

CJEU - C-285/12, Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides

Country of Applicant:

Guinea

Date of Decision:

30-01-2014

Citation:

C-285/12

Court Name:

Fourth Chamber of the CJEU

Keywords:[Armed conflict](#) [1][Individual threat](#) [2][Real risk](#) [3][Internal armed conflict](#) [4][International armed conflict](#) [5][Subsidiary Protection](#) [6]**Relevant Legislative Provisions:**European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Recital 5](#) [8]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Recital 6](#) [9]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Recital 24](#) [10]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [11] > [Art 2 \(e\)](#) [11]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [11]**Headnote:**

?Internal armed conflict? in the context of international protection means armed groups confronting each other or the State armed forces, and is defined independently of international

humanitarian law. No special conditions apply regarding intensity, organisation or duration of conflict.

Facts:

The case concerns the application of a Guinean national for international protection in Belgium, on account of repression and violence endured during his participation in protest movements against the ruling regime. Under Article 2(e) of the [Qualification Directive](#) [12], subsidiary protection applies if there are 'substantial grounds for believing that', if returned to their country of origin, an applicant faces a 'real risk of suffering serious harm'. Serious harm includes death, inhuman treatment, or a 'serious and individual threat to a civilian's life' by reason of indiscriminate violence in situations of international or internal armed conflict? (Article 15(c)).

The applicant was refused protection in Belgium because the situation in Guinea was not regarded as constituting 'armed conflict not of an international character' under international humanitarian law. The applicant appealed, arguing that he had sought protection under EU law, and international humanitarian law was irrelevant. The highest court in Belgium asked the CJEU to clarify what the Qualification Directive means by 'internal armed conflict'.

Questions referred for a preliminary ruling:

Must Article 15(c) of Council Directive 2004/83/EC be interpreted as meaning that that provision offers protection only in a situation of 'internal armed conflict', as interpreted by international humanitarian law and, in particular, by reference to Common Article 3 of the four Geneva Conventions of 12 August 1949??

If the concept of 'internal armed conflict' referred to in Article 15(c) of Directive 2004/83 is to be given an interpretation independent of Common Article 3 of the four Geneva Conventions of 12 August 1949, what, in that case, are the criteria for determining whether such an 'internal armed conflict' exists?

Decision & Reasoning:

Regarding the first question, the CJEU ruled that 'internal armed conflict' has a definition independent of international humanitarian law. The Court accepted the argument in Advocate General Mengozzi's Opinion [66-67] that international humanitarian law and the Qualification Directive pursue different aims and establish distinct protection mechanisms. The former provides protection for civilian populations in a conflict zone by restricting the effects of war, whereas the latter protects certain civilians who are outside the conflict zone. The definition of armed conflict in international humanitarian law is not designed to identify situations in which international protection is necessary. Therefore, eligibility for subsidiary protection due to 'internal armed conflict' cannot be subject to conditions in international humanitarian law.

On the second question about defining 'internal armed conflict', the CJEU gave it the 'usual meaning in everyday language' [28]: armed groups confronting each other or the State armed forces. Not all 'internal armed conflicts' will warrant subsidiary protection. Applying the reasoning in paragraph 43 of [Case C-465/07 Elgafaji](#) [13], and noting the wording in Articles 2(e) and 15(c) of the Qualification Directive, the Court noted that only those conflicts where there are 'substantial grounds' for believing that the applicant if returned would face a 'real risk' of being subjected to 'a serious and individual threat' to their life will attract protection. Given this existing requirement,

the CJEU held it unnecessary to impose extra conditions relating to the intensity, level of organisation and duration of the relevant conflict. Such conditions would not help the aim of the Qualification Directive to aid the identification of persons genuinely in need of international protection.

Outcome:

The CJEU decided to answer the questions as follows:

On a proper construction of Article 15(c) of Council Directive 2004/83/EC ? it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as ?armed conflict not of an international character? under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

Case Law Cited:

CJEU - C?119/12 Probst

CJEU - C?549/07 Wallentin-Hermann

[CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie](#) [13]

[ICTY - Prosecutor v Tadic \(IT-94-1-AR72\) ICTY](#) [14]

Attachment(s):



[Original judgment - C-285.12.pdf](#)[15]

Authentic Language:

French

Country of preliminary reference:

Belgium

National / Other Legislative Provisions:

Common Article 3 of the four Geneva Conventions

Belgium - Vreemdelingenwet/loi sur les étrangers 15/12/1980 (Aliens Act) - Artikel 48/4

Links:

- [1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A14
- [2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A205
- [3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A202
- [4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A203
- [5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A204
- [6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A81
- [7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

- [8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%202>
- [9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%206>
- [10] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%2024>
- [11] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>
- [12] <https://www.asylumlawdatabase.eu/en/content/en-qualification-directive-directive-200483ec-29-april-2004>
- [13] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-46507-meki-elgafaji-noor-elgafaji-v-staatssecretaris-van-justitie>
- [14] <https://www.asylumlawdatabase.eu/en/content/icty-prosecutor-v-tadic-it-94-1-ar72-icty>
- [15] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgment%20-%20C-285.12.pdf>