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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

30 April 2025(*)

(Reference for a preliminary ruling – Asylum policy – Refugee status or subsidiary protection status – Directive 2011/95/EU – Article 12(2)(b) – Article 18 of the Charter of Fundamental Rights of the European Union – Exclusion from being a refugee – Grounds – Commission of a serious non-political crime outside the country of refuge prior to his or her admission as a refugee – Effect of the fact that the sentence has been served)

In Case C63/24 [Galte], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 24 January 2024, received at the Court on 26 January 2024, in the proceedings

K.L.

v

Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos,

THE COURT (Third Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, S. Rodin, N. Piçarra, O. Spineanu-Matei and N. Fenger, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Lithuanian Government, by V. Kazlauskaitė-Švenčionienė and E. Kurelaitytė, acting as Agents,

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

– the German Government, by J. Möller and R. Kanitz, acting as Agents,

– the French Government, by R. Bénard and O. Duprat-Mazaré, acting as Agents,

– the Netherlands Government, by M. K. Bulterman and A. Hanje, acting as Agents,

– the European Commission, by F. Blanc, M. Debieuvre and J. Jokubauskaitė, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12(2)(b) 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), read in conjunction with Article 18 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between K.L. 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 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954. It was supplemented and amended by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which itself entered into force on 4 October 1967 ('the Geneva Convention').

4 Under Article 1(F) of the Geneva Convention:

'The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

…

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

…'

5 Article 33 of that convention states:

'1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having

been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.'

European Union law

6 Recital 4 of Directive 2011/95 states:

'The Geneva Convention … [provides] the cornerstone of the international legal regime for the protection of refugees.'

7 Article 12(2) of that directive provides:

'A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

…

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

…'

8 Article 21(1) of that directive provides:

'Member States shall respect the principle of non-refoulement in accordance with their international obligations.'

Lithuanian law

9 Under Article 86(1) of the Lietuvos Respublikos įstatymas dėl užsieniečių teisinės padėties Nr. IX-2206 (Law No IX-2206 of the Republic of Lithuania on the legal status of foreign nationals) of 29 April 2004 (Žin., 2004, No 73-2539), in the version applicable to the dispute in the main proceedings:

'Refugee status shall be granted to an applicant for asylum who, owing to well-founded fear of being persecuted on account of his or her race, religion, nationality, membership of a particular social group, or political opinions, is outside the State of his or her nationality and who is unable or afraid to avail himself or herself of the protection of that State, or who, not having the nationality of any foreign State, is outside the State of his or her habitual residence and, for the reasons set out above, is unable or afraid to return there, provided that he or she is not covered by the grounds for exclusion laid down in Article 88(1) and (2) of this Law.'

10 Point 3 of Article 88(2) of that law provides:

'An applicant for asylum who meets the criteria set out in Article 86(1) of this Law shall not be granted refugee status if there are serious reasons for considering that, prior to entering the Republic of Lithuania, he or she has committed a serious non-political crime (particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes) or has been found guilty of acts contrary to the purposes and principles of the United Nations, or has incited or otherwise participated in the commission of such crimes or such acts.'

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

11 On 17 February 2022, after having illegally crossed the border between Belarus and Lithuania, K.L., a third-country national, submitted an application for asylum and for a temporary residence permit in that

Member State. He stated that he had been wrongfully convicted three times by the authorities of his country of origin, the real reasons for those convictions being his activities as part of the political opposition. K.L. left his country of origin because law enforcement officials had been interrogating other persons, which he interpreted as evidence of the preparation of a new criminal case against him, based on the dissemination of political information and the organisation of demonstrations.

12 The Migration Department found that K. L. was eligible for refugee status in Lithuania. That department took the view that the public criticism, by K.L., of the authorities of his country of origin constituted a possible reason for his persecution. According to the Migration Department, K.L. would most likely be arrested in that country and be subject to criminal prosecution on account of his posts on social media.

13 That said, having regard to the criminal proceedings brought against K.L. in the past and to the extent of the penalties imposed, that department considered that he had committed acts which had to be classified as a 'serious non-political crime' within the meaning of point 3 of Article 88(2) of Law No IX-2206 of the Republic of Lithuania on the legal status of foreign nationals, in the version applicable to the dispute in the main proceedings.

14 Accordingly, by decision of 16 January 2023, the Migration Department rejected K.L.'s application for international protection. That department nevertheless issued a temporary residence permit to K.L., on the ground that to have him returned to his country of origin, where he may be persecuted on account of his political opinions, was prohibited.

15 By judgment of 30 March 2023, the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) dismissed K.L.'s action against that decision. An appeal was brought by K. L. against that judgment before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), which is the referring court.

16 Before that court, K.L. claims that he has already served his sentence for the crime on account of which the Migration Department refused to grant him refugee status. Relying on the publications of the United Nations High Commissioner for Refugees (UNHCR), he therefore submits that the refugee status exclusion clause set out in Article 12(2)(b) of Directive 2011/95 is no longer applicable.

17 The Migration Department, taking the view that no clear definition of the concept of 'serious non-political crime' stems from Directive 2011/95 or Lithuanian legislation, relied for its part, first, on the document of the European Asylum Support Office (EASO) of December 2021, entitled 'EASO Practical Guide on Exclusion for Serious (Non-Political) Crimes', in order to classify one of the offences committed by K.L. as a 'serious non-political crime' and, second, on page 35 of the EASO document of January 2017, entitled 'EASO Practical Guide: Exclusion', in order to conclude, where the applicant for international protection has served his or her sentence, that the competent authority has a discretion as regards the application of Article 12(2)(b) of Directive 2011/95.

18 According to the referring court, the consequences of such a circumstance has not yet been explained, whether in the judgments of the Court of Justice of 9 November 2010, *B and D* (C57/09 and C101/09, EU:C:2010:661), and of 13 September 2018, *Ahmed* (C369/17, EU:C:2018:713), which clarify the scope of Article 12(2)(b) of Directive 2011/95, or in EASO's documents. In the document of January 2016, entitled 'Exclusion: Articles 12 and 17 of the Qualification Directive (2011/95/EU)', no position is taken, and in that of December 2021, entitled 'EASO Practical Guide on Exclusion for Serious (Non-Political) Crimes', an exhaustive list of the criteria for identifying a serious crime is not established.

19 In addition, while it considered that the serving of the sentence imposed, by its nature, does not relate to the seriousness of the act committed by the applicant for international protection or to his or her

individual responsibility, that court is uncertain as to the effect of that circumstance on the applicability of Article 12(2)(b) of Directive 2011/95, in the light of paragraph 157 of UNHCR Document HCR/1P/4/ENG/REV.4 of February 2019, entitled '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 Refugees', and page 35 of the EASO document of January 2017, entitled 'EASO Practical Guide: Exclusion', from which it is apparent, in the referring court's view, that the fact that the applicant for international protection has already served his or her sentence, has been granted a pardon or has benefited from amnesty may be relevant for the purposes of applying that provision.

20 Furthermore, the referring court notes that, under Article 18 of the Charter, the right to asylum is guaranteed with due respect for the rules of the Geneva Convention and in accordance with the EU Treaty and the FEU Treaty. The Court held, in paragraph 50 of the judgment of 2 May 2018, *K. and H.F. (Right of residence and alleged war crimes)* (C331/16 and C366/16, EU:C:2018:296), that the grounds for exclusion from refugee status laid down in Article 1(F) of the Geneva Convention and in Article 12(2) of Directive 2011/95 were established with the aim of excluding from that status persons deemed unworthy of the protection which refugee status entails.

21 According to the referring court, any obligation to take into consideration, for the purposes of Article 12(2)(b) of that directive, the sentence served, the pardon or amnesty granted, could run counter to such an objective. To proceed thus could turn the assessment of the seriousness of the offence or of the individual responsibility of the asylum seeker into a secondary consideration.

22 That said, the grounds for exclusion, as exceptions or limits to the application of humanitarian rules, are, according to that court, to be interpreted with particular caution. In that regard, paragraph 18 of Document EC/47/SC/CRP.29 of the Executive Committee of the UNHCR of 30 May 1997, entitled 'Note on the Exclusion Clauses', refers to the requirement to conduct a balancing test between the crime committed and the level of persecution likely to be faced by the offender in the country of origin. That court considers that such a requirement is satisfied where, as in the present case, the principle of non-refoulement is guaranteed in respect of the applicant even if he or she is not granted asylum.

23 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:

'Must Article 12(2)(b) of Directive [2011/95], read in conjunction with Article 18 of the [Charter], be interpreted as meaning that, in the assessment of whether the actions of a person who otherwise fulfils the criteria for the grant of refugee status are covered by the [ground] for exclusion from refugee status set out in Article 12(2)(b) of Directive [2011/95], there is an obligation to take into consideration the sentence already served by that person, the pardon or amnesty granted to that person, or any other circumstance of a similar nature?'

Consideration of the question referred

24 As a preliminary point, it should be noted that it is apparent from the request for a preliminary ruling that the applicant for international protection at issue in the main proceedings submits that he has served the sentence for the crime for which he was refused refugee status by the Migration Department. No pardon or amnesty is at issue in the light of the information provided by the referring court.

25 Therefore, as regards those circumstances, an answer from the Court to the question referred is not necessary for the resolution of the dispute in the main proceedings.

26 It must therefore be held that, by its question, the referring court asks whether Article 12(2)(b) of Directive 2011/95, read in the light of Article 18 of the Charter, must be interpreted as meaning that, when

examining whether the actions of an applicant for international protection who otherwise fulfils the criteria for the grant of refugee status are covered by the ground for exclusion from that status set out in Article 12(2)(b), the competent authorities and, where relevant, the competent courts of the Member State concerned must take account of the fact that that applicant has served the sentence imposed on him or her for the acts he or she committed.

27 It should be noted that, under Article 12(2)(b) of Directive 2011/95, a third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee.

28 It is settled case-law that, in accordance with both the need for uniform application of EU law and the principle of equality, the terms of a provision of EU law which, like Article 12(2)(b), makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (see, to that effect, judgment of 6 July 2023, *Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)*, C402/22, EU:C:2023:543, paragraph 23 and the case-law cited).

29 In that regard, given that neither Article 12(2)(b) of Directive 2011/95 nor any other provision thereof defines the terms ‘serious crime’, those terms must be interpreted in accordance with their usual meaning in everyday language, while also taking into consideration the context in which they are used and the objectives pursued by the rules of which they are part (see, to that effect, judgment of 6 July 2023, *Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)*, C402/22, EU:C:2023:543, paragraph 24 and the case-law cited).

30 In the first place, in accordance with the wording of Article 12(2)(b), the ground for exclusion set out therein is intended as a penalty for acts committed in the past (see, to that effect, judgment of 9 November 2010, *B and D*, C57/09 and C101/09, EU:C:2010:661, paragraph 103).

31 As regards the usual meaning of the terms used, although the word ‘crime’ refers to factual circumstances which have been fixed in the past, namely the point in time when that crime was committed, the qualifying adjective ‘serious’ adds an element of assessment which may, by contrast, change over time. Thus, it cannot be ruled out that the assessment of the seriousness of an offence may be different at the time when it was committed and at the time an application for international protection is examined.

32 In the second place, as regards the contextual interpretation, it should be noted that, under Article 18 of the Charter, the right to asylum is to be guaranteed with due respect for, inter alia, the rules of the Geneva Convention.

33 As stated, inter alia, in recital 4 of Directive 2011/95, the Geneva Convention provides the cornerstone of the international legal regime for the protection of refugees. It follows that the provisions of that directive must be interpreted not only in the light of its general scheme but also in compliance with that convention (see, to that effect, judgment of 29 February 2024, *Bundesamt für Fremdenwesen und Asyl (Subsequent religious conversion)*, C222/22, EU:C:2024:192, paragraph 27 and the case-law cited).

34 In that context, in the light of the role conferred on the UNHCR by the Geneva Convention, the documents issued by it are particularly relevant (judgment of 16 January 2024, *Intervyuirasht organ na DAB pri MS (Women victims of domestic violence)*, C621/21, EU:C:2024:47, paragraph 38 and the case-law cited).

35 As regards Article 1(F)(b) of that convention, the wording of which is similar to that of Article 12(2)(b) of Directive 2011/95, paragraph 157 of UNHCR Document HCR/1P/4/ENG/REV.4 of February 2019, entitled ‘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 Refugees' states that 'the fact that an applicant convicted of a serious non-political crime has already served his sentence or has been granted a pardon or has benefited from an amnesty is also relevant'.

36 In the third place, the purpose underlying the grounds for exclusion laid down in Directive 2011/95 is to maintain the credibility of the protection system provided for in that directive in accordance with the Geneva Convention (see, to that effect, judgment of 9 November 2010, *B and D*, C57/09 and C101/09, EU:C:2010:661, paragraph 115).

37 In that regard, first, Article 12(2)(b) of that directive pursues a dual objective, consisting of excluding from refugee status individuals deemed to be undeserving of the protection which that status entails and ensuring that the granting of that status does not enable the perpetrators of certain serious crimes to escape criminal liability (see, to that effect, judgment of 2 May 2018, *K. and H.F. (Right of residence and alleged war crimes)*, C331/16 and C366/16, EU:C:2018:296, paragraph 50 and the case-law cited).

38 The taking into account of the fact that the applicant for international protection has served the sentence imposed on him or her for the acts he or she committed does not run counter to that dual objective. On the one hand, the exclusion from refugee status of a person who has already served the sentence imposed on him or her for the crime in question cannot be justified by the objective of preventing that person from escaping criminal liability for that crime. On the other hand, as regards the objective of excluding from refugee status individuals deemed to be undeserving of the protection which that status entails, the commission of serious acts at a certain point in a person's life cannot permanently render that person necessarily unworthy of international protection, without taking into consideration, in particular, his or her possible rehabilitation.

39 Second, exclusion from refugee status on the ground laid down in Article 12(2)(b) of Directive 2011/95 is linked to the seriousness of the acts committed, which must be of such a degree that the person concerned cannot legitimately claim the protection attaching to refugee status (see, to that effect, judgment of 9 November 2010, *B and D*, C57/09 and C101/09, EU:C:2010:661, paragraph 108).

40 It is settled case-law that the competent authority of the Member State concerned cannot rely on the ground for exclusion laid down in Article 12(2)(b) of that directive until that authority has undertaken, for each individual case, an assessment of the specific facts within its knowledge. That is done with a view to determining whether there are serious reasons for considering that the acts committed by the person in question, who otherwise satisfies the qualifying conditions for the status applied for, come within the scope of that particular ground for exclusion, the assessment of the seriousness of the crime in question requiring a full investigation into all the circumstances of the individual case concerned (see, to that effect, judgment of 6 July 2023, *Staatssecretaris van Justitie en Veiligheid (Particularly serious crime)*, C402/22, EU:C:2023:543, paragraph 30 and the case-law cited).

41 Therefore, the decision to exclude a person from refugee status cannot be taken automatically (see, to that effect, judgments of 9 November 2010, *B and D*, C57/09 and C101/09, EU:C:2010:661, paragraphs 91 and 93, and of 13 September 2018, *Ahmed*, C369/17, EU:C:2018:713, paragraph 49).

42 In that regard, it should be noted that the fact that the Court has held that the exclusion from refugee status pursuant to Article 12(2)(b) of Directive 2011/95 is not dependent on the person concerned representing a present danger to the host Member State (see, to that effect, judgment of 2 May 2018, *K. and H.F. (Right of residence and alleged war crimes)*, C331/16 and C366/16, EU:C:2018:296, paragraph 50 and the case-law cited) or on an assessment of proportionality, implying as that does a fresh assessment of the level of seriousness of the acts committed (see, to that effect, judgment of 9 November 2010, *B and D*, C57/09 and C101/09, EU:C:2010:661, paragraph 109) does not preclude the taking into account of the fact

that the person concerned has served his or her sentence in order to establish whether or not he or she is covered by that ground for exclusion.

43 It follows from those considerations that the fact that the applicant for international protection has served his or her sentence constitutes an element which must necessarily be taken into account by the competent authority of the Member State concerned in its assessment of all the specific circumstances of the individual case concerned.

44 That said, it should be noted that, as the Lithuanian, French and Netherlands Governments and the European Commission stated, in essence, in their written observations, that circumstance in no way precludes, in itself, the application of Article 12(2)(b) of Directive 2011/95.

45 The fact that the applicant for international protection has served his or her sentence is only one of a number of circumstances which must be taken into account in order to determine whether that applicant must be regarded as being covered by that ground for exclusion set out in that provision. In order to assess the seriousness of the offence in question, the competent authority will have to examine, inter alia, the type of act at issue, the sentence provided for and imposed, the period which has elapsed since the criminal conduct, the conduct of the person concerned during that period and the remorse, if any, expressed.

46 Furthermore, it should be noted that the exclusion of a person from refugee status pursuant to Article 12(2) of Directive 2011/95 does not imply the adoption of a position on the separate question of whether that person can be deported to his or her country of origin (see, by analogy, judgment of 9 November 2010, *B and D*, C57/09 and C101/09, EU:C:2010:661, paragraph 110).

47 In the light of all of the foregoing considerations, the answer to the question referred is that Article 12(2)(b) of Directive 2011/95, read in the light of Article 18 of the Charter, must be interpreted as meaning that, when examining whether the actions of an applicant for international protection who otherwise fulfils the criteria for the grant of refugee status are covered by the ground for exclusion from that status set out in Article 12(2)(b), the competent authorities and, where relevant, the competent courts of the Member State concerned must take account of the fact that that applicant has served the sentence imposed on him or her for the acts he or she committed, but that fact however does not, in itself, prevent that applicant from being excluded from refugee status under that provision.

Costs

48 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 12(2)(b) 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, read in the light of Article 18 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that, when examining whether the actions of an applicant for international protection who otherwise fulfils the criteria for the grant of refugee status are covered by the ground for exclusion from that status set out in Article 12(2)(b), the competent authorities and, where relevant, the competent courts of the Member State concerned must take account of the fact that that applicant has served the sentence imposed on him or her for the acts he or she committed, but that

fact however does not, in itself, prevent that applicant from being excluded from refugee status under that provision.

[Signatures]

* Language of the case: Lithuanian.

i The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.