



OSSERVATORIO SULLA CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA N. 1/2016

1. THE COURT OF JUSTICE REFINES THE MEANING OF FREEDOM OF MOVEMENT FOR THIRD COUNTRY NATIONALS WHO ARE BENEFICIARIES OF SUBSIDIARY PROTECTION

[*Ibrahim Alo, Amira Osso \(Joined Cases C-443/14 and C-444/14\), judgment of the Grand Chamber of the Court of Justice, 1 March 2016 \(ECLI:EU:C:2016:127\)*](#)

(Reference for a preliminary ruling — Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 — Articles 23 and 26 — Area of freedom, security and justice — Directive 2011/95/EU — Rules relating to the content of international protection — Subsidiary protection status — Article 29 — Social welfare — Conditions of access — Article 33 — Freedom of movement within the host Member State — Definition — Restriction — Obligation to reside in a particular place — Different treatment — Comparable situations — Balanced distribution of budgetary costs between local authorities — Grounds of migration or integration policy)

1. Article 33 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 a residence condition imposed on a beneficiary of subsidiary protection status, such as the conditions at issue in the main proceedings, constitutes a restriction of the freedom of movement guaranteed by that article, even when it does not prevent the beneficiary from moving freely within the territory of the Member State that has granted the protection and from staying on a temporary basis in that territory outside the place designated by the residence condition.

2. Articles 29 and 33 of Directive 2011/95 must be interpreted as precluding the imposition of a residence condition, such as the conditions at issue in the main proceedings, on a beneficiary of subsidiary protection status in receipt of certain specific social security benefits, for the purpose of achieving an appropriate distribution of the burden of paying those benefits among the various institutions competent in that regard, when the applicable national rules do not provide for the imposition of such a measure on refugees, third-country nationals legally resident in the Member State concerned on grounds that are not humanitarian or political or based on international law or nationals of that Member State in receipt of those benefits.

3. Article 33 of Directive 2011/95 must be interpreted as not precluding a residence condition, such as the conditions at issue in the main proceedings, from being imposed on a beneficiary of subsidiary protection status, in receipt of certain specific social security benefits, with the objective of facilitating the integration of third-country nationals in the Member State that has granted that protection — when the applicable national rules do not provide for such a measure to be imposed on third-country nationals legally resident in that Member State on grounds that are not humanitarian or political or based on international law and who are in receipt of those benefits — if beneficiaries of subsidiary protection status are not in a situation that is objectively comparable, so far as that objective is concerned, with the situation of third-country nationals legally resident in the Member State concerned on grounds that are not humanitarian or political or based on international law, it being for the referring court to determine whether that is the case.

1. In the Grand Chamber’s ruling issued on 1 March 2016, the Court of Justice interpreted upon a reference for preliminary ruling from the German *Bundesverwaltungsgericht* (Federal Administrative Court) the [Qualification Directive 2011/95/EU](#) as to the meaning that freedom of movement for beneficiaries of subsidiary protection must be given by Member States and the compatibility of a residence condition with such freedom. This judgment is the first on the recast qualification Directive which replaced former [Directive 2004/83/EC](#).

2. As is known, the Qualification Directive defines the eligibility grounds for subsidiary protection, a legal status that complements refugee status as established by the 1951 [United Nations Convention on the Status of Refugees](#). Pursuant to the mentioned Directive, and namely Art. 33, “Member States shall allow freedom of movement within their territory to beneficiaries of international protection, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories.” The principle of equal treatment echoed in Art. 29, provides that Member States can derogate from offering the necessary social assistance as provided to nationals of that Member State, by limiting social assistance granted to beneficiaries of subsidiary protection status “to core benefits which will then be provided at the same level and under the same eligibility conditions as nationals.”

The judgment is relevant from different levels of analysis, especially including the relationship with the Geneva Convention and the coordination with the status of other third country nationals under EU law and nationals of a EU Member State. Both issues will be subsequently considered in greater detail, after a short overview of the disputes in the main proceedings.

3. The cases concern two Syrian nationals who, arrived in Germany in 1998 and 2001 respectively, were granted subsidiary protection status including the imposition of a residence condition in line with the administrative instructions concerning the Law on the residence, employment and integration of foreign nationals in the Federal Territory. Such residence condition was objected by the applicants concerned. However, while the appeal brought by Mr Alo was successful, Ms Osso’s appeal was dismissed. In view of these diverging circumstances, the Federal Administrative Court decided to stay the proceedings and referred to the Court of Justice questions for a preliminary ruling. Specifically, these questions can be summarized as follows: whether a restriction to the freedom of

movement within the host country of beneficiaries of subsidiary protection that receive social security benefits is compatible with the Qualification Directive, should it be founded upon a) the objective of achieving an appropriate distribution of social assistance burdens among the relevant institutions within the territory of the State; b) on grounds of migration or integration policy, for instance to prevent social tension owing to the settlement of a high number of third country nationals in certain municipalities or districts.

4. In its judgment, the Court emphasized that, as stressed by Advocate General Cruz Villalón in the [Opinion of last 6 October 2015](#), the concept of “free movement” in EU law is not uniformly applied, as it usually refers to ‘a series of closely related rights, among them freedom to move and freedom of residence, and also the freedom to leave one’s own State’ (para. 34). The Court therefore elaborates its reasoning on the assumption that freedom of movement does not necessarily and always include the right to choose the place of residence, as proved by the different linguistic versions of the Directive that support in fact different literal interpretations. Consequently, following a consistent case law, the hermeneutical method to apply where there is a divergence between the various language versions of an EU text suggests an interpretation in line with the ‘the general scheme and the purpose of the rules of which it forms part’ (*GSV kft.* C-74/13, para 27).

5. In this regard, thus, the Court, referred to the relevant international legal framework and specifically the Refugee Convention that, as reiterated by the Luxembourg judges since the ruling in [Abdullahi](#), constitutes ‘the cornerstone of the international legal regime for the protection of refugees and that the provisions of the Directive for determining who qualifies for refugee status’ (para. 52). In the case under discussion the Court even echoed that even the Preamble of the Qualification Directive confirms that the Common European Asylum System (CEAS), to whose definition that directive contributes, is based on the full and inclusive application of the Geneva Convention (para. 30). The latter instrument enshrines in Art. 26 on freedom of movement the right for refugees to choose their place of residence. It is worth noting that, despite the Refugee Convention does not mention any complementary form of protection apart from the refugee status, following the [Stockholm Programme](#), the EU aimed to establish a common asylum procedure and a uniform status for those granted international protection (par. 6.2). The recast asylum legislation adopted between 2011 and 2013 is based on the understanding that refugee and recipients of subsidiary protection under EU law shall enjoy the same rights and benefits. The Court of Justice therefore ruled that interpreting Art. 33 of the Qualification Directive as referring solely to the refugees, without including recipients of subsidiary protection, would be contrary to the objective of the CEAS.

6. The Court subsequently investigated the grounds for possible legitimate restrictions to the freedom of movement in order to address the other specific questions that the German judge referred to Luxembourg. From this perspective, the Refugee Convention allows that the right to choose the place of residence may be ‘subject to any regulations applicable to aliens generally in the same circumstances.’ Accordingly, the Court mentioned that beneficiaries of subsidiary protection status cannot ‘in principle, be subject to more restrictive rules..., than those applicable to refugees and other third-country nationals who are legally resident in the Member State which has granted that protection.’

7. However, the residence obligation is imposed under German law in as much as recipients of subsidiary protection enjoy welfare benefit, pursuant to Art. 29 of the Qualification Directive. The latter provision allows Member States to limit social assistance granted to beneficiaries of subsidiary protection status to core benefits but these should be

provided ‘under the same conditions of eligibility as those applicable to nationals of that Member State’ (para. 49). The Court clarified that ‘national rules could legitimately provide for a residence condition to be imposed on beneficiaries of subsidiary protection status,’ only if it is proved that they are not in a comparable situation as refugees and third country nationals legally resident in the territory of the Member State concerned on grounds that are not humanitarian or political or based on international law and nationals of that Member State (para. 54). More specifically, the Court pointed out that ‘the grant of social security benefits to a given person will entail costs for the institution that is required to provide those benefits, regardless of whether that person is a beneficiary of subsidiary protection status, a refugee, a third-country national who is legally resident in German territory on grounds that are not humanitarian or political or based on international law or a German national’ (para. 55).

8. As to the possibility to restrict freedom of movement for broader migration or integration policy, such as to prevent ‘the emergence of points of social tension’ owing to a high number of third country nationals in certain municipalities or districts, the Court underscored that the treatment of recipients of subsidiary protection is different from the one applicable, generally, to third-country nationals legally resident in German territory on grounds that are not humanitarian or political or based on international law and to German nationals. Consequently, as to the objective of favoring the integration of third-country nationals, Art. 29 is not relevant. Nonetheless, as regards Art. 33 of the Qualification Directive and the freedom of movement, the Court left to the German Federal Administrative Court to establish whether a beneficiary of subsidiary protection ‘will face greater difficulties relating to integration than another third-country national who is legally resident in Germany and in receipt of such benefits.’ The Court concluded that Art. 33 does not preclude a restriction through a residence condition to the freedom of movement for beneficiaries of subsidiary protection.

9. The case at issue offers another occasion to reflect on the degree of compliance with Refugee Convention required by Member States when applying EU asylum law. The case is especially relevant because it puts in connection the protection regulated by the Refugee Convention and the distinct features of the EU system of protection. In so doing, the Court significantly recognised the paramount role of the Refugee Convention as ‘a cornerstone’ of the CEAS that plays a quintessential role in guaranteeing that a uniform status for those granted international protection. In contrast with the recent ruling in [Diakité](#), commented [here](#), in which the Court underscored the specificity of EU asylum law to provide stronger protection for persons in need, the Court’s reasoning in *Alo and Osso* stresses how the EU international protection regime is heavily rooted in the relevant international law framework and namely the Refugee Convention.

10. Nonetheless, as noticed by [Halleskov Storgaard](#), in elaborating on the need to assure a uniform status between refugees and recipients of subsidiary protection, the Court did not follow Advocate General’s approach to interpreting Article 33 of the Directive through the lens of the non-discrimination provisions in Article 21 of the EU Charter of Fundamental Rights and Article 14 ECHR in conjunction with the fundamental right to freedom of movement set out in international human rights law, including Article 2 of Protocol 4 to the ECHR. The judgment in fact, surprisingly does not contain any reference to the relevant framework on fundamental rights and non-discrimination, and in that sense the Court perhaps missed an opportunity to emphasize the inherent connection, discussed

by [Chetail](#) in greater detail, between international refugee law and international human rights standards.

11. Ultimately, an important element that deserves attention is that the Court of Justice, although very succinctly, provided further clarification on the broad concept of free movement. This constitutes the major breakthrough of the ruling under discussion in as much as the Court confirmed that, drawing from the Refugee Convention, such freedom does include the right to choose the place of residence within the territory of the Member State. This is a relevant finding which can serve as basis for Member States to design migration policies that would favour the integration of recipients of international protection within the State's social fabric.

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