

Netherlands - AJDCoS, 20 July 2007, 200608939/1

Country of Decision:

Netherlands

Country of Applicant:

Kosovo

Date of Decision:

20-07-2007

Citation:

200608939/1

Court Name:

Administrative Jurisdiction Division of the Council of State

Keywords:

Subsidiary Protection

Armed conflict

Relevant Legislative Provisions:European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 2](#) [2] > [Art 2 \(e\)](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 2](#) [2]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 15](#) [3] > [Art 15 \(a\)](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 15](#) [3] > [Art 15 \(b\)](#) [4]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 15](#) [3] > [Art 15 \(c\)](#) [4]

Headnote:

The question as to whether or not an armed conflict existed has to be answered according to humanitarian law (common Art 3 of the Geneva Convention and the second additional protocol).

Facts:

This case concerned the further appeal of the Secretary of State for Justice against the decision of

the District Court of Assen (1 December 2006, 06/54996, 06/55003, 06/55005, 06/54991, 06/55000 and 06/55004).

The applicants were Roma from Kosovo. They argued that they were entitled to subsidiary protection under Art 15(c) of the Qualification Directive. They argued that the position of Roma in Kosovo was particularly difficult and met the serious harm threshold. In dispute was whether or not an internal armed conflict existed.

Decision & Reasoning:

The Council of State held that the concept of 'internal armed conflict' is not defined in the Qualification Directive and so they applied international humanitarian law and found that such a conflict exists when: an organised armed group with a command responsibility is able to conduct military operations on the territory of a state (or a part thereof) against the armed forces of the state authorities. These military operations must be protracted and connected. It was further held that less serious forms of violence, such as internal disturbances and riots or acts cannot lead to the conclusion that such a conflict existed.

Outcome:

The appeal was allowed.

Attachment(s):



[2007_07_20, ABRvS \(MK\), 200608939_1, Servië.pdf](#)[5]

National / Other Legislative Provisions:

[Fourth Geneva Convention 1949](#) [6]

[Fourth Geneva Convention 1949 - Art 3](#) [7]

[Additional Protocol II 1977](#) [8]

[Additional Protocol II 1977 - Art 1\(1\)](#) [9]

[Additional Protocol II 1977 - Art 1\(2\)](#) [10]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[2] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 15 QD>

[4] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2015%20QD>

[5]

https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/2007_07_20%2C%20ABRvS%20%28MK%2

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/704>

[7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/705>

[8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/706>

[9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/707>

[10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/708>