international humanitarian law and the other by Article 2(e) of Directive 2004/83, read in conjunction with Article 15(c) of that directive – to make eligibility for subsidiary protection conditional upon a finding that the conditions for applying international humanitarian law have been met.

27 Consequently, since Directive 2004/83 does not define 'internal armed conflict', the meaning and scope of that phrase must, as the Court has consistently held, be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part (Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 17, and Case C-119/12 *Probst* [2012] ECR, paragraph 20).

28 The usual meaning in everyday language of 'internal armed conflict' is a situation in which a State's armed forces confront one or more armed groups or in which two or more armed groups confront each other.

29 It should be noted in that regard that, although the Commission proposal for the adoption of Directive 2004/83 envisaged that the definition of 'serious harm' under Article 15(c) of that directive would recognise that threats to the life, safety or freedom of the applicant could arise either through armed conflict or through systematic or generalised violation of human rights, the EU legislature ultimately decided to retain only the idea of a threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

30 Furthermore, it should be borne in mind that the existence of an internal armed conflict can be a cause for granting subsidiary protection only where confrontations between a State's armed forces and one or more armed groups or between two or more armed groups are exceptionally considered to create a serious and individual threat to the life or person of an applicant for subsidiary protection for the purposes of Article 15(c) of Directive 2004/83 because the degree of indiscriminate violence which characterises those confrontations reaches such a high level that substantial grounds are shown for believing that a civilian, if returned to the relevant country or, as the case may be, to the relevant region, would – solely on account of his presence in the territory of that country or region – face a real risk of being subject to that threat (see, to that effect, *Elgafaji*, paragraph 43).

31 In that regard, the Court has stated that the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection (*Elgafaji*, paragraph 39).

32 In that context, it is not necessary, when considering an application for subsidiary protection, to carry out a specific assessment of the intensity of such confrontations in order to determine, separately from the appraisal of the resulting level of violence, whether the condition relating to armed conflict has been met.

33 Moreover, it is clear from recitals 5, 6 and 24 to Directive 2004/83 that the minimum requirements for granting subsidiary protection must help to complement and add to the protection of refugees enshrined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, through the identification of persons genuinely in need of international protection and through such persons being offered an appropriate status.

34 In consequence, as the Advocate General observed in point 92 of his Opinion, the finding that there is an armed conflict must not be made conditional upon the armed forces involved having a certain level of organisation or upon the conflict lasting for a specific length of time: it is sufficient if the confrontations in which those armed forces are involved give rise to the level of violence referred to in paragraph 30 above, thereby creating a genuine need for international protection on the part of the applicant, who faces a real risk of serious and individual threat to his life or person.

35 Consequently, the answer to the question referred is that, on a proper construction of Article 15(c) of Directive 2004/83, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

Costs

36 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 (Fourth Chamber) hereby rules:

On a proper construction of Article 15(c) 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, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

[Signatures]