Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 28 May 2020[1]

Case C-238/19

EZ
v
Federal Republic of Germany, represented by the Bundesamt für Migration und Flüchtlinge

(Request for a preliminary ruling from the Verwaltungsgericht Hannover (Administrative Court, Hanover, Germany))

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum policy — Conditions for granting refugee status — Directive 2011/95/EU — Interpretation of Article 9(3) — Reasons for persecution — Article 10(1)(e) — Concept of political opinion — Refusal to perform military service — Conscientious objection)

1. In *Shepherd*[2] the Court examined whether an enlisted soldier who deserted because he refused to perform further military service with the United States of America forces in the Iraq war should be granted asylum.[3] The Verwaltungsgericht Hannover (Administrative Court, Hanover Germany) now asks the Court for further clarification of that ruling. Unlike Mr Shepherd, the applicant in the main proceedings fled his country in order to avoid conscription into the armed forces; and the particular context here is military service in the Syrian army in the Syrian civil war. Certain issues raised by the referring court thus differ from those that were considered in Mr Shepherd's case. The Court has asked me to focus in this Opinion on the interpretation of the text that is currently applicable: specifically, on Article 9(3) of Directive 2011/93/EC ('the Qualification Directive'). In particular, I shall examine whether there must be a causal connection between the 'reasons for persecution' and the 'acts of persecution' (or absence of protection from such acts) within the meaning of that directive.

1 Original language: English.

2 Judgment of 26 February 2015, C-472/13, EU:C:2015:117.

3 Mr Shepherd's case concerned Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304 p. 12). The present proceedings are concerned with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9), which repealed and replaced Directive 2004/83/EC.

International law

Convention relating to the Status of Refugees

2. Pursuant to Article 1(A)(2) of the Geneva Convention,[4] 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' falls within the definition of the term 'refugee'.

3. Article 1(F)(a) states that the Geneva Convention does not apply to any person for whom there are serious reasons for considering that he has committed 'a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes'.[5]

The Convention for the Protection of Human Rights and Fundamental Freedoms

4. Article 9(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms[6] guarantees the right to freedom of thought, conscience and religion, including freedom to change religion or belief.

European Union law

The Charter of Fundamental Rights of the European Union

5. Article 10(1) of the Charter of Fundamental Rights of the European Union ('the Charter') corresponds to Article 9(1) of the ECHR. Under Article 10(2) of the Charter, the right to conscientious objection is recognised in accordance with the national laws governing that right. Article 52(3) thereof states that the rights enshrined in the Charter are to be interpreted consistently with corresponding rights guaranteed by the ECHR.

The Qualification Directive

6. The recitals to the Qualification Directive include the following statements. The Qualification Directive forms part of the measures comprising the Common European Asylum System ('the CEAS'), based on the full and inclusive application of the Geneva Convention and the Protocol which together provide the cornerstone of the international legal regime for the protection of refugees.[7] The main objective of that directive is to ensure that Member States apply common criteria to identify persons genuinely in need of international protection and to guarantee that a minimum level of benefits is uniformly available.[8] The directive respects the fundamental rights and observes the principles

4 Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, which entered into force on 22 April 1954 ('the Geneva Convention'), as 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 Protocol'). The Geneva Convention was originally limited to persons fleeing events that occurred before 1 January 1951 and within Europe. The Protocol removed those limitations and gave the Geneva Convention universal coverage.

5 Article 1(F)(b) and (c) of the Geneva Convention provide respectively that the Convention likewise does not apply to a person who commits a serious non-political crime outside the country of refuge; or to someone who is guilty of acts contrary to the purposes and principles of the United Nations.

6 Signed at Rome on 4 November 1950 ('the ECHR').

7 Recitals 3 and 4.

8 Recital 12.

recognised by the Charter.[9] Member States are bound by their obligations under international law regarding their treatment of persons falling within the scope of the Qualification Directive.[10] 'Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention. [11] 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. [12] It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention. [13] Finally, 'one of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons for persecution, namely race, religion, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts'.[14]

7. Pursuant to Article 1, the purpose of the Qualification Directive includes laying down standards for third-country nationals or stateless persons to qualify as beneficiaries of international protection.

8. Article 2(d) defines the term 'refugee' as 'a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply'.[15] In Article 2(g) 'subsidiary protection status' is defined as 'the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection'.

9. Chapter II is entitled 'Assessment of applications for international protection'. Within that Chapter, Article 4(1) states that it is the duty of Member States to assess the relevant elements of applications for international protection in cooperation with the applicant. In accordance with Article 4(3), that assessment is to be carried out on an individual basis and take into account the factors listed in Article 4(3)(a) to (e). Those factors include:

'(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;

…

(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 or serious harm;

…'

9 Recital 16.
10 Recital 17.
11 Recital 22.
12 Recital 23.
13 Recital 24.
14 Recital 29.
15 See point 13 below.

Pursuant to Article 4(5), 'where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

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

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

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

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

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

10. In accordance with Article 6(a), actors of persecution or serious harm include the State.

11. Articles 9 to 12 comprise Chapter III, which is entitled 'Qualification for being a refugee'. Article 9 ('Acts of persecution') states:

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

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the [ECHR]; [16] or

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

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

(a) acts of physical or mental violence, including acts of sexual 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;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2); [17]

(f) acts of a gender-specific or child-specific nature.

16 Article 15(2) of the ECHR lists those rights from which there is no derogation, such as the right to life.

17 See point 13 below.

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

12. Article 10(1) lists five 'elements' which Member States must take into account when assessing the 'reasons for persecution', namely race, religion, nationality, membership of a particular social group and political opinion (Article 10(1)(a) through (e)). As to the last-mentioned, Article 10(1)(e) states:

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

Article 10(2) provides that 'when assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution'.

13. Article 12 lists the circumstances in which a third-country national or stateless person is excluded from being a refugee under the Qualification Directive. Those circumstances include where there are serious reasons for considering that 'he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes' (Article 12(2)(a)).[18]

14. Article 13 requires Member States to grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III of the Qualification Directive.

The Procedures Directive

15. The objective of Directive 2013/32/EU[19] is to establish common procedures for granting and withdrawing international protection pursuant to the Qualification Directive. It applies to all applications for international protection made within the territory of the European Union.[20] The requirements for examining applications are set out in Article 10. Member States must ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination.[21]

National law

16. Paragraph 3(1) of the Asylgesetz (Law on asylum: 'the AsylG') defines a 'refugee' in accordance with the definition in Article 2(d) of the Qualification Directive. Paragraph 3a of the AsylG defines 'acts of persecution' in a way that parallels Article 9 of the Qualification Directive (Paragraph 3a(2)(5) replicating Article 9(2)(e) of the directive on prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include (implication in committing war crimes)). Paragraph 3b of the AsylG sets out the elements of the 'reasons for persecution' in a similar

18 A parallel provision (Article 17(1)(a)) similarly excludes such a person from being eligible for subsidiary protection. I add for the sake of completeness that the wording of Article 12(2)(b) and (c), and the parallel exclusions from subsidiary protection contained in Article 17(1)(b) and (c), are similar to Article 1(F)(b) and (c) of the Geneva Convention; see footnote 5 above.

19 Directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60) ('the Procedures Directive').

20 Article 3(1).

21 Article 10(3).

manner to Article 10 of the Qualification Directive (Paragraph 3b(1)(5) replicating Article 10(1)(e) of the directive on the concept of 'political opinion'). Finally, Paragraph 3a(3) of the AsylG — in the same way as Article 9(3) of the Qualification Directive — requires there to be a connection [22] between the acts of persecution and the reasons for persecution.

Facts, procedure and questions referred

17. The applicant, Mr EZ, was born on 27 January 1989. He is a Syrian national. He left his homeland by sea and, after traveling by land through a number of countries, he finally arrived in the Federal Republic of Germany on 5 September 2015. He filed a formal application for asylum with the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany: 'the Bundesamt') on 28 January 2016.

18. Mr EZ informed the Bundesamt that while he was in Syria he had requested a deferral of his military service for fear of having to take part in the civil war. The Syrian authorities had granted him deferment until February 2015 in order to allow him to complete his course at Aleppo University. Mr EZ completed his university studies in April 2014. He had left Syria in November 2014 because of his impending call-up for military service in February 2015.

19. By decision of 11 April 2017, the Bundesamt granted Mr EZ subsidiary protection status, [23] but it rejected his asylum application on the grounds that he had not been subject to persecution in Syria which would have caused him to flee his home country. The Bundesamt took the view that there was no causal link between the act of persecution and a reason for persecution in his case. On 1 May 2017, Mr EZ brought an action against that decision before the referring court.

20. The referring court made the following statements in its order for reference.

21. Syria has been the scene of a domestic armed conflict since 2011. All parties involved in that conflict have committed — and continue to commit — serious and systematic violations of international humanitarian law. [24]

22. Syria operates a system of two-year compulsory military service for male Syrian nationals aged 18 and over. There is no recognition of the right to conscientious objection under Syrian law. [25] The Syrian military administration continues to recruit intensively. A general expectation exists that conscripts, on becoming eligible for military service (following for example, the expiry of a period of deferment for the purposes of study), will report to the military administration of their own accord. After six months, conscripts who do not so report are routinely placed on a list of draft evaders. That list is made available to checkpoints and to other government agencies. In times of war, draft evaders apprehended in this way are liable under Syrian law to be sanctioned severely. The form of punishment imposed is arbitrary: it ranges from statutory prison sentences which can be imposed for terms of up to five years, to (effectively) execution as a result of such recruits being placed on hazardous assignments in front-line operations without being given any prior military training.

22 'Zwischen den in § 3 Absatz 1 Nummer 1 in Verbindung mit den in § 3b gennanten Verfolgungsgründen und den in Absätzen 1 und 2 als Verfolgung eingestuften Handlungen oder dem Fehlen von Schutz vor solchen Handlungen *muss eine Verknüpfung bestehen*' (*There must be a connection* between the reasons for persecution mentioned in Article 3(1)(1) in conjunction with Article 3b and the acts of persecution defined in Article 3a(1) and (2) or the absence of protection against such acts) (emphasis added).

23 See point 8 above.

24 In its order for reference, the referring court documents this finding of fact extensively.

25 The referring court cites in its order for reference the United Nations Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/34/64, of 2 February 2017.

23. The referring court took the view that Mr EZ does not wish to comply with the general obligation to enlist and serve in the Syrian military which would probably involve him in the commission of war crimes.[26] By fleeing Syria and making a request for international protection, Mr EZ has rendered himself liable — on account of that very conduct — to prosecution or punishment in his country of origin.

24. Against that background, the referring court seeks guidance on a number of issues. In particular it asks this Court to examine Article 9(3) of the Qualification Directive and clarify whether it is necessary to establish a causal connection between the 'acts of persecution' listed in Article 9(2) and one of the 'reasons for persecution' set out in Article 10(1). If that question is answered affirmatively, the referring court enquires whether such a link is established automatically under that directive where an asylum application is based on Article 9(2)(e).[27] Accordingly, the referring court has requested a preliminary ruling on the following questions:

'(1) Is Article 9(2)(e) of [the Qualification Directive] to be interpreted as meaning that a "refusal to perform military service in a conflict" does not require the person concerned to have refused to perform military service in a formalised refusal procedure, where the law of the country of origin does not provide for a right to refuse to perform military service?

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

By the reference to "refusal to perform military service in a conflict", does Article 9(2)(e) of [the Qualification Directive] also protect persons who, after the deferment of military service has expired, do not make themselves available to the military administration of the State of origin and evade compulsory conscription by fleeing?

(3) If Question 2 is to be answered in the affirmative:

Is Article 9(2)(e) of [the Qualification Directive] to be interpreted as meaning that, for a conscript who does not know what his future field of military operation will be, the performance of military service would, directly or indirectly, include "crimes or acts falling within the grounds for exclusion as set out in Article 12(2)" solely because the armed forces of his State of origin repeatedly and systematically commit such crimes or acts using conscripts?

(4) Is Article 9(3) of [the Qualification Directive] to be interpreted as meaning that, in accordance with Article 2(d), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in Article 9(1) and (2) of [the Qualification Directive] or the absence of protection against such acts, even in the event of persecution under Article 9(2)(e) of [the Qualification Directive]?

(5) In the event that Question 4 is to be answered in the affirmative, is the connection, within the meaning of Article 9(3) in conjunction with Article 2(d) of [the Qualification Directive], between persecution by virtue of prosecution or punishment for refusal to perform military service and the reason for persecution already established in the case where prosecution or punishment is triggered by refusal?'

25. Written observations were submitted by Mr EZ and the European Commission. Both parties together with the Bundesamt and Germany made oral submissions at the hearing on 5 March 2020.

26 In its order for reference the referring court cites the United Nations General Assembly's Resolution A/71/L.48 of 19 December 2016 entitled 'International, impartial and independent mechanism to assist in the investigation and prosecution of those responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011'.

27 The referring court states in its order for reference that judicial opinion is divided at national level as to whether there must be such a causal connection in cases where applicants for asylum rely on Article 9(2)(e) of the Qualification Directive.

Assessment

General remarks

26. The preamble to the Qualification Directive establishes the framework within which its provisions are to be interpreted. Thus, the Geneva Convention and the Protocol form the basis for applying that directive, which also takes full account of the principles enshrined in the Charter as well as the Member States' obligations under international law. [28]

27. The Qualification Directive must thus 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 and with the rights recognised by the Charter. [29] Statements made by the UN High Commissioner for Refugees provide valuable guidance in interpreting the Qualification Directive. [30]

28. The general scheme of the Qualification Directive is as follows. The term 'refugee' refers, in particular, to a third-country national who is outside his country of 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. The person concerned must therefore, on account of circumstances existing in his country of origin, have a well-founded fear of being personally the subject of persecution for at least one of the five reasons listed in Article 2(d) and Article 10(1) of that directive and in Article 1(A)(2) of the Geneva Convention.

29. Under Article 4(3)(a), (b) and (c) of the Qualification Directive, the individual assessment of an application for international protection must take account of the following: (i) all relevant facts as they relate to the country of origin at the time of taking a decision on the request for asylum, including laws and regulations of the country of origin and the manner in which they are applied; (ii) the relevant statements and documentation presented by the applicant; and (iii) the applicant's individual position and his personal circumstances. [31]

30. The Syrian State and its military administration falls within the definition of 'Actors of persecution or serious harm' set out in Article 6(a) of the Qualification Directive.

31. Article 12(2) of the Qualification Directive is derived from Article 1(F) of the Geneva Convention. Only Article 12(2)(a) is relevant in the present circumstances. [32] The acts listed in that provision and in Article 1(F)(a) of the Geneva Convention as leading to exclusion from being a refugee are identical. They are where there are 'serious reasons' for considering that the person in question has committed crimes against peace, war crimes, or crimes against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

28 Recitals 3, 4, 16 and 17 of the Qualification Directive.

29 Judgment of 26 February 2015, *Shepherd*, C-472/13, EU:C:2015:117, paragraph 23 and the case-law cited.

30 See recital 22 of the Qualification Directive. The *Handbook on procedures and criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to Status of Refugees*, recently revised in February 2019 ('the Handbook'), and the Guidelines on International Protection No.10 'Claims to Refugee Status related to Military Service within the context of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to Status of Refugees' ('the UNHCR Guidelines No 10') in (the version of 12 November 2014) are particularly relevant to the present matter. Whilst neither of those documents is legally binding, they nonetheless reflect established principles of international law.

31 Judgment of 26 February 2015, *Shepherd*, C-472/13, EU:C:2015:117, paragraph 26 and the case-law cited.

32 Grounds 12(2)(b) and (c) are reflected in Article 1(F)(b) and (c) of the Geneva Convention and are thus not relevant here (see footnote 5 above).

32. The Charter of the International Military Tribunal [33] defines a 'crime against peace' as involving the planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties or other agreements. Such a crime by its very nature can only be committed by a person in a high position of authority representing a State or a State-like entity. [34] The order for reference indicates that Mr EZ is a young man who evaded military service in Syria by fleeing the country. The possibility, had he entered the army, that he would (within two years) have become a military official of a sufficiently elevated rank to be able to commit a crime against peace can, I think, safely be excluded.

33. However, the account of the background facts and the referring court's statements in its order for reference do indicate that, had he entered military service, Mr EZ might well have been at risk of committing war crimes and/or crimes against humanity. [35] A number of international instruments define 'war crimes'. Such crimes include serious breaches of rules of international humanitarian law that seek to protect persons who are not, or are no longer, taking part in hostilities and to restrict the methods and means of warfare employed. The term war crimes cover acts of wilful killing and torture of civilians. [36] Crimes against humanity cover acts such as genocide, murder, rape and torture carried out as part of a widespread or systematic attack directed against a civilian population. [37]

34. The principal objective of the Qualification Directive, as stated in Article 1 thereto, is to ensure that the Member States apply common criteria in order to identify persons who are genuinely in need of international protection in the European Union. [38] The context of that directive is essentially humanitarian.

35. It is also important to recall that the Qualification Directive introduces minimum harmonised standards for determining refugee status. [39] Thus, it is all the more important to ensure that those rules are applied consistently and uniformly throughout the Member States.

36. It is in the light of those considerations that Article 9(2)(e) and (3) and Article 10 must be interpreted.

Questions 4 and 5

37. By Questions 4 and 5 the referring court seeks guidance on the interpretation of Article 9(3) of the Qualification Directive. [40] In particular, it wishes to ascertain how that provision should be read in conjunction with Article 9(2)(e) and Article 10(1)(e).

38. The referring court asks by Question 4 whether the requirement in Article 9(3) for there to be a 'connection' with a reason for persecution listed in Article 10 applies even where the 'act of persecution' is prosecution or punishment for refusal to serve in the army in a conflict where performing military service would include involvement in war crimes and/or crimes against humanity (Article 9(2)(e)).

33 Signed at London on 8 August 1945.

34 See, for example, paragraph 11 of the Guidelines on the application of the exclusion clauses: Article 1(F) of the Geneva Convention ('the UNHCR Guidelines on exclusion clauses').

35 See points 21 to 23 above.

36 See my Opinion in *Shepherd*, C-472/13, EU:C:2014:2360, points 41 to 43.

37 In that respect the referring court cites a number of reports and resolutions. These include the United Nations Human Rights Council Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/39/65 of 9 August 2018; the United Nations General Assembly Resolution on 'the human rights situation in the Syrian Arab Republic', A/HRC/38/L.20 of 2 July 2018; and a document of the United Nations Human Rights Council Independent International Commission of Inquiry 'Human rights abuses and international humanitarian law violation in the Syrian Arab Republic, 21 July 2016- 28 February 2017', A/HRC/34/CRP.3 of 10 March 2017.

38 See recital 12 of the Qualification Directive.

39 Article 3 of the Qualification Directive.

40 Article 9(3) cross-refers to Article 9(1) but — perhaps curiously — makes no mention of the (non-exhaustive) list of specific 'acts of persecution set out in Article 9(2). See further point 45 below.

39. It is common ground between the Bundesamt, Germany and the Commission that there should always be a causal link between the acts of persecution and the reasons for persecution. Mr EZ disputes that view.

40. In my opinion, the interpretation of Article 9(3) of the Qualification Directive advanced by the Bundesamt, Germany and the Commission is correct.

41. First, the contrary interpretation is incompatible with the very definition of a refugee in Article 2(d) of the Qualification Directive (a person who has a 'well-founded fear of being persecuted' for at least one of the five reasons there listed who is 'unable or, owing to such fear, is unwilling to avail him or herself of the protection of that country'. [41]

42. Second, it would be contrary to the express wording of Article 9(3) itself, which states that 'there *must be* a connection' [42] between the reasons mentioned in Article 10 and the acts of persecution as characterised in Article 9(1) or the absence of protection against such acts. [43]

43. Here, it is helpful to look at Article 9, which defines those factors that make it possible to regard acts as constituting persecution, [44] in greater detail.

44. Article 9(1)(a) 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 indefeasible rights from which there can be no derogation, in accordance with Article 15(2) of the ECHR. Article 9(1)(b) provides that an accumulation of various measures, including violations of human rights, which is 'sufficiently severe as to affect an individual in a similar manner' to that referred to in Article 9(1)(a), is also to be regarded as amounting to persecution. All alleged acts of persecution must meet the threshold laid down in Article 9(1) in order for an applicant for asylum to fall within the scope of the Qualification Directive.

45. Article 9(2) comprises a heterogeneous list of possible acts of persecution. That list is merely illustrative. The first four entries in the list describe actions that can be taken by an actor of persecution or serious harm against an individual. The fifth and sixth entries are predicated upon some prior action by, or quality in, the individual who then suffers the treatment in question. Because the list in Article 9(2) is illustrative ('… can, inter alia, take the form of: …'), other acts that are not listed might nevertheless qualify as acts of persecution for the purposes of Article 9(1)(a). [45] It is in any event clear that an act of a *type* (or *form*) that is listed in Article 9(2) must nevertheless reach the *level of severity* specified in Article 9(1) before it will *qualify* as an 'act of persecution'.

46. Article 9(3) cross-refers to Article 9(1) ('the acts of persecution as qualified in paragraph 1 of this Article'), but makes no reference to the illustrative list of such acts in Article 9(2). That omission may be a legislative oversight or may, on the contrary, be deliberate. There is nothing in the Qualification Directive itself pointing to the reasons for the omission. It may be that there is no reference to Article 9(2) in Article 9(3) simply because the former does not comprehensively define acts of persecution (that is the function and purpose of Article 9(1)). [46] The legislature may have considered that the illustrative list in Article 9(2) of what *might* comprise acts that are sufficiently serious for the purposes of Article 9(1) was covered implicitly by Article 9(1).

41 See point 28 above.

42 Emphasis added.

43 See further point 45 below.

44 Judgment of 5 September 2012, *Y and Z*, C-71/11 and C-99/11, EU:C:2012:518, paragraph 53.

45 See point 44 above.

46 See point 45 above.

47. Whatever the correct explanation may be, however, it does not seem to me to be plausible to imply that for each of the forms of act listed in Article 9(2), it is unnecessary to establish a causal link between the acts and the reasons for persecution.

48. Third, such an interpretation would be at variance with the wording of Article 1(A)(2) of the Geneva Convention, which refers to persons who have a well-founded fear of persecution 'for reasons of race, religion, nationality, membership of a particular social group or political opinion'. That definition is naturally reflected in Article 2(d) of the Qualification Directive (as I have indicated in point 41 above), which is to be interpreted consistently with the Geneva Convention.[47] I also note that the explanatory memorandum to the Qualification Directive states that the legislature sought to clarify in the recast version of that directive what is described as the 'causal link requirement' now in Article 9(3).[48]

49. Fourth, the Court has consistently referred to the need to demonstrate a causal link between fear of acts of persecution and the grounds in Article 10(1). The Court's decisions in cases concerning applications for asylum on the grounds of religion or sexual orientation are examples that can be applied readily by analogy to the present matter.[49]

50. Fifth, it would be contrary to the purpose of the Qualification Directive to ignore the need to establish a causal link between the reasons for persecution and the acts of persecution or the absence of protection against such acts.[50]

51. I therefore conclude that Article 9(3) of the Qualification Directive is to be interpreted as meaning that there must always be a causal link between the reasons for persecution in Article 10(1) and the acts of persecution defined in Article 9(1), including in cases where an applicant for international protection seeks to rely on Article 9(2)(e) of that directive.

52. Given that I propose an affirmative response to Question 4, it is necessary to reply to Question 5. By that question, the referring court asks whether the causal link required by Article 9(3) is present automatically in cases where an applicant for asylum seeks to rely on Article 9(2)(e) of the Qualification Directive. Inherent in that question are issues concerning the process of assessing such claims under Article 4.

53. Mr EZ submits that where an applicant relies on a conscientious objection to performing military service, it should be considered that by reason of that objection he is expressing a political opinion and that he will be subject to persecution in his home country by virtue of the fact that a penalty is imposed for evasion of military service.

47 See recital 24 of the Qualification Directive.

48 See the Commission's Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, COM(2009) 551 final of 21 October 2009, pages 7 and 8: 'In many cases where the persecution emanates from non-State actors, such as militia, clans, criminal networks, local communities or families, the act of persecution is not committed for reasons related to a Geneva Convention ground but, for instance, with criminal motivations or for private revenge. However, it often happens in such cases that the State is unable or unwilling to provide protection to the individual concerned because of a reason related to the Geneva Convention (for example religion, gender, ethnicity etc). To address potential protection gaps, the proposal makes explicit that the requirement of a connection between the acts of persecution and the reasons for persecution is also fulfilled where there is a connection between the acts of persecution *and the absence of protection against such acts*.' Emphasis as in the original text.

49 Judgments of 5 September 2012, *Y and Z*, C-71/11 and C-99/11, EU:C:2012:518, paragraph 55, concerning religion, and of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 60, concerning sexual orientation.

50 See recital 29 of the Qualification Directive, which stresses that the existence of such a causal link is 'one of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention'.

54. The Bundesamt submits that it cannot be assumed that all individuals who refuse to do military service can rely on Article 10(1)(e) of the Qualification Directive. In order to demonstrate the necessary causal link it must be clear to the Syrian State that the person concerned evaded military service on grounds of conscientious objection; and that must be evidenced by an external manifestation of those views.

55. Germany argues that it does not follow that there is a causal link in every case where applicants rely on Article 9(2)(e) of the Qualification Directive. Applicants must prove the reasons for persecution and the competent national authorities must be able to verify their account. That verification process might include reference to external sources where the applicant has indicated his political opinions, such as by making posts on public platforms via the internet.

56. The Commission submits it is self-evident that requests for international protection require an individual examination in each case. All facts must be assessed in accordance with Article 4 of the Qualification Directive. Refusing military service in order to avoid the risk of participating in war crimes can be understood to constitute the expression of a political opinion for the purposes of Article 10(1)(e) of the Qualification Directive.

57. The Court has no information before it indicating which of the five grounds for persecution listed in Article 10(1) of the Qualification Directive Mr EZ has invoked. The order for reference records Mr EZ as claiming that irrespective of any individual reasons, he is at risk of persecution in Syria not least because of his flight from Syria and his application for asylum in Germany. The referring court proceeds on the premiss that Article 10(1)(e) (political opinion) is the relevant ground for persecution in Mr EZ's case. Whilst that assumption may be right, it does not necessarily follow that that is the only ground that might apply.[51]

58. In accordance with the definition of the word 'refugee' in Article 2(d) of the Qualification Directive, the competent authorities must be satisfied that there is persecution or a risk of persecution in regard to the applicant. Articles 9 and 10 read together mean that the concept of persecution comprises both 'the act of persecution' and the 'reasons for persecution'.[52]

59. Where an applicant for international protection relies on Article 9(2)(e) as the 'act of persecution' and is able to show that he fulfils the two cumulative conditions in that provision (namely, that he is at risk of prosecution or punishment for refusing to perform military service and that, if he were to serve in the armed forces, his service would be likely to include acts that fall within the scope of Article 12(2)),[53] does he also need to prove that he holds a political opinion in order to establish a 'reason for persecution' for the purposes of Article 10(1)(e)?

60. The reasoning behind the referring court's fifth question seems to be that where the conditions in Article 9(2)(e) are met, the applicant has already demonstrated the necessary elements of the concept of a political opinion. He has done so because he opposes his home country's ideology in conducting a war in a way that includes the commission of war crimes and/or breaches of international humanitarian law.

61. It seems to me, in the light of the general scheme of the Qualification Directive, that there is no scope for automaticity in the assessment of any application for refugee status. Thus, in cases where an applicant seeks to invoke Article 9(2)(e) as the 'act of persecution', the competent authorities should still conduct an assessment under Article 10(1) to establish the reasons for persecution.

51 See further point 83 below.

52 See the Opinion of my late and esteemed friend and colleague Advocate General Bot in Joined Cases *Y and Z*, C-71/11 and C-99/11, EU:C:2012:224, points 21 and 22.

53 See points 31 to 33 above.

62. Article 10(1)(e) states that 'the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, *whether or not that opinion, thought or belief has been acted upon by the applicant*'.

63. That is a broad definition. It is capable of covering a person who holds political opinions that are merely different from those of the government in his home country, as well as individuals who have already been identified as political antagonists (or opponents of the State), and who are in fear of losing their liberty or indeed their lives in their home countries.

64. Furthermore, the final words of Article 10(1)(e), 'whether or not that opinion, thought or belief has been acted upon by the applicant', make it plain that the person concerned does *not* have to prove that he has manifested his opinion externally, whether in his home country before he leaves or subsequently in the country where he seeks asylum. There are obvious reasons as to why that should be so. Under a repressive regime, a person who is brave or rash enough to speak out may be arrested and suppressed before he is able to flee the country and seek asylum elsewhere.

65. I therefore reject the submissions of the Bundesamt and the German Government in so far as they argue that there must be an external manifestation of an applicant's political opinion in order for him to rely on Article 10(1)(e). That submission is incompatible with the wording of the Qualification Directive and is at variance with the detailed obligations as to assessment set out in Article 4 thereof. [54]

66. Article 10(2) states that, 'when assessing if an applicant has a well-founded fear of being persecuted *it is immaterial* whether the applicant actually *possesses* the … political characteristic which attracts the persecution, provided that such a characteristic is *attributed* to the applicant by the actor of persecution' (emphasis added). Accordingly, the competent authorities examining an application for asylum must establish *either* that the person concerned actually holds the political opinion in issue *or* that it is *reasonable to suppose* that the actor of persecution (here, the Syrian State) will impute such an opinion to him. [55]

67. If there is no well-founded fear of persecution an individual will not fall within the definition of the term 'refugee'. [56] Thus, fear in the abstract of prosecution and punishment for draft evasion does not constitute a well-founded fear of persecution for the purposes of the Qualification Directive. Likewise, a person whose objections to being conscripted are based on opportunism ('I want to get on with my career, not waste time in the military'), or a desire to avoid the hardship and potential risks of military service, will not fall within the scope of the directive. [57]

68. The necessary determination can be made only after conducting a thorough assessment in accordance with Article 4 of the Qualification Directive.

54 See also, by analogy, judgment of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraphs 31 and 32.

55 See the UNHCR Guidelines No 10, paragraph 51.

56 See the Handbook, paragraphs 80 to 83. See also the commentary on Article 12(e) which became Article 10(1)(e) of the Qualification Directive in the explanatory memorandum to the Commission's Proposal for directive 2004/83, the first version of the Qualification Directive ((Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, COM(2001) 510 final).

57 See the Handbook, paragraphs 167 and 168.

69. I note here that a right to conscientious objection is recognised in international law, although there is no comprehensive definition of such a right.[58] The importance of freedom of thought, conscience and religion has also been stressed by the European Court of Human Rights ('the Strasbourg Court'). It is regarded as one of the foundations of a democratic society.[59] The protection afforded by Article 9 of the ECHR (which is reflected in Article 10 of the Charter) extends well beyond the expression of religious convictions. It applies to all personal, political, philosophical and moral convictions. The Strasbourg Court has ruled that opposition to military service can constitute a conviction of sufficient cogency, seriousness, cohesion and importance to be protected by Article 9(1) of the ECHR.[60] The Strasbourg Court has also stated that it is legitimate for the competent national authorities to interview the person concerned to assess the seriousness of his beliefs and to thwart attempts to misuse the guarantees provided by Article 9 of the ECHR.[61] Pursuant to Article 52(3) of the Charter, the corresponding rights to those in Article 9 of the ECHR, enshrined in Article 10(1) of the Charter, are to be construed as covering objection to military service on grounds of conscience.

70. In the context of the Qualification Directive, Article 4(1) allows Member States to place the onus upon applicants '… to submit as soon as possible all elements needed to substantiate the application for international protection …'. That provision also, however, places a positive duty on Member States to act in cooperation with the applicant to assess the relevant elements of his application. The assessment is to be carried out on an individual basis and should include taking into account the applicant's individual position and personal circumstances. In that respect, Article 4(5) of the Qualification Directive acknowledges that an applicant may not always be able to substantiate his claim with documentary or other evidence. Where the cumulative conditions of that provision are met, such evidence is not required.[62]

71. It is settled case-law that the applicant's statement forms merely the starting point of the assessment conducted by the competent authorities.[63] The objective of such an assessment is to ensure that the goals of the CEAS are met: that is, to restrict refugee status to individuals who may be exposed to a serious denial or systematic infringements of their most fundamental rights and whose life has therefore become intolerable in their country of origin.[64] The circumstances in the main proceedings differ from those in *Shepherd*[65] (which concerned an enlisted soldier rather than someone who fled to avoid conscription). Nonetheless, that case provides a useful starting point. The Court there explained that being a member of the military is a necessary but not sufficient precondition to trigger Article 9(2)(e) of the Qualification Directive. That provision refers exclusively to a conflict situation in which 'it is the military service itself that would involve war crimes' (the individual applicant does not have to demonstrate that he would be led to commit such crimes personally). Rather, 'the EU legislature intended the general context in which that service is performed to be taken into account objectively'. Protection can be extended only to those other persons whose tasks could, 'sufficiently directly and reasonably plausibly', lead them to participate in such acts. However, since Article 9(2)(e) is intended to protect the applicant who opposes military service because he does not

58 Thus, both Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights state that everyone has the right to freedom of thought, conscience and religion (those provisions are cited in paragraphs 8 and 9 respectively of the UNHCR Guidelines No 10). In paragraph 3 of those Guidelines, conscientious objection is defined as an objection to military service that derives from principles and reasons of conscience, including profound convictions arising from religious, moral, ethical, humanitarian or similar motives.

59 Judgment of 26 April 2016, *İzzettin Doğan and Others v Turkey*, (CE:ECHR:2016:0426JUD006264910, [GC], §109). On the broad scope of Article 9 ECHR see also an older, but well-known decision, Commission report of 12 October 1978, DR 19, *Arrowsmith v. the United Kingdom*, No 7050/75, concerning the protection afforded to both religious and non-religious opinions and convictions including coherent and sincerely held philosophical convictions, such as pacifism.

60 Judgment of 7 July 2011, *Bayatyan v. Armenia*, (CE:ECHR:2011:0707JUD002345903 [GC], § 110 and the case-law cited).

61 Judgment of 15 September 2016, *Papavasilakis v.* Greece, (CE:ECHR:2016:0915JUD006689914, § 54).

62 See point 9 and footnote 19 above, see further judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraphs 50, 51 and 58.

63 Judgment of 25 January 2018, F, C-473/16, EU:C:2018:36, paragraph 28.

64 See, for example (in relation to religious conviction), Opinion of Advocate General Bot in Joined Cases *Y and Z*, C-71/11 and C-99/11, EU:C:2012:224, point 28.

65 Judgment of 26 February 2015, C-472/13, EU:C:2015:117.

wish to run the risk of committing, in the future, acts of the kind referred to in Article 12(2), the person concerned 'can therefore invoke only the likelihood' of such acts being committed. The assessment which the national authorities must carry out under Article 4(3) can be based only on '*a body of evidence which alone is capable of establishing, in view of the circumstances in question, that the situation of that military service makes it credible that such acts will be committed*' (emphasis added). [66]

72. The relevant procedural rules governing the conduct of that assessment are in the Procedures Directive, rather than the Qualification Directive. [67] It seems to me that, in cases where applicants rely on Article 9(2(e), there will inevitably be significant overlap between the assessment of whether there is an 'act of persecution' under that provision and the assessment of whether the applicant has shown a 'reason for persecution' under Article 10. It would be both artificial and unduly burdensome to require an applicant to demonstrate the elements highlighted by the judgment in *Shepherd* [68] in order to show that the conditions in Article 9(2)(e) were satisfied, and then to prove the same facts yet again in order to show that the government of his home country held an ideology endorsing the commission of war crimes by its army to which he might plausibly be opposed.

73. So far as the reasons for persecution under Article 10(1) are concerned, the order for reference does not state whether Mr EZ claims to be a conscientious objector because he is a pacifist and objects to *any* use of military force or whether his objections are based on more limited grounds. Those grounds might plausibly include the fact that the war in Syria is a civil war and that the methods employed by the Syrian State in waging that war involve the commission of war crimes and contravene international humanitarian law. [69] It is legitimate for the competent authorities to seek to ascertain the nature of his objection.

74. In making that assessment the competent authorities might take the following points into account.

75. Objection to military service necessarily implies a degree of conflict of values between the authorities and the person who objects. Thus, holding an opinion or thought or belief opposing those activities of the Syrian State is capable of amounting to holding a political opinion for the purposes of Article 10(1)(e) of the Qualification Directive.

76. If it is determined that the applicant objects to performing military service on grounds of conscience, the next step in the assessment is to establish whether there are objective and subjective factors indicating that he has a well-founded fear of persecution because of his political opinion or beliefs.

77. Regarding the objective factors, where military personnel are recruited through conscription, that is an objective factor which tends to indicate that an individual who objects to performing such compulsory military service is likely to come into conflict with the State authorities in his home country.

78. If the applicant's home country is actively engaged in conducting a war and there is — as here — evidence that the war is prosecuted in breach of international humanitarian law and involves systematic and repeated incidents of war crimes documented by reputable sources, that is powerful objective material in support of a claim for refugee status based on Article 10(1)(e). [70]

66 Judgment of 26 February 2015, *Shepherd*, C-472/13, EU:C:2015:117, paragraphs 34 to 40.

67 See point 15 above and judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 47 and the case-law cited.

68 Judgment of 26 February 2015, C-472/13, EU:C:2015:117.

69 See for example, 'Conscientious Objection to Military Service' Report prepared in pursuance of resolutions 14 (XXXIV) and 1982/30 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities by Mr Asbjern Eide and Mr Chama Mubanga-Chipoya, paragraph 33 ('the Report: Conscientious Objection to Military Service').

70 See the UNHCR Guidelines No 10, paragraph 44.

79. Whether there is a real and viable possibility for the person concerned to perform alternative service in order to fulfil his call-up obligations should be taken into account. The absence of a procedure for obtaining, or recognition of, the status of conscientious objector in the country of origin is also a relevant factor. Where domestic law and/ or practice in the home country does not provide a legitimate means to object to military service, it is entirely conceivable that evading military service will of itself be perceived by the State as an expression of political views.[71]

80. The nature and gravity of the penalties and treatment meted out to individuals who refuse to perform military service in Syria is a relevant consideration, as is whether the punishment for evading military service is disproportionate or severe.[72]

81. In making their assessment, the national authorities should also take into account that laws on conscription normally apply to relatively young adults. It may be that such an applicant for asylum will put forward less sophisticated reasoning than might be expected of an older person in such circumstances.[73]

82. Given the abundant material documenting the conscription regime and the severe treatment of draft evaders in Syria, it would be wholly unreasonable to expect applicants to provide evidence that they had informed the Syrian military authorities of their objections to performing military service *before* fleeing Syria.[74] Nor can I see a good reason for requiring applicants for asylum to submit evidence that they have made posts on social media publicly condemning the conduct of the war in Syria (presumably, once they are safely out of the country). Such a requirement would lead to a highly artificial application of the directive.[75]

83. I add for the sake of good order that Mr EZ may wish to rely on other reasons enumerated in Article 10(1), such as membership of a particular social group (Article 10(1)(d))[76] or religious belief (Article 10(1)(b)). Whichever reason or reasons for persecution he seeks to invoke, the competent authorities are obliged to carry out an assessment in accordance with Article 4 of the Qualification Directive.[77]

84. What of Mr EZ's case in the main proceedings?

85. In accordance with Article 13 of the Qualification Directive, Mr EZ must be granted refugee status if he qualifies as a refugee for the purposes of Chapters II and III of that directive. That assessment is of course for the competent national authorities to make, subject to supervision by the national courts. It seems to me to be worth highlighting the following elements.

86. Mr EZ was aged 25 when he completed his university studies. At that point, his military service was still deferred. He was 26 when he arrived in Germany and 27 by the time he made his request for asylum. Mr EZ fell within the group of those identified under Syrian law as eligible for conscription; and Syrian law does not recognise the right to conscientious objection.[78] There is no evidence that the military authorities have ceased to recruit personnel. There appears to be no credible alternative to military service for those who object to serving in the army. It is well documented that individuals who refuse to serve are subject to harsh penalties. In stating in its order for reference that in the

71 See footnote 25 above and the UNHCR Guidelines No 10, paragraph 52.

72 See the UN Handbook, paragraph 169.

73 The Report: Conscientious Objection to Military Service, paragraph 91.

74 See point 22 above.

75 See point 65 above.

76 The facts set out in the Court's judgment of 26 February 2015, *Shepherd* (C-472/13, EU:C:2015:117), show that Mr Shepherd relied on the ground of membership of a social group (Article 10(1)(d) of the Qualification Directive) in his application for refugee status.

77 The UN Handbook, paragraph 66.

78 See point 22 above.

Syrian civil war the commission of war crimes within the meaning of Article 12(2) of that directive is widespread and that there are many documented instances of breaches of international humanitarian law, the referring court echoes the findings of numerous international bodies. All these are objective factors supporting the conclusion that it is plausible for a person such as Mr EZ to hold a political opinion as a conscientious objector for the purposes of Article 10(1)(e) of the Qualification Directive.

87. Under the Qualification Directive the competent authorities are obliged to ascertain whether Mr EZ's account of the reasons for persecution is credible. Do they consider him to be honest? Is his account plausible?

88. In that respect it may be relevant that when Mr EZ fled Syria his call-up was imminent (three months before the deferral expired). At that point, it was therefore highly likely that, if he became a conscript soldier, he would become involved in the civil war. Those factors are clearly relevant to any assessment under the Qualification Directive.

89. In conclusion, I am of the opinion that, where an applicant for asylum seeks to invoke Article 9(2)(e) of the Qualification Directive as the act of persecution, reliance upon that provision does not automatically establish that the person concerned has a well-founded fear of persecution because he holds a political opinion within the meaning of Article 10(1)(e) thereof. It is for the competent national authorities, acting under the supervision of the courts, to establish whether there is a causal link for the purposes of that directive. In conducting that assessment the following factors may be relevant: whether the applicant's home country is conducting a war; the nature and methods employed by the military authorities in such a war; the availability of country reports documenting matters such as whether recruitment for military service is by conscription; whether the status of conscientious objector is recognised under national law and, if so, the procedures for establishing such status; the treatment of those subject to conscription who refuse to perform military service; the existence or absence of alternatives to military service; and the applicant's personal circumstances, including his age.

Conclusion

90. In the light of the foregoing considerations, I propose that the Court should answer Questions 4 and 5 referred by the Verwaltungsgericht Hannover (Administrative Court, Hanover, Germany) as follows:

– Article 9(3) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted is to be interpreted as meaning that there must always be a causal link between the reasons for persecution in Article 10(1) and the acts of persecution defined in Article 9(1), including in cases where an applicant for international protection seeks to rely on Article 9(2)(e) of that directive.

– Where an applicant for asylum seeks to invoke Article 9(2)(e) of Directive 2011/95 as the act of persecution, reliance upon that provision does not automatically establish that the person concerned has a well-founded fear of persecution because he holds a political opinion within the meaning of Article 10(1)(e) thereof. It is for the competent national authorities, acting under the supervision of the courts, to establish whether there is a causal link for the purposes of that directive. In conducting that assessment the following factors may be relevant: whether the applicant's home country is conducting a war; the nature and methods employed by the military authorities in such a war; the availability of country reports documenting matters such as whether recruitment for military service is by conscription; whether the status of conscientious objector is

recognised under national law and, if so, the procedures for establishing such status; the treatment of those subject to conscription who refuse to perform military service; the existence or absence of alternatives to military service; and the applicant's personal circumstances, including his age.