InfoCuria

Giurisprudenza

ECLI:EU:C:2023:13

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

12 January 2023 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Common asylum policy – Eligibility for refugee status – Directive 2011/95/EU – Article 10(1)(e) and (2) – Reasons for persecution – Concepts of 'political opinion' and 'attributed political opinion' – Attempts by an applicant for asylum to defend himself, in his country of origin, by legal means against non-State actors acting illegally and in a position to exploit the mechanism by which that State imposes penalties for criminal offences)

In Case C-280/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 21 April 2021, received at the Court on 30 April 2021, in the proceedings

**P.I.**

v

**Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos,**

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan, N. Piçarra (Rapporteur), N. Jääskinen and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– P.I., by L. Biekša, advokatas,

– the Lithuanian Government, by K. Dieninis and V. Kazlauskaitė-Švenčionienė, acting as Agents,

– the European Commission, by A. Azéma and A. Steiblytė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2022,

gives the following

**Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 10 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 P.I. and the Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos (Migration Department under the Ministry of the Interior of the Republic of Lithuania, 'the Migration Department') relating to the Migration Department's refusal to grant him refugee status.

**Legal context**

***International law***

3 The Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951 and 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 and which entered into force on 4 October 1967 ('the Geneva Convention'), provides in the first subparagraph of Article 1(A)(2) that the term 'refugee' applies 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'.

***European Union law***

4 Recitals 4, 12, 16 and 29 of Directive 2011/95 state:

(4) The Geneva Convention and the Protocol provide 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.

…

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

…

(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 Article 2(d) of that directive reproduces, for the purposes thereof, the definition of 'refugee' given in in the first subparagraph of Article 1(A)(2) of the Geneva Convention and, under paragraph (e), defines 'refugee status' as 'the recognition by a Member State of a third-country national or a stateless person as a refugee'.

6 Article 2(h) of Directive 2011/95 defines an 'application for international protection' as 'a request made by a third-country national … for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status' and paragraph (i) defines an 'applicant' as 'a third-country national … who has made [such an application] in respect of which a final decision has not yet been taken'.

7 Article 4 of that directive, entitled 'Assessment of facts and circumstances', provides, in paragraphs 3 and 5:

'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;

…

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.'

8 Article 6(a) and (c) of the directive identifies 'actors of persecution' as the State and 'non-State actors' in respect of which it can be demonstrated that the State is unable or unwilling to provide protection against persecution or serious harm.

9 Article 9 of Directive 2011/95, entitled 'Acts of persecution', provides:

'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:

…

(c) prosecution or punishment which is disproportionate or discriminatory;

…

3. 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 paragraph 1 of this Article or the absence of protection against such acts.'

10 Article 10 of the directive, entitled 'Reasons for persecution', provides, in paragraphs 1(e) and 2:

'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.'

11 Article 13 of that directive, entitled 'Granting of refugee status', is worded as follows:

'Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.'

***Lithuanian law***

12 Article 83(2) of the Lietuvos Respublikos įstatymas dėl užsieniečių teisinės padėties Nr. IX-2206 (Law of the Republic of Lithuania on the legal status of foreigners No IX-2206) of 29 April 2004 (Žin., 2004, No 73-2539), which transposes into Lithuanian law, inter alia, Directive 2011/95, provides, in the version amended by Law No XII-1396 of 9 December 2014 (TAR, 2014, No 19923):

'Where it is established, in the course of the examination of the application, that evidence relating to the decision on the status of the applicant for asylum cannot be substantiated by written evidence, despite his or her genuine efforts, that evidence shall be assessed in the applicant's favour and the application for asylum shall be considered to be well founded if that application was made at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; if 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; and if 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.'

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

13 On 15 July 2019, P.I., a third-country national, filed an application for asylum with the Migration Department. In support of that application, he explained that, in 2010, in his country of origin, he entered into a contract for the purchase of shares with an undertaking belonging to an individual connected with the spheres of power, including the intelligence services. He paid that undertaking the sum of 690 000 United States dollars (USD) (approximately EUR 647 000). As that contract was not performed, P.I. claimed repayment of that amount from the other party to the contract. Subsequently, he was subject to criminal proceedings instigated by the owner of that undertaking and, in December 2015, he had to give up the main part of a project developed by his undertaking, control of which passed to certain undertakings belonging to other individuals.

14 Those criminal proceedings were allegedly suspended in January 2016. However, after P.I.'s attempt to bring an action before the courts challenging the illegal appropriation of his project, those proceedings were reopened in April 2016 following a statement made against P.I. by a person connected with the new owners of his undertaking. In December 2016 and January 2017, those criminal proceedings resulted in orders convicting P.I. and placing him in provisional custody, and he was deprived in the meantime of the share of the project that he still owned.

15 By decision of 21 September 2020, the Migration Department rejected the application to grant P.I. refugee status. The investigation of that department led to the finding that, even though the reasons giving rise to the risk of criminal proceedings and custody had been identified and considered to be plausible, those reasons did not come under any of the reasons covered by the Geneva Convention, including, in particular, the reason based on the concept of 'political opinion'.

16 After his action brought against that decision before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) was dismissed, P.I. appealed against the judgment of that court before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), the referring court. He challenges the decision of the Migration Department upheld at first instance, claiming that, where acts of persecution or the absence of protection from such acts are connected, as in the present situation, not to 'political activity' in the traditional sense or to political ideas expressed in public, but to active resistance to a group acting illegally and influencing the State via corruption, that resistance is covered by the concept of 'political opinions' within the meaning of Article 10 of Directive 2011/95 as 'attributed political opinions'. He specifies that the criminal offence that he is charged with (extortion with a view to appropriating an asset of very high value belonging to another) is in actual fact a civil dispute relating to material assets between economic operators.

17 The referring court considers that P.I. has stated consistently throughout the investigation that (i) the businessmen connected with State powers via corruption had seized his assets; (ii) following his opposition to the transaction concerned, criminal proceedings instigated by one of those businessmen had been opened against him; (iii) those criminal proceedings, intended to intimidate him, had been resumed after they had been suspended, following P.I.'s attempt to defend himself in the courts, and had resulted in, inter alia, a custody order against him. That court adds that, according to national legislation on asylum, prosecution or criminal penalties constitute acts of persecution if they are disproportionate and discriminatory, and specifies that it finds it plausible that those criminal proceedings were 'fabricated', so that, should P.I. return to his country of origin, there is a risk that he would continue to be subject to acts of persecution.

18 In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is opposition to an illegally operating and corruptly influential group which oppresses an applicant for asylum through the machinery of the State and against which it is impossible to mount a legitimate defence due to extensive corruption in the State to be regarded as equivalent to attributed political opinion within the meaning of Article 10 of [Directive 2011/95]?'

**Consideration of the question referred**

19 By its question, the referring court asks, in essence, whether Article 10(1)(e) and (2) of Directive 2011/95 must be interpreted as meaning that the concept of 'political opinion' includes attempts by an applicant for international protection, within the meaning of Article 2(h) and (i) of that directive, to defend his or her personal material and economic interests by legal means against non-State actors acting illegally, where those actors, on account of their connections with the State via corruption, are in a position to exploit, to the applicant's detriment, the mechanism by which that State imposes penalties for criminal offences.

20 As a preliminary point, it should be borne in mind that Directive 2011/95, as set out in recital 12 of the 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.

21 The directive must be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention, which is the cornerstone of the international legal regime for the protection of refugees, as recalled in recital 4 of the directive, and also, as is apparent from recital 16 of the directive, with the rights recognised by the Charter of Fundamental Rights of the European Union ('the Charter') (see, to that effect, judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)*, C-238/19, EU:C:2020:945, paragraphs 19 and 20 and the case-law cited).

22 According to Article 2(d) of Directive 2011/95, a 'refugee' is defined, inter alia, as 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 his or her country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country.

23 Article 13 of the directive provides that the Member State concerned is required to grant refugee status to any third-country national who qualifies under, inter alia, Articles 9 and 10 of the directive.

24 An applicant for such status must therefore, on account of circumstances existing in his or her country of origin, have a well-founded fear that he or she will be subject to 'acts of persecution' within the meaning of Article 9(1) and (2) of Directive 2011/95 carried out towards him or her personally by 'actors of persecution' defined in Article 6 of that directive, provided that there is a causal link, for the purposes of Article 9(3), read in the light of recital 29 of the directive, between those acts or the absence of protection from those acts and at least one of the five reasons listed in Article 10 of the directive, one such reason being 'political opinions' (see, by analogy, judgment of 5 September 2012, *Y and Z,* C-71/11 and C-99/11, EU:C:2012:518, paragraph 51).

25 Regarding the concept of 'political opinion', to which the referring court's uncertainties relate, Article 10(1)(e) of Directive 2011/95 provides that the concept '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'. In addition, in accordance with Article 10(2), it is immaterial whether the applicant actually possesses the characteristic related to political opinion which attracts the persecution, provided that that characteristic is attributed to the applicant by the actor of persecution.

26 In that connection, it is appropriate, in the first place, to observe that the wording itself of those provisions means that the concept of 'political opinion' is to be interpreted broadly. That premiss is based on several factors. The first is the use of the phrase 'in particular' in order to list, non-exhaustively, the features which may serve to identify that concept. Next, not only 'opinions' are referred to, but also 'thoughts' and 'beliefs' on a matter related to the potential actors of persecution and to the 'policies' or 'methods' of those actors, without those opinions, thoughts or beliefs necessarily being acted upon by the applicant. Last, the perception of the 'political' nature of those opinions, thoughts or beliefs by the actors of persecution is highlighted.

27 That interpretation is borne out by the Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967

Protocol relating to the Status of Refugees (United Nations High Commissioner for Refugees (HCR), 1979, reissued and updated in February 2019, HCR/1P/4/ENG/REV.4), to which reference must be made having regard to the fact that they are particularly relevant in the light of the role conferred on the HCR by the Geneva Convention (see, to that effect, judgment of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 57 and the case-law cited). Those guidelines also provide a broad definition of the concept of 'political opinions' in that the concept can include any opinion or issue involving the State, the Government, society or a policy.

28 In the second place, the concept of 'political opinions' within the meaning of Article 10(1)(e) of Directive 2011/95, given that it is intended to protect the right to freedom of opinion and of expression, must be interpreted in the light of Article 11 of the Charter, which is expressly referred to in recital 16 of the directive as one of the articles which the application of the directive is intended to promote.

29 Under Article 11 of the Charter, everyone has the right to freedom of expression, which includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It follows from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) and from Article 52(3) of the Charter that the rights guaranteed in Article 11 thereof have the same meaning and scope as those guaranteed in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the case-law of the European Court of Human Rights, without prejudice to EU law providing more extensive protection (see, to that effect, judgment of 26 April 2022, *Poland* v *Parliament and Council*, C-401/19, EU:C:2022:297, paragraph 44).

30 It is apparent from that case-law that freedom of expression is one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment; it protects not only 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society' (ECtHR, 15 October 2015, *Perinçek v. Switzerland*,CE:ECHR:2015:1015JUD002751008, § 196(i)).

31 In addition, the European Court of Human Rights highlighted that there is little scope under Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms for restrictions on freedom of expression in political discourse or on debate on questions of public interest, and that freedom of expression is normally given a high degree of protection where the expression relates to matters of public interest (15 October 2015, *Perinçek v. Switzerland*, CE:ECHR:2015:1015JUD002751008, §§ 196(i), 197, 230 and 231). It also clarified that corruption in the management of public affairs within the State is a matter of public interest and its discussion contributes to political debate (see, to that effect, judgment of 31 May 2016, *Nadtoka v. Russia*, CE:ECHR:2016:0531JUD003801005, § 43).

32 That case-law of the European Court of Human Rights, which is relevant to the interpretation of Article 11 of the Charter, supports a broad interpretation of the concept of 'political opinion' within the meaning of Article 10(1)(e) of Directive 2011/95. According to that interpretation, the concept of 'political opinion' covers any opinion, thought or belief which, without necessarily being directly and immediately political, manifests as an act or omission which is perceived by the actors of persecution mentioned in Article 6 of the directive as part of a matter related to those actors or their policies and/or methods and communicating opposition or resistance thereto.

33 In the third place, the broad interpretation of the concept of 'political opinion' as a 'reason for persecution' within the meaning of Article 10(1)(e) of Directive 2011/95 means that, in order to determine the existence of such opinion and the causal link between it and the acts of persecution, the competent authorities of the Member States must take into consideration the general context of the country of origin of the applicant for refugee status, from, inter alia, a political, legal, judicial, historical and sociocultural perspective.

34 Indeed, the Court has previously held that any opinion, thought or belief which, without necessarily being directly and immediately political, manifests as an act or omission can, subject to the specific context of the applicant's country of origin, lead 'actors of persecution' to perceive such opinion, thought or belief to be 'political opinions' within the meaning of Article 10(1)(e) and (2) of the directive.

35 In that connection, it explained, first, that 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, subject to verification by the authorities of the Member State to which the application for international protection was made whether the connection between such refusal and the reason for the persecution concerned is plausible (judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)*, C-238/19, EU:C:2020:945, paragraphs 47, 48, 60 and 61).

36 Second, the Court considered that the involvement of an applicant for international protection in bringing a complaint against his or her country of origin before the European Court of Human Rights, for the purposes of supporting a finding that the governing regime disregards fundamental freedoms, must be defined as a reason for persecution on the ground of 'political opinion' if there are valid grounds for fearing that that involvement would be perceived by the regime as an act of political dissent against which it might consider taking retaliatory action (see, to that effect, judgment of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 90).

37 The same is true of the attempts by an applicant for refugee status to defend his interests by bringing actions before the courts against non-State actors acting illegally against him where those actors, on account of their connections with the State via corruption, are in a position to exploit, to the applicant's detriment, the mechanism by which that State imposes penalties for criminal offences, even where that applicant was motivated to do so in defence of his personal material and economic interests.

38 In the context of the assessment of facts and circumstances provided for in Article 4 of Directive 2011/95 which must, under paragraph 3 of that article, be carried out on a case-by-case basis, in view of all the circumstances of the case, taking into account all the relevant facts, including those set out in paragraph 33 of the present judgment, the competent authorities of the Member State must take into consideration that it may be particularly difficult to provide direct evidence that a certain act or omission by the applicant may be perceived by the authorities of the country of origin as a manifestation of 'political opinion'. Article 4(5) of the directive 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 (see, by analogy, judgment of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)*, C-238/19, EU:C:2020:945, paragraph 55).

39 As observed by the Advocate General in point 59 of his Opinion, the assessment for which those authorities are responsible must therefore relate, in view of all the circumstances of the case, to the plausibility of the political opinions attributed to the applicant by the actors of persecution.

40 Having regard to all the foregoing considerations, the answer to the question referred is that Article 10(1)(e) and (2) of Directive 2011/95 must be interpreted as meaning that the concept of 'political opinion' includes attempts by an applicant for international protection, within the meaning of Article 2(h) and (i) of that directive, to defend his personal material and economic interests by legal means against non-State actors acting illegally, where those actors, on account of their connections with the State via corruption, are in a position to exploit, to the applicant's detriment, the mechanism by which that State imposes penalties for criminal offences, in so far as those attempts are perceived by the actors of persecution as opposition or resistance as part of a matter related to those actors or their policies and/or methods.

**Costs**

41 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 (Third Chamber) hereby rules:

**Article 10(1)(e) and (2) 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 meaning that the concept of 'political opinion' includes attempts by an applicant for international protection, within the meaning of Article 2(h) and (i) of that directive, to defend his personal material and economic interests by legal means against non-State actors acting illegally, where those actors, on account of their connections with the State via corruption, are in a position to exploit, to the applicant's detriment, the mechanism by which that State imposes penalties for criminal offences, in so far as those attempts are perceived by the actors of persecution as opposition or resistance as part of a matter related to those actors or their policies and/or methods.**

[Signatures]

---

* Language of the case: Lithuanian.