



Press and Information

Court of Justice of the European Union

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Judgment in Case C-573/14

Commissaire général aux réfugiés et aux apatrides v Mostafa Lounani

## **An application for asylum can be rejected if the asylum seeker has participated in the activities of a terrorist network**

*It is not necessary that the asylum seeker personally committed terrorist acts, or instigated such acts, or participated in their commission*

In 2006, Mr Mostafa Lounani, a Moroccan national, was convicted in Belgium by the Brussels Criminal Court and sentenced to six years imprisonment, with respect to his participation in the activities of a terrorist group - namely the Belgian cell of the 'Moroccan Islamic Combatant Group' ('the MICG') – as a member of its leadership, criminal conspiracy, use of forged documents, and illegal residence. That court found in particular that Mr Lounani was guilty of 'active participation in the organisation of a network for sending volunteers to Iraq'. In particular, the fraudulent transfer of passports was described as 'an act of participation in the activities of a cell providing logistical support to a terrorist movement'.

In 2010, Mr Lounani applied to the Belgian authorities for refugee status. He claimed that he feared persecution in the event of his being returned to Morocco because of the likelihood that he would be regarded by the Moroccan authorities as a radical Islamist and jihadist, following his conviction in Belgium. That application for asylum was rejected.

An action against that decision having been brought before it, the Belgian Council for asylum and immigration proceedings ('the CCE') held in 2011 that Mr Lounani should be granted refugee status. The CCE confirmed its decision in 2012 after its initial decision was set aside by the Belgian Conseil d'État. The CCE took the view that the acts of which Mr Lounani was specifically convicted did not constitute terrorist offences as such, since the Brussels Criminal Court had found Mr Lounani to be guilty of belonging to a terrorist group, but had not convicted him of committing or participating in a terrorist act. No specific act by the MICG, even in inchoate form, falling within the scope of that type of offence had been established, nor had the fact of personal conduct on the part of Mr Lounani, giving rise to his individual liability for the performance of such an act, been established. According to the CCE, nothing in the conduct in respect of which Mr Lounani had been convicted reached the required degree of gravity to be categorised as 'acts contrary to the purposes and principles of the United Nations' within the meaning of the directive on refugee status,<sup>1</sup> and accordingly Mr Lounani could not be excluded on that ground from refugee status.

An appeal on a point of law having been brought before it, the Conseil d'État decided to refer questions for a preliminary ruling to the Court of Justice. The Conseil d'État seeks in particular to ascertain under what circumstances an applicant for asylum can be excluded from refugee status for 'acts contrary to the purposes and principles of the United Nations' where he has been convicted in a criminal court of participation in the activities of a terrorist group but has not himself committed a terrorist act.

The Court notes, first, that it is clear from the file that Mr Lounani did not personally commit terrorist acts, or instigate such acts, or participate in their commission.

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<sup>1</sup> 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), and corrigenda (OJ 2005, L 204, p. 24, and OJ 2011, L 278, p. 13).

Nonetheless, the concept of ‘acts contrary to the purposes and principles of the United Nations’ is not confined to terrorist acts. The Court notes in particular that, in Resolution 2178 (2014), the United Nations Security Council expressed its ‘grave concern over the acute and growing threat posed by foreign terrorist fighters’ and its concern with regard to the international networks established by terrorist entities enabling them to move between States fighters of all nationalities and the resources to support them.

Consequently, application of the ground for exclusion of refugee status laid down in the directive cannot be confined to the actual perpetrators of terrorist acts, but can also extend to the persons who engage in activities of recruitment, organisation, transportation or equipment of individuals who travel to a State other than their States of residence or nationality for the purpose of, inter alia, the perpetration, planning or preparation of terrorist acts.

The Court states that the final assessment of an application for international protection is the task of the competent national authorities, subject to review by the national courts. However, the Court notes, among the factors to be taken into consideration, as stated by the Belgian Conseil d’État itself, that Mr Lounani was a member of the leadership of a terrorist group operating internationally which was registered, on 10 October 2002, on the United Nations list identifying certain individuals and entities that are subject to sanctions and which has continued to be named on that list, as updated since that date. His logistical support to the activities of that group has an international dimension in so far as he was involved in the forgery of passports and assisted volunteers who wanted to travel to Iraq. In the opinion of the Court, such acts can justify exclusion from refugee status.

Further, the fact that Mr Lounani was convicted of participation in the activities of a terrorist group and that that conviction has become final is, in the context of the individual assessment that must be undertaken by the competent authority, of particular importance.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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