



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 89/18**

Luxembourg, 21 June 2018

Advocate General's Opinion in Joined Cases C-391/16 M v Ministerstvo vnitra, C-77/17 and C-78/17 X v Commissaire général aux réfugiés et aux apatrides

**According to Advocate General Wathelet, the provisions of the Qualification Directive allowing a Member State to refuse or to revoke refugee status are compatible with EU law**

*Given that the decision to refuse or to revoke refugee status does not impact on the fact that a person is a refugee, a Member State is required to ensure that the refugees concerned are afforded their rights resulting from the Geneva Convention*

**Case C-77/17**

X, an Ivorian national, applied for asylum in Belgium. On the ground that X had been convicted of several particularly serious offences prior to lodging his application for asylum, the Belgian authorities took the view that he constituted a danger to society and refused to grant him refugee status. That decision was adopted pursuant to the Belgian legislation transposing the EU's Qualification Directive,<sup>1</sup> which allows a Member State to refuse to grant refugee status or to revoke that status granted to a refugee in the case where the refugee in question represents a danger to the security or, having been convicted by a final judgment of a particularly serious offence, for the society of that Member State. X challenged that decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings, Belgium).

**Case C-78/17**

X, a Congolese national, was granted refugee status in Belgium. He was later convicted and sentenced to a term of imprisonment for particularly serious offences. Taking the view that he constituted a danger to society, the national authorities withdrew his refugee status. X challenged that decision before the Conseil du contentieux des étrangers.

**Case C-391/16**

M, an individual of Chechen origin, was granted refugee status in the Czech Republic. Before that status was even granted, M had been convicted and sentenced there to a term of imprisonment. After he had been granted refugee status in the Czech Republic, he was again convicted of a particularly serious offence. On the ground that he therefore represented a danger to the security of that Member State and its citizens, his refugee status was revoked pursuant to the Czech law implementing the Qualification Directive. M challenged that decision before the Czech courts. Following the dismissal of his action, he appealed on a point of law to the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic).

In these three cases, the Conseil du contentieux des étrangers and the Nejvyšší správní soud referred questions to the Court for a preliminary ruling. In essence, those courts are asking the Court of Justice whether the provisions of the Qualification Directive allowing Member States to

<sup>1</sup> 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).

refuse or to revoke refugee status infringe the Geneva Convention on the Status of Refugees<sup>2</sup> ('the Geneva Convention') and are, consequently, invalid in the light of the provisions of the Charter of Fundamental Rights of the European Union ('the Charter') and of the TFEU, pursuant to which the common asylum policy must comply with that convention.

In today's Opinion, Advocate General Melchior Wathelet observes, first, that the situations in which a Member State may refuse or revoke refugee status pursuant to that directive correspond to the circumstances in which the Geneva Convention authorises the return of a refugee. The Advocate General points out, however, that the obligations of the Member States in matters of the protection of fundamental rights broadly counteract their ability to return refugees. Where a refugee cannot be returned, despite the fact that he constitutes a danger to the security of the Member State of refuge or to its society, that Member State nevertheless has the option, pursuant to the Qualification Directive, of depriving that individual of his refugee status.

Next, the Advocate General points out that the revocation of or the refusal to grant refugee status does not have the result that the individual concerned is no longer a refugee. According to the Advocate General, it is apparent from the text, objectives and overall scheme of that directive that being a refugee, on the one hand, and having refugee status, on the other hand, are two distinct concepts. Refugee status derives from the sole fact that a person qualifies as such, irrespective of any recognition by a Member State. As long as a person qualifies as a refugee, that person continues to be a refugee. Refugee status, within the meaning of the provisions of the Qualification Directive which allow refusal or revocation, designates, by contrast, the benefit of rights deriving in principle from the recognition of refugee status pursuant to that directive. The Advocate General observes that some of those rights (such as the right to a residence permit, the recognition of qualifications, and healthcare) have no equivalent in the Geneva Convention, and that others (such as the right to access to employment, housing and social assistance) are guaranteed by that convention only to refugees who are legally resident in the country of refuge.

Consequently, the Advocate General considers that the revocation of or refusal to grant refugee status leads to the individual concerned not, or no longer, benefiting from the rights provided for by the Qualification Directive, it being understood that he nevertheless remains a refugee and retains all the rights guaranteed by the Geneva Convention for any refugee irrespective of the lawfulness of his residence (such as the rights to non-discrimination, access to justice and state education as well as protection against deportation). Furthermore, the refusal to grant refugee status does not discharge the Member State concerned from its obligation to examine the application for asylum submitted to it and to recognise the applicant's refugee status, where appropriate, at the conclusion of that examination.

The Advocate General concludes that **the provisions of the Qualification Directive allowing a Member State to revoke or to refuse refugee status do not infringe the Geneva Convention and, accordingly, are compatible with the provisions of the TFEU and of the Charter.**

---

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

---

<sup>2</sup> Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 137, No 2545 (1954)), which entered into force on 22 April 1954, as supplemented by the Protocol relating to the Status of Refugees, which was concluded at New York on 31 January 1967 and entered into force on 4 October 1967.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

Pictures of the delivery of the opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106