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**In EU law, the interpretation to be given to the concept of ‘internal armed conflict’ must be independent of the definition used in international humanitarian law**

*An internal armed conflict must be found to exist where a State’s armed forces confront one or more armed groups or where two or more armed groups confront each other, regardless of the intensity of the confrontations, the level of organisation of the armed forces involved or the duration of the conflict*

An EU Directive<sup>1</sup> protects not only persons who can qualify for recognition as refugees, but also persons who do not qualify for this status but in respect of whom substantial grounds have been shown for believing that, if returned to their country of origin or country of former habitual residence, they would face a real risk of suffering serious harm (subsidiary protection regime). Serious harm consists, inter alia, in a serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

In 2008 and 2010, Mr Diakité – a Guinean national – applied for international protection in Belgium, arguing that he had been the victim of acts of violence in Guinea following his participation in protest movements against the ruling regime. Mr Diakité was refused subsidiary protection on the ground that there was no ‘internal armed conflict’ in Guinea, as defined in international humanitarian law.

In those circumstances, the Conseil d’État (Council of State, Belgium) requested a preliminary ruling from the Court of Justice in order to ascertain whether the interpretation to be given to the concept of ‘internal armed conflict’ as referred to in Directive 2004/83 must be independent of the definition used in international humanitarian law and, if so, which criteria must be met in order for a situation to be covered by that concept.

As regards the question whether the criteria for assessing whether an internal armed conflict exists are those established by international humanitarian law, the Court finds that the concept of ‘internal armed conflict’ as used in Directive 2004/83 is unique to that directive and is not directly reflected in international humanitarian law, which acknowledges only ‘armed conflict not of an international character’. Moreover, since international humanitarian law makes no provision for a subsidiary protection regime, it does not identify situations in which such protection is necessary and the protection mechanisms that it establishes are quite distinct from those provided for under Directive 2004/83. In addition, international humanitarian law is very closely linked to international criminal law, whereas no such relationship exists in the case of the protection mechanism provided for under Directive 2004/83. The Court concludes from this that the concept of ‘internal armed conflict’ must be given an autonomous interpretation.

As regards the criteria to be applied in that connection, the Court states that the phrase ‘internal armed conflict’ refers to a situation in which a State’s armed forces confront one or more armed groups or in which two or more armed groups confront each other. The Court recalls that, in the context of the system provided for under Directive 2004/83, the existence of an armed conflict can

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<sup>1</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12, and – corrigendum – OJ 2005 L 204, p. 24).

be a cause for granting subsidiary protection only where the degree of indiscriminate violence reaches such a high level that an applicant for subsidiary protection would face a real risk of suffering serious and individual threat to his life or person solely on account of his presence in the territory concerned. The Court concludes from this that a finding that there is an armed conflict must not be made conditional upon the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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