Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

20 January 2021*

(Reference for a preliminary ruling – Directive 2004/83/EC – Minimum standards for granting refugee status or subsidiary protection status – Refugee status – Article 2(c) – Cessation of refugee status – Article 11 – Change in circumstances – Article 11(1)(e) – Possibility of availing oneself of the protection of the country of origin – Criteria for assessment – Article 7(2) – Financial and social support – Irrelevant)

In Case C-255/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom), made by decision of 22 March 2019, received at the Court on 26 March 2019, in the proceedings

Secretary of State for the Home Department

v

OA,

intervening parties:

United Nations High Commissioner for Refugees (UNHCR),

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Second Chamber, A. Kumin, T. von Danwitz (Rapporteur) and P.G. Xuereb, Judges,

Advocate General: G. Hogan,

Registrar: C. Strömholm, administrator,

having regard to the written procedure and further to the hearing on 27 February 2020,

after considering the observations submitted on behalf of:

– the Government of the United Kingdom, by Z. Lavery and J. Simpson, acting as Agents, and by D. Blundell, Barrister,

– the French Government, initially by A.-L. Desjonquères and A. Daniel, D. Colas and D. Dubois, and subsequently by A.-L. Desjonquères, A. Daniel and D. Dubois, acting as Agents,

* Language of the case: English.

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the European Commission, initially by A. Azema, M. Condou-Durande and J.Tomkin, and subsequently by A. Azema and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(c), Article 7 and Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12, and corrigendum, OJ 2005 L 204, p. 24).

2 The request has been made in proceedings between the Secretary of State for the Home Department (United Kingdom) ('the Secretary of State') and OA, a Somali national, concerning the revocation of the latter's refugee status

Legal context

International law

3 The Convention on 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 for its part 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 …, is unable or, owing to such fear, is unwilling to return to it'.

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

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

…

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

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

EU law

6 Recital (3) of Directive 2004/83 states that 'the Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees'.

7 Article 1 of that directive provides:

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

8 Article 2(c) to (e) of that directive provides:

'For the purposes of this Directive:

…

(c) "refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

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

(e) "person eligible for subsidiary protection" means a third country national 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 to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.'

9 Article 7(1) and (2) of that directive, that article being headed 'Actors of protection', provides:

'1. Protection can be provided by:

(a) the State, or

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

2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.'

10 Article 9 of Directive 2004/83, headed ‘Acts of persecution’, provides:

‘1. Acts of persecution within the meaning of Article 1(A) 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 European Convention for the Protection of Human Rights and Fundamental Freedoms [signed at Rome on 4 November 1950, ‘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 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;

…

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.’

11 Article 11(1)(e) and (2) of that directive, that article being headed ‘Cessation’, provides:

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

…

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

…

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

12 Article 15 of that directive, headed ‘Serious harm’, provides:

‘Serious harm consists of:

(a) death penalty or execution; or

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

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

13 Directive 2004/83 was repealed with effect from 21 December 2013 by 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 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). In accordance with recital 50 of the latter directive, the United Kingdom of Great Britain and Northern Ireland did not take part in the adoption of that directive and is not bound by it or subject to its application.

United Kingdom law

14 Regulation 4(1) and (2) of the Refugee or Person In Need of International Protection Regulations 2006 provides:

'(1) In deciding whether a person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by:

(a) the State; or

(b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.

2. Protection shall be regarded as generally provided when the actors mentioned in paragraph (l)(a) and (b) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection.'

15 Paragraph 338A of the Immigration Rules states:

'A person's grant of refugee status under paragraph 334 shall be revoked or not renewed if any of paragraphs 339A to 339AB apply. …'

16 Paragraph 339A of the Immigration Rules states:

'This paragraph applies when the Secretary of State is satisfied that one or more of the following applies:

…

(v) they can no longer, because the circumstances in connection with which they have been recognised as a refugee have ceased to exist, continue to refuse to avail themselves of the protection of the country of nationality; or

(vi) being a stateless person with no nationality, they are able, because the circumstances in connection with which they have been recognised as a refugee have ceased to exist, to return to the country of former habitual residence;

In considering (v) and (vi), the Secretary of State shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.'

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

17 OA is a Somali national, who originally resided in Mogadishu (Somalia). He is a member of the minority Reer Hamar clan.

18 In the course of the 1990s, OA and his then wife were the victims on a number of occasions of serious harm and violence at the hands of the Hawiye militia in Mogadishu.

19 In 2001 they fled Somalia and travelled to Kenya. In the same year, OA's then wife entered the United Kingdom and obtained refugee status by reason of the persecution mentioned in the preceding paragraph.

20 OA travelled to the United Kingdom in 2003 and obtained refugee status there as a dependent of his then wife.

21 On 8 July 2014 the Secretary of State informed OA that she intended to revoke his refugee status.

22 By decision of 27 September 2016, the Secretary of State revoked OA's refugee status on the ground of a change in circumstances in his country of origin and declared him to be ineligible for humanitarian protection under the national immigration legislation, while holding that to return OA to his country of origin would not be in breach of the obligations of the United Kingdom under Article 3 ECHR.

23 OA brought an action before the First-tier Tribunal (Immigration and Asylum Chamber) (United Kingdom) against that decision. The initial judgment delivered by that court dismissed OA's action in its entirety; after that judgment was set aside by the Upper Tribunal (Immigration and Asylum Chamber) (United Kingdom), the First-tier Tribunal delivered a second judgment partially dismissing that action.

24 The Upper Tribunal (Immigration and Asylum Chamber) has set aside that second judgment and must now undertake a further examination of OA's action.

25 Before the referring court, the Secretary of State submits that she was entitled to revoke OA's refugee status on the ground that there was a non-temporary change of circumstances in his country of origin, pursuant to Article 11(1)(e) of Directive 2004/83, since, in her view, the minority clans are no longer subject to persecution by the majority clan in the Mogadishu region, and since the State offers effective protection in that region. In that regard, the Secretary of State relies on the findings of fact made in the 'Country Guidance' judgment of the Upper Tribunal of 3 October 2014, *MOJ and Others* (*return to Mogadishu*):

> '(ii) Generally, a person who is "an ordinary civilian" (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 [ECHR] or Article 15(c) of [Directive 2004/83] …
>
> …
>
> (vii) A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.
>
> (viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.
>
> …

(xi) It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.

(xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) [of Directive 2004/83] risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp [camp for internally displaced persons] where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.'

26 OA disputes those findings of fact and argues that he still has a well-founded fear of persecution in Mogadishu and that the State authorities in Somalia are not capable of protecting him from serious harm. In that regard, he refers to the assessment made by the United Nations High Commissioner for Refugees (UNHCR), in June 2014, that, as regards the issue of the availability of State protection, the security situation in Mogadishu still gives rise to serious concerns and that the minority clans remain at a particular disadvantage, in Mogadishu in particular. Further, he submits that the 'Country Guidance' judgment, cited in the preceding paragraph, is the result of a misunderstanding of State protection, since it is based in part on the availability of protection from family or other clan members, who are private, and not State, actors.

27 According to the information provided in the request for a preliminary ruling, some courts in the United Kingdom consider that the availability of sufficient protection must be taken into account both at the stage of assessing the test of whether there is a 'well-founded fear of persecution' and at the stage of assessing the test of whether there is 'protection' of which the applicant is unable or unwilling to avail himself or herself, but the requirements to be satisfied in those two stages need not, however, be the same. Those courts consider that, while the second test must be assessed with regard to the requirements stemming from Article 7 of Directive 2004/83, those requirements are not, however, applicable in the examination of the first test, which may therefore take into consideration any form of protection and, in particular, the support provided by, among others, the family or clan of the person concerned.

28 As regards OA's situation following a possible return to Mogadishu, the referring court considers that he would have some possibilities, albeit limited because of his reduced mobility, of finding work in that city. Further, OA could seek financial support from his close family living in that city, from his sister who has latterly been residing in Dubai (United Arab Emirates) and from members of the Reer Hamar clan residing in the United Kingdom, at least until he is able to support himself in Mogadishu.

29 In those circumstances the Upper Tribunal (Immigration and Asylum Chamber) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is "protection of the country of nationality" within the meaning of Article 11(1)(e) and Article 2(e) of [Directive 2004/83] to be understood as State protection?

(2) In deciding the issue of whether there is a well-founded fear of being persecuted within the meaning of Article 2(e) of [Directive 2004/83] and the issue of whether there is protection available against such persecution, pursuant to Article 7 of [Directive 2004/83], is the "protection test" or "protection inquiry" to be applied to both issues and, if so, is it governed by the same criteria in each case?

(3) Leaving to one side the applicability of protection by non-State actors under Article 7(l)(b) [of Directive 2004/83], and assuming the answer to question (1) above is yes, is the effectiveness or availability of protection to be assessed solely by reference to the protective acts/functions of State actors or can regard be had to the protective acts/functions performed by private (civil society) actors such as families and/or clans?

(4) Are (as is assumed in questions (2) and (3)) the criteria governing the "protection inquiry" that has to be conducted when considering cessation in the context of Article 11(l)(e) [of Directive 2004/83] the same as those to be applied in the Article 7 context?'

Consideration of the questions referred

Preliminary observations

30 As a preliminary point, it must be observed that while, according to the information provided in the request for a preliminary ruling, OA was granted refugee status because he was the victim of acts of violent persecution in the 1990s, as a member of a minority clan in Mogadishu, at the hands of a militia of the majority clan in that city, it appears from the information provided that, following changes that have occurred in the meantime, 'there are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members'. In that regard, that request seems to be based on the finding that the Federal Republic of Somalia now offers, in principle, sufficient protection from acts of persecution, though that protection may be supplemented by the protection provided by private actors, such as the family and the clan. In that context, the referring court states that, if no financial or other form of support is provided by their family or by their clan, Somali nationals who return to Mogadishu 'have no real prospect of securing access to a livelihood on return [and] will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms'.

31 That said, it is apparent from the information provided that OA disputes the findings of the referring court as summarised in the preceding paragraph, claiming that he still has a well-founded fear of persecution in Mogadishu and that the State authorities in Somalia are not capable of protecting him from those acts of persecution. Further, the French Government submitted, at the hearing, that the findings of the referring court concerning the protection provided by those authorities and the absence of a risk of persecution no longer match the current reality in Somalia.

32 In those circumstances, it is for the referring court to determine whether, if he were to return to Mogadishu, OA is liable to run the risk of being a victim of acts of persecution.

Question 4

33 By question 4, which should be examined first, the referring court seeks, in essence, to ascertain whether Article 11(1)(e) of Directive 2004/83 must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in relation to the cessation of refugee status must be the same as those which arise, in respect of the granting of that status, from Article 2(c) of that directive, read together with Article 7(1) and (2) thereof.

34 In that regard, it is clear from the wording of Article 11(1)(e) of that directive that a third country national is to cease to be a refugee if he or she can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality.

35 Article 11(1)(e) of that directive, in the same way as Article 1(C)(5) of the Geneva Convention, provides that a person is to cease to be classified as a refugee when the circumstances as a result of which he or she was recognised as such have ceased to exist, that is to say, in other words, when the conditions for the grant of refugee status are no longer met. In so far as Article 11(1)(e) of Directive 2004/83 provides that the third country national can 'no longer continue to refuse' to avail himself or herself of the protection of the country of his or her nationality, that article implies that the 'protection' in question is the same as that which was up to that point lacking, namely protection from acts of persecution for at least one of the five reasons specified in Article 2(c) of that directive (see, to that effect, judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 65 and 67).

36 Thus, the circumstances which demonstrate the country of origin's inability or, conversely, its ability to provide protection from acts of persecution constitute a crucial element in the assessment which leads to the grant of refugee status, or, correspondingly, when appropriate, to the cessation of that status. Such cessation thus implies that the change in circumstances has remedied the reasons which led to the recognition of refugee status (judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 68 and 69).

37 Given the parallelism established by Directive 2004/83 between the granting and the cessation of refugee status, the requirements to be met by the protection which may preclude that status, in the context of Article 2(c) of that directive, or bring about its cessation, pursuant to Article 11(1)(e) thereof, must be the same as those which arise from, in particular, Article 7(1) and (2) of that directive.

38 In order to arrive at the conclusion that the fear of persecution of the refugee concerned is no longer well founded, the competent authorities, in the light of Article 7(2) of Directive 2004/83, must verify, having regard to that refugee's individual situation, that the actor or actors in question who are providing protection, within the meaning of Article 7(1), have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the third country national concerned will, if he or she ceases to have refugee status, have access to that protection (see, to that effect, judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 70 and 74).

39 In the light of the foregoing, the answer to the fourth question is that Article 11(1)(e) of Directive 2004/83 must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in relation to the cessation of refugee status must be the same as those which arise, in relation to the granting of that status, from Article 2(c) of that directive, read together with Article 7(1) and (2) thereof.

Questions 1 to 3

40 By questions 1 to 3, which can be examined together, the referring court seeks, in essence, to ascertain whether Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive, must be interpreted as meaning that social and financial support that may be provided by private actors, such as the family or clan of the third country national concerned, constitutes protection that meets the requirements arising from those provisions and whether such support is of relevance to the assessment of the effectiveness or availability of the protection provided by the State within the meaning of Article 7(1)(a) of that directive, or to the determination, under Article 11(1)(e) of that directive, read together with Article 2(c) thereof, of whether there continues to be a well-founded fear of persecution.

41 In that regard, it is necessary to examine, first, whether social and financial support provided by private actors, such as the family or the clan of the third country national concerned, can be held to constitute protection that meets the requirements arising from Article 11(1)(e), of Directive 2004/83, read together with Article 7(2) of that directive.

42 In accordance with Article 2(c) of that directive, a third country national must, on account of circumstances existing in his or her 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 that provision. Such circumstances establish that the third country concerned does not protect that national from acts of persecution (see, to that effect, judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 56 and 57).

43 As the Advocate General stated, in essence, in point 58 of his Opinion, and as has also been mentioned in paragraph 38 of the present judgment, the protection required by Article 11(1)(e) of that directive is clarified in Article 7(2) of that directive, which provides that 'protection is generally provided when the actors mentioned in paragraph 1 [of Article 7] take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection'.

44 In the light of that wording, the protection required by Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive, refers to the ability of the third country of which the person concerned is a national to prevent or to punish acts of persecution within the meaning of that directive (see, to that effect, judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 59, 67 and 68). Further, Article 7(2) refers to steps taken to prevent acts of persecution and the existence of an effective legal system for the detection, prosecution and punishment of such acts.

45 Article 9(1) of Directive 2004/83, which specifies the factors involved in the classification of acts as persecution, states that the relevant acts must be 'sufficiently serious' by their nature or repetition to constitute a 'severe violation of basic human rights', or be an accumulation of various measures that are 'sufficiently severe' to affect an individual in a similar manner to a 'severe violation of basic human rights'. 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.

46 Mere social and financial support, such as that mentioned in the request for a preliminary ruling, which is made available to the third country national concerned, is inherently incapable of either preventing acts of persecution or of detecting, prosecuting and punishing such acts and, therefore, cannot be regarded as providing the protection required by Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive. That is particularly the case given that, in this instance, the objective of that social and financial support seems to be not to protect OA from such acts, but rather to ensure his reintegration in Mogadishu.

47 In those circumstances, social and financial support, such as that mentioned by the request for a preliminary ruling, provided by the family or the clan of the third country national concerned, cannot be regarded as providing protection from acts of persecution within the meaning of those provisions.

48 Second, it follows that such social and financial support is of no relevance to the assessment of the effectiveness or the availability of the protection provided by the State within the meaning of Article 7(1)(a) of Directive 2004/83.

49 That is all the more true given that mere economic hardship cannot, as a general rule, be classified as 'persecution', within the meaning of Article 9 of Directive 2004/83, and consequently such social and financial support intended to remedy such hardship should not, as a general rule, have any bearing on the assessment of the adequacy of State protection from acts of persecution.

50 In this instance, since the documents before the Court contain nothing to suggest that the economic hardship which OA might face on his return to Mogadishu would constitute a form of persecution within the meaning of Article 9 of that directive, that hardship cannot be classified as 'persecution' within the meaning of that article such as to justify the grant and the retention of refugee status.

51 Further, while the French Government observed, at the hearing, that extreme destitution might be of relevance to the granting of subsidiary protection, it is, however, clear from what is stated in the request for a preliminary ruling that the dispute in the main proceedings and the questions referred to the Court are not concerned with whether OA may be granted the status conferred by subsidiary protection, but with the cessation of his refugee status. It must be added, in that regard, that the reference made in the questions submitted for a preliminary ruling to Article 2(e) of Directive 2004/83, containing the definition of a 'person eligible for subsidiary protection', must be understood, in the light of clarification provided by the referring court and taking into consideration all the material in the file before the Court, as relating to Article 2(c) of that directive and thus as concerning solely the cessation of the refugee status of the applicant in the main proceedings.

52 Moreover, in so far as the doubts expressed by the referring court were to be understood as being concerned with establishing whether, to the extent that the clans in Mogadishu may, in addition to their providing social and financial support, also provide protection in terms of security, such protection may be taken into account in order to ascertain whether the protection provided by the State meets the requirements that arise, in particular, from Article 7(2) of Directive 2004/83, it must be recalled that, for the purposes of determining whether a refugee's fear of persecution is no longer well founded, the actor or actors of protection with respect to which the reality of a change of circumstances in the country of origin is to be assessed are, in accordance with Article 7(1)(a) and (b) of that directive, either the State itself, or the parties or organisations, including international organisations, controlling the State or a substantial part of the territory of that State (judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 74).

53 In accordance with the requirements described in paragraphs 38 and 43 to 46 of the present judgment, any such protection in terms of security cannot, in any event, be taken into account in order to ascertain whether State protection meets the requirements that arise, in particular, from Article 7(2) of that directive.

54 Third, the referring court asks the Court whether the existence of social and financial support provided by the family or the clan of the third country national concerned may nonetheless be taken into account for the purposes of determining, pursuant to Article 11(1)(e) of Directive 2004/83, read together with Article 2(c) of that directive, whether there continues to be a well-founded fear of persecution. On such an interpretation, adopted by a number of courts in the United Kingdom, social and financial support, provided by the family or the clan of the third country national concerned, may be such, irrespective of the definition of the protection that is required by Article 11(1)(e), read together with Article 7(2) of that directive, as to exclude such fear.

55 Under Article 2(c) of Directive 2004/83, the term 'refugee' refers, in particular, to a third country national who is outside the country of his or her 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 or herself of the 'protection' of that country. Where the circumstances justifying such fear have ceased to exist, refugee status may come to an end, under Article 11(1)(e) of that directive.

56 In that regard, it should be observed that the conditions specified in Article 2(c) of Directive 2004/83, in relation to the fear of persecution and to protection, are intrinsically linked. Indeed, the protection to which that provision refers is, as is stated in paragraph 47 of the present judgment, protection from acts of persecution.

57 Accordingly, the Court has previously held that if the national concerned has, because of the circumstances existing in his or her country of origin, a well-founded fear of being personally the subject of persecution for at least one of the five reasons listed in Article 2(c) of Directive 2004/83, those circumstances establish that the third country in question does not protect its national against acts of persecution (see, to that effect, judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 57 and 58). A third country national who is in fact protected against acts of persecution within the meaning of that provision cannot, for that reason, be regarded as having a well-founded fear of persecution.

58 Further, the same circumstances that establish that the third country concerned does not protect its national against acts of persecution explain why it is impossible for that national, or why he or she justifiably refuses, to avail himself or herself of the protection of his or her country of origin in terms of that provision, that is to say, in terms of that country's ability to prevent or punish acts of persecution (judgment of 2 March 2010, *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 59).

59 Consequently, for the purposes of determining whether the third country national concerned has a well-founded fear of persecution in his or her country of origin, within the meaning of Article 2(c) of Directive 2004/83, account must be taken of whether there is or is not protection from acts of persecution in that third country.

60 However, the existence of protection from acts of persecution in a third country can permit the inference that there is no well-founded fear of persecution within the meaning of that provision only if that protection satisfies the requirements arising, in particular, from Article 7(2) of that directive.

61 Since the conditions specified in Article 2(c) of that directive dealing with fear of persecution and protection from acts of persecution are, as is stated in paragraph 56 of the present judgment, intrinsically linked, their examination cannot be subject to a separate criterion of protection; their assessment must be made in the light of the requirements laid down in, inter alia, Article 7(2) of that directive.

62 Moreover, it follows, more specifically, from Article 1 of Directive 2004/83 that Article 7(2) of that directive sets out the minimum requirements in respect of protection against acts of persecution existing in the third country of origin of the person concerned that is of a sort that may preclude, in certain cases, the grant to that person of refugee status. To adopt an interpretation to the effect that the protection existing in that third country may rule out a well-founded fear of persecution even though that protection does not satisfy those requirements would be liable to call into question the minimum requirements laid down by Article 7(2).

63 In the light of the foregoing, the answer to questions 1 to 3 is that Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive, must be interpreted as meaning that any social and financial support provided by private actors, such as the family or the clan of a third country national concerned, falls short of what is required under those provisions to constitute protection and is, therefore, of no relevance either to the assessment of the effectiveness or availability of the protection provided by the State within the meaning of Article 7(1)(a) of that directive, or to the determination, under Article 11(1)(e) of that directive, read together with Article 2(c) thereof, of whether there continues to be a well-founded fear of persecution.

Costs

64 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 (Second Chamber) hereby rules:

1. **Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in respect of the cessation of refugee status must be the same as those which arise, in relation to the granting of that status, from Article 2(c) of that directive, read together with Article 7(1) and (2) thereof.**

2. **Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive, must be interpreted as meaning that any social and financial support provided by private actors, such as the family or the clan of a third country national concerned, falls short of what is required under those provisions to constitute protection and is, therefore, of no relevance either to the assessment of the effectiveness or availability of the protection provided by the State within the meaning of Article 7(1)(a) of that directive, or to the determination, under Article 11(1)(e) of that directive, read together with Article 2(c) thereof, of whether there continues to be a well-founded fear of persecution.**

Arabadjiev Lenaerts Kumin

von Danwitz Xuereb

Delivered in open court in Luxembourg on 20 January 2021.

A. Calot Escobar
Registrar

A. Arabadjiev
President of the Second Chamber