

CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie

Country of Applicant:

Iraq

Date of Decision:

17-02-2009

Citation:

C-465/07

Court Name:

Grand Chamber of the CJEU

Keywords:[Armed conflict](#) [1][Indiscriminate violence](#) [2][Individual threat](#) [3][Subsidiary Protection](#) [4][Serious harm](#) [5]

Relevant Legislative Provisions:Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6]

Council of Europe Instruments

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6] > [Article 3](#) [7]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Recital 1](#) [9]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Recital 6](#) [10]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > Recital 10European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Recital 24](#) [11]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Recital 25](#) [12]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Recital 26](#) [13]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Art 1](#) [14]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Art 2](#) [15]

Headnote:

This preliminary ruling concerned the interpretation and application of Article 15(c) of the Qualification Directive and the protection offered under this provision.

Facts:

Mr and Mrs. Elgafaji applied for temporary residence permits in the Netherlands on the basis of risk upon return to Iraq. They partly relied on their personal circumstances as Mr. Elgafaji, a Shiite Muslim, work for a British firm in Iraq previously providing security for personnel transport. They had received a threatening letter after their Uncle was killed by militia. The Minister for Immigration and Integration denied their application and they appealed the decision. The Rechtbank te s-Gravenhage Court annulled the orders refusing residence permits. Seised on appeal the Raad van State (Council of State) held that there were difficulties in interpreting the provisions of the Directive. Therefore it decided to stay proceedings and to refer the following questions for preliminary ruling before the CJEU: Is Article 15(c) of Council Directive 2004/83/EC [1](#) [16] 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 to be interpreted as offering protection only in a situation on which Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case-law of the European Court of Human Rights, also has a bearing, or does Article 15(c), in comparison with Article 3 of the Convention, offer supplementary or other protection?

If Article 15(c) of the Directive, in comparison with Article 3 of the Convention, offers supplementary or other protection, what are the criteria in that case for determining whether a person who claims to be eligible for subsidiary protection status runs a real risk of serious and individual threat by reason of indiscriminate violence within the terms of Article 15(c) of the Directive, read in conjunction with Article 2(e) thereof?

Decision & Reasoning:

The Court noted that the referring Court was seeking guidance on the protection guaranteed under Article 15(c) of the Directive, in comparison to that provided under Article 3 ECHR as interpreted by the European Court of Human Rights. The CJEU held that Article 15(b) of the Directive which corresponds, in essence, to Article 3 ECHR. The interpretation of Article 15(c) must be carried out independently, although with due regard for fundamental rights, as they are guaranteed before the ECHR (Para 28). The harm defined in Article 15(c) covers a more general risk of harm. Para 34: Reference is made, more generally, to a 'threat' to a civilian's life or person rather than to specific acts of violence. Furthermore, that threat is inherent in a general situation of 'international or internal armed conflict'. Lastly, the violence in question which gives rise to that threat is described as 'indiscriminate', a term which implies that it may extend to people irrespective of their personal circumstances. The word 'individual' covers harm to civilians irrespective of their identity, where the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country, or region of the country, would solely on account of his presence on the

territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) (Para 35). The Court found that such an interpretation would not be invalidated by Recital 26 in the preamble of the Directive which still allows for the possibility of an exceptional situation which would be characterised by such a high degree of risk that substantial grounds would be shown for believing that the person would be subject individually to the risk in question. The more the Applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection (Para 39). The following factors may also be taken into account:

- the geographical scope of the situation of indiscriminate violence and the actual destination of the Applicant in the event that he is returned to the relevant country, and the existence, if any, of a serious indication of real risk, such as that referred to in Article 4(4) of the Directive, an indication in the light of which the level of indiscriminate violence required for eligibility for subsidiary protection may be lower.

Therefore the Court provided the answers to the questions as stated below. It also held that such an approach was fully compatible with the ECHR including caselaw of the European Court of Human Rights under Article 3 ECHR.

Outcome:

The Court ruled that: Article 15(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, in conjunction with Article 2(e) thereof, must be interpreted as meaning that:

- the existence of a serious and individual threat to the life or person of an Applicant for subsidiary protection is not subject to the condition that that Applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place ? assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred ? reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.

Observations/Comments:

See the Hungarian Helsinki Committee Publication: ?The Luxembourg Court: Conductor for a Disharmonious Conductor? Mapping the national impact of the four initial asylum-related judgments of the EU Court of Justice? available at: <http://helsinki.hu/wp-content/uploads/The-Luxemburg-Court-06-04-2012-final.pdf> [17] This looks at the impact of this Judgment at the national level.

See also UNHCR?s study: ?Safe at Last? Law and Practice in Selected EU Member States with respect to asylum seekers fleeing indiscriminate violence? available at: <http://www.refworld.org/docid/4e2ee022.html> [18]

Other summaries and commentaries on this judgment by a variety of different actors are available

at:

http://ec.europa.eu/dgs/legal_service/arrets/07c465_en.pdf [19]

http://rogererrera.fr/droit_etrangers/docs/Elgafaji_09_final.pdf [20]

<http://www.aej.org/spip.php?article296> [21]

Case Law Cited:

[ECtHR - NA v UK, Application No. 25904/07](#) [22]

CJEU - C-188/07 Commune de Mesquer v Total France SA and Total International Ltd.

CJEU - C-106/89 Marleasing SA v La Comercial Internacional de Alimentacion SA

Attachment(s):



[Original judgment - C-465.07.odt](#)[23]

Other sources cited:

The Advocate General's opinion cites UNHCR's study on *Asylum in the European Union: A Study of the Implementation of the Qualification Directive*, November 2007 as well as McADam J, *Complementary Protection in International Refugee Law*

Authentic Language:

Dutch

Country of preliminary reference:

Netherlands

National / Other Legislative Provisions:

Netherlands - Vreemdelingenwet 2000 (Aliens Act) - Art 29

Netherlands - Decree on Aliens 2000

Netherlands - Circular on Aliens 2000

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%3A41

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A205

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A81

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A74

[6] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[7] https://www.asylumlawdatabase.eu/node/195#toc_12

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

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

[10] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%206>

[11] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%2024>

[12] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%2025>

[13] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%2026>

[14] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%201%20QD>

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

[16]

<http://curia.europa.eu/juris/document/document.jsf?docid=72161&mode=lst&pageIndex=1&>

[17] <http://helsinki.hu/wp-content/uploads/The-Luxemburg-Court-06-04-2012-final.pdf>

[18] <http://www.refworld.org/docid/4e2ee022.html>

[19] http://ec.europa.eu/dgs/legal_service/arrets/07c465_en.pdf

[20] http://rogererrera.fr/droit_etrangers/docs/Elgafaji_09_final.pdf

[21] <http://www.aej.org/spip.php?article296>

[22] <https://www.asylumlawdatabase.eu/en/content/ecthr-na-v-uk-application-no-2590407>

[23] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgment%20-%20C-465.07.odt>