ECLI:EU:C:2023:843

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

9 November 2023 (*)

(Reference for a preliminary ruling – Common policy on asylum and subsidiary protection – Directive 2011/95/EU – Article 15 – Conditions for granting subsidiary protection – Taking into account of factors relating to the applicant's individual position and personal circumstances and to the general situation in the country of origin – Humanitarian situation)

In Case C-125/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (District Court, The Hague, sitting in 's-Hertogenbosch, Netherlands), made by decision of 22 February 2022, received at the Court on 22 February 2022, in the proceedings

X,

Y,

their six minor children

v

Staatssecretaris van Justitie en Veiligheid,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot, S. Rodin and L.S. Rossi (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 23 March 2023,

after considering the observations submitted on behalf of:

– Y, X and their six minor children, by S. Rafi, P.J. Schüller and J.W.J. van den Broek, advocaten,

– the Netherlands Government, by M.K. Bulterman, M.H.S. Gijzen, A. Hanje and J.M. Hoogveld, acting as Agents,

– the Belgian Government, by M. Jacobs and M. Van Regemorter, acting as Agents,

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the French Government, by R. Bénard, A.-L. Desjonquères and J. Illouz, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 8 June 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15 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 X, Y and their six minor children, who are Libyan nationals, and the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands) (‘the State Secretary’), concerning the rejection by the latter of their applications for international protection.

Legal context

European Union law

3 Recitals 12, 16 and 34 of Directive 2011/95 state:

‘(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 ["the Charter"]. 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.

…

(34) It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.'

4 Article 2 of that directive, entitled 'Definitions', provides:

'For the purposes of this Directive the following definitions shall apply:

(a) "international protection" means refugee status and subsidiary protection status as defined in points (e) and (g);

(b) "beneficiary of international protection" means a person who has been granted refugee status or subsidiary protection status as defined in points (e) and (g);

…

(f) "person eligible for subsidiary protection" means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(g) "subsidiary protection status" means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;

(h) "application for international protection" means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

(i) "applicant" means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

…'

5 Article 4 of the said directive, entitled 'Assessment of facts and circumstances', which appears in Chapter II thereof, relating to the '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.

…

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 …

(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;

…

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 [or her] 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.’

6 Article 8(2) of the same directive, entitled ‘Internal protection’, is worded as follows:

‘In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the

country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.'

7 Under Article 15 of Directive 2011/95, entitled 'Serious harm', which appears in Chapter V thereof, relating to 'qualification for subsidiary protection':

'Serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

8 Article 18 of that directive, entitled 'Granting of subsidiary protection status', states:

'Member States shall grant subsidiary protection status to a third-country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.'

Netherlands law

9 Article 29 of the Vreemdelingenwet 2000 (Law on foreign nationals of 2000), of 23 November 2000 (Stb. 2000, No 495), in the version applicable to the dispute in the main proceedings, provides, in paragraph 1 thereof:

'1. The fixed-term residence permit … may be issued to a foreign national who:

(a) has refugee status; or

(b) establishes to the requisite standard that he or she has valid reasons to believe that, if he or she is expelled, he or she will face a real risk of suffering serious harm, which is:

1°. the death penalty or execution;

2°. torture, inhuman or degrading treatment or punishment; or

3°. serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

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

10 On 28 January 2018, X and Y, two spouses of Libyan nationality, lodged, also on behalf of their six minor children, applications for international protection with the State Secretary, claiming that, if they were returned to Libya, they would face a real risk of 'serious harm' within the meaning of Article 15(b) and/or (c) of Directive 2011/95.

11 In support of their applications for international protection, X and Y relied on facts relating both to their personal circumstances and to the general circumstances of their country of origin, in particular the general level of violence in Libya and the resulting humanitarian situation.

12 More specifically, X stated that he had worked in Tripoli (Libya) from 2012 until June 2017 as a bodyguard for prominent politicians, including two prime ministers, a deputy prime minister and several ministers. He claims to have been the victim of a shooting outside his working hours, during which he was shot in the head and received a bullet fragment in his left cheek, and to have subsequently received death threats, during telephone conversations which took place approximately five months and one to two years after the date of that shooting, respectively. X has suspicions as to the identity of the persons responsible for those acts, but is unable, however, to provide proof. In addition, X invoked the fact that his brother had informed him that militias were trying to take over a piece of land that he would have inherited from his father and had threatened to kill anyone who opposed them. Finally, X stated that his departure from Libya was also due to difficult living conditions in Tripoli, including the absence of fuel, drinking water and electricity. Y, for her part, based her application for international protection on the fear resulting from X's personal experience, as well as from the general situation of insecurity in Libya, which also caused her health problems.

13 By separate decisions of 24 December 2020, the State Secretary rejected the applications for international protection lodged by X and Y as unfounded. First, he took the view that the applicants had not had a fear of serious harm, within the meaning of Article 15(b) of Directive 2011/95. He found that the two alleged threats were not credible and that X had not demonstrated that the shooting of which he had been a victim had specifically targeted him, or that there had been a link between that violence and his professional activity as a bodyguard to high-level politicians. Second, the State Secretary considered that it was for him to identify the groups at risk and to determine whether there existed a situation of risk such as that envisaged in Article 15(c) of that directive. Not believing it necessary to assess the general security situation in Libya, however, he concluded that the applicants had not had a fear of serious harm within the meaning of the latter provision, either.

14 X and Y brought actions against those decisions before the rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (District Court, The Hague, sitting in 's-Hertogenbosch, Netherlands).

15 First of all, that court emphasises that the applications for international protection at issue in the main proceedings are supported both by the individual and personal circumstances of the applicants and by the reference to the general situation of violence and to the humanitarian situation resulting from that violence in the country of origin. It observes, however, that it does not appear that such factors, considered separately, attain the degree of individualisation of serious harm and the threshold of seriousness of indiscriminate violence required to be eligible for the subsidiary protection conferred, respectively, in Article 15(b) and in Article 15(c) of Directive 2011/95.

16 According to that court, the question must therefore be asked whether Article 15 of that directive must be interpreted as meaning that the manifestations of serious harm referred to in Article 15 must be assessed strictly separately, with the consequence that the facts and circumstances alleged by the applicant are relevant only for substantiating the fear of one of those types of serious harm, or, on the other hand, that it is necessary to carry out a full and joint assessment of all the relevant factors, relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin, before determining which manifestation of serious harm such facts and such circumstances are capable of substantiating.

17 The referring court considers, in that regard, that the starting point of the assessment of the existence of a real risk of serious harm is the applicant's need for protection and that the first interpretation of Article 15 of Directive 2011/95, summarised in the preceding paragraph, leads to a lacuna in the protection afforded by that provision, which renders ineffective the subsidiary protection regime for which it provides. The second interpretation of that Article 15, summarised in the preceding paragraph, is, for its part, consistent with the scheme of that directive and with its objectives, as well as with the case-law of the European Court of Human Rights on the interpretation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), which should be taken into account in the interpretation of Article 4 of the Charter, by virtue of Article 52(3) thereof.

18 Next, the referring court asks the Court to specify the manner in which the reasons specific to the applicant's personal circumstances, as identified in the judgment of 17 February 2009, *Elgafaji* (C-465/07, EU:C:2009:94), must be taken into account in the assessment made in the light of Article 15(c) of Directive 2011/95. In that context, the referring court wishes, inter alia, for the Court to clarify whether the taking into account of the individual position and personal circumstances of an applicant for international protection goes beyond the condition of individualisation, as follows from the judgment of the ECtHR of 17 July 2008, *NA. v. the United Kingdom* (CE:ECHR:2008:0717JUD002590407, § 115), namely whether individual circumstances other than the mere fact of coming from an area of a given country where 'the most extreme cases of general violence', within the meaning of the latter judgment, occur, may substantiate a fear of the serious harm defined in the said provision.

19 If so, the referring court asks the Court to indicate whether, on the one hand, personal factors or the risk of being the victim of 'criminal violence' as a result of a situation of indiscriminate violence and, on the other hand, non-personal individual circumstances, such as the exercise of certain professions and/or the places where they are exercised, or the fact of having to travel to places in order to receive basic services, must be taken into account.

20 That court also wishes to know how the level of indiscriminate violence in the applicant's country of origin, as referred to in Article 15(c) of Directive 2011/95, must be taken into account in the assessment of the existence of serious harm, within the meaning of Article 15(a) and (b) thereof. In particular, it seeks to know whether the inverse correlation between the applicant's ability to show that he or she is specifically affected by reason of factors particular to his or her personal circumstances and the level of indiscriminate violence required for him or her to be eligible for subsidiary protection, resulting from the case-law arising from the judgment of 17 February 2009, *Elgafaji* (C-465/07, EU:C:2009:94, paragraph 39), applies also to the assessment of the serious harm referred to in the said Article 15(b) where there exists a high level of general violence in the applicant's country of origin but where that alone is not sufficient to justify the grant of subsidiary protection.

21 Lastly, the referring court seeks to know whether and under what conditions a humanitarian situation, which, unlike that in the case which gave rise to the judgment of 18 December 2014, *M'Bodj* (C-542/13, EU:C:2014:2452), is the direct or indirect consequence of acts of violence committed by an actor of serious harm inflicted in the context of an international or internal armed conflict, and which is liable to result in a breach of Articles 1 and 4 and Article 19(2) of the Charter, should be taken into account in assessing an application for subsidiary protection. That court specifies, in that regard, that it is referring both to the humanitarian situation deliberately created by an actor of serious harm and to that which would be caused by the indifferent attitude of such an actor to the consequences of an armed conflict for the civilian population.

22 It is in those circumstances that the rechtbank Den Haag, zittingsplaats ’s-Hertogenbosch (District Court, The Hague, sitting in ’s-Hertogenbosch) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 15 of [Directive 2011/95], read in conjunction with Article 2(g) [and] Article 4 [thereof], [and with] Article 4 … and Article 19(2) of the [Charter], be interpreted as meaning that, in considering whether an applicant is in need of subsidiary protection, all relevant factors relating both to the applicant’s individual situation and personal circumstances, and to the general situation in the country of origin, must always be examined and assessed as an integrated whole and having regard to their mutual interdependence before determining what feared manifestation of serious harm may be substantiated by those factors?

(2) In the event that the Court of Justice answers the first question in the negative, is the evaluation of the applicant’s individual situation and personal circumstances in the context of the assessment of Article 15(c) of [Directive 2011/95], which the Court has already clarified must be taken into account, more comprehensive than the assessment of the individualisation requirement referred to in the judgment of the [ECtHR of 17 July 2008,] *NA. v. the United Kingdom* [(CE:ECHR:2008:0717JUD002590407)]? Can those factors, in the case of the same application for subsidiary protection, be taken into account when assessing both Article 15(b) … and Article 15(c) of [Directive 2011/95]?

(3) Must Article 15 of [Directive 2011/95] be interpreted as meaning that, when assessing the need for subsidiary protection, the so-called sliding scale, which the Court of Justice has already clarified must be applied when assessing an alleged fear of serious harm as referred to in Article 15(c) of [that directive], must also be applied when assessing an alleged fear of serious harm as referred to in Article 15(b) [thereof]?

(4) Must Article 15 of [Directive 2011/95], read in conjunction with Article 1 …, Article 4 … and Article 19(2) of the [Charter], be interpreted as meaning that humanitarian circumstances, which are a direct or an indirect consequence of acts and/or omissions of an actor of serious harm, must be taken into account when assessing whether an applicant is in need of subsidiary protection?’

23 By decision of the President of the Court of Justice of 8 April 2022, the proceedings in the present case were stayed, pursuant to Article 55(1)(b) of the Rules of Procedure of the Court of Justice, pending the decision closing the proceedings in the case *Staatssecretaris van Justitie en Veiligheid (Concept of serious and individual threat)* (C-579/20).

24 Following the withdrawal of the request for a preliminary ruling in that case and its removal from the Register by the order of 18 May 2022, *Staatssecretaris van Justitie en Veiligheid (Concept of serious and individual threat)* (C-579/20, EU:C:2022:416), the proceedings in the present case were accordingly resumed on 20 May 2022.

The request for an expedited procedure

25 The referring court requested that the present reference for a preliminary ruling be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure.

26 In support of its request, that court submitted, in essence, that, although the applicants were lawfully resident until it had given a final ruling on the dispute in the main proceedings, the minor children of X and Y were in a situation of insecurity. In that regard, that court stated that five of the

six minor children of X and Y had received educational assistance from 22 April 2020 and that those children were seriously threatened in their development and were growing up in a dangerous and unstable educational context, in which they were witnesses and victims of assault and suffered from feelings of emotional and physical abandonment. Moreover, the referring court emphasised that, according to X and Y, the context of uncertainty in question resulted also from the length of the proceedings at issue in the main proceedings and the uncertainty as to their outcome.

27 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.

28 In the case at hand, on 20 May 2022, after hearing the Judge-Rapporteur and the Advocate General, the President of the Court decided to reject the request referred to in paragraph 25 of the present judgment.

29 It should be borne in mind that such an expedited procedure is a procedural instrument intended to respond to a situation of extraordinary urgency (judgment of 13 July 2023, *Azienda Ospedale-Università di Padova*, C-765/21, EU:C:2023:566, paragraph 26 and the case-law cited).

30 The referring court, however, has not provided all the information necessary for assessing the existence of such a situation of extraordinary urgency and, in particular, the risks that would be incurred were that reference to follow the ordinary procedure. Although that court has referred to risks for the development of X and Y's minor children arising from the family, social and educational context in which they have been placed, it has not, however, demonstrated that there is a link between the duration of the proceedings before the Court and the prolongation of the situation of insecurity in which those children find themselves. Nor has the referring court set out the reasons for which such risks could be avoided or for which such a situation of uncertainty could be resolved if the present case were dealt with under the expedited procedure, the legal uncertainty affecting the said children as to the outcome of the proceedings at issue in the main proceedings not being, in itself, capable of justifying the application of an expedited procedure (see, to that effect, order of the President of the Court of 27 June 2016, *S.*, C-283/16, EU:C:2016:482, paragraph 11 and the case-law cited).

31 Moreover, without being decisive in itself, the significant lapse of time between, on the one hand, the lodging of the applicants' applications for international protection and the decisions of the State Secretary rejecting those applications, and, on the other hand, the lodging of the present reference for a preliminary ruling, does not militate in favour of adopting a decision subjecting that reference to an expedited procedure (see, to that effect, order of the President of the Court of 27 June 2016, *S.*, C-283/16, EU:C:2016:482, paragraph 12).

Consideration of the questions referred

Preliminary observations

32 Before answering the questions referred, it should be noted, as a preliminary point, that, first of all, Directive 2011/95 having been adopted on the basis, inter alia, of Article 78(2)(b) TFEU, it seeks, inter alia, to establish a uniform system of subsidiary protection. In that regard, it follows from recitals 12 and 34 thereof that one of that directive's main objectives is to ensure that Member States apply common criteria for the identification of persons genuinely in need of international

protection by offering them an appropriate status (see, to that effect, judgments of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 35 and the case-law cited, and of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')*, C-901/19, EU:C:2021:472, paragraphs 22 and 34).

33 Next, it is apparent from Article 18 of Directive 2011/95, read in conjunction with the definition of 'person eligible for subsidiary protection' in Article 2(f) of that directive, and that of 'subsidiary protection status' in Article 2(g) thereof, that the subsidiary protection status referred to in that directive must, in principle, be granted to a third-country national or stateless person who faces a real risk of suffering serious harm, within the meaning of Article 15 of the said directive, if returned to his or her country of origin or to his or her country of former habitual residence (judgment of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')*, C-901/19, EU:C:2021:472, paragraph 23 and the case-law cited).

34 Last, Directive 2011/95 repealed and replaced, with effect from 21 December 2013, 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 (OJ 2004 L 304, p. 12). That change of directive not having resulted in any change in the legal rules for granting subsidiary protection or as regards the numbering of the relevant provisions, however, the case-law concerning Directive 2004/83 is relevant for interpreting Directive 2011/95. In particular, as the wording of Article 15 of Directive 2011/95 is identical to that of Article 15 of Directive 2004/83, the case-law concerning the latter provision is relevant to the interpretation of the former (see, to that effect, judgment of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')*, C-901/19, EU:C:2021:472, paragraph 24).

The first question

35 By its first question, the referring court asks, in essence, whether Article 15 of Directive 2011/95 must be interpreted as meaning that, in order to determine whether an applicant for international protection is eligible for subsidiary protection, the competent national authority must examine all the relevant factors, relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin, before identifying the type of serious harm that those factors may potentially substantiate.

36 In the first place, it should be noted that Article 15 provides for three types of 'serious harm' such as to justify the grant of subsidiary protection to a person who, if returned to his or her country of origin or to his or her country of former habitual residence, would face a real risk of suffering such harm.

37 As regards, first, the grounds set out in Article 15(a), namely the risk of 'the death penalty or execution', and in point (b) thereof, namely the risk of 'torture or inhuman or degrading treatment or punishment', such 'serious harm' covers situations in which the applicant for subsidiary protection is specifically exposed to the risk of a particular type of harm, which requires a clear degree of individualisation (judgments of 17 February 2009, *Elgafaji*, C-465/07, EU:C:2009:94, paragraphs 32 and 38, and of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')*, C-901/19, EU:C:2021:472, paragraph 25 and the case-law cited).

38 It follows that the grant of subsidiary protection under Article 15(a) and (b) of Directive 2011/95 presupposes that there are substantial grounds for believing that the applicant, if returned to his or her country of origin or to his or her country of former habitual residence, would be exposed

specifically and individually to a real risk of being subjected to the death penalty, execution, torture or inhuman or degrading treatment or punishment.

39 That being so, the factors relating to the general situation in the country concerned, including those relating to the general level of violence and insecurity in that country, must also be examined when assessing the existence of such a risk. Such a general context makes it possible to assess, more precisely, the extent to which the applicant is actually exposed to a risk of suffering the serious harm defined in Article 15(a) or (b) of Directive 2011/95.

40 As regards, second, the harm defined in Article 15(c) of that directive, consisting of a 'serious and individual threat to [the applicant's] life or person', it should be noted that that provision covers a 'more general' risk of harm than those referred to in points (a) and (b) of the same article. Reference is thus 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 armed conflict giving rise to 'indiscriminate violence', which implies that it may extend to people irrespective of their personal circumstances or identity, where such violence 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 or her presence on the territory of that country or region, face a real risk of being subject to that threat (see, to that effect, judgment of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')*, C-901/19, EU:C:2021:472, paragraphs 26 and 28 and the case-law cited).

41 It follows that, in an exceptional situation, such as that described in the preceding paragraph of the present judgment, the finding of the existence of a risk of a 'serious and individual threat', within the meaning of Article 15(c) of Directive 2011/95, is not conditional on the applicant proving that he or she is specifically affected by reason of factors particular to his or her personal circumstances (see, to that effect, judgments of 17 February 2009, *Elgafaji*, C-465/07, EU:C:2009:94, paragraph 43, and of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')*, C-901/19, EU:C:2021:472, paragraph 27).

42 However, in other, less exceptional situations, factors relating to the individual position and personal circumstances of the applicant are relevant. Thus, the more the applicant is able to show that he or she is specifically affected by reason of factors particular to his or her individual position or personal circumstances, the lower the level of indiscriminate violence required for him or her to be eligible for subsidiary protection, under Article 15(c) of Directive 2011/95 (see, to that effect, judgments of 17 February 2009, *Elgafaji*, C-465/07, EU:C:2009:94, paragraph 39, and of 30 January 2014, *Diakité*, C-285/12, EU:C:2014:39, paragraph 31).

43 It follows that Article 15 of Directive 2011/95 must be interpreted as meaning that both the circumstances relating to the general situation in the country of origin, particularly the general level of violence and insecurity in that country, and those relating to the individual position and personal circumstances of the applicant are capable of constituting factors relevant to the assessment of any application for subsidiary protection by the competent national authority, irrespective of the specific type of serious harm, within the meaning of that Article 15, which is the subject of such an assessment.

44 In that regard, it is also important to emphasise that, while each of the types of serious harm referred to in Article 15(a) to (c) of Directive 2011/95 constitutes an autonomous ground for recognition of subsidiary protection, the conditions for which must be fully satisfied in order for that protection to be granted, the fact remains, as the Advocate General observed, in essence, in points 30, 40 and 41 of his Opinion, that that article does not establish a hierarchical order between

those various types of serious harm nor does it impose any order in the assessment of the existence of a real risk of suffering one of those types of serious harm. On the one hand, a single application for international protection may reveal the existence of a risk that the applicant will be exposed to several types of serious harm if returned to his or her country of origin or to his or her country of former habitual residence. On the other hand, a single factor may serve to substantiate the existence of a real risk of suffering several of those types of serious harm.

45 In the second place, the interpretation of Article 15 of Directive 2011/95, mentioned in paragraph 43 of the present judgment, is supported by the normative context in which that Article 15 is set.

46 In that regard, it follows, first of all, from Article 4 of that directive, contained in Chapter II thereof, relating to the 'assessment of applications for international protection', and thus applicable both to applications for refugee status and to applications for subsidiary protection within the meaning of the said directive, that the assessment of the facts and circumstances substantiating an application for international protection takes place in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence and entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down in Article 15 of the same directive for the grant of subsidiary protection are satisfied (see, to that effect, judgment of 3 March 2022, *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*, C-349/20, EU:C:2022:151, paragraph 63 and the case-law cited).

47 Although, under Article 4(1) of Directive 2011/95, Member States may require the applicant, during the first of those stages, to submit as soon as possible all elements needed to substantiate the application for protection, the fact remains that the authorities of the Member States must, if necessary, actively cooperate with him or her in order to determine and supplement the relevant elements of the application, those authorities moreover often being better placed than the applicant to gain access to certain types of documents (see, to that effect, judgment of 3 March 2022, *Secretary of State for the Home Department (Refugee status of a stateless person of Palestinian origin)*, C-349/20, EU:C:2022:151, paragraph 64 and the case-law cited), it being understood that, where certain aspects of an applicant's statements are not supported by documentary or other evidence, those aspects do not need confirmation, provided that the cumulative conditions laid down in Article 4(5)(a) to (e) of that directive are met (judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 58).

48 Consequently, as the Advocate General considered in points 34 and 41 of his Opinion, the national authority competent for the assessment of an application for international protection is obliged to examine, during the first stage of that assessment, all the relevant factual circumstances of the particular case that may constitute evidence, before determining, during the second stage of that assessment, which type of serious harm, defined in Article 15 of that directive, that evidence may potentially substantiate, without being able to disregard factors potentially relevant to the assessment of that application on the sole ground that the applicant has put them forward in support of only one type of serious harm defined in that Article 15.

49 Next, it is apparent from Article 4(3) of the said directive that the relevant factors which that authority must take into account when it carries out the assessment of each application for international protection include both 'all relevant facts as they relate to the country of origin', within the meaning of point (a) of that provision, and the 'individual position and personal circumstances of the applicant', within the meaning of point (c) thereof.

50 Thus, the Court has held that, even if an application for international protection made under Article 15(c) of the same directive does not rely on factors specific to the applicant's circumstances, it follows from Article 4(3) thereof that such an application must be subject to an individual assessment, in respect of which a whole series of factors must be taken into account, as part of a comprehensive appraisal of all the relevant circumstances of the individual case (see, to that effect, judgment of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')*, C-901/19, EU:C:2021:472, paragraphs 40 and 41).

51 Moreover, by virtue of Article 4(4) of Directive 2011/95, the fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, may, in principle, constitute a serious indication of the applicant's real risk of suffering serious harm, such that those facts relating to the applicant's personal circumstances must always be taken into account when assessing the existence of a real risk of suffering one of the types of serious harm defined in Article 15 of the same directive, whatever it might be.

52 Last, the requirement to carry out the assessment of an application for international protection taking into account all the relevant factors, including those recalled in paragraph 49 of the present judgment, and to cooperate actively with the applicant to that end, is confirmed in Article 8(2) of that directive (see, to that effect, judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 67), since it obliges the competent national authorities, in examining whether an applicant for international protection has access to protection against, inter alia, any type of serious harm in a part of the country of origin, in accordance with paragraph 1 of that article, to have regard both to the general circumstances prevailing in that part of the country and to the applicant's personal circumstances.

53 In the third and last place, the interpretation of Article 15 of Directive 2011/95 developed in paragraphs 43 and 48 of the present judgment is consistent with the objectives pursued by that directive, as recalled in paragraph 32 of the present judgment. An examination of applications for international protection which does not have regard to all the relevant circumstances of the individual case and, in particular, to all the factors listed in Article 4(3) of that directive, before identifying the type of serious harm defined in Article 15 thereof that those factors might potentially substantiate, would lead to a breach of the obligation which the said directive imposes on the Member States to identify persons genuinely in need of that protection (see, to that effect, judgment of 10 June 2021, *Bundesrepublik Deutschland (Concept of 'serious and individual threat')*, C-901/19, EU:C:2021:472, paragraph 44).

54 Such an interpretation is, moreover, consistent with Article 4 and with Article 19(2) of the Charter, which concern, respectively, the prohibition of torture and inhuman or degrading treatment or punishment and protection in the event of removal, expulsion or extradition, as mentioned by the referring court. In this connection, however, it should be observed that, while it is true that the fundamental rights guaranteed in those provisions must be respected in the implementation of Directive 2011/95 and thus also in the assessment of applications for subsidiary protection in the light of Article 15 thereof, the said provisions do not provide, in the context of the answer to the present question referred for a preliminary ruling, any further specific guidance as to the scope of the requirement systematically to examine all relevant factors, relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin, when making such an assessment (see, by analogy, judgments of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraph 129, and of 4 October 2018, *Ahmedbekova*, C-652/16, EU:C:2018:801, paragraph 64).

55 In the light of all the foregoing considerations, the answer to the first question is that Article 15 of Directive 2011/95 must be interpreted as meaning that, in order to determine whether an applicant for international protection is eligible for subsidiary protection, the competent national authority must examine all the relevant factors, relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin, before identifying the type of serious harm that those factors may potentially substantiate.

The second question

56 The second question is asked only in the event that the first question is answered in the negative. That being so, while the answer to the second part of the second question follows from the affirmative answer given to the first question, in the sense that the facts relating to the individual position and personal circumstances of the applicant may prove relevant in the examination of the merits of an application for international protection in the light of both Article 15(b) and Article 15(c) of Directive 2011/95, the first part of the second question nevertheless retains its relevance.

57 The referring court seeks after all to ascertain whether, in order to assess the existence of a real risk of 'serious and individual threat to … life or person' within the meaning of Article 15(c) of that directive, the competent national authority must take into account, among the various relevant factors relating to the individual position and personal circumstances of the applicant, factors additional to the mere fact that the applicant comes from an area of a given country where 'the most extreme cases of general violence' within the meaning of the case-law of the European Court of Human Rights, in particular its judgment of 17 July 2008, *NA. v. the United Kingdom* (CE:ECHR:2008:0717JUD002590407, § 115), occur, namely from the area in which the degree of violence reaches such a level that the expulsion of a person to that country constitutes a violation of the prohibition of torture and inhuman or degrading treatment guaranteed by Article 3 ECHR.

58 In those circumstances, it must be considered that, by its second question, the referring court asks, in essence, whether Article 15(c) of Directive 2011/95 must be interpreted as meaning that, in order to assess whether there is a real risk of suffering a type of serious harm as defined in that provision, the competent national authority must be able to take account of factors relating to the individual position and personal circumstances of the applicant other than the mere fact of coming from an area of a given country where 'the most extreme cases of general violence', within the meaning of the judgment of the ECtHR of 17 July 2008, *NA. v. the United Kingdom* (CE:ECHR:2008:0717JUD002590407, § 115), occur.

59 In that regard, it is appropriate to note from the outset that the case-law of the European Court of Human Rights is, in principle, relevant for the interpretation of Article 15 of Directive 2011/95. First, it is apparent from Article 6(3) TEU that the fundamental right guaranteed under Article 3 ECHR forms part of the general principles of EU law, observance of which is ensured by the Court of Justice. The case-law of the European Court of Human Rights must therefore be taken into consideration in interpreting the scope of that right in the EU legal order (see, to that effect, judgment of 17 February 2009, *Elgafaji*, C-465/07, EU:C:2009:94, paragraph 28).

60 Second, it is apparent from recital 16 of Directive 2011/95 that that directive must be interpreted in a manner that is consistent with the fundamental rights recognised by the Charter, including, in particular, Article 4 thereof (see, to that effect, judgment of 24 April 2018, *MP (Subsidiary protection of a person previously a victim of torture)*, C-353/16, EU:C:2018:276, paragraph 36). In accordance with Article 52(3) of the Charter, in so far as the rights guaranteed by Article 4 thereof correspond to those guaranteed by Article 3 ECHR, the meaning and scope of

those rights are the same as those laid down by that Article 3 (see, to that effect, judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraph 60 and the case-law cited), which does not, however, prevent EU law from providing more extensive protection to the said rights. When interpreting Article 4 of the Charter, account must therefore be taken of Article 3 ECHR, as interpreted by the European Court of Human Rights, as the minimum threshold of protection (see, by analogy, judgment of 22 June 2023, *K.B. and F.S. (Raising* ex officio *of an infringement in criminal proceedings)*, C-660/21, EU:C:2023:498, paragraph 41 and the case-law cited).

61 Furthermore, it is apparent from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) that the right enshrined in Article 19(2) thereof, according to which no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment, incorporates the relevant case-law of the European Court of Human Rights relating to Article 3 ECHR, to which that Article 19(2) corresponds in essence (see, to that effect, judgments of 18 December 2014, *M'Bodj*, C-542/13, EU:C:2014:2452, paragraph 38 and the case-law cited, and of 18 December 2014, *Abdida*, C-562/13, EU:C:2014:2453, paragraph 47). That case-law is therefore also relevant to the interpretation of that right.

62 That being so, the Court has already held that it is Article 15(b) of Directive 2011/95 which corresponds, in essence, to Article 3 ECHR. By contrast, Article 15(c) of that directive is a provision, the content of which is different from that of Article 3 ECHR, and the interpretation of which must, therefore, be carried out independently, in order, inter alia, to ensure that that provision has its own field of application, although with due regard for the fundamental rights guaranteed under the Charter and the ECHR (see, to that effect, judgment of 17 February 2009, *Elgafaji*, C-465/07, EU:C:2009:94, paragraphs 28 and 36).

63 In that regard, it should be noted that Article 15(c) of Directive 2011/95 does indeed cover the exceptional situation in which the level of indiscriminate violence resulting from an international or internal armed conflict is such that there are substantial grounds for believing that a civilian, returned to the relevant country or region, would, solely on account of his or her presence on the territory of that country or region, face a real risk of being subject to a serious and individual threat to his or her life or person.

64 However, as has been noted in paragraph 42 of the present judgment, that provision may also cover other situations, in which the combination, first, of a level of indiscriminate violence lower than that characterising such an exceptional situation and, second, of factors specific to the applicant's personal circumstances is such as to materialise the real risk of being subject to a serious and individual threat within the meaning of the said provision.

65 It follows that, in those other situations, the factors relating to the individual position and personal circumstances of the applicant which the competent national authority must take into account necessarily go beyond the fact of coming from an area of a given country where 'the most extreme cases of general violence', within the meaning of the case-law of the European Court of Human Rights, in particular its judgment of 17 July 2008, *NA. v. the United Kingdom* (CE:ECHR:2008:0717JUD002590407, § 115), occur.

66 Thus, while being fully compatible with the case-law of the European Court of Human Rights relating to Article 3 ECHR (see, to that effect, judgment of 17 February 2009, *Elgafaji*, C-465/07, EU:C:2009:94, paragraph 44), the interpretation of Article 15(c) of Directive 2011/95 developed by

the Court of Justice provides applicants for international protection more extensive protection than that offered by the said Article 3.

67 In the light of the questions raised by the referring court and recalled in paragraph 19 of the present judgment, it should also be made clear that the list of relevant factors relating to the individual position and personal circumstances of the applicant contained in Article 4(3)(c) of that directive is not exhaustive, with the result that, in the situations referred to in paragraph 64 of the present judgment, the national authority competent for granting subsidiary protection must carry out an assessment on a case-by-case basis, taking into account, as the case may be, any other factors relating to the individual position and personal circumstances of the applicant liable to contribute to the materialisation of the real risk of suffering a type of serious harm as defined in Article 15(c) of the said directive, regard being had to the level of indiscriminate violence in the country or region concerned. In that context, factors specific to the applicant's private, family or professional life which may reasonably be presumed to increase the risk of serious harm to that applicant, if returned to his or her country of origin or to his or her country of former habitual residence, could inter alia be regarded as relevant in that context.

68 In addition, it is for the competent national authority, as has been recalled in paragraph 51 of the present judgment and in accordance with Article 4(4) of Directive 2011/95, to take account of the fact that the applicant has already suffered serious harm or has already been the subject of direct threats to that effect, unless there are good reasons to consider that such serious harm will not be repeated.

69 In the light of all the foregoing considerations, the answer to the second question is that Article 15(c) of Directive 2011/95 must be interpreted as meaning that, in order to assess whether there is a real risk of suffering a type of serious harm as defined in that provision, the competent national authority must be able to take account of factors relating to the individual position and personal circumstances of the applicant other than the mere fact of coming from an area of a given country where 'the most extreme cases of general violence', within the meaning of the judgment of the ECtHR of 17 July 2008, *NA. v. the United Kingdom* (CE:ECHR:2008:0717JUD002590407, § 115), occur.

The third question

70 By its third question, the referring court asks, in essence, whether Article 15(b) of Directive 2011/95 must be interpreted as meaning that the intensity of the indiscriminate violence occurring in the applicant's country of origin is capable of weakening the requirement of individualisation of the serious harm defined in that provision.

71 In that regard, it must be recalled that, as has been pointed out in paragraphs 37 to 42 of the present judgment, the serious harm defined in Article 15(b) of Directive 2011/95 requires a clear degree of individualisation.

72 As has been recalled in paragraph 38 above, the harm relating to the risk of 'the death penalty or execution' and of 'torture or inhuman or degrading treatment or punishment', referred to in Article 15(a) and (b) of the said directive, covers situations in which the applicant for subsidiary protection is exposed specifically and individually to the risk of a particular type of harm.

73 Although, as has been pointed out in paragraph 39 of the present judgment, the relevant factors relating to the general situation in the applicant's country of origin, including those relating to the general level of violence and insecurity in that country, must also be examined in such cases,

the fact remains that the existence, in the said country, of a level of violence and insecurity, however significant, cannot weaken the scope of the condition that, in order for there to exist a real risk of serious harm, within the meaning of Article 15(a) and (b) of Directive 2011/95, it must be shown, taking into account, where appropriate, such a level of violence, that the applicant faces a real risk of being exposed specifically and individually to such harm if returned to the same country.

74 In the light of all the foregoing considerations, the answer to the third question is that Article 15(b) of Directive 2011/95 must be interpreted as meaning that the intensity of the indiscriminate violence occurring in the applicant's country of origin is not capable of weakening the requirement of individualisation of the serious harm defined in that provision.

The fourth question

75 By its fourth question, the referring court asks, in essence, whether Article 15(c) of Directive 2011/95, read in conjunction with Articles 1 and 4 and Article 19(2) of the Charter, must be interpreted as meaning that a humanitarian situation which is the direct or indirect consequence of the acts and/or omissions of an actor of serious harm inflicted in the context of an international or internal armed conflict must be taken into account in the assessment of an application for international protection, within the meaning of that Article 15(c).

76 The European Commission submits that that question is inadmissible, arguing, in essence, that, in the light of the factors substantiating the applications for international protection at issue in the main proceedings, the answer to the said question is not necessary for resolving the dispute in the main proceedings and that, in any event, the order for reference does not contain the information and details necessary for that purpose.

77 According to a consistent line of decisions, although questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court of Justice to determine, enjoy a presumption of relevance, the fact nonetheless remains that the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. The justification for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute. As is apparent from the actual words of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it (judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 167 and the case-law cited).

78 Thus, it is, in particular, essential, as stated in Article 94(a) of the Rules of Procedure, that the order for reference itself contain a summary of the relevant findings of fact as determined by the referring court or, at least, an account of the facts on which the questions are based (judgment of 3 December 2019, *Iccrea Banca*, C-414/18, EU:C:2019:1036, paragraph 28 and the case-law cited).

79 In the case at hand, as has been noted in paragraphs 11, 12 and 15 of the present judgment, the factors substantiating the applications for international protection at issue in the main proceedings, as has been put forward by the applicants and noted by the competent national authority and by the referring court, includes facts relating to the general level of violence and

insecurity in Libya, to the difficult living conditions in Tripoli and to the resulting 'humanitarian situation'.

80 However, in no way does it follow from those factors, as set out in the request for a preliminary ruling, that such a humanitarian situation is the direct or indirect consequence of the acts and/or omissions of an actor of serious harm inflicted in the context of an international or internal armed conflict, within the meaning of Article 15(c) of Directive 2011/95.

81 In addition, the referring court has failed to indicate who is the actor of the acts and/or omissions in question and what those acts and/or omissions consist of.

82 It follows that the referring court has not sufficiently demonstrated how an answer to the fourth question is necessary to enable it to resolve the dispute in the main proceedings, nor has it set out in a sufficient manner the facts on which that question is based.

83 In those circumstances, the fourth question must be declared inadmissible.

Costs

84 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

1. **Article 15 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 in order to determine whether an applicant for international protection is eligible for subsidiary protection, the competent national authority must examine all the relevant factors, relating both to the individual position and personal circumstances of the applicant and to the general situation in the country of origin, before identifying the type of serious harm that those factors may potentially substantiate.

2. **Article 15(c) of Directive 2011/95**

must be interpreted as meaning that in order to assess whether there is a real risk of suffering a type of serious harm as defined in that provision, the competent national authority must be able to take account of factors relating to the individual position and personal circumstances of the applicant other than the mere fact of coming from an area of a given country where 'the most extreme cases of general violence', within the meaning of the judgment of the European Court of Human Rights of 17 July 2008, *NA. v. the United Kingdom* (CE:ECHR:2008:0717JUD002590407, § 115), occur.

3. **Article 15(b) of Directive 2011/95**

must be interpreted as meaning that the intensity of the indiscriminate violence occurring in the applicant's country of origin is not capable of weakening the requirement of individualisation of the serious harm defined in that provision.

[Signatures]

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* Language of the case: Dutch.