

Dutch Council of State 202400387/1/V2 - 17 July 2024 - ECLI:NL:RVS:2024:2927
Article 15 Directive 2011/95/EU (Qualification Directive) – Individual assessment – Risk of indiscriminate violence – ECJ judgment C-125/22, 9 November 2023

(Vreemdelingen tegen de minister van Asiel en Migratie)

From now on, the Minister of Asylum and Migration has to take into account the individual situation of a foreign national from a country where there is indiscriminate violence as a result of an armed conflict when deciding whether to grant asylum to a foreign national, as is laid down in article 15, sub c, Qualification Directive.

This case concerns a couple with six children from Libya. The couple believes that they are at increased risk of becoming victims of indiscriminate violence in Libya because the husband has been a security guard for high-ranking politicians. The couple also believes that they are more likely to be victims of indiscriminate violence because they have underage children.

On 9 November 2023, the ECJ ruled in case C-125/22, ECLI:EU:C:2023:843, in response to preliminary questions from the District Court of The Hague, sitting place, 's Hertogenbosch, ECLI:NL:RBDHA:2022:1329, that even if a country is plagued by indiscriminate violence through armed conflict, the individual situation of a foreign national must be taken into account when assessing whether he should be granted asylum. The individual situation can increase the risk of becoming a victim of indiscriminate violence. The more a foreign national's individual situation increases the risk of indiscriminate violence, the less the degree of indiscriminate violence needs to be in order to be granted asylum. It is only in the most exceptional situation of indiscriminate violence caused by armed conflict in a country, where everyone is at real risk of serious harm just by being there, that the individual situation does not need to be taken into account.

In the current ruling, the Administrative Jurisdiction Division of the Council of State (Division) ruled in line with the judgment of the ECJ. The Division concludes that the security situation in Libya, and in Tripoli in particular, means that the Minister should have taken the individual situation of the family into account when deciding whether they should be granted asylum. There is indiscriminate violence in Libya through armed conflict, but not to the extent that everyone is at risk just because of their mere presence.

Because the Minister has given sufficient reasons during the procedure as to why the individual situation of this family is insufficient to grant the family asylum, the Minister does not have to take any new decisions on the family's asylum application.

The foreign nationals lose the case.