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Judgment of the Court of Justice in Case C-465/07

Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie

**AN APPLICANT FOR SUBSIDIARY PROTECTION DOES NOT NECESSARILY
HAVE TO PROVE THAT HE IS SPECIFICALLY TARGETED IN HIS COUNTRY OF
ORIGIN BY REASON OF FACTORS PARTICULAR TO HIS CIRCUMSTANCES**

The degree of indiscriminate violence in the applicant's country of origin can exceptionally suffice for the competent authorities to decide that a civilian, if returned to his country of origin, would face a real risk of being subject to serious and individual threat

The main objective of Directive 2004/83/EC¹ is, on the one hand, to ensure that all 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 these persons in all Member States.

On 13 December 2006 Mr and Mrs Elgafaji submitted applications for temporary residence permits in the Netherlands, together with evidence seeking to prove the real risk to which they would be exposed if they were expelled to their country of origin, in this case, Iraq. By orders of 20 December 2006, the competent minister refused to grant temporary residence permits to Mr and Mrs Elgafaji. He found, inter alia, that they had not proved satisfactorily the circumstances on which they were relying and, therefore, had not established the real risk of serious and individual threat to which they claimed to be exposed in their country of origin.

Following the refusal of their applications, Mr and Mrs Elgafaji brought actions before the Rechtbank te 's-Gravenhage. Their actions before that court were successful. The Raad van State, seised on appeal, held that there were difficulties in interpreting the relevant provisions of Directive 2004/83/EC and decided to refer questions to the Court of Justice for a preliminary ruling. The referring court wishes to know, inter alia, whether the relevant provisions of the directive² must be interpreted as meaning that the existence of a serious and individual threat to the life or person of the applicant for subsidiary protection is subject to the condition that **that applicant adduce evidence that he is specifically targeted by reason of factors particular to his circumstances.**

¹ 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).

² Article 15(c) of the directive, in conjunction with Article 2(e) thereof.

The Court holds that the harm, defined in the directive as consisting of a ‘serious and individual threat to [the applicant’s] life or person’³, covers a more general risk of harm than the other two types of harm defined in the directive⁴, which cover situations in which the applicant is specifically exposed to the risk of a particular type of harm.

Reference is made, more generally, to a threat to a civilian’s life or person, rather than to specific acts of violence. Furthermore, that threat is inherent in a general situation of ‘international or internal armed conflict’. Lastly, **the violence in question which gives rise to that threat is described as ‘indiscriminate’, a term which implies that it may extend to people irrespective of their personal circumstances.**

In that regard, the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.

Moreover, the Court adds that, in the individual assessment of an application for subsidiary protection, the following may be taken into account:

- the geographical scope of the situation of indiscriminate violence and the actual destination of the applicant in the event that he is returned to the relevant country, and
- the existence, if any, of a serious indication of real risk – such as the fact that an applicant has already been subject to serious harm or to direct threats of such harm, unless there are good reasons to consider that such serious harm will not be repeated – an indication in the light of which the level of indiscriminate violence required for eligibility for subsidiary protection may be lower.

Therefore, the relevant provisions of the directive must be interpreted as meaning that:

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

³ Article 15(c) of the directive.

⁴ Article 15(a) and (b) of the directive, in which the expressions ‘death penalty’, ‘execution’ and ‘torture or inhuman or degrading treatment or punishment’ are used.

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Languages available: FR CS DE EN ES EL HU IT NL PT SK

The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-465/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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