Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

19 November 2020 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Asylum policy – Directive 2011/95/EU – Conditions for granting refugee status – Refusal to perform military service – Article 9(2)(e) – Law of the country of origin which does not provide for the right to conscience objection – Protection of persons who have fled their country of origin after the expiry of the period for suspending military service – Article 9(3) – Connection between the reasons mentioned in Article 10 of that directive and the prosecution and punishment referred to in Article 9(2)(e) of that directive – Evidence)

In Case C−238/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Hannover (Administrative Court, Hanover, Germany), made by decision of 7 March 2019, received at the Court on 20 March 2019, in the proceedings

EZ

v

Bundesrepublik Deutschland

THE COURT (Sixth Chamber),

composed of J.–C. Bonichot (Rapporteur), President of the First Chamber, acting as President of the Chamber, C. Toader and M. Safjan, Judges,

Advocate General: E. Sharpston,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 5 March 2020,

after considering the observations submitted on behalf of:

– EZ, by S. Schröder, Rechtsanwältin,

– Bundesrepublik Deutschland, by A. Horlamus, acting as Agent,

– the German Government, by R. Kanitz, acting as Agent,

– the European Commission, by S. Grünheid and M. Condou-Durande, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 May 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 9(2)(e) and (3) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

2 The request has been made in proceedings between EZ, a Syrian national, and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning the decision of the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany) refusing to grant him refugee status.

Legal context

The Geneva Convention

3 Under Article 1(A) of the of the Convention relating to the Status of Refugees, which was signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol 189, p. 150, No 2545 (1954)) and entered into force on 22 April 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 ('the Geneva Convention'):

'For the purposes of the present Convention, the term "refugee" shall apply to any person who:

…

(2) … 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.

…'

Directive 2011/95

4 Recitals 2, 4, 12, 24 and 29 of Directive 2011/95 state:

'(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.

…

(4) The Geneva Convention … [provides] the cornerstone of the international legal regime for the protection of refugees.

…

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

…

(24) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

…

(29) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons for persecution, namely race, religion, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts.'

5 According to Article 2(d), for the purposes of that directive, '"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 …'.

6 Article 4 of that directive, in Chapter II thereof, headed 'Assessment of applications for international protection', provides:

'1. Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in paragraph 1 consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, travel documents and the reasons for applying for international protection.

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

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

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

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

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are

not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

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

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

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

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

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

7 Article 9 of that directive, headed 'Acts of persecution', provides as follows:

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

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950]; 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:

…

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

…

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

8 Article 10 of Directive 2011/95 reads as follows:

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

…

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

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

9 Article 12 of that directive, headed 'Exclusion', provides, in paragraph 2 thereof:

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

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

…'

German law

10 Paragraph 3 of the Asylgesetz (Law on asylum), in the version applicable to the case in the main proceedings ('the AsylG'), headed 'Granting of refugee status', provides:

'(1) A foreign national is a refugee within the meaning of the [Geneva Convention] if he or she:

1. owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group,

2. is outside the country (country of origin)

a) of which he or she is a national and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country,

…

(2) A foreign national is not a refugee under (1) where there are serious reasons for considering that:

1. he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

2. he or she has committed a serious non-political crime outside Federal Territory prior to his or her admission as a refugee, particularly a cruel action, even if it was committed with an allegedly political objective, or

3. he or she has been guilty of acts contrary to the purposes and principles of the United Nations.

…'

11 Paragraph 3a of the AsylG, headed 'Acts of persecution', provides:

'(1) An act of persecution within the meaning of Paragraph 3(1) means an act which:

1. is sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms …; or

2. is an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as referred to in point 1 above.

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

…

5. prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Paragraph 3(2) of this Law,

…

(3) there must be a connection between the reasons for persecution mentioned in the combined provisions of Paragraph 3(1)(1) and Paragraph 3b and the acts of persecution as qualified in sub-paragraphs (1) and (2) of this Paragraph or the absence of protection against such acts.'

12 Paragraph 3b of the AsylG, headed 'Reasons for persecution', provides:

'(1) In assessing the reasons for persecution under Article 3(1)(1), account should be taken of the following factors:

…

5. the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Paragraph 3c and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the foreign national.

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

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

13 EZ, a Syrian national, left his country on 6 November 2014. He arrived in Germany on 5 September 2015 and submitted an application for asylum on 28 January 2016.

14 He stated that he fled Syria in November 2014 in order not to perform his military service there, fearing that he would have to participate in the civil war. He had been granted a deferment of his military service until February 2015 so that he could complete his university studies.

15 On 11 April 2017, the Federal Office for Migration and Refugees granted him subsidiary protection, but rejected his application for asylum on the grounds that he himself had not been subject to persecution which induced him to leave. According to that authority, the person concerned, having only fled the civil war, would not have to fear persecution if he returned to Syria. It concluded that, in any event, there was no connection between the persecution he fears and the reasons for persecution which may give rise to entitlement to recognition as a refugee.

16 On 1 May 2017, EZ brought an action against that decision before the referring court, the Verwaltungsgericht Hannover (Administrative Court, Hanover, Germany). He argues, in essence, that, as a result of his flight from his country of origin to avoid his military service and of his application for asylum lodged in Germany, he is exposed to a risk of persecution which justifies him being granted refugee status.

17 The referring court notes that national case-law is not established with regard to applications for asylum made by Syrian conscripts who have fled their country in order to avoid military service and are therefore exposed to prosecution and punishment if they return to their country.

18 In those circumstances, the Verwaltungsgericht Hannover (Administrative Court, Hanover) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 9(2)(e) of [Directive 2011/95] to be interpreted as meaning that a “refusal to perform military service in a conflict” does not require the person concerned to have refused to perform military service in a formalised refusal procedure, where the law of the country of origin does not provide for a right to refuse to perform military service?

(2) If Question 1 is to be answered in the affirmative: Does Article 9(2)(e) of [Directive 2011/95] also protect persons who, after the deferment of military service has expired, do not make themselves available to the military administration of the State of origin and evade compulsory conscription by fleeing?

(3) If Question 2 is to be answered in the affirmative: Is Article 9(2)(e) of [Directive 2011/95] to be interpreted as meaning that, for a conscript who does not know what his future field of military operation will be, the performance of military service would, directly or indirectly, include “crimes or acts falling within the grounds for exclusion as set out in Article 12(2)” solely because the armed forces of his State of origin repeatedly and systematically commit such crimes or acts using conscripts?

(4) Is Article 9(3) of [Directive 2011/95] to be interpreted as meaning that, in accordance with Article 2(d), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in Article 9(1) and (2) or the absence of protection against such crimes, even in the event of persecution under Article 9(2)(e)?

(5) In the event that Question 4 is to be answered in the affirmative, is the connection, within the meaning of Article 9(3) in conjunction with Article 2(d) of [Directive 2011/95], between persecution by virtue of prosecution or punishment for refusal to perform military service and the reason for persecution already established in the case where prosecution or punishment is triggered by refusal?’

Consideration of the questions referred

Preliminary observations

19 It should be noted, in the first place, that it is apparent from recitals 4 and 12 of Directive 2011/95 that the Geneva Convention is the cornerstone of the international legal regime for the protection of refugees and that that directive was adopted in order, inter alia, to ensure that all Member States apply common criteria for the identification of persons genuinely in need of international protection.

20 Directive 2011/95 must, for that reason, be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU. As is apparent from recital 16 thereof, the directive must also be interpreted in a manner consistent with the rights recognised by the Charter of Fundamental Rights of the European Union (see, to that effect, judgment of 26 February 2015, *Shepherd*, C−472/13, EU:C:2015:117, paragraph 23 and the case-law cited).

21 In the second place, it must be noted that, under Article 2(d) of Directive 2011/95, the term ‘refugee’ refers, in particular, to a third-country national who is outside the country of nationality ‘owing to a well-founded fear of being persecuted’ for reasons of race, religion, nationality, political opinion or membership of a particular social group and is unable or, ‘owing to such fear’, unwilling to avail himself or herself of the ‘protection’ of that country. The national concerned must therefore, 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 directive and the Geneva Convention (see, to

that effect, judgment of 26 February 2015, *Shepherd*, C−472/13, EU:C:2015:117, paragraph 24 and the case-law cited).

22 In the third place, it must be emphasised that Article 9 of Directive 2011/95 sets out the factors which support a finding that acts constitute persecution within the meaning of Article 1(A) of the Geneva Convention. In that regard, Article 9(1)(a) of that directive states that the relevant acts must be sufficiently serious by their nature or their repetition to constitute a severe violation of basic human rights, in particular the unconditional rights from which there can be no derogation, in accordance with Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Moreover, Article 9(1)(b) of Directive 2011/95 states that an accumulation of various measures, including violations of human rights, which is sufficiently severe to affect an individual in a manner similar to that referred to in Article 9(1)(a) of that directive, must also be regarded as amounting to persecution. It is clear from those provisions that, for an infringement of fundamental rights to constitute persecution within the meaning of Article 1(A) of the Geneva Convention, it must be sufficiently serious (see, to that effect, judgment of 26 February 2015, *Shepherd*, C−472/13, EU:C:2015:117, paragraph 25 and the case-law cited).

23 In the fourth place, it must be pointed out that, under Article 4(3)(a), (b) and (c) of Directive 2011/95, in the individual assessment of an application for international protection, account must be taken of all the relevant facts as they relate to the country of origin at the time of taking a decision on the application, of the relevant statements and documentation presented by the applicant, and of his or her individual position and his or her personal circumstances.

24 It is in the light of those considerations that it is necessary to interpret the provisions of Article 9(2)(e) of Directive 2011/95, according to which acts of persecution, within the meaning of paragraph 1 of that article, can take the form of prosecution or punishment for refusal to perform military service in conflict, where performing military service would include crimes or acts falling within the exclusion clauses referred to in Article 12(2) of that directive.

25 Furthermore, as regards the case in the main proceedings, it is apparent from the information provided by the referring court that the crimes that EZ might have been led to commit as a conscript in the context of the Syrian civil war are ‘war crimes’ or ‘crimes against humanity’, as referred to in Article 12(2)(a) of Directive 2011/95.

The first and second questions

26 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 9(2)(e) of Directive 2011/95 must be interpreted as precluding, where the law of the State of origin does not provide for the possibility of refusing to perform military service, that refusal from being established in a situation in which the person concerned has not formalised his or her refusal through a given procedure and has fled his or her country of origin without presenting himself or herself to the military authorities.

27 According to Article 9(2)(e) of Directive 2011/95, the acts of persecution to which a person seeking refugee status under that provision claims to be exposed must arise from his or her refusal to perform military service. Consequently, that refusal must constitute the only means by which the person concerned could avoid participating in the crimes referred to in Article 12(2)(a) of that directive (see, to that effect, judgment of 26 February 2015, *Shepherd*, C−472/13, EU:C:2015:117, paragraph 44).

28 It follows that the fact that the applicant for refugee status did not avail himself or herself of a procedure for obtaining the status of conscientious objector excludes any protection under Article 9(2)(e) of Directive 2011/95, unless that applicant proves that no procedure of that nature would have been available to him or her in his or her specific situation (see, to that effect, judgment of 26 February 2015, *Shepherd*, C−472/13, EU:C:2015:117, paragraph 45).

29 In particular, where the law of the State of origin does not provide for the possibility of refusing to perform military service and consequently no procedure exists for that purpose, the objector cannot be required to formalise his or her refusal in accordance with a given procedure.

30 In addition, in that case, in view of the unlawful nature of that refusal under the law of the State of origin and the prosecution and punishment to which the objector will be exposed as a result, the latter cannot reasonably be expected to have expressed his or her refusal to the military authorities.

31 Nonetheless, those circumstances are not sufficient to establish that the person concerned did in fact refuse to perform his or her military service. In accordance with Article 4(3)(a), (b) and (c) of Directive 2011/95, the question of whether that refusal was genuine is, like the other elements put forward in support of an application for international protection, to be assessed by taking into account all the relevant facts as they relate to the country of origin at the time of taking a decision on the application, the relevant statements and documentation presented by the applicant, and his or her individual position and his or her personal circumstances, as was noted in paragraph 23 of the present judgment.

32 Consequently, Article 9(2)(e) of Directive 2011/95 must be interpreted as not precluding, where the law of the State of origin does not provide for the possibility of refusing to perform military service, that refusal from being established in a situation in which the person concerned has not formalised his or her refusal through a given procedure and has fled his or her country of origin without presenting himself or herself to the military authorities.

The third question

33 By its third question, the referring court asks whether Article 9(2)(e) of Directive 2011/95 must be interpreted as meaning that, in respect of a conscript who refuses to perform his or her military service in a conflict but who does not know what his or her future field of military operation will be, it should be assumed that the performance of his or her military service will involve committing the crimes or acts referred to in Article 12(2) of that directive solely because the armed forces of his or her State of origin repeatedly and systematically commit such crimes or acts using conscripts.

34 It is for the national authorities alone to assess, under the supervision of the courts, whether the performance of military service by an applicant seeking refugee status on the basis of Article 9(2)(e) of Directive 2011/95 would necessarily or, at least, very probably lead that applicant to commit the crimes referred to in Article 12(2) of that directive (see, to that effect, judgment of 26 February 2015, *Shepherd*, C−472/13, EU:C:2015:117, paragraph 40).

35 That factual assessment must be based on a body of evidence capable of establishing, in view of all the circumstances of the case, particularly those concerning the relevant facts as they relate to the country of origin at the time of taking a decision on the application and to the individual position and personal circumstances of the applicant, that the overall situation in question makes it credible that the alleged crimes would be committed (see, to that effect, judgment of 26 February 2015, *Shepherd*, C−472/13, EU:C:2015:117, paragraph 46).

36 In addition, the Court has found that situations in which the applicant would participate only indirectly in the commission of such crimes, because, inter alia, he or she is not a member of the combat troops but rather, for example, serves in a unit providing logistical or technical support, are not, as a matter of principle, excluded (see, to that effect, judgment of 26 February 2015, *Shepherd*, C−472/13, EU:C:2015:117, paragraph 37).

37 In the context of the all-out civil war that was ongoing in Syria at the time when a decision was taken on the application of the person concerned, that is to say, in April 2017, and having regard, in particular, to the fact that the Syrian army, including the units composed of conscripts, repeatedly and systematically committed war crimes, as was widely documented according to the referring court, it appears that it is

highly plausible that a conscript would be led, regardless of his or her field of operation, to participate, directly or indirectly, to commit the crimes in question, which it is for the referring court to verify.

38 Consequently, Article 9(2)(e) of Directive 2011/95 must be interpreted as meaning that, in respect of a conscript who refuses to perform his or her military service in a conflict but who does not know what his or her future field of military operation will be, in the context of all-out civil war characterised by the repeated and systematic commission of the crimes and acts referred to in Article 12(2) of that directive by the army using conscripts, it should be assumed that the performance of his or her military service will involve committing, directly or indirectly, such crimes or acts, regardless of his or her field of operation.

The fourth question

39 By its fourth question, the referring court asks, in essence, whether Article 9(3) of Directive 2011/95 must be interpreted as meaning that there must be a connection between the reasons mentioned in Article 10 of that directive and the prosecution and punishment referred to in Article 9(2)(e) of the same directive.

40 That question must be answered in the light not only of the wording of Article 9, but also of its context and the intention of the EU legislature.

41 In the first place, it is clear from the wording of Article 9(3) of Directive 2011/95 that there must be a connection between the reasons mentioned in Article 10 of that directive and the acts of persecution as qualified in Article 9(1) of that directive or the absence of protection against such acts. Article 9(2) of that directive includes an indicative list of acts of persecution within the meaning of Article 9(1) of that directive. Consequently, the requirement that there be a connection between the reasons mentioned in Article 10 of that directive and the acts of persecution as qualified in Article 9(1) applies, inter alia, to the acts of persecution listed in Article 9(2), including those referred to in point (e) of that provision.

42 In the second place, that interpretation is consistent with the very definition of a ‘refugee’, within the meaning of Article 2(d) of Directive 2011/95, namely a third-country national or a stateless person who has a well-founded fear of being persecuted for one of the five reasons listed in that provision and elaborated upon in Article 10 of that directive and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of the country in which he or she has habitual residence.

43 In the third place, as stated in recital 24 of Directive 2011/95, an aim of that directive is to adopt common criteria for recognising applicants for asylum as refugees within the meaning of the Geneva Convention. Consequently, in accordance with the provisions of Article 1(A)(2) of that convention, that directive restricts the benefit of the right to asylum to persons who have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, as is also apparent from recital 29 of that directive.

44 In the light of the foregoing, Article 9(3) of Directive 2011/95 must be interpreted as requiring there to be a connection between the reasons mentioned in Article 10 of that directive and the prosecution and punishment referred to in Article 9(2)(e) of that directive.

The fifth question

45 By its fifth question, the referring court asks, in essence, whether Article 9(2)(e) in conjunction with Article 9(3) of Directive 2011/95 must be interpreted as meaning that the existence of a connection between the reasons mentioned in Article 2(d) and Article 10 of that directive and the prosecution and punishment for refusal to perform military service referred to in Article 9(2)(e) of that directive must be regarded as established solely because the prosecution and punishment are connected to that refusal.

46 It should be noted, first of all, that by referring to prosecution or punishment for refusal to perform military service in a conflict, where performing military service would involve crimes or acts falling within the scope of the grounds for exclusions as set out in Article 12(2) of Directive 2011/95, Article 9(2)(e) of

that directive defines certain acts of persecution according to their reason, and that that reason differs from those exhaustively listed in Article 2(d) and Article 10 of that directive, namely race, religion, nationality, political opinion or membership of a particular social group.

47 It is true that, in many situations, refusal to perform military service is an expression of political opinions – whether they consist of the rejection of any use of military force or of opposition to the policy or methods of the authorities of the country of origin – or of religious beliefs, or is motivated by membership of a particular social group. In those cases, the acts of persecution to which that refusal may give rise are also linked to the same reasons.

48 However, as the Advocate General observed in point 67 of her Opinion, the reasons for refusing military service may also be different from the five reasons for persecution referred to above. In particular, that refusal may be motivated by the fear of being exposed to the dangers associated with performing military service in the context of armed conflict.

49 Consequently, accepting that refusal to perform military service under the conditions laid down in Article 9(2)(e) of Directive 2011/95 is, in all circumstances, connected to one of the five reasons for persecution provided for in the Geneva Convention would in fact amount to adding other reasons for persecution to those reasons and thus to extending the scope of that directive as compared with that of the Geneva Convention. Such an interpretation would run counter to the clear intention of the EU legislature, set out in recital 24 of that directive, to harmonise within the European Union the implementation of refugee status within the meaning of the Geneva Convention.

50 That is why the existence of a connection between at least one of the reasons for persecution mentioned in Article 10 of that directive and the prosecution and punishment referred to in Article 9(2)(e) thereof cannot be deemed to be established or, consequently, escape examination by the national authorities responsible for assessing the application for international protection.

51 That conclusion is borne out by the detailed rules for the assessment of applications for international protection laid down in Directive 2011/95.

52 Article 4(1) of that directive provides that Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. However, the statements made by an applicant for international protection constitute merely the starting point in the process of assessment of the facts and circumstances carried out by the competent authorities (see, to that effect, judgment of 25 January 2018, *F*, C−473/16, EU:C:2018:36, paragraph 28). The same provision states that it is the duty of the Member State, in cooperation with the applicant for international protection, to assess the relevant elements of his or her application.

53 Among the relevant elements submitted for assessment by the competent national authorities, Article 4(2) of Directive 2011/95 mentions ‘the reasons for applying for international protection’, which necessarily include the reason for the acts of persecution to which the applicant claims to be exposed. Consequently, accepting, without examination, that prosecution and punishment for refusal to perform military service in the circumstances referred to in Article 9(2)(e) of that directive relate to one of the five reasons for persecution set out in the Geneva Convention would amount to removing from the assessment of the competent authorities an essential element of ‘the reasons for applying for international protection’, contrary to what is provided for in Article 4(2) of that directive.

54 Nonetheless, it cannot be found that it is for the applicant for international protection to prove the connection between the reasons mentioned in Article 2(d) and Article 10 of Directive 2011/95 and the prosecution and punishment which he or she will face as a result of his or her refusal to perform military service in the circumstances referred to in Article 9(2)(e) of that directive.

55 Such a burden of proof would be inconsistent with the detailed rules for the assessment of applications for international protection, as set out in Article 4 of Directive 2011/95. First, as was recalled in paragraph 52

of the present judgment, Article 4(1) of that directive allows only Member States to place the onus on the applicant 'to submit as soon as possible all the elements needed to substantiate the application for international protection' and places on Member States the onus of assessing the relevant elements of the application. Second, as the Advocate General noted in point 70 of her Opinion, Article 4(5) of Directive 2011/95 acknowledges that an applicant may not always be able to substantiate his or her claim with documentary or other evidence and lists the cumulative conditions under which such evidence is not required. In that regard, the reasons for the refusal to perform military service and, consequently, the prosecution to which it exposes the conscript constitute subjective elements of the application in respect of which it may be particularly difficult to adduce direct evidence.

56 In those conditions, it is for the competent national authorities to assess, in the light of all the circumstances adduced by the applicant for international protection, the plausibility of the connection between the reasons mentioned in Article 2(d) and Article 10 of Directive 2011/95 and the prosecution and punishment to which the conscript is exposed if he or she refuses to perform military service under the conditions set out in Article 9(2)(e) of that directive.

57 In that regard, it must be pointed out that there is a strong presumption that refusal to perform military service under the conditions set out in Article 9(2)(e) of that directive relates to one of the five reasons set out in Article 10 of that directive.

58 In the first place, by specifying the reason for the acts of persecution mentioned in Article 9(2)(e) of Directive 2011/95, it is clear that the EU legislature did not intend to make it more difficult for conscientious objectors to obtain refugee status by imposing an additional condition for obtaining that status, but, on the contrary, took the view that that reason for persecution related, as a general rule, to at least one of the five reasons for persecution conferring entitlement to refugee status. The specific reference in that directive to conscientious objectors whose performance of military service would require them to commit crimes against peace, war crimes or crimes against humanity is entirely consistent with the exclusion from refugee status of the perpetrators of the abovementioned crimes provided for in Article 12 of the directive.

59 In the second place, as the Advocate General noted in point 75 of her Opinion, refusal to perform military service, particularly where it is punishable by heavy sanctions, suggests that there is a high degree of conflict in political or religious values and opinions between the person concerned and the authorities of the country of origin.

60 In the third place, in the context of armed conflict, particularly civil war, and where there is no legal possibility of avoiding military obligations, it is highly likely that the authorities will interpret the refusal to perform military service as an act of political opposition, irrespective of any more complex personal motives of the person concerned. According to Article 10(2) of Directive 2011/95, 'when assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution'.

61 It follows from the foregoing that Article 9(2)(e) in conjunction with Article 9(3) of Directive 2011/95 must be interpreted as meaning that the existence of a connection between the reasons mentioned in Article 2(d) and Article 10 of that directive and the prosecution and punishment for refusal to perform the military service referred to in Article 9(2)(e) of that directive cannot be regarded as established solely because that prosecution and punishment are connected to that refusal. Nevertheless, there is a strong presumption that refusal to perform military service under the conditions set out in Article 9(2)(e) of that directive relates to one of the five reasons set out in Article 10 thereof. It is for the competent national authorities to ascertain, in the light of all the circumstances at issue, whether that connection is plausible.

Costs

62 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 (Sixth Chamber) hereby rules:

1. **Article 9(2)(e) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted must be interpreted as not precluding, where the law of the State of origin does not provide for the possibility of refusing to perform military service, that refusal from being established in a situation in which the person concerned has not formalised his or her refusal through a given procedure and has fled his or her country of origin without presenting himself or herself to the military authorities.**

2. **Article 9(2)(e) of Directive 2011/95 must be interpreted as meaning that, in respect of a conscript who refuses to perform his or her military service in a conflict but who does not know what his or her future field of military operation will be, in the context of all-out civil war characterised by the repeated and systematic commission of the crimes and acts referred to in Article 12(2) of that directive by the army using conscripts, it should be assumed that the performance of military service will involve committing, directly or indirectly, such crimes or acts, regardless of his or her field of operation.**

3. **Article 9(3) of Directive 2011/95 must be interpreted as requiring there to be a connection between the reasons mentioned in Article 10 of that directive and the prosecution and punishment referred to in Article 9(2)(e) of that directive.**

4. **Article 9(2)(e) in conjunction with Article 9(3) of Directive 2011/95 must be interpreted as meaning that the existence of a connection between the reasons mentioned in Article 2(d) and Article 10 of that directive and the prosecution and punishment for refusal to perform the military service referred to in Article 9(2)(e) of that directive cannot be regarded as established solely because that prosecution and punishment are connected to that refusal. Nevertheless, there is a strong presumption that refusal to perform military service under the conditions set out in Article 9(2)(e) of that directive relates to one of the five reasons set out in Article 10 thereof. It is for the competent national authorities to ascertain, in the light of all the circumstances at issue, whether that connection is plausible.**

[Signatures]

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* Language of the case: German.