ECLI:EU:C:2023:688

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

21 September 2023 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Common asylum policy – Eligibility for refugee status – Directive 2011/95/EC – Article 10(1)(e) and (2) – Reasons for persecution – 'Political opinion' – Concept – Political opinions developed in the host Member State – Article 4 – Assessment of the well-founded fear of persecution on account of those political opinions)

In Case C-151/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 16 February 2022, received at the Court on 2 March 2022, in the proceedings

S,

A

v

Staatssecretaris van Veiligheid en Justitie,

intervening party:

United Nations High Commissioner for Refugees (UNHCR),

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan, N. Piçarra (Rapporteur), N. Jääskinen and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– S, by M.M.J. van Zantvoort, advocate,

– the United Nations High Commissioner for Refugees (UNHCR), by C.J. Ullersma, advocate,

– the Netherlands Government, by M.K. Bulterman and A. Hanje, acting as Agents,

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the European Commission, by A. Azéma and F. Wilman, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 10(1)(e) of 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).

2 The request has been made in the context of two sets of proceedings, the first between S and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) (‘the State Secretary’), the second between A and the State Secretary, concerning the latter’s refusal to grant them refugee status.

Legal context

International law

3 The first subparagraph of Article 1(A)(2) of the Convention relating to the Status of Refugees, which was signed in Geneva on 28 July 1951 and entered into force on 22 April 1954 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967 and entered into force on 4 October 1967 (‘the Geneva Convention’), provides that the term ‘refugee’ is to apply to any person who, ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it’.

European Union law

4 Recitals 4, 12 and 16 of Directive 2011/95 state:

‘(4) The [Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951] and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

…

(12) The main objective of this Directive is, on the one hand, to ensure that 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 those persons in all Member States.

…

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.’

5 Article 2 of that directive provides:

‘For the purposes of this Directive the following definitions shall apply:

…

(d) “refugee” means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(e) “refugee status” means the recognition by a Member State of a third-country national or a stateless person as a refugee;

…

(h) “application for international protection” means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

(i) “applicant” means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

…’

6 Article 4 of the said directive, entitled ‘Assessment of facts and circumstances’, provides, in paragraphs 3 to 5 thereof:

‘3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution …

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant’s personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution …

(d) whether the applicant’s activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution … if returned to that country;

…

4. The fact that an applicant has already been subject to persecution … or to direct threats of such persecution … is a serious indication of the applicant’s well-founded fear of persecution …, unless there are good reasons to consider that such persecution … will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements at the applicant’s disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) the applicant’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant’s case;

…

(e) the general credibility of the applicant has been established.’

7 According to Article 6 of the same:

‘Actors of persecution or serious harm include:

(a) the State;

(b) parties or organisations controlling the State or a substantial part of the territory of the State;

…’

8 Article 9 of Directive 2011/95 sets out the conditions in order for an act to be regarded as an ‘act of persecution’ for the purposes of Article 1(A) of the Geneva Convention. To that end, it contains a non-exhaustive list of the forms that acts of persecution can take and requires that a connection can be established between those acts and the reasons for persecution mentioned in Article 10 thereof.

9 Article 10 of that directive, entitled ‘Reasons for persecution’, provides:

‘1. Member States shall take the following elements into account when assessing the reasons for persecution:

…

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

…

(d) a group shall be considered to form a particular social group where in particular:

– members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

…

(e) the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant 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.’

10 Article 13 of that directive, entitled ‘Granting of refugee status’, is worded as follows:

‘Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.’

Netherlands law

11 Chapter C2 of the Vreemdelingencirculaire 2000 (Circular on foreign nationals 2000), of 2 March 2001 (*Stcrt*. 2001, No 64), in the version applicable to the case in the main proceedings, provides, in paragraph 3.2 thereof:

‘…

Political opinions

The fact that the foreign national cannot express his or her political opinions in his or her country of origin in the same manner as in the Netherlands is not sufficient for the foreign national to be issued with a temporary asylum residence permit …

In any event, in assessing the application for a temporary asylum residence permit, the [Immigratie- en Naturalisatiedienst (IND) (Immigration and Naturalisation Service)] shall also take into account:

a. whether there is a question of fundamental political opinion. The IND shall assess whether, for the foreign national, those political opinions are particularly important for maintaining his or her identity or conscience;

b. the manner in which he or she has expressed his or her political opinions, whether those activities took place in his or her country of origin, in the Netherlands or elsewhere, and the way in which, after his or her return, he or she intends to (continue to) express them;

c. whether or not he or she has previously experienced problems from the authorities as a result of his or her political opinions;

d. whether the manner in which he or she has expressed his or her political opinions or wishes to express them in the event of return will lead to acts of persecution as referred to in Article 3.36 of the Voorschrift Vreemdelingen 2000 [(Regulation on foreign nationals 2000), of 18 December 2000 (*Stcrt*. 2001, No 10)]; and

e. whether it is plausible that previous expressions of his or her political opinions have come to the attention of the authorities.

In the case of fundamental political opinions, the IND requires no restraint if the activities (that the foreign national is planning) are linked to those fundamental political opinions. If they are not fundamental political opinions, then the IND does require restraint.

The IND shall assess whether the measures and sanctions that will be taken against the foreign national in the event of return to the country of origin as a result of those expressions or acts which constitute a corollary of fundamental political opinions are sufficiently serious in their consequences for the question of persecution to be raised.

Even where there is not a question of fundamental political opinion, the IND shall assess whether the political activities of the foreign national or his or her expressions of political opinion in his or her country of origin, in the Netherlands or elsewhere have come to the knowledge of the authorities or will come to their knowledge and whether, as a result, they provide sufficient justification for accepting a well-founded fear of persecution in the event of return on account of political opinions which are attributed to him or her.

…’

The disputes in the main proceedings and the questions referred for a preliminary ruling

The first case in the main proceedings

12 S, a Sudanese national, arrived in the Netherlands on 21 January 2012. In her fourth application for asylum lodged with the State Secretary, she explained that, if she were returned to her country of origin, she would be persecuted by the Sudanese authorities on account of the political activities carried out in the Netherlands for, first, the Umma Party, which belonged to the 'Forces of Freedom and Change' alliance and coordinated the Sudanese revolution that occurred in 2019, and, second, the Darfur Vereniging Nederland (Association for Darfur in the Netherlands).

13 S also claimed that she had participated in more than 10 demonstrations organised in the Netherlands against the Sudanese Government, during which she had chanted slogans against the Sudanese regime, that she had informed other women about the Umma Party's activities, encouraging them to take part in those events, and that she had criticised the Sudanese Government on her Facebook and Twitter accounts.

14 In none of her asylum applications did S claim that, while she was still in Sudan, she had expressed political opinions that had forced her to leave that country. Nor did she claim that the political opinions she expressed after her departure had come to the attention of the Sudanese authorities.

15 By decision of 30 August 2019, the State Secretary rejected the application for a temporary asylum residence permit lodged by S, taking the view that, notwithstanding the credibility of her statements concerning her activities in the Netherlands, they did not stem from political opinions worthy of protection. According to the State Secretary, S had not clearly identified those opinions, indicated that they were of fundamental importance to her or specified which specific activities she was intending to carry out in the future on the basis of those opinions.

16 By judgment of 20 May 2020, the rechtbank Den Haag (District Court, The Hague, Netherlands) upheld the appeal brought by S and annulled that decision, holding that the person concerned had established to the requisite standard that she had a 'political opinion' within the meaning of Article 10(1)(e) of Directive 2011/95. According to that court, the question whether those opinions were worthy of protection should be assessed in the light of paragraphs 80, 82 and 86 of the document entitled Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, drawn up by the United Nations High Commissioner for Refugees (UNHCR), in its revised version of February 2019 (HCR/1P/4/FRE/REV.4; 'the Handbook on Procedures'). The said court also considered that the criterion set out in the Circular on foreign nationals 2000, according to which political opinions must be 'fundamental', was ambiguous and confused with the criteria applicable to the reason for persecution relating to religion.

17 The State Secretary brought an appeal against that judgment before the Raad van State (Council of State, Netherlands), the referring court, arguing that the court of first instance had wrongly held that the reasons for persecution based, respectively, on political opinions and on religious beliefs are different in nature. In his view, they should both be assessed by ascertaining whether the opinions or beliefs alleged by the applicant are so determinative of his or her identity or moral integrity that he or she may not be asked to renounce or conceal them in the event of return to his or her country of origin.

18 For her part, S, who lodged a cross-appeal against the judgment of 20 May 2020, referred to in paragraph 16 of the present judgment, criticised the court of first instance for having held that the assessment of the conditions to be fulfilled by an applicant in order to obtain refugee status depends on the importance and strength of his or her political opinions. Neither Directive 2011/95 nor the

Handbook on Procedures requires that those opinions be ‘fundamental’ in order to be worthy of protection.

The second dispute in the main proceedings

19 A, a Sudanese national, arrived in the Netherlands on 20 July 2011. In his second application for asylum, he stated that, if he were returned to his country of origin, he would be persecuted by the Sudanese authorities on account of his critical views in the Netherlands on the political situation in Sudan and his initiatives in favour of the rights of the Al-Gimir tribe in West Darfur.

20 It is apparent from the order for reference that the evidence provided by A in his first application for asylum in order to establish that, prior to his departure from Sudan, he had been arrested and tortured on suspicion of membership of an opposition political party was considered not to be credible. Moreover, A became politically active in the Netherlands only after the rejection of that first application for asylum.

21 By decision of 18 June 2020, the State Secretary rejected the application for a temporary asylum residence permit submitted by A and issued him with an entry ban on the ground that he had not provided sufficient evidence that his activities in the Netherlands stemmed from fundamental political opinions.

22 By judgment of 28 August 2020, the rechtbank Den Haag (District Court, The Hague) dismissed the action brought by A against the decision of the State Secretary. That court held that the State Secretary had rightly considered as not credible the hypothesis that A’s political activities in the Netherlands stemmed from fundamental political opinions. That court pointed out that A had specified neither the purpose of the demonstrations in which he had participated nor the aim he had pursued by participating in them.

23 A lodged an appeal against that judgment, criticising the court of first instance for having failed to find, inter alia, that the State Secretary had no uniform decision-making line with regard to the concept of ‘political opinion’ within the meaning of Article 10(1)(e) of Directive 2011/95. In any event, it is not apparent either from that directive or from the Handbook on Procedures that those opinions must be ‘fundamental’ in order to be worthy of protection.

24 In the context of the two disputes, the Raad van State (Council of State) asks, in particular, whether, in order to fall within the concept of ‘political opinion’, within the meaning of Article 10(1)(e) of Directive 2011/95, in a situation where the applicant has not yet attracted the negative interest of the potential agents of persecution in his or her country of origin, the opinions in question must be of ‘a particular strength’. That court also asks whether and to what extent such a circumstance is relevant to the assessment of the merits of an application for international protection.

25 It is in those circumstances that, in the two disputes in the main proceedings, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 1(10)(e) of [Directive 2011/95] be interpreted as meaning that political opinion as a reason for persecution may also be invoked by applicants who merely claim to hold a political view, and/or to express such a view, without having attracted the negative interest of an actor of persecution during their residence in their country of origin and since their residence in the host country?

(2) If the answer to Question 1 is in the affirmative, and a political view is thus sufficient to qualify as a political opinion, what weight must be given to the strength of that political view, thought or belief and to the importance to the foreign national of the activities stemming from it in the examination and assessment of an asylum application, that is to say, the examination of the reality of that applicant's alleged fear of persecution?

(3) If the answer to Question 1 is in the negative, is the criterion then that such a political opinion must be deeply rooted, and if not, what is the relevant criterion and how is it to be applied?

(4) If the criterion is that the political opinion must be deeply rooted, can an applicant who fails to demonstrate that he or she holds a deeply rooted political opinion be expected to refrain from expressing that political opinion upon return to the country of origin, so as not to arouse the negative interest of an actor of persecution?'

Consideration of the questions referred

The first, third and fourth questions

26 By its first, third and fourth questions, which it is appropriate to examine jointly, the referring court asks, in essence, whether Article 10(1)(e) and (2) of Directive 2011/95 must be interpreted as meaning that, in order for the opinions, ideas or beliefs of an applicant who has not yet attracted the negative interest of the potential actors of persecution in his or her country of origin to fall within the concept of 'political opinion', it is sufficient for that applicant to claim that he or she has or expresses that opinion, thought or belief.

27 Under Article 10(1)(e) of Directive 2011/95, 'the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant'. According to Article 10(2) of that directive, 'when assessing if an applicant 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'.

28 According to settled case-law, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union. That interpretation must take into account not only its wording but also its context and the objective pursued by the legislation in question (judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11, and of 2 June 2022, *T.N. and N.N. (Declaration concerning the waiver of succession)*, C-617/20, EU:C:2022:426, paragraph 35 and the case-law cited).

29 In the first place, it is apparent from the very wording of Article 10(1)(e) and (2) of Directive 2011/95 that the concept of 'political opinion' and 'political characteristic' is to be interpreted broadly. That is true, first of all, of the non-exhaustive list of elements which may serve to identify that concept, which follows from the use of the adverbial phrase 'in particular'. Next, not only opinions are referred to, but also 'thoughts' and 'beliefs' on a matter related to the potential actors of persecution and to the 'policies' or 'methods' of those actors, without those opinions, thoughts or beliefs necessarily being acted upon by the applicant. Last, the perception of the political nature of those opinions, thoughts or beliefs is highlighted rather than the applicant's personal reasons (see, to

that effect, judgment of 12 January 2023, *Migracijos departamentas (Reasons for persecution on the ground of political opinion)*, C-280/21, EU:C:2023:13, paragraph 26).

30 It follows that the wording of Article 10(1)(e) and (2) of Directive 2011/95, irrespective of the language version considered, gives no indication that, in order to fall within the concept of 'political opinion' or 'political characteristic', within the meaning of those provisions, the views, ideas or beliefs which the applicant claims to have or express must be of a certain degree of conviction for that applicant, or even be so deeply rooted in him or her that he or she could not refrain, if returned to his or her country of origin, from expressing them in order not to attract the negative interest of the actors of potential persecution in that country.

31 In the second place, that broad interpretation of the concept of 'political opinion' is confirmed by the general context of the concept of 'political opinion' and 'political characteristic', within the meaning of Article 10(1)(e) and (2) of Directive 2011/95. After all, the guidelines contained in the Handbook on Procedures to which it is important to refer, having regard to their particular relevance in the light of the role conferred on the UNHCR by the Geneva Convention (see, to that effect, judgment of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 57), emphasise that the concept of 'political opinion' can include any opinion or issue involving the State, the Government, society or a policy, irrespective of its strength or rooting in the applicant (see, to that effect, judgment of 12 January 2023, *Migracijos departamentas (Reasons for persecution on the ground of political opinion)*, C-280/21, EU:C:2023:13, paragraph 27).

32 As regards the specific context of Directive 2011/95, it should be recalled that 'political opinions' constitute, in line with the first subparagraph of Article 1(A)(2) of the Geneva Convention, one of the five 'reasons for persecution' listed in Article 10 of Directive 2011/95, the others being race, religion, nationality and membership of a particular social group. Each of those 'reasons for persecution', as its own distinct concept, has autonomous definitions in the five points of Article 10(1).

33 In the light of the referring court's questions, it should be noted, in particular, first, that the reason for persecution relating to 'religion' and that relating to 'political opinion', provided for in points (b) and (e) of Article 10(1) respectively, are intended, as is stated in recital 16 of Directive 2011/95, to promote the application of distinct fundamental rights, different in content and scope. The first case concerns freedom of thought, conscience and religion, guaranteed in Article 10(1) of the Charter of Fundamental Rights of the European Union. The second case concerns freedom of expression, guaranteed in Article 11 of that charter, which includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It follows that those two 'reasons for persecution' should not, in principle, be assessed without taking that difference into consideration.

34 Second, it is important to emphasise that it is only in relation to the reason for persecution linked to 'membership of a particular social group', referred to in Article 10(1)(d) of Directive 2011/95, that there is mention of 'a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it'. The requirement of such an element, for the purposes of defining the concept of 'political opinion' or 'political characteristic, within the meaning of Article 10(1)(e) and (2) of that directive, would thus amount to restricting unduly the scope to be given to that latter concept.

35 In the third place, a broad interpretation of the concept of 'political opinion' or 'political characteristic', within the meaning of those provisions, is supported by the objective of that

directive, which consists, inter alia, as recital 12 thereof states, in identifying persons genuinely in need of international protection, on the basis of common criteria.

36 After all, as the UNHCR has noted in its written observations, even if the political opinions invoked by an applicant are not of a certain degree of conviction or are not 'fundamental' or deeply rooted in that applicant, he or she could be exposed, if returned to his or her country of origin, to the real risk of being persecuted on account of those political opinions or of those that the actors of potential persecution in that country would be led to attribute to him or her, having regard to the applicant's personal situation and the general context of the said country. From that point of view, only a broad interpretation of the concept of 'political opinion' as a reason for persecution is capable of achieving the objective referred to in the preceding paragraph.

37 In the light of all the foregoing reasons, the answer to the first, third and fourth questions is that Article 10(1)(e) and (2) of Directive 2011/95 must be interpreted as meaning that, in order for the opinions, ideas or beliefs of an applicant who has not yet attracted the negative interest of the potential actors of persecution in his or her country of origin to fall within the concept of 'political opinion' or 'political characteristic', it is sufficient for that applicant to claim that he or she has or expresses those opinions, thoughts or beliefs. That is without prejudice to the assessment of whether the applicant's fear of being persecuted on account of his or her political opinions is well founded.

The second question

38 Under the cooperation procedure provided for in Article 267 TFEU, the Court may be called upon to provide the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings (see, to that effect, judgments of 12 December 1990, *SARPP*, C-241/89, EU:C:1990:459, paragraph 8, and of 1 August 2022, *TL (Absence of an interpreter and of translation)*, C-242/22 PPU, EU:C:2022:611, paragraph 37).

39 In the case at hand, the referring court does not refer, in the wording of the second question, to any specific provision. However, it is apparent from the request for a preliminary ruling that that court seeks to determine the criteria for assessing the reason for persecution referred to in Article 10(1)(e) of Directive 2011/95. Such an assessment is governed by the provisions of Article 4 of that directive, relating to the assessment of the facts and circumstances and, more specifically, by those of paragraphs 3 to 5 thereof.

40 In those circumstances, it must be considered that, by its second question, the referring court asks, in essence, whether Article 4(3) to (5) of Directive 2011/95 must be interpreted as meaning that, for the purposes of assessing whether an applicant's fear of being persecuted on account of his or her political opinions is well founded, the competent authorities of the Member States must take account of the degree of conviction of those opinions and, in particular, ascertain whether they are so deeply rooted in the applicant that he or she could not abstain, if returned to his or her country of origin, from expressing them, thereby exposing himself or herself to the risk of being subjected to acts of persecution within the meaning of Article 9 of that directive.

41 In that regard, it must be recalled at the outset that, even though Article 4 of Directive 2011/95 is applicable to all applications for international protection, whatever the ground for persecution relied on in support of those applications, it is for the competent authorities to adapt

their methods of assessing statements and documentary or other evidence having regard to the specific features of each category of application for international protection, in observance of the rights guaranteed by the Charter of Fundamental Rights (judgment of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 36).

42 In the scheme of Directive 2011/95, the assessment of the well-foundedness of an applicant's fear of being persecuted on account of his or her 'political opinion' or 'political characteristic', within the meaning of Article 10(1)(e) and (2) of that directive, must, in accordance with Article 4(3) thereof, be individual in character and be carried out on a case-by-case basis. When the competent national authorities carry out such an assessment, they must determine whether the circumstances established constitute such a threat that the person concerned may reasonably fear, in the light of his or her individual situation, that he or she will in fact be subject to acts of persecution. That determination, which must, in all cases, be carried out with vigilance and care, must be based solely on a specific evaluation of the facts and circumstances, in accordance with the rules laid down in particular by Article 4(3) to (5) of the said directive (see, to that effect, judgment of 5 September 2012, *Y and Z*, C-71/11 and C-99/11, EU:C:2012:518, paragraphs 76 and 77).

43 Article 4(3) of Directive 2011/95 lists, in points (a) to (e) thereof, the factors that must be taken into account for that purpose, which include, in particular, all the relevant facts as they relate to the country of origin of the applicant at the time of taking a decision on his application, the information and documentation enabling it to be determined whether the applicant has been or may be subject to persecution, and the individual position and personal circumstances of the applicant. Article 4(4) of that directive states that the fact that an applicant has already been subject to persecution, or to direct threats of such persecution, is a serious indication of the applicant's well-founded fear of persecution, unless there are good reasons to consider that such persecution will not be repeated.

44 Last, Article 4(5) of that directive lays down, in the situation where aspects of the applicant's statements are not supported by documentary or other evidence, the cumulative conditions required in order for those aspects not to require confirmation. Those conditions include the coherence and plausibility of the applicant's statements and his or her general credibility.

45 It follows from the foregoing that the competent authorities of the Member States must carry out an exhaustive and thorough examination of all the relevant circumstances, relating to the specific personal situation of that applicant and of the more general context of his or her country of origin, from, inter alia, a political, legal, judicial, historical and sociocultural perspective, in order to determine whether the applicant has a well-founded fear of being personally persecuted on account of his or her political opinions, and in particular of those which potential actors of persecution in his or country of origin might be led to attribute to him or her (see, to that effect, judgment of 12 January 2023, *Migracijos departamentas (Reasons for persecution on the ground of political opinion)*, C-280/21, EU:C:2023:13, paragraphs 33 and 38).

46 In that context, the degree of conviction of the political opinions relied on by the applicant and whether he or she engages in activities to promote those opinions are relevant factors for the purposes of the individual assessment of his or her application, in accordance with Article 4(3) of Directive 2011/95. Those factors come into play in the assessment of the risk that they could have attracted or may attract the negative interest of the actors of potential persecution in the applicant's country of origin and that, if returned to that country, the applicant may be persecuted.

47 The circumstance that an applicant, through the political opinions that he or she has expressed or through the activities that he or she may have carried out in order to promote those opinions

during his or her stay in the country of origin or since his or her departure from that country, has already drawn the negative interest of the actors of potential persecution in that country is likewise a relevant factor for the individual assessment required by Article 4(3) of Directive 2011/95.

48 It follows that, in a situation in which the applicant states that he or she has or expresses opinions, ideas or beliefs acquired since his or her departure from the country of origin, without proving that he or she has drawn the negative interest of the actors of potential persecution in that country, liable to lead to acts of persecution on their part if he or she were to return there, the competent authorities of the Member States must take into account, for the purposes of the individual assessment of the application which they are required to carry out, in particular the degree of conviction of the political opinions relied on by the applicant and whether he or she engages in activities to promote those opinions. Those authorities cannot, however, require that those political opinions be so deeply rooted in that applicant that, on his or her return to his or her country of origin, he or she could not refrain from manifesting them in order not to attract the negative interest of the actors of potential persecution in that country, liable to lead them to acts of persecution, within the meaning of Article 9 of Directive 2011/95.

49 In the light of the foregoing, the answer to the second question is that Article 4(3) to (5) of Directive 2011/95 must be interpreted as meaning that, for the purposes of assessing whether an applicant's fear of persecution on account of his or her political opinions is well founded, the competent authorities of the Member States must take account of the fact that those political opinions, owing to the degree of conviction with which they are expressed or the possible engagement by that applicant in activities to promote those opinions, could have attracted or may attract the negative interest of the actors of potential persecution in that applicant's country of origin. It is not however required that the same opinions be so deeply rooted in the applicant that he or she could not refrain, if returned to his or her country of origin, from manifesting them, thereby exposing himself or herself to the risk of suffering acts of persecution within the meaning of Article 9 of that directive.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 10(1)(e) and (2) of 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**

must be interpreted as meaning that, in order for the opinions, ideas or beliefs of an applicant who has not yet attracted the negative interest of the potential actors of persecution in his or her country of origin to fall within the concept of 'political opinion' or 'political characteristic', it is sufficient for that applicant to claim that he or she has or expresses those opinions, thoughts or beliefs. That is without prejudice to the assessment of whether the applicant's fear of being persecuted on account of his or her political opinions is well founded.

2. **Article 4(3) to (5) of Directive 2011/95**

must be interpreted as meaning that, for the purposes of assessing whether an applicant's fear of persecution on account of his or her political opinions is well founded, the competent authorities of the Member States must take account of the fact that those political opinions, owing to the degree of conviction with which they are expressed or the possible engagement by that applicant in activities to promote those opinions, could have attracted or may attract the negative interest of the actors of potential persecution in that applicant's country of origin. It is not however required that the same opinions be so deeply rooted in the applicant that he or she could not refrain, if returned to his or her country of origin, from manifesting them, thereby exposing himself or herself to the risk of suffering acts of persecution within the meaning of Article 9 of that directive.

[Signatures]

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* Language of the case: Dutch.

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

21 September 2023 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Common asylum policy – Eligibility for refugee status – Directive 2011/95/EC – Article 10(1)(e) and (2) – Reasons for persecution – 'Political opinion' – Concept – Political opinions developed in the host Member State – Article 4 – Assessment of the well-founded fear of persecution on account of those political opinions)

In Case C-151/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 16 February 2022, received at the Court on 2 March 2022, in the proceedings

S,

A

v

Staatssecretaris van Veiligheid en Justitie,

intervening party:

United Nations High Commissioner for Refugees (UNHCR),

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan, N. Piçarra (Rapporteur), N. Jääskinen and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– S, by M.M.J. van Zantvoort, advocate,

– the United Nations High Commissioner for Refugees (UNHCR), by C.J. Ullersma, advocate,

– the Netherlands Government, by M.K. Bulterman and A. Hanje, acting as Agents,

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the European Commission, by A. Azéma and F. Wilman, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 10(1)(e) of 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).

2 The request has been made in the context of two sets of proceedings, the first between S and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) (‘the State Secretary’), the second between A and the State Secretary, concerning the latter’s refusal to grant them refugee status.

Legal context

International law

3 The first subparagraph of Article 1(A)(2) of the Convention relating to the Status of Refugees, which was signed in Geneva on 28 July 1951 and entered into force on 22 April 1954 (*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967 and entered into force on 4 October 1967 ('the Geneva Convention'), provides that the term 'refugee' is to apply to any person who, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it'.

European Union law

4 Recitals 4, 12 and 16 of Directive 2011/95 state:

'(4) The [Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951] and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

…

(12) The main objective of this Directive is, on the one hand, to ensure that 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 those persons in all Member States.

…

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.'

5 Article 2 of that directive provides:

'For the purposes of this Directive the following definitions shall apply:

…

(d) "refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(e) “refugee status” means the recognition by a Member State of a third-country national or a stateless person as a refugee;

…

(h) “application for international protection” means a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

(i) “applicant” means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

…’

6 Article 4 of the said directive, entitled ‘Assessment of facts and circumstances’, provides, in paragraphs 3 to 5 thereof:

‘3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant, including information on whether the applicant has been or may be subject to persecution …

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant’s personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution …

(d) whether the applicant’s activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution … if returned to that country;

…

4. The fact that an applicant has already been subject to persecution … or to direct threats of such persecution … is a serious indication of the applicant’s well-founded fear of persecution …, unless there are good reasons to consider that such persecution … will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

…

(e) the general credibility of the applicant has been established.'

7 According to Article 6 of the same:

'Actors of persecution or serious harm include:

(a) the State;

(b) parties or organisations controlling the State or a substantial part of the territory of the State;

…'

8 Article 9 of Directive 2011/95 sets out the conditions in order for an act to be regarded as an 'act of persecution' for the purposes of Article 1(A) of the Geneva Convention. To that end, it contains a non-exhaustive list of the forms that acts of persecution can take and requires that a connection can be established between those acts and the reasons for persecution mentioned in Article 10 thereof.

9 Article 10 of that directive, entitled 'Reasons for persecution', provides:

'1. Member States shall take the following elements into account when assessing the reasons for persecution:

…

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

…

(d) a group shall be considered to form a particular social group where in particular:

– members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

…

(e) the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their

policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant 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.'

10 Article 13 of that directive, entitled 'Granting of refugee status', is worded as follows:

'Member States shall grant refugee status to a third-country national or a stateless person who qualifies as a refugee in accordance with Chapters II and III.'

Netherlands law

11 Chapter C2 of the Vreemdelingencirculaire 2000 (Circular on foreign nationals 2000), of 2 March 2001 (*Stcrt*. 2001, No 64), in the version applicable to the case in the main proceedings, provides, in paragraph 3.2 thereof:

'…

Political opinions

The fact that the foreign national cannot express his or her political opinions in his or her country of origin in the same manner as in the Netherlands is not sufficient for the foreign national to be issued with a temporary asylum residence permit …

In any event, in assessing the application for a temporary asylum residence permit, the [Immigratie- en Naturalisatiedienst (IND) (Immigration and Naturalisation Service)] shall also take into account:

a. whether there is a question of fundamental political opinion. The IND shall assess whether, for the foreign national, those political opinions are particularly important for maintaining his or her identity or conscience;

b. the manner in which he or she has expressed his or her political opinions, whether those activities took place in his or her country of origin, in the Netherlands or elsewhere, and the way in which, after his or her return, he or she intends to (continue to) express them;

c. whether or not he or she has previously experienced problems from the authorities as a result of his or her political opinions;

d. whether the manner in which he or she has expressed his or her political opinions or wishes to express them in the event of return will lead to acts of persecution as referred to in Article 3.36 of the Voorschrift Vreemdelingen 2000 [(Regulation on foreign nationals 2000), of 18 December 2000 (*Stcrt*. 2001, No 10)]; and

e. whether it is plausible that previous expressions of his or her political opinions have come to the attention of the authorities.

In the case of fundamental political opinions, the IND requires no restraint if the activities (that the foreign national is planning) are linked to those fundamental political opinions. If they are not fundamental political opinions, then the IND does require restraint.

The IND shall assess whether the measures and sanctions that will be taken against the foreign national in the event of return to the country of origin as a result of those expressions or acts which constitute a corollary of fundamental political opinions are sufficiently serious in their consequences for the question of persecution to be raised.

Even where there is not a question of fundamental political opinion, the IND shall assess whether the political activities of the foreign national or his or her expressions of political opinion in his or her country of origin, in the Netherlands or elsewhere have come to the knowledge of the authorities or will come to their knowledge and whether, as a result, they provide sufficient justification for accepting a well-founded fear of persecution in the event of return on account of political opinions which are attributed to him or her.

…'

The disputes in the main proceedings and the questions referred for a preliminary ruling

The first case in the main proceedings

12 S, a Sudanese national, arrived in the Netherlands on 21 January 2012. In her fourth application for asylum lodged with the State Secretary, she explained that, if she were returned to her country of origin, she would be persecuted by the Sudanese authorities on account of the political activities carried out in the Netherlands for, first, the Umma Party, which belonged to the 'Forces of Freedom and Change' alliance and coordinated the Sudanese revolution that occurred in 2019, and, second, the Darfur Vereniging Nederland (Association for Darfur in the Netherlands).

13 S also claimed that she had participated in more than 10 demonstrations organised in the Netherlands against the Sudanese Government, during which she had chanted slogans against the Sudanese regime, that she had informed other women about the Umma Party's activities, encouraging them to take part in those events, and that she had criticised the Sudanese Government on her Facebook and Twitter accounts.

14 In none of her asylum applications did S claim that, while she was still in Sudan, she had expressed political opinions that had forced her to leave that country. Nor did she claim that the political opinions she expressed after her departure had come to the attention of the Sudanese authorities.

15 By decision of 30 August 2019, the State Secretary rejected the application for a temporary asylum residence permit lodged by S, taking the view that, notwithstanding the credibility of her statements concerning her activities in the Netherlands, they did not stem from political opinions worthy of protection. According to the State Secretary, S had not clearly identified those opinions, indicated that they were of fundamental importance to her or specified which specific activities she was intending to carry out in the future on the basis of those opinions.

16 By judgment of 20 May 2020, the rechtbank Den Haag (District Court, The Hague, Netherlands) upheld the appeal brought by S and annulled that decision, holding that the person concerned had established to the requisite standard that she had a 'political opinion' within the meaning of Article 10(1)(e) of Directive 2011/95. According to that court, the question whether

those opinions were worthy of protection should be assessed in the light of paragraphs 80, 82 and 86 of the document entitled Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, drawn up by the United Nations High Commissioner for Refugees (UNHCR), in its revised version of February 2019 (HCR/1P/4/FRE/REV.4; 'the Handbook on Procedures'). The said court also considered that the criterion set out in the Circular on foreign nationals 2000, according to which political opinions must be 'fundamental', was ambiguous and confused with the criteria applicable to the reason for persecution relating to religion.

17 The State Secretary brought an appeal against that judgment before the Raad van State (Council of State, Netherlands), the referring court, arguing that the court of first instance had wrongly held that the reasons for persecution based, respectively, on political opinions and on religious beliefs are different in nature. In his view, they should both be assessed by ascertaining whether the opinions or beliefs alleged by the applicant are so determinative of his or her identity or moral integrity that he or she may not be asked to renounce or conceal them in the event of return to his or her country of origin.

18 For her part, S, who lodged a cross-appeal against the judgment of 20 May 2020, referred to in paragraph 16 of the present judgment, criticised the court of first instance for having held that the assessment of the conditions to be fulfilled by an applicant in order to obtain refugee status depends on the importance and strength of his or her political opinions. Neither Directive 2011/95 nor the Handbook on Procedures requires that those opinions be 'fundamental' in order to be worthy of protection.

The second dispute in the main proceedings

19 A, a Sudanese national, arrived in the Netherlands on 20 July 2011. In his second application for asylum, he stated that, if he were returned to his country of origin, he would be persecuted by the Sudanese authorities on account of his critical views in the Netherlands on the political situation in Sudan and his initiatives in favour of the rights of the Al-Gimir tribe in West Darfur.

20 It is apparent from the order for reference that the evidence provided by A in his first application for asylum in order to establish that, prior to his departure from Sudan, he had been arrested and tortured on suspicion of membership of an opposition political party was considered not to be credible. Moreover, A became politically active in the Netherlands only after the rejection of that first application for asylum.

21 By decision of 18 June 2020, the State Secretary rejected the application for a temporary asylum residence permit submitted by A and issued him with an entry ban on the ground that he had not provided sufficient evidence that his activities in the Netherlands stemmed from fundamental political opinions.

22 By judgment of 28 August 2020, the rechtbank Den Haag (District Court, The Hague) dismissed the action brought by A against the decision of the State Secretary. That court held that the State Secretary had rightly considered as not credible the hypothesis that A's political activities in the Netherlands stemmed from fundamental political opinions. That court pointed out that A had specified neither the purpose of the demonstrations in which he had participated nor the aim he had pursued by participating in them.

23 A lodged an appeal against that judgment, criticising the court of first instance for having failed to find, inter alia, that the State Secretary had no uniform decision-making line with regard to

the concept of ‘political opinion’ within the meaning of Article 10(1)(e) of Directive 2011/95. In any event, it is not apparent either from that directive or from the Handbook on Procedures that those opinions must be ‘fundamental’ in order to be worthy of protection.

24 In the context of the two disputes, the Raad van State (Council of State) asks, in particular, whether, in order to fall within the concept of ‘political opinion’, within the meaning of Article 10(1)(e) of Directive 2011/95, in a situation where the applicant has not yet attracted the negative interest of the potential agents of persecution in his or her country of origin, the opinions in question must be of ‘a particular strength’. That court also asks whether and to what extent such a circumstance is relevant to the assessment of the merits of an application for international protection.

25 It is in those circumstances that, in the two disputes in the main proceedings, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 1(10)(e) of [Directive 2011/95] be interpreted as meaning that political opinion as a reason for persecution may also be invoked by applicants who merely claim to hold a political view, and/or to express such a view, without having attracted the negative interest of an actor of persecution during their residence in their country of origin and since their residence in the host country?

(2) If the answer to Question 1 is in the affirmative, and a political view is thus sufficient to qualify as a political opinion, what weight must be given to the strength of that political view, thought or belief and to the importance to the foreign national of the activities stemming from it in the examination and assessment of an asylum application, that is to say, the examination of the reality of that applicant’s alleged fear of persecution?

(3) If the answer to Question 1 is in the negative, is the criterion then that such a political opinion must be deeply rooted, and if not, what is the relevant criterion and how is it to be applied?

(4) If the criterion is that the political opinion must be deeply rooted, can an applicant who fails to demonstrate that he or she holds a deeply rooted political opinion be expected to refrain from expressing that political opinion upon return to the country of origin, so as not to arouse the negative interest of an actor of persecution?’

Consideration of the questions referred

The first, third and fourth questions

26 By its first, third and fourth questions, which it is appropriate to examine jointly, the referring court asks, in essence, whether Article 10(1)(e) and (2) of Directive 2011/95 must be interpreted as meaning that, in order for the opinions, ideas or beliefs of an applicant who has not yet attracted the negative interest of the potential actors of persecution in his or her country of origin to fall within the concept of ‘political opinion’, it is sufficient for that applicant to claim that he or she has or expresses that opinion, thought or belief.

27 Under Article 10(1)(e) of Directive 2011/95, ‘the concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant’. According to Article 10(2) of that

directive, ‘when assessing if an applicant 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’.

28 According to settled case-law, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union. That interpretation must take into account not only its wording but also its context and the objective pursued by the legislation in question (judgments of 18 January 1984, *Ekro*, 327/82, EU:C:1984:11, paragraph 11, and of 2 June 2022, *T.N. and N.N. (Declaration concerning the waiver of succession)*, C-617/20, EU:C:2022:426, paragraph 35 and the case-law cited).

29 In the first place, it is apparent from the very wording of Article 10(1)(e) and (2) of Directive 2011/95 that the concept of ‘political opinion’ and ‘political characteristic’ is to be interpreted broadly. That is true, first of all, of the non-exhaustive list of elements which may serve to identify that concept, which follows from the use of the adverbial phrase ‘in particular’. Next, not only opinions are referred to, but also ‘thoughts’ and ‘beliefs’ on a matter related to the potential actors of persecution and to the ‘policies’ or ‘methods’ of those actors, without those opinions, thoughts or beliefs necessarily being acted upon by the applicant. Last, the perception of the political nature of those opinions, thoughts or beliefs is highlighted rather than the applicant’s personal reasons (see, to that effect, judgment of 12 January 2023, *Migracijos departamentas (Reasons for persecution on the ground of political opinion)*, C-280/21, EU:C:2023:13, paragraph 26).

30 It follows that the wording of Article 10(1)(e) and (2) of Directive 2011/95, irrespective of the language version considered, gives no indication that, in order to fall within the concept of ‘political opinion’ or ‘political characteristic’, within the meaning of those provisions, the views, ideas or beliefs which the applicant claims to have or express must be of a certain degree of conviction for that applicant, or even be so deeply rooted in him or her that he or she could not refrain, if returned to his or her country of origin, from expressing them in order not to attract the negative interest of the actors of potential persecution in that country.

31 In the second place, that broad interpretation of the concept of ‘political opinion’ is confirmed by the general context of the concept of ‘political opinion’ and ‘political characteristic’, within the meaning of Article 10(1)(e) and (2) of Directive 2011/95. After all, the guidelines contained in the Handbook on Procedures to which it is important to refer, having regard to their particular relevance in the light of the role conferred on the UNHCR by the Geneva Convention (see, to that effect, judgment of 23 May 2019, *Bilali*, C-720/17, EU:C:2019:448, paragraph 57), emphasise that the concept of ‘political opinion’ can include any opinion or issue involving the State, the Government, society or a policy, irrespective of its strength or rooting in the applicant (see, to that effect, judgment of 12 January 2023, *Migracijos departamentas (Reasons for persecution on the ground of political opinion)*, C-280/21, EU:C:2023:13, paragraph 27).

32 As regards the specific context of Directive 2011/95, it should be recalled that ‘political opinions’ constitute, in line with the first subparagraph of Article 1(A)(2) of the Geneva Convention, one of the five ‘reasons for persecution’ listed in Article 10 of Directive 2011/95, the others being race, religion, nationality and membership of a particular social group. Each of those ‘reasons for persecution’, as its own distinct concept, has autonomous definitions in the five points of Article 10(1).

33 In the light of the referring court's questions, it should be noted, in particular, first, that the reason for persecution relating to 'religion' and that relating to 'political opinion', provided for in points (b) and (e) of Article 10(1) respectively, are intended, as is stated in recital 16 of Directive 2011/95, to promote the application of distinct fundamental rights, different in content and scope. The first case concerns freedom of thought, conscience and religion, guaranteed in Article 10(1) of the Charter of Fundamental Rights of the European Union. The second case concerns freedom of expression, guaranteed in Article 11 of that charter, which includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It follows that those two 'reasons for persecution' should not, in principle, be assessed without taking that difference into consideration.

34 Second, it is important to emphasise that it is only in relation to the reason for persecution linked to 'membership of a particular social group', referred to in Article 10(1)(d) of Directive 2011/95, that there is mention of 'a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it'. The requirement of such an element, for the purposes of defining the concept of 'political opinion' or 'political characteristic, within the meaning of Article 10(1)(e) and (2) of that directive, would thus amount to restricting unduly the scope to be given to that latter concept.

35 In the third place, a broad interpretation of the concept of 'political opinion' or 'political characteristic', within the meaning of those provisions, is supported by the objective of that directive, which consists, inter alia, as recital 12 thereof states, in identifying persons genuinely in need of international protection, on the basis of common criteria.

36 After all, as the UNHCR has noted in its written observations, even if the political opinions invoked by an applicant are not of a certain degree of conviction or are not 'fundamental' or deeply rooted in that applicant, he or she could be exposed, if returned to his or her country of origin, to the real risk of being persecuted on account of those political opinions or of those that the actors of potential persecution in that country would be led to attribute to him or her, having regard to the applicant's personal situation and the general context of the said country. From that point of view, only a broad interpretation of the concept of 'political opinion' as a reason for persecution is capable of achieving the objective referred to in the preceding paragraph.

37 In the light of all the foregoing reasons, the answer to the first, third and fourth questions is that Article 10(1)(e) and (2) of Directive 2011/95 must be interpreted as meaning that, in order for the opinions, ideas or beliefs of an applicant who has not yet attracted the negative interest of the potential actors of persecution in his or her country of origin to fall within the concept of 'political opinion' or 'political characteristic', it is sufficient for that applicant to claim that he or she has or expresses those opinions, thoughts or beliefs. That is without prejudice to the assessment of whether the applicant's fear of being persecuted on account of his or her political opinions is well founded.

The second question

38 Under the cooperation procedure provided for in Article 267 TFEU, the Court may be called upon to provide the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings (see, to that effect, judgments of 12 December 1990, *SARPP*, C-241/89,

EU:C:1990:459, paragraph 8, and of 1 August 2022, *TL (Absence of an interpreter and of translation)*, C-242/22 PPU, EU:C:2022:611, paragraph 37).

39 In the case at hand, the referring court does not refer, in the wording of the second question, to any specific provision. However, it is apparent from the request for a preliminary ruling that that court seeks to determine the criteria for assessing the reason for persecution referred to in Article 10(1)(e) of Directive 2011/95. Such an assessment is governed by the provisions of Article 4 of that directive, relating to the assessment of the facts and circumstances and, more specifically, by those of paragraphs 3 to 5 thereof.

40 In those circumstances, it must be considered that, by its second question, the referring court asks, in essence, whether Article 4(3) to (5) of Directive 2011/95 must be interpreted as meaning that, for the purposes of assessing whether an applicant's fear of being persecuted on account of his or her political opinions is well founded, the competent authorities of the Member States must take account of the degree of conviction of those opinions and, in particular, ascertain whether they are so deeply rooted in the applicant that he or she could not abstain, if returned to his or her country of origin, from expressing them, thereby exposing himself or herself to the risk of being subjected to acts of persecution within the meaning of Article 9 of that directive.

41 In that regard, it must be recalled at the outset that, even though Article 4 of Directive 2011/95 is applicable to all applications for international protection, whatever the ground for persecution relied on in support of those applications, it is for the competent authorities to adapt their methods of assessing statements and documentary or other evidence having regard to the specific features of each category of application for international protection, in observance of the rights guaranteed by the Charter of Fundamental Rights (judgment of 25 January 2018, *F*, C-473/16, EU:C:2018:36, paragraph 36).

42 In the scheme of Directive 2011/95, the assessment of the well-foundedness of an applicant's fear of being persecuted on account of his or her 'political opinion' or 'political characteristic', within the meaning of Article 10(1)(e) and (2) of that directive, must, in accordance with Article 4(3) thereof, be individual in character and be carried out on a case-by-case basis. When the competent national authorities carry out such an assessment, they must determine whether the circumstances established constitute such a threat that the person concerned may reasonably fear, in the light of his or her individual situation, that he or she will in fact be subject to acts of persecution. That determination, which must, in all cases, be carried out with vigilance and care, must be based solely on a specific evaluation of the facts and circumstances, in accordance with the rules laid down in particular by Article 4(3) to (5) of the said directive (see, to that effect, judgment of 5 September 2012, *Y and Z*, C-71/11 and C-99/11, EU:C:2012:518, paragraphs 76 and 77).

43 Article 4(3) of Directive 2011/95 lists, in points (a) to (e) thereof, the factors that must be taken into account for that purpose, which include, in particular, all the relevant facts as they relate to the country of origin of the applicant at the time of taking a decision on his application, the information and documentation enabling it to be determined whether the applicant has been or may be subject to persecution, and the individual position and personal circumstances of the applicant. Article 4(4) of that directive states that the fact that an applicant has already been subject to persecution, or to direct threats of such persecution, is a serious indication of the applicant's well-founded fear of persecution, unless there are good reasons to consider that such persecution will not be repeated.

44 Last, Article 4(5) of that directive lays down, in the situation where aspects of the applicant's statements are not supported by documentary or other evidence, the cumulative conditions required

in order for those aspects not to require confirmation. Those conditions include the coherence and plausibility of the applicant's statements and his or her general credibility.

45 It follows from the foregoing that the competent authorities of the Member States must carry out an exhaustive and thorough examination of all the relevant circumstances, relating to the specific personal situation of that applicant and of the more general context of his or her country of origin, from, inter alia, a political, legal, judicial, historical and sociocultural perspective, in order to determine whether the applicant has a well-founded fear of being personally persecuted on account of his or her political opinions, and in particular of those which potential actors of persecution in his or country of origin might be led to attribute to him or her (see, to that effect, judgment of 12 January 2023, *Migracijos departamentas (Reasons for persecution on the ground of political opinion)*, C-280/21, EU:C:2023:13, paragraphs 33 and 38).

46 In that context, the degree of conviction of the political opinions relied on by the applicant and whether he or she engages in activities to promote those opinions are relevant factors for the purposes of the individual assessment of his or her application, in accordance with Article 4(3) of Directive 2011/95. Those factors come into play in the assessment of the risk that they could have attracted or may attract the negative interest of the actors of potential persecution in the applicant's country of origin and that, if returned to that country, the applicant may be persecuted.

47 The circumstance that an applicant, through the political opinions that he or she has expressed or through the activities that he or she may have carried out in order to promote those opinions during his or her stay in the country of origin or since his or her departure from that country, has already drawn the negative interest of the actors of potential persecution in that country is likewise a relevant factor for the individual assessment required by Article 4(3) of Directive 2011/95.

48 It follows that, in a situation in which the applicant states that he or she has or expresses opinions, ideas or beliefs acquired since his or her departure from the country of origin, without proving that he or she has drawn the negative interest of the actors of potential persecution in that country, liable to lead to acts of persecution on their part if he or she were to return there, the competent authorities of the Member States must take into account, for the purposes of the individual assessment of the application which they are required to carry out, in particular the degree of conviction of the political opinions relied on by the applicant and whether he or she engages in activities to promote those opinions. Those authorities cannot, however, require that those political opinions be so deeply rooted in that applicant that, on his or her return to his or her country of origin, he or she could not refrain from manifesting them in order not to attract the negative interest of the actors of potential persecution in that country, liable to lead them to acts of persecution, within the meaning of Article 9 of Directive 2011/95.

49 In the light of the foregoing, the answer to the second question is that Article 4(3) to (5) of Directive 2011/95 must be interpreted as meaning that, for the purposes of assessing whether an applicant's fear of persecution on account of his or her political opinions is well founded, the competent authorities of the Member States must take account of the fact that those political opinions, owing to the degree of conviction with which they are expressed or the possible engagement by that applicant in activities to promote those opinions, could have attracted or may attract the negative interest of the actors of potential persecution in that applicant's country of origin. It is not however required that the same opinions be so deeply rooted in the applicant that he or she could not refrain, if returned to his or her country of origin, from manifesting them, thereby exposing himself or herself to the risk of suffering acts of persecution within the meaning of Article 9 of that directive.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 10(1)(e) and (2) of 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**

must be interpreted as meaning that, in order for the opinions, ideas or beliefs of an applicant who has not yet attracted the negative interest of the potential actors of persecution in his or her country of origin to fall within the concept of 'political opinion' or 'political characteristic', it is sufficient for that applicant to claim that he or she has or expresses those opinions, thoughts or beliefs. That is without prejudice to the assessment of whether the applicant's fear of being persecuted on account of his or her political opinions is well founded.

2. **Article 4(3) to (5) of Directive 2011/95**

must be interpreted as meaning that, for the purposes of assessing whether an applicant's fear of persecution on account of his or her political opinions is well founded, the competent authorities of the Member States must take account of the fact that those political opinions, owing to the degree of conviction with which they are expressed or the possible engagement by that applicant in activities to promote those opinions, could have attracted or may attract the negative interest of the actors of potential persecution in that applicant's country of origin. It is not however required that the same opinions be so deeply rooted in the applicant that he or she could not refrain, if returned to his or her country of origin, from manifesting them, thereby exposing himself or herself to the risk of suffering acts of persecution within the meaning of Article 9 of that directive.

[Signatures]

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* Language of the case: Dutch.