Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 31 May 2016[1]

Case C-573/14

Commissaire général aux réfugiés et aux apatrides
v
Mostafa Lounani

(Request for a preliminary ruling from the Conseil d'État (Council of State, Belgium))

(Area of freedom, security and justice — Asylum — Minimum standards for the qualification and status of third country nationals or stateless persons as refugees — Directive 2004/83/EC — Article 12(2)(c) — Conditions for exclusion from refugee status — Concept of 'acts contrary to the purposes and principles of the United Nations' — Meaning of instigation or participation for the purposes of Article 12(3) — Framework Decision 2002/475/JHA — Articles 1 and 2 — Whether a conviction for terrorist offences is a requirement for exclusion from refugee status — Assessment of the grounds for exclusion)

1. In this case the Conseil d'État (Council of State, Belgium) seeks guidance as to the interpretation of the grounds upon which Member States may exclude a person from refugee status under the Qualification Directive.[2] The referring court wishes to know whether (and, if so, to what extent) the scope of the provisions governing exclusion from refugee status in that directive is determined by Framework Decision 2002/475/JHA on combating terrorism.[3] Where an applicant for refugee status is a leading member of a terrorist group, is it necessary for him to be convicted of an offence under Article 1 of the Framework Decision in order for the grounds for exclusion from refugee status under the Qualification Directive to apply? Does a conviction for participating in a terrorist organisation mean that he should be excluded automatically from consideration for refugee status? If not, what are the criteria that national competent authorities should apply in their assessment as to whether he should be so excluded? In answering those questions, it is necessary to establish where the balance lies between the Member States' response to terrorist acts and their obligations to apply the EU provisions which reflect the rules of international law protecting the status of refugees.

1 — Original language: English.

2 — 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 Qualification Directive'). That directive was repealed and replaced in recast form by Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (OJ 2011 L 337, p. 9). The wording of the relevant provisions has not changed materially.

3 — Council Framework Decision of 13 June 2002 on combating terrorism (OJ 2002 L 164, p. 3) ('the Framework Decision'). That decision was amended by Council Framework Decision 2008/919/JHA of 28 November 2008 (OJ 2008 L 330, p. 21). The Framework Decision applies to all the Member States apart from the United Kingdom, which exercised its right to notify the Council that that decision is an act in respect of which it does not accept the powers of the institutions in accordance with Article 10(4) of Protocol No 36 annexed to the Treaties.

International law

Charter of the United Nations

2. The Preamble to the Charter of the United Nations [4] sets out certain aims of the States signatory. Chapter I records the purposes and principles of the United Nations. Those principles refer to maintaining international peace and security and to the need to take effective measures to that end to prevent and remove threats to peace and to suppress acts of aggression or other breaches of the peace and to take appropriate measures to strengthen universal peace (Article 1). Furthermore, the members of the United Nations must give every assistance to any action that the UN takes in accordance with its Charter (Article 2).

The Resolutions of the UN Security Council

3. On 28 September 2001, in response to the terrorist attacks committed on 11 September 2001 in New York, Washington and Pennsylvania, the UN Security Council adopted Resolution 1373 (2001) on the basis of Chapter VII of the Charter of the United Nations. The Preamble to that Resolution reaffirms 'the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts'. Under point 5 of that resolution, it is declared that 'acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and … knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations'.

4. On 12 November 2001, the UN Security Council adopted Resolution 1377 (2001), in which it 'stresses that acts of international terrorism are contrary to the purposes and principles of the Charter of the United Nations, and that the financing, planning and preparation of as well as any other form of support for acts of international terrorism are similarly contrary to the purposes and principles of [that Charter]'.

5. On 14 September 2005, the UN Security Council adopted Resolution 1624 (2005), in which it reaffirms that it is imperative to combat terrorism in all its forms, and also stresses that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law; such measures should be adopted in compliance with, inter alia, refugee law and humanitarian law.

6. On 24 September 2014, the UN Security Council adopted Resolution 2178 (2014). It there calls upon States in conformity with international law, and international refugee law, inter alia, to ensure that refugee status is not abused by perpetrators, organisers or facilitators of terrorist acts. It also states (at point 5) that: 'Member States shall … prevent and suppress the recruiting, organising, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and activities'.

7. Whilst these UN Security Council Resolutions identify a range of *activities* that are to be considered to be contrary to the aims and purposes of the United Nations, there is no general definition in international law of *terrorism* or *terrorist*. [5]

4 — The Charter of the United Nations and Statute of the International Court of Justice signed in San Francisco on 26 June 1945 ('the UN Charter').

5 — See for example, Goodwin-Gill, Guy S., and McAdam, Jane, *The Refugee in International Law*, Oxford University Press, third edition, pages 192 and 193. See also, Singer Sarah, *Terrorism and Exclusion from Refugee Status in the United Kingdom*, Brill Nijhoff, 2015, pages 15 and 16.

The Geneva Convention relating to the status of refugees

8. According to Article 1A(2) of the Geneva Convention,[6] to which the Qualification Directive refers, 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'.

9. Article 1F(c) states that the Geneva Convention does not apply to any person with respect to whom there are serious reasons for considering that he has been guilty of acts contrary to the purposes and principles of the United Nations.[7]

EU law

Treaty on European Union

10. Article 2 TEU contains a list of values on which the Union is founded: these include respect for the rule of law and human rights. Article 3(5) TEU states that in its relations with the wider world the Union is to uphold and promote those values and in so doing it should contribute to the strict observance and development of international law including respect for the principles of the United Nations Charter.

Treaty on the Functioning of the European Union

11. Article 78(1) TFEU states: 'The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with [the Geneva Convention], and other relevant treaties.'

The Charter of Fundamental Rights of the European Union

12. Article 18 of the Charter of Fundamental Rights of the European Union[8] guarantees the right to asylum with due respect for the rules of the Geneva Convention and in accordance with the Treaties.

13. The removal, expulsion or extradition of a person to a State where there is a serious risk that they would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment is prohibited by Article 19(2).

6 — The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, which entered into force on 22 April 1954 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), 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 (together, 'the Geneva Convention'). The Protocol is not relevant to answering the present request for a preliminary ruling.

7 — The grounds of exclusion also cover persons who have committed crimes against peace, war crimes or crimes against humanity as defined in acts of international law (Article 1F(a)), and serious non-political crimes outside the country of refuge prior to admission as a refugee (Article 1F(b)).

8 — OJ 2010 C 83, p. 389 ('the Charter').

The Framework Decision

14. The Framework Decision introduced a common definition of terrorist offences. Article 1 states that each Member State must take the measures necessary to ensure that the acts listed therein, defined as offences under national law, are deemed to be terrorist offences where certain conditions are met.[9] Those conditions are that the acts are carried out intentionally and given their nature and context, may seriously damage a country or an international organisation, where committed with the aim of: (i) seriously intimidating a population; or (ii) unduly compelling a government or international organisation to perform or abstain from performing any act; or (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

15. Pursuant to Article 2(2)(a) and (b) respectively, directing a terrorist group or participating in the activities of a terrorist group also constitute offences.

The Qualification Directive

16. The preamble of the Qualification Directive states that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees.[10] A principal aim of the directive is to ensure that Member States apply common criteria to identify persons genuinely in need of international protection.[11] It is clear that respecting fundamental rights and, in particular, observance of the principles recognised by the Charter, such as full respect for human dignity and the right to asylum, are amongst the objectives pursued.[12] Consultations with the United Nations High Commissioner for Refugees ('the UNHCR') are acknowledged as providing valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.[13]

17. Recital 22 states: 'Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism, which declare that "acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations".'

18. Article 2(c) provides that '"refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, 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'.

19. In accordance with Article 4(3), the assessment of an application for international protection must be carried out on an individual basis.[14]

9 — The listed acts are (a) attacks upon a person's life; (b) attacks upon his physical integrity; (c) kidnapping or hostage taking; (d) causing extensive destruction to a Government or public facility; (e) seizure of aircraft, ships or other means of public or goods transport; (f) manufacture, possession, acquisition, transport, supply or use of weapons; (g) the release of dangerous substances, or causing fires, floods or explosions to endanger human life; (h) interfering with or disrupting the water supply or any other fundamental natural resource which would endanger human life; or (i) threats to commit any of the acts set out in Article 1(1) of the Framework Decision.

10 — Recital 3. See also judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 77.

11 — Recital 6. See also recitals 16 and 17.

12 — Recital 10.

13 — Recital 15.

14 — See further Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13) ('the Procedures Directive'). That directive was repealed and replaced in recast form by Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 180, p. 60).

20. Article 12 is entitled 'Exclusion' and forms part of Chapter III, itself entitled 'Qualification for being a refugee'. The grounds for exclusion from refugee status are listed in Article 12(2) and (3), which state:

'2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

…

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.' [15]

21. Pursuant to Article 21, Member States are subject to an obligation of *non-refoulement*. That obligation is subject to very limited exceptions, notably where there are reasonable grounds for considering the person in question to be a danger to the security of the Member State in which he or she is present or if that person has been convicted by a final judgment of a particularly serious crime and he or she constitutes a danger to the community of that Member State. [16]

Facts, procedure and questions referred

22. Mr Mostafa Lounani ('Mr Lounani') is a Moroccan national. It appears that he arrived in Belgium at some point in 1997 and has since resided there illegally.

23. On 16 February 2006 the Tribunal correctionnel de Bruxelles (Brussels Criminal Court) ('the Tribunal correctionnel') found Mr Lounani guilty of having participated in the activities of a terrorist group, the Belgian cell of the 'Moroccan Islamic Combatant Group' ('the MICG'), as one of its leading members. He was convicted of having committed the following acts: (i) 'providing logistical support to a terrorist group'; (ii) 'forging passports' and the 'fraudulent transfer of passports'; and (iii) 'active participation in the organisation of a channel for sending volunteers to Iraq'. The Tribunal correctionnel considered those acts to constitute serious offences and accordingly sentenced him to a term of six years' imprisonment. He was also ordered to pay a fine of EUR 2 000 and in the event of default he was to be subject to a further term of two months' imprisonment.

24. On 16 March 2010 Mr Lounani applied to the Belgian authorities for refugee status. He claimed that he feared persecution if he were to be returned to Morocco, because as a result of his conviction he was liable to be classified by the Moroccan authorities as a radical Islamist and jihadist.

25. On 8 December 2010 the Commissaire général aux réfugiés et aux apatrides (the Commissioner General for Refugees and Stateless Persons ('the CGRA')) refused his application. By a judgment dated 12 February 2013, the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings ('the CCE')) annulled that decision on appeal and Mr Lounani was granted refugee status.

15 — Article 12(2) excludes from refugee status persons who have committed: (a) 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; or (b) serious non-political crimes outside the country of refuge prior to admission as a refugee; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes.

16 — Article 21(2).

26. The CGRA appealed that ruling before the Conseil d'État (Council of State). In those proceedings the CGRA submits, inter alia, that the MICG was entered in the UN Sanctions List on 10 October 2002.[17] It is a terrorist organisation linked to Al-Qaeda that has committed terrorist acts against international bodies. The Tribunal correctionnel convicted Mr Lounani of participation in the activity of a terrorist group, criminal conspiracy to attack persons and property, of having been the head of a cell providing logistical support to terrorism, procuring false documents for Islamic activists, forgery and use of false documents, and illegal residence. The CGRA argues that a full examination of Mr Lounani's file leads to the ineluctable conclusion that the MICG had committed specific terrorist offences and that Mr Lounani was involved in those acts by virtue of the judgment of the Tribunal correctional and his conviction of 16 February 2006.

27. Mr Lounani argues that there is a crucial difference between a terrorist offence as defined by and made subject to penalties under Belgian criminal law, on the one hand, and a terrorist offence capable of being interpreted as an act contrary to the purposes and principles of the United Nations which allows a person to be excluded from international protection under the Geneva Convention, on the other hand. In his view, the judgment of the Tribunal correctionnel does not show that he committed a specific terrorist act which would fall into the latter category. He was convicted of belonging to a terrorist group that has not committed, attempted to commit or threatened to commit an attack. Still less has he been convicted of having committed a terrorist act of a degree of seriousness that calls into question the very foundation of the international community's coexistence under the auspices of the United Nations.

28. The referring court explains that the CCE was correct to state in its judgment (in point 5.9.2) that Mr Lounani was found guilty of participating in the activities of a terrorist group under Article 2(2)(b) of the Framework Decision,[18] but that he was not convicted of having committed terrorist acts within the meaning of Article 1(1) of the Framework Decision.[19] The CCE stated in point 5.9.7 of its judgment: 'nor has the slightest element of a specific act covered by this type of offence begun to be established on the part of the MICG, or the reality of a personal act by the applicant, that would give rise to his individual liability, aimed at the performance of such an act'.

29. The referring court seeks to ascertain precisely what the competent authorities must establish in order for the grounds for exclusion in Article 12(2)(c) and (3) of the Qualification Directive to apply. It has therefore requested a preliminary ruling on the following questions:

'(1) Is Article 12(2)(c) of [the Qualification Directive] to be interpreted as necessarily implying that, for the exclusion clause provided for therein to be applied, the asylum seeker must have been convicted of one of the terrorist offences referred to in Article 1(1) of [the Framework Decision] which was transposed in Belgium by the Law of 19 December 2003 on terrorist offences?

(2) If the first question is answered in the negative, can acts such as those referred to in point 5.9.2 of the judgment under appeal (judgment No 96.933 of the [CCE]), given on 12 February 2013, which were imputed to Mostafa Lounani by the judgment of the [Tribunal correctionnel] of 16 February 2006 and resulted in his being convicted of participation in a terrorist organisation, be considered to be acts contrary to the purposes and principles of the United Nations within the meaning of Article 12(2)(c) of [the Qualification Directive]?

17 — That list identifies certain individuals and entities who are the subject of sanctions (assets freezing, travel bans or arms embargoes). The MICG was added to the UN Sanctions List pursuant to UN Security Council Resolution 1390 (2002). The list has since been updated and the MICG remains listed in the current version.

18 — The Belgian Government explained at the hearing that Article 140 of the Belgian Criminal Code (Code pénal) implements Article 2(2) of the Framework Decision.

19 — The Belgian Government explained at the hearing that Article 137 of the Belgian Criminal Code implements Article 1 of the Framework Decision.

(3) For the purposes of considering the exclusion, on the grounds of his participation in a terrorist organisation, of a person seeking international protection, is the judgment convicting him of being a leading member of a terrorist organisation, which finds that the person seeking international protection has not committed, attempted to commit or threatened to commit a terrorist act, sufficient for a finding of the existence of an act of instigation or participation within the meaning of Article 12(3) of [the Qualification Directive] imputable to that person, or is it necessary for an individual examination of the facts of the case to be made and to demonstrate participation in the commission of a terrorist offence or instigation of a terrorist offence as defined in Article 1 of [the Framework Decision]?

(4) For the purposes of considering the exclusion, on the grounds of his participation in a terrorist organisation of a person seeking international protection, possibly as a leading member, must the act of instigation or participation referred to in Article 12(3) of [the Qualification Directive] relate to the commission of a terrorist offence as defined in Article 1 of [the Framework Decision] on combating terrorism, or may it relate to participation in a terrorist group as referred to in Article 2 of that [decision]?

(5) So far as terrorism is concerned, is the exclusion from international protection provided for in Article 12(2)(c) of [the Qualification Directive] possible when there has been no commission or instigation of, or participation in, a violent act of a particularly cruel nature as referred to in Article 1 of [the Framework Decision]?'

30. Written observations have been submitted by the CGRA, Mr Lounani, the Belgian, French, Greek, Hungarian, Italian, Polish, Spanish and United Kingdom Governments and the European Commission. At the hearing on 16 February 2016 the same parties, save for the Hungarian, Italian and Polish Governments, presented oral argument.

Assessment

Preliminary remarks

31. The Geneva Convention is a living instrument that should be interpreted in the light of present day conditions and in accordance with developments in international law.[20] The UNHCR plays a particular role under the Convention in providing guidance for States when determining refugee status.[21] The Qualification Directive must be construed in the light of the general scheme and purpose of that Convention.[22]

32. The law on refugees is of course closely linked to international humanitarian law and international law on human rights. That is reflected in Article 18 of the Charter, which guarantees the right to asylum with due respect for the Geneva Convention and in accordance with the Treaties. Unsurprisingly, the Court has confirmed that the Qualification Directive must be interpreted in a manner which respects fundamental rights and the principles recognised by the Charter.[23]

20 — See the Introductory Note to the Geneva Convention by the Office of the UNHCR, dated December 2010.

21 — See recitals 15 and 22 of the Qualification Directive. That guidance has however been described by my colleague Advocate General Mengozzi as a 'plethora of documents' which is not always consistent: see his Opinion in Joined Cases *B and D*, C-57/09 and C-101/09, EU:C:2010:302, point 43.

22 — See, further, Article 78(1) TFEU, which states expressly that the European Union's policy on asylum must be in accordance with the Geneva Convention and other relevant treaties.

23 — See judgment of 2 March 2010 in *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 54. See more generally, regarding the interpretation of EU acts in the light of guidelines supplied by international instruments for the protection of human rights on which the Member States have collaborated or to which they are signatories, judgment of 3 September 2008 in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 283; and see further recital 10 of the Qualification Directive.

33. The effect of applying the exclusion clauses in Article 12(2) of the Qualification Directive is to deprive an applicant of the protection of refugee status; and it therefore constitutes an exception to the right to asylum in relation to a person who would otherwise fall within the scope of protection. [24] When interpreting those clauses a cautious approach must accordingly be taken and they should be construed restrictively. [25]

34. However, where Article 12(2) of the Qualification Directive applies, that does not necessarily imply that the person concerned may be returned to his country of origin (or indeed elsewhere) if, for example, the prohibition against torture or his right not to be subjected to inhuman or degrading treatment or punishment are at risk of being violated. [26] The Member States remain subject to the obligation to respect the principle of *non-refoulement* in accordance with their international obligations. [27]

35. It is important to keep clearly in mind what the present reference does, and does not, invite the Court to decide.

36. The (thorny) question of what is or is not a terrorist organisation in international law is not raised by the referring court. [28] Nor has the listing of the MICG on the UN Sanctions List pursuant to UNSCR 1390 (2002) been questioned in the material placed before this Court. As I see it, the present proceedings must therefore *necessarily* proceed on the basis that the MICG as such is validly categorised by the UN as a 'terrorist' organisation.

37. It is clear from the order for reference that Mr Lounani's criminal conviction was for offences that did *not* involve him directly in the commission of any of the offences that are 'deemed to be terrorist offences' as listed in Article 1 of the Framework Decision. On the material before the Court, however, the MICG is properly to be characterised as a 'terrorist group' within the meaning of Article 2(1) of the Framework Decision; and Mr Lounani's activities might well come within Article 2(2) (or perhaps Article 3(c)) of the Framework Decision.

38. But — are these the right questions to be asking anyway? What is the relationship between the Framework Decision and the Qualification Directive? And are there indications — which the competent national authorities will need to assess, subject always to the supervisory jurisdiction of the national courts as final judges of fact — that the specific activities for which Mr Lounani was convicted are 'contrary to the purposes and principles of the United Nations' because the explanatory phrase in Article 12(2)(c) of the Qualification Directive ('as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations') should be read as encompassing other international material that has clearly identified particular 'terrorism-related acts' as being 'contrary to the purposes and principles of the United Nations'?

24 — Article 2(c) of the Qualification Directive states that 'refugee' denotes an individual who falls within the definition contained therein, *unless* the conditions for exclusion in Article 12 apply.

25 — See the Opinion of Advocate General Mengozzi in Joined Cases *B and D*, C-57/09 and C-101/09, EU:C:2010:302, point 46.

26 — Those rights are guaranteed by Article 4 of the Charter. The corresponding rights in the European Convention on Human Rights ('the ECHR') are in Article 3. See for example, judgment of the Strasbourg Court of 15 November 1996 in *Chahal v. United Kingdom,* ECLI:CE:ECHR:1996:1115JUD002241493.

27 — See Article 21 of the Qualification Directive and Article 19(2) of the Charter.

28 — An aspect of that question will be occupying the Grand Chamber in another case currently in the pipeline, namely *A and Others*, C-158/14.

B and D

39. In *B and D*[29] the Court was answering questions referred by the Bundesverwaltungsgericht (Federal Administrative Court, Germany) arising from proceedings brought by two persons who had clearly, *prior* to their arrival within the territory of the European Union, been actively involved in activities associated with groups that were listed in the Annex to Common Position 2001/931[30] on the application of specific measures to combat terrorism. Mr B had been a sympathiser of Dev Sol (now DHKP/C), had supported armed guerrilla warfare in the mountains of Turkey, and had been arrested, subjected to serious physical abuse and forced to give a statement under torture. He had twice been sentenced to life imprisonment. He had taken advantage of a six-month conditional release from custody on health grounds to leave Turkey and make his way to Germany, where he applied for asylum. Mr D had stated in support of his application for asylum that he had fled to the mountains in Turkey where he had joined the PKK and that he had been a guerrilla fighter for that organisation and one of its senior officials. The PKK had sent him to northern Iraq, but he had subsequently fallen out with its leadership; he then moved to Germany, where he was initially granted asylum; however, following a change in national law, that decision was revoked.[31] The right of the applicants to obtain refugee status (Mr B) or to retain refugee status (Mr D) turned on the interpretation of the exclusion clauses in Article 12(2) of the Qualification Directive.

40. The Grand Chamber of the Court held that 'terrorist acts [which it did not define], which are characterised by their violence towards civilian populations, even if committed with a purportedly political objective, fall to be regarded as serious non-political crimes within the meaning of point (b) [of Article 12(2) of the Qualification Directive]'.

41. So far as Article 12(2)(c) of the Qualification Directive was concerned, the Court recalled that recital 22 of the Qualification Directive identifies 'acts contrary to the purposes and principles of the United Nations' by reference to the Preamble to, and Articles 1 and 2 of, the Charter of the United Nations and that they are among the acts identified in the UN Resolutions relating to 'measures combating international terrorism'. Those measures include UN Security Council Resolutions 1373 (2001) and 1377 (2001). It was therefore 'clear that the Security Council takes as its starting point the principle that international terrorist acts are, generally speaking and irrespective of any State participation, contrary to the purposes and principles of the United Nations'.[32]

42. I shall return later in this Opinion to further elements of the judgment in *B and D* that are pertinent to the analysis of the present reference. It is, however, important to note from the outset that the present reference differs significantly from *B and D*.

43. On the one hand, it appears from the order for reference that, whatever precisely has or has not been established in respect of the MICG that has led to it being listed on the UN Sanctions List on 10 October 2002, Mr Lounani himself has been convicted of participating in a terrorist organisation, but he has not been convicted of a specific terrorist act. Nor have the offences for which he was convicted (providing logistical support to a terrorist group, forging and supplying passports, participating in organising a channel for sending volunteers to Iraq) been linked to the commission of a specific terrorist act by the MICG.

29 — Judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661.

30 — Council Common Position 2001/931/CFSP of 27 December 2001 (OJ 2001 L 344, p. 93) which aims, inter alia, to implement measures to combat the financing of terrorism contained in UN Security Council Resolution 1373 (2001).

31 — Judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 57 to 60.

32 — Judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 81 to 83.

44. On the other hand, the acts taken into account by the competent authorities in respect of Mr B and Mr D were past acts committed in a third country. In contrast, the acts that led to Mr Lounani's conviction were committed within the territory of the European Union during the extended period when he was residing illegally in Belgium; and his application for asylum was made whilst he was serving his six-year sentence of imprisonment in respect of that conviction.

Question 1

45. Pursuant to Article 12(2)(c) of the Qualification Directive, an applicant for refugee status is excluded from protection where he '… has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations'. By Question 1 the referring court asks whether that ground of exclusion can only apply where an applicant for asylum has been convicted of one of the terrorist offences listed in Article 1(1) of the Framework Decision.

46. Article 12(2)(c) of the Qualification Directive reflects and expands slightly upon the wording of Article 1F(c) of the Geneva Convention. The term 'acts contrary to the purposes and principles of the United Nations' in Article 1F(c) is recognised as being vague and unclear.[33] Considered in isolation, the broad nature of the purposes and principles of the United Nations gives little guidance as to the type of acts that would deprive a person of refugee status. That wording does not identify the scope of Article 1F(c) with precision. Nor does it define the type of act that might come within that category or the persons who might commit such acts.

47. International law has, of course, moved on since the UN Charter was drafted. Thus, in UN Security Council Resolution 1373 (2001), the Security Council decided that States must take measures to combat terrorism and declared that terrorist acts, methods and practices are contrary to the purposes and principles of the United Nations, including planning and inciting such activities. Similar declarations are also contained in subsequent resolutions, in particular Resolution 1377 (2001). The wording of those instruments indicates clearly that the international community regards the acts they describe as *also* being 'contrary to the purposes and principles of the United Nations'. A number of international conventions address specific aspects of the fight against terrorism; they require their States signatory to include within their domestic law the necessary criminal offences to encompass, prosecute and punish the different forms of collateral activity that they identify.[34] At the same time, the Security Council has also emphasised (in UN Security Council Resolutions 1624 (2005) and 2178 (2014)) that States' measures to combat terrorism must comply with international law, in particular international human rights law, refugee law and humanitarian law.

48. The wording of Article 12(2)(c) of the Qualification Directive differs slightly from Article 1F(c) of the Geneva Convention in so far as it refers to a person who has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of its Charter.[35] However, it too does not specify the acts or type of activities that might trigger the grounds for exclusion.

33 — See paragraph 46 of the UNHCR Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees ('the Background Note').

34 — See, for example, the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999.

35 — It seems that, on one reading, only persons who held positions of power in countries or State-like entities were initially considered capable of being within the scope of Article 1F(c) of the Geneva Convention. See, for example, the *travaux préparatoires* to that convention, in particular the views of the French delegate 'The provision was not aimed at the man-in-the-street, but at persons occupying government posts, such as heads of States, ministers and high officials' (E/AC.7/SR.160, 18 August 1950, p. 18), cited in UNHCR Statement on Article 1F of the 1951 Convention (July 2009), paragraph 2.3.3, footnote 62.

49. In *B and D* and subsequently in *H.T.*, the Court has construed the current approach of the Security Council to be that international terrorist acts are contrary to the purposes and principles of the United Nations.[36] That interpretation is consistent with current circumstances. The threat posed by international terrorist activity has been in sharp focus since the events of 11 September 2001 and has only been highlighted further by the recent attacks in Paris and Brussels.

50. In *B and D*, the Court went on immediately thereafter to say that, 'It follows that … the competent authorities of the Member States can also apply Article 12(2)(c) … to a person who, in the course of his membership of an organisation which is on the list forming the Annex to Common Position 2001/931, has been involved in terrorist acts with an international dimension'.[37] The Court did not elaborate directly on the reasoning linking those two statements or on what is meant by 'has been involved in' (terrorist acts); but other passages in *B and D* that I shall discuss later in this Opinion help to elucidate the rationale and scope of the Grand Chamber's ruling.[38] I note here that the position taken is consistent with the two main aims of the exclusion clauses, both in Article 12(2)(c) of the Qualification Directive and in Article 1F(c) of the Geneva Convention, which are to deny refugee status to those persons whose conduct has rendered them unworthy of international protection and to prevent such individuals from being able to use the protection afforded by refugee status in order to evade justice.[39]

51. Must an applicant for refugee status have been convicted of a terrorist offence within the meaning of Article 1(1) of the Framework Decision in order for Article 12(2)(c) of the Qualification Directive to apply?

52. In my view the answer to that question is 'no'.

53. First, the wording of Article 12(2)(c) of the Qualification Directive does not suggest that 'acts contrary to the purposes and principles of the United Nations' should be restricted or defined by reference to other EU acts, such as the Framework Decision. The scope and purpose of Article 12(2)(c) of the Qualification Directive and Article 1 of the Framework Decision are not the same. Whilst a conviction for a terrorist act as defined by the Framework Decision is clearly relevant to the assessment process for refugee status, it cannot determine the scope of application of the exclusion clause. The Qualification Directive was adopted almost two years after the Framework Decision. The legislator could have included an express reference to the latter. However he did not do so, perhaps because a restriction of that nature would probably have been inconsistent with the Geneva Convention.

54. Second, to limit the application of the grounds for exclusion in Article 12(2)(c) in that way would be inconsistent with the proposition that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees.[40] The Geneva Convention itself does not make the application of Article 1F(c) dependent on any additional condition, such as a criminal conviction at national or international level for terrorist acts (or any other offence). The fact that Article 12(2)(c) of the Qualification Directive refers to the Preamble to and Articles 1 and 2 of the United Nations Charter suggests that its scope is wider than the list of terrorist offences in Article 1(1) of the Framework Decision.

36 — Judgments of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 83, and 24 June 2015 in *H.T.*, C-373/13, EU:C:2015:413, paragraph 85.

37 — Judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 84.

38 — See points 68 to 70 and 74 below.

39 — See paragraph 2 of the Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees of 4 September 2003 ('the Guidelines').

40 — See recital 3 of the Qualification Directive.

55. Third, it is the system of rules for determining refugee status that provides the context and the starting point for interpreting the provisions of the Qualification Directive, rather than concepts derived from other areas of EU law, such as the measures aimed at combating terrorism. The Qualification Directive is essentially a humanitarian measure.[41] Its legal basis is in what was Title IV of the Treaty establishing the European Community concerning visas, immigration and other policies related to the free movement of persons, which is part of the area of freedom, security and justice established under Article 61 EC.[42] The origins of the Framework Decision are very different. That decision criminalises certain terrorist acts, and it requires Member States to punish serious violations and attacks on certain common values of the European Union.[43] The Framework Decision has a different legal base, namely Title VI of the Treaty on European Union on police and judicial cooperation in criminal matters (Articles 29, 31(1)(e) and 34(2)(b) TEU).[44] Thus, the scope and purposes of the two measures are not the same.[45]

56. Fourth, reading into the text a condition that exclusion under Article 12(2)(c) of the Qualification Directive is dependent on the existence of a prior criminal conviction for a terrorist offence within the meaning of Article 1(1) of the Framework Decision would introduce a double restriction. On the one hand, it would mean that a person guilty of *other acts* associated with terrorism not listed in Article 1(1), such as directing a terrorist group or participation in the activities of a terrorist group (Article 2(2)), fell outside the scope of the grounds for exclusion. On the other hand, it would restrict the concept of 'acts contrary to the purposes and principles of the United Nations' to *one sub-category* of such acts. Both restrictions are inconsistent with the aims of the exclusion clauses and would be entirely artificial.

57. Fifth, I note that the Framework Decision is a measure that is subject to what is known as 'variable geometry'. It is an act that does not bind the United Kingdom, which has chosen to opt out of its provisions.[46] In contrast, the principal aim of the Qualification Directive, which applies to all 28 Member States, is to establish common EU-wide criteria for identifying those persons genuinely in need of international protection.[47] In those circumstances, it seems to me that it would be inconsistent with the harmonising objectives of the Qualification Directive to import a restriction on the interpretation of one of its provisions derived from another EU measure that does *not* bind all Member States.

58. I therefore consider that it is not necessary to demonstrate that an applicant for asylum has been convicted of a terrorist offence within the meaning of Article 1(1) of the Framework Decision in order for that person to be excluded from refugee status on the ground laid down in Article 12(2)(c) of the Qualification Directive.

Questions 2 and 3

59. The referring court explains the background to Questions 2 and 3 as follows. In its judgment of 12 February 2013 the CCE stated that Mr Lounani had been convicted of crimes involving acts within Article 2(2) of the Framework Decision — participation in the activities of a terrorist group — rather than acts under Article 1(1) of that decision. The Tribunal correctionnel considered that his offences, committed as a leading member of the MICG, merited a severe penalty.[48] According to the CCE,

41 — See judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 93.

42 — That is now Title V TFEU: see in particular Articles 67 and 78 TFEU.

43 — See Article 2 TEU, where those values are set out.

44 — Replaced respectively by Articles 67 and 82 TFEU (Article 34(2)(b) TEU was repealed).

45 — See judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 89.

46 — See footnote 3 above.

47 — See recitals 16 and 17 of the Qualification Directive.

48 — See point 23 above.

however, only Mr Lounani's membership of a terrorist group is described as a 'terrorist activity' in the judgment leading to his criminal conviction. The judgment of the Tribunal correctionnel did not attribute responsibility for specific terrorist offences to the MICG and Mr Lounani was not found guilty of personal involvement in any such acts.

60. Against that background, the referring court asks whether the acts for which Mr Lounani was convicted can be considered to be 'contrary to the purposes and principles of the United Nations' within the meaning of Article 12(2)(c) of the Qualification Directive (Question 2). It also asks whether Mr Lounani's conviction for being a leading member of a terrorist group is sufficient to establish that he has 'instigate[d]' or 'otherwise participate[d]' in an act mentioned in Article 12(2) of the Qualification Directive for the purposes of Article 12(3) thereof[49] (Question 3).

Admissibility

61. Both the CGRA and the Belgian Government submit that Question 3 is inadmissible. They both consider that the referring court has not explained why a reply to that question is necessary in order to resolve the main proceedings.

62. I disagree.

63. It follows from settled case-law that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for this Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.[50]

64. Here, the referring court seeks to establish whether the fact that Mr Lounani was found guilty of participating in a terrorist group is sufficient to trigger the grounds of exclusion in Article 12(2)(c) and (3) of the Qualification Directive. The interpretation of those provisions is clearly relevant to the main proceedings. Question 3 should therefore be answered.

Relevance of Mr Lounani's criminal conviction

65. Mr Lounani submits that little or no weight should be attached to the decision of the Tribunal correctionnel. He argues that there are serious doubts as to whether those proceedings were fair. He bases that argument on the judgment of the European Court of Human Rights ('the Strasbourg Court') in *El Haski*.[51] The Strasbourg Court ruled that there had been a breach of Article 6 of the ECHR ('Right to a fair hearing'), because statements obtained in breach of Article 3 of the ECHR ('Prohibition against torture') had been admitted in evidence in the same criminal proceedings before the Tribunal correctionnel relating to one of Mr Lounani's co-defendants.

66. I note that Mr Lounani did not appeal against the judgment in his case, that he himself did not lodge an application with the Strasbourg Court, and that he has not advanced any substantive submission suggesting that the criminal proceedings against him were tainted in any way or that Article 47 of the Charter (or Article 6 of the ECHR) was violated in the course of his trial.

49 — The English text of Article 12(3) of Directive 2011/95 uses 'incite' rather than 'instigate' but is otherwise identical to Article 12(3) of the Qualification Directive.

50 — See judgment of 6 June 2013 in *MA and Others*, C-648/11, EU:C:2013:367, paragraph 37 and the case-law cited.

51 — Judgment of the Strasbourg Court of 25 September 2012 in *El Haski v. Belgium*, ECLI:CE:ECHR:2012:0925JUD000064908.

67. In the absence of any material suggesting that the criminal proceedings in Mr Lounani's case were flawed or that the facts established by the judgment of the Tribunal correctionnel are unreliable, his conviction constitutes an established fact. The real question is, what weight should that conviction carry in the assessment of whether the exclusion in Article 12(2)(c) of the Qualification Directive applies?

68. In *B and D* the Court rejected the proposition that a conviction for participation in the activities of a terrorist group within Article 2(2)(b) of the Framework Decision could automatically trigger the exclusion clauses in Article 12(2)(b) and (c) of the Qualification Directive. It stated that the conditions for exclusion presuppose a full investigation into all the circumstances of each individual case.[52] For that reason, I reject the argument advanced by the CGRA that if a person has been convicted of committing terrorist acts, for example the offences covered by Articles 1 to 4 of the Framework Decision, such a person may automatically be excluded from refugee status under Article 12(2) and/or (3) of the Qualification Directive without any further individual examination of his application.

69. In *B and D*, the Court explained that although 'there is no direct relationship between Common Position 2001/931 and [the Qualification Directive] in terms of the aims pursued, and it is not justifiable for a competent authority, when considering whether to exclude a person from refugee status pursuant to Article 12(2) of the directive, to base its decision solely on that person's membership of an organisation which is on a list adopted *outside* the framework set up by [the Qualification Directive] consistently with the Geneva Convention',[53] '*the inclusion of an organisation* on a list such as that which forms the Annex to Common Position 2001/931 *makes it possible to establish the terrorist nature of the group of which the person concerned was a member*'.[54] Here, therefore, the starting point must be that the MICG as such *is* to be considered to be a terrorist organisation.[55]

70. However, it is clear both from *B and D* and from the Court's subsequent ruling in *H.T.*[56] that mere membership of a terrorist organisation does not suffice to trigger the exclusion clauses in Article 12(2) and (3) of the Qualification Directive, since the listing of an organisation cannot be assimilated to the (compulsory) individual assessment of whether a particular applicant qualifies as a refugee.[57] Such membership merely indicates that those exclusion clauses may (potentially) be applicable. The individual circumstances surrounding an application for asylum are intrinsically likely to be more elaborate and nuanced than the subset of facts on which a criminal prosecution and conviction are based. I therefore take the view that — even in the presence of an apparently relevant criminal conviction — the requirement for individual assessment continues to subsist.

Article 12(2)(c) and (3) of the Qualification Directive

71. Article 1F(c) of the Geneva Convention makes no mention of 'instigating' or 'participating' in acts contrary to the aims and purposes of the United Nations. Nonetheless, that provision is to be interpreted as also covering those who do not actually carry out acts contrary to those purposes and principles themselves.[58] A combined reading of Article 12(2)(c) and (3) indicates that persons guilty of

52 — See judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 93.

53 — See judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 89, emphasis added.

54 — See judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 90, emphasis added.

55 — It has *not* suggested in the present proceedings that the listing of the MICG was invalid.

56 — Judgment of 24 June 2015 in *H.T.*, C-373/13, EU:C:2015:413, paragraph 89 and the case-law cited.

57 — See Article 4(3) of the Qualification Directive.

58 — See paragraphs 17 and 18 of the Guidelines.

committing, instigating or otherwise participating in acts contrary to the purposes and principles of the United Nations are all within the ambit of the conditions for exclusion. That reading accords both with the interpretation of the Geneva Convention favoured by the Guidelines and with the objectives of the Qualification Directive. [59]

72. It follows that the exclusion in Article 12(2)(c) of the Qualification Directive is not restricted to the actual perpetrators of terrorist acts. Read together with Article 12(3), it extends to those who facilitate the commission of terrorist acts.

73. But how far does that extension under Article 12(3) go? Where along the spectrum that stretches from a person who is merely shaking a collecting tin in the street [60] to an individual who is directly involved in a terrorist attack as the driver of the getaway car should the line be drawn?

74. The standard of proof to be applied is that there must be '*serious reasons for considering that*' [61] the applicant is individually responsible as a participant of the group during the period at issue and that he is guilty of acts that fall within the scope of the exclusion clauses. [62] In *B and D* the Court stated: 'to that end, the competent authority must, inter alia, assess the true role played by the person concerned in the perpetration of the acts in question; his position within the organisation; the extent of the knowledge he had, or was deemed to have, of its activities; any pressure to which he was exposed; or other factors likely to have influenced his conduct'. [63]

75. In relation to the applicant's participation in acts referred to in Article 12(2)(c), the introductory words 'serious reasons for considering that' indicate that the threshold for invoking Article 12(2) is high. The reference to 'the purposes and principles of the United Nations' show that the applicant's act must have an impact on the international plane, and be of a gravity that has implications for international peace and security, because the Preamble and Articles 1 and 2 of the UN Charter essentially set out the principles on which the international community co-exists. [64]

Assessment of conditions for exclusion under Article 12(2)(c) of the Qualification Directive

76. It follows from my answer to Question 1 that I consider that in the assessment process Article 12(2) should be interpreted independently of the application of Article 1 of the Framework Decision. I take the same view in relation to Article 2 of that decision (participation in a terrorist group); and consider that here likewise it is not necessary to establish that an applicant has a criminal conviction under that provision.

77. All Member States are under a duty to uphold and promote the common values enshrined in Article 2 TEU, including the rule of law (Article 3(5) TEU). Thus, where an applicant for asylum has been convicted following a trial which complies with the procedural requirements laid down by law and with Article 47 of the Charter and that conviction has become final, that would carry significant weight in any individual assessment under Article 4 of the Qualification Directive. At the same time,

59 — See recital 22. The equivalent of Article 12(3) was not in the Commission's original 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 (OJ 2002 C 51 E, p. 325). The text was inserted by the Member States during the negotiations in Council.

60 — In *H.T.* for example, it was established that Mr H.T. had collected donations on behalf of the PKK and occasionally distributed a periodical published by that organisation. The Court ruled that it did not necessarily follow from those acts that Mr H.T. supported the legitimacy of terrorist activities and that such acts in themselves do not constitute terrorist acts. Judgment of 24 June 2015 in *H.T.*, C-373/13, EU:C:2015:413, paragraph 91.

61 — See the express wording of the introductory paragraph to Article 12(2) of the Qualification Directive.

62 — See judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 94.

63 — See judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 97.

64 — All types of criminal acts leading to exclusion under Article 1F of the Geneva Convention involve a high degree of seriousness (UNHCR Statement on Article 1F of the 1951 Convention (July 2009)). In paragraph 17 of the Guidelines the UNHCR states that Article 1F(c) of the Geneva Convention is likely to be invoked less often than the grounds for exclusion in Article 1F(a) or (b).

Article 12(2)(c) cannot be regarded simply as an additional anti-terrorism provision that can be invoked automatically to supplement any sanctions already imposed.[65] There must still be an individual assessment of all the relevant facts and circumstances in order to comply with the requirements of the Qualification Directive.

78. The French Government submits that where the applicant has been convicted of an offence, such as participation in a terrorist group, a rebuttable presumption arises to the effect that he should be excluded on the grounds in Article 12(2).

79. I disagree with that view.

80. Where the circumstances indicate they may be relevant, the potential grounds of exclusion are assessed at the time of the application for refugee status.[66] The Member States have a wide discretion under Article 4 of the Qualification Directive as to the assessment process.[67] In my view, a conviction for a terrorist offence should simply be regarded as clear and credible evidence that there are serious reasons for considering that the threshold in Article 12(2) has been met. That approach has the advantage of ensuring that the common criteria for recognising refugees are not undermined by Member States applying different rules governing the operation of presumptions.

81. The United Kingdom submits that the Court might derive assistance from *Shepherd*,[68] where the Court interpreted Article 9(2)(e) of the Qualification Directive,[69] in ascertaining the threshold that is sufficient to engage Article 12(2)(c); and argues that any test that is applied should be consistent with the Court's ruling in *Shepherd*. I understand the test the United Kingdom proposes to be as follows: by performing his tasks in a terrorist group it is reasonably likely that the person concerned would provide indispensable support for the preparation or execution of crimes that trigger the ground for exclusion in Article 12(2)(c): that should also suffice to trigger Article 12(3).

82. I do not believe that *Shepherd* assists the Court here. First, *Shepherd* concerned only the ground of exclusion in Article 12(2)(a). Second, the Court drew a clear distinction in *Shepherd* between Article 9(2)(e) and the grounds for exclusion set out in Article 12(2). Indeed, the Court stated that the assessment of whether there is a risk of committing a crime in the future for the purposes of Article 9(2)(e) of the Qualification Directive and the assessment under Article 12(2) are fundamentally different. The latter requires an *ex post* inquiry to establish whether, by reason of his past actions, an applicant should be excluded from the protection afforded by the Qualification Directive.[70] Finally, *Shepherd* says nothing about what amounted to a terrorist act within the meaning of the Qualification Directive.

83. I suggest that there are two stages to the assessment that the competent national authorities are required to make for the purposes of Article 12(2)(c).

84. The first step involves verifying that the organisation that the applicant for asylum has supported, or in whose activities he has participated, is indeed a terrorist organisation.[71]

65 — See also paragraph 25 of the Guidelines in relation to Article 1F(c) of the Geneva Convention and UN Security Council Resolutions 1624 (2005) and 2178 (2014) which stress that States must ensure that measures taken to combat terrorism comply with their obligations under international law and are adopted in accordance with, inter alia, refugee law and humanitarian law.

66 — Article 2(c) of the Qualification Directive.

67 — See, further, the minimum standards laid down in the Procedures Directive.

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

69 — *Shepherd* concerned the scope of Article 9(2)(e) of the Qualification Directive, in particular the meaning of the words '… where *performing military service would include* crimes or acts falling under the exclusion clauses as set out in Article 12(2)'.

70 — See judgment of 26 February 2015 in *Shepherd*, C-472/13, EU:C:2015:117, paragraph 38.

71 — See point 69 above. That appears unquestionably to be so in the present case.

85. The second step is to assess whether the specific facts attributed to the individual concerned show that he has participated in terrorist acts that trigger Article 12(2)(c) and (3) of the Qualification Directive. That requires an assessment of the organisation's structure, his position within it and his ability to influence the group's activities;[72] and an examination of whether and to what extent he was involved in planning, decision-making or directing other persons with a view to committing terrorist acts, and whether and to what extent he financed such acts or procured for other persons the means to commit them. The competent authorities must also be satisfied that he committed or made a substantial contribution to terrorist activities and that he shares responsibility for them, because he acted in the knowledge that he was facilitating the commission of such offences.[73]

86. The order for reference indicates that Mr Lounani was found to be a leading member of the MICG. It follows logically that he could presumably influence the group's activities. He provided logistical support. That implies that he may well have facilitated and enabled others to participate in or commit terrorist acts. There is an international dimension to MICG's activities as it is entered in the UN Sanctions List.[74] There is also an international aspect to Mr Lounani's activities in so far as he was involved in the forgery of passports and he assisted volunteers who wished to go to Iraq. His motives and his intentions in relation to the terrorist group in which he was a participant are also relevant to establishing his personal responsibility.

87. Whilst it is clear from the order for reference that Mr Lounani was not convicted of perpetrating terrorist attacks himself, the severity of the sentence imposed is a strong indication of the gravity of the offences attributed to him.

88. I emphasise, however, that this Court can only offer guidance; and that ultimately the assessment of Mr Lounani's application is a matter for the competent national authorities, subject to the supervisory jurisdiction of the national court as sole judge of fact.

89. I therefore consider that where an applicant for refugee status has been convicted of having participated in a terrorist group by the courts of a Member State and that conviction has become final, that circumstance is relevant to, and should carry significant weight in the individual assessment of, whether the grounds for exclusion in Article 12(2)(c) of the Qualification Directive apply. In assessing the facts and circumstances of an applicant's case, for the purposes of Article 12(2)(c) and (3) read together, the competent national authorities must also examine whether he shares personal responsibility, by reference to his motives and intentions relating to the activities of the terrorist group in which he participates. The group's activities must have an international dimension and be of such gravity that they have implications for international peace and security. A finding that the applicant was a leading member of such a group is a relevant factor. It is not necessary to establish that he himself has instigated or participated in terrorist acts as defined in Article 1 of the Framework Decision in order to invoke the grounds of exclusion in Article 12(2)(c) and (3) of the Qualification Directive.

Question 4

90. Question 4 asks whether the act of instigation or participation referred to in Article 12(3) of the Qualification Directive must relate to the commission of an offence under Article 1 of the Framework Decision or whether it may relate to an offence under Article 2 thereof.

72 — See paragraph 19 of the Guidelines. See also by way of analogy the judgment of 24 June 2015 in *H.T.*, C-373/13, EU:C:2015:413, paragraphs 90 to 93, where the Court considered whether support provided by a refugee to a terrorist group constituted a compelling reason of national security or public order within the meaning of Article 24(1) of the Qualification Directive justifying the withdrawal of his residence permit.

73 — See paragraph 51 of the Background Note.

74 — See point 26 above.

91. For the reasons set out in response to Questions 1, 2 and 3, I do not consider that the application of Article 12(2)(c) of the Qualification Directive depends on whether the Framework Decision applies. Thus, it is not necessary to demonstrate that an offence within the meaning of Article 1 or 2 of that decision has been committed for Article 12(2)(c) and (3) of the Qualification Directive to apply.

Question 5

92. Can an applicant be excluded from qualifying as a refugee where neither he nor the terrorist group of which he is a member has committed violent acts of a particularly cruel nature as referred to in Article 1 of the Framework Decision?

93. In my view, there is no need to demonstrate that an applicant is guilty of such acts in order for the grounds of exclusion in Article 12(2) of the Qualification Directive to apply.

94. First, the words 'a violent act of a particularly cruel nature' do not appear in the text of Framework Decision. Second, as I have already explained, the commission of acts defined as terrorist acts by that decision is not the sole or even a required ground to trigger Article 12(2) of the Qualification Directive. [75]

95. For the sake of good order, I would add that the expression 'a violent act of a particularly cruel nature' is also not a condition for exclusion pursuant to the text of the Qualification Directive. Furthermore, the objectives of that directive do not indicate any basis for interpreting Article 12(2) as though such a condition applies.

Conclusion

96. In the light of all the foregoing considerations, I am of the opinion that the Court should answer the questions raised by the Conseil d'État (Council of State, Belgium) to the following effect:

— It is not necessary to demonstrate that an applicant for asylum has been convicted of a terrorist offence within the meaning of Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism in order for that person to be excluded from being a refugee, on the grounds that he has been guilty of acts contrary to the purposes and principles of the United Nations within the meaning of Article 12(2)(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

— Where an applicant for refugee status is convicted of having participated in a terrorist group by the courts of a Member State and that conviction has become final, that circumstance is relevant to, and should carry significant weight in the individual assessment of, whether the grounds for exclusion in Article 12(2)(c) of Directive 2004/83 apply. In assessing the facts and circumstances of an applicant's case for the purposes of Article 12(2)(c) and (3) read together, the competent national authorities must also examine whether he shares personal responsibility, by reference to his motives and intentions relating to the activities of the terrorist group in which he participates. The group's activities must have an international dimension and be of such gravity that they have implications for international peace and security. A finding that the applicant was a leading member of such a group is a relevant factor. It is not necessary to establish that he himself has instigated or participated in terrorist acts as defined in Article 1 of Framework Decision 2002/475 in order to invoke the grounds of exclusion in Article 12(2)(c) and (3) of Directive 2004/83.

75 — See points 58 and 91 above.

— To establish that an applicant for refugee status has instigated or otherwise participated in committing crimes or acts within the meaning of Article 12(2) and (3) of Directive 2004/83, it is not necessary for the terrorist group in which he participated to have committed an act listed in Article 1 of Framework Decision 2002/475, or for the applicant to be found guilty of an act referred to in Article 2 of that decision.

— An applicant for refugee status may be excluded from qualifying as a refugee even though neither he nor the terrorist group of which he is a member has committed violent acts of a particularly cruel nature as referred to in Article 1 of the Framework Decision 2002/475.