



Press and Information

Court of Justice of the European Union

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Judgment in Case C-901/19 Bundesrepublik Deutschland
(Notion of 'serious and individual threat')

When considering an application for subsidiary protection, the competent authorities of the Member States must examine all the relevant circumstances which characterise the situation of the country of origin of the applicant in order to determine the intensity of an armed conflict

The systematic application by the competent authorities of the Member States of a single quantitative criterion such as a minimum threshold of civilian casualties may exclude persons genuinely in need of protection

CF and DN, two Afghan nationals from the province of Nangarhar (Afghanistan), submitted asylum applications in Germany to the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany). Following the rejection of those asylum applications, the applicants brought proceedings before the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg, Germany), requesting that they be granted subsidiary protection.

That court seeks clarification from the Court of Justice on the interpretation of Directive 2011/95¹ on the international protection of refugees. In essence, the Court has to consider what are the criteria to be applied for the purposes of granting subsidiary protection in cases of a serious and individual threat to a civilian's life or person by reason of 'indiscriminate violence in situations of armed conflict'.

This is an issue which the Court of Justice has not yet had occasion to decide expressly. Furthermore, the case-law handed down by other courts in this area is inconsistent. Whereas some have conducted a comprehensive assessment based on all the circumstances of the case, others have predicated their approach on an analysis based primarily on the number of civilian casualties.

According to the German court, German law necessarily makes any finding of serious and individual threats subject to a quantitative assessment of the 'risk of death and injury', expressed by the ratio between the number of casualties in the relevant area and the total number of individuals composing the population of that area. The result obtained must reach a certain minimum threshold. If that threshold is not reached, there is no need for any further assessment of the level of risk. In that specific instance, a serious and individual threat cannot be found to exist on the basis of a comprehensive assessment of the specific circumstances of the case.

However, according to that court, on the basis of a comprehensive assessment that also included other risk-substantiating circumstances, the current level of violence prevailing in the province of Nangarhar would have to be regarded as being so high that CF and DN, to whom no internal protection is available, would, solely by reason of their presence, face a serious threat on that territory. By contrast, if a finding of serious and individual threat depended principally on the number of civilian casualties, their applications for subsidiary protection would have to be rejected.

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).

In its judgment of today's date, **the Court considers that, where a civilian is not specifically targeted by reason of factors particular to his or her personal circumstances, national legislation according to which a finding of 'serious and individual threat' depends on the ratio between the number of civilian casualties and the total number of individuals in the relevant area reaching a fixed threshold is not compatible with Directive 2011/95.**

The Court notes, first of all, that one of the objectives of the directive is to ensure that all Member States apply common criteria for the identification of persons genuinely in need of international protection. In that regard, it states that the subsidiary protection status referred to in that directive must, in principle, be granted to a third-country national or stateless person who faces a real risk of suffering serious harm if returned to his or her country of origin or to the country of his or her former habitual residence.

The Court observes that the finding of a 'serious and individual threat', within the meaning of the directive, is not conditional on the applicant for subsidiary protection proving that he or she is specifically affected by reason of factors particular to his or her personal circumstances. The word 'individual' must be understood as covering harm to civilians irrespective of their identity, where the degree of indiscriminate violence characterising the armed conflict reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or region, would, solely on account of his or her presence on the territory, face a real risk of being subject to a serious threat.

The Court finds that the quantitative criterion of the number of casualties in the light of the population as a whole in the region concerned is at odds, in the first place, with the objectives of Directive 2011/95 and, in particular, the need to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection. The systematic application by a Member State of a single quantitative criterion, such as a minimum number of casualties, is likely to lead authorities to refuse to grant international protection in breach of the Member States' obligation to identify persons genuinely in need of that protection.

In the second place, such an interpretation would be likely to prompt applicants for international protection to travel to Member States which do not apply the criterion of a fixed threshold of casualties already established or which apply a lower threshold in that respect, which could encourage a practice of *forum shopping* aimed at circumventing the rules set up by Directive 2011/95. However, as stated in that directive, the approximation of rules on the recognition and content of refugee and subsidiary protection status should, inter alia, help to limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in national legal frameworks.

Moreover, the Court considers that the concept of 'serious and individual threat' to the life or person of the applicant for subsidiary protection must be interpreted broadly. Thus, **a comprehensive appraisal of all the relevant circumstances of the individual case is required, in particular those which characterise the situation of the applicant's country of origin.**

Those factors include, in particular, under the directive, all relevant facts as they relate to the country of origin at the time of taking a decision on the application. More specifically, the elements to be taken into account in assessing whether there is a real risk of serious harm may also include the intensity of the armed confrontations, the level of organisation of the armed forces involved and the duration of the conflict, as well as other elements such as the geographical scope of the situation of indiscriminate violence, the actual destination of the applicant in the event that he or she is returned to the relevant country or region and potentially intentional attacks against civilians carried out by the parties to the conflict.

Consequently, the systematic application by the competent authorities of a Member State of a criterion, such as a minimum number of civilian casualties injured or deceased, in order to determine the intensity of an armed conflict, without examining all the relevant circumstances which characterise the situation of the country of origin of the applicant for subsidiary protection, is

contrary to the provisions of Directive 2011/95, in so far as it may lead those authorities to refuse to grant that protection in breach of the Member States' obligation to identify persons genuinely in need of it.

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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