



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 142/20
Luxembourg, 19 November 2020

Judgment in Case C-238/19
EZ v Bundesrepublik Deutschland

In the context of the civil war in Syria, there is a strong presumption that refusal to perform military service there is connected to a reason which may give rise to entitlement to recognition as a refugee

In a number of situations, such refusal is an expression of political opinions or of religious beliefs, or is motivated by membership of a particular social group

A Syrian conscript who fled his country in order to avoid military service and is therefore exposed to prosecution and punishment if he returns to Syria is contesting before the Verwaltungsgericht Hannover (Administrative Court, Hanover, Germany) the decision of the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany) granting him subsidiary protection, but refusing to grant him refugee status.

According to the Bundesamt für Migration und Flüchtlinge, the person concerned had not himself been subject to persecution which induced him to leave and, since he only fled the civil war, he would not have to fear persecution if he returned to Syria. In any event, there was no connection between the persecution he fears and any of the five reasons for persecution which may give rise to entitlement to recognition as a refugee, namely race, religion, nationality, political opinion or membership of a particular social group.

The Verwaltungsgericht Hannover asked the Court of Justice to interpret the directive on international protection,¹ according to which acts of persecution can take the form, inter alia, of prosecution or punishment for refusal to perform military service in conflict, where performing military service would include crimes or acts precluding recognition as a refugee, such as war crimes or crimes against humanity. According to the Verwaltungsgericht Hannover, the person concerned could have been led to commit such crimes as a conscript in the context of the Syrian civil war.

By its judgment delivered today, the Court of Justice finds, first of all, that, **where the law of the State of origin does not provide for the possibility of refusing to perform military service, it cannot be argued that the person concerned should have formalised his or her refusal through a given procedure and should not have fled his or her country of origin without presenting himself or herself to the military authorities.**

Furthermore, **in the context of all-out civil war characterised by the repeated and systematic commission of war crimes or crimes against humanity by the army using conscripts, it is irrelevant that the person concerned does not know what his or her future field of military operation will be.** According to the Court, in the context of the all-out civil war that was ongoing in Syria at the time when a decision was taken on the application of the person concerned, that is to say, in April 2017, and having regard, in particular, to the fact that the Syrian army, including the units composed of conscripts, repeatedly and systematically committed war crimes, as was widely documented according to the Verwaltungsgericht Hannover, **it is highly plausible that a**

¹ 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).

conscript would be led, regardless of his or her field of operation, to participate, directly or indirectly, to commit such crimes.

However, there must be a connection between the prosecution and punishment for refusal to perform military service and at least one of the five reasons for persecution which may give rise to entitlement to recognition as a refugee. According to the Court, the existence of such a connection cannot be deemed to be established or, consequently, escape examination by the national authorities responsible for assessing the application for international protection.

The reasons for refusing to perform military service may be different from those five reasons for persecution. In particular, that refusal may be motivated by the fear of being exposed to the dangers associated with performing military service in the context of armed conflict.

Nevertheless, **in a number of situations, refusal to perform military service reflects an expression of political opinions** – whether they consist of the rejection of any use of military force or of opposition to the policy or methods of the authorities of the country of origin – **or of religious beliefs, or is motivated by membership of a particular social group.**

Thus, there is a strong presumption that refusal to perform military service under the conditions of the case submitted to the Court relates to one of the five reasons which may give rise to entitlement to recognition as a refugee. It is for the competent national authorities, rather than for the person concerned, to ascertain, in the light of all the circumstances at issue, whether that connection is plausible.

The Court goes on to find that, in the context of armed conflict, particularly civil war, and where there is no legal possibility of avoiding military obligations, **it is highly likely that the authorities will interpret a refusal to perform military service as an act of political opposition, irrespective of any more complex personal motives of the person concerned.** According to the directive, when assessing if the person concerned has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

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

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