

17 July 2014 (\*)

(Reference for a preliminary ruling — Geneva Convention of 28 July 1951 relating to the Status of Refugees — Article 31 — Third country national who has entered the territory of a Member State after passing through another Member State — Use of the services of human traffickers — Unauthorised entry and stay — Presentation of a forged passport — Criminal penalties — Lack of jurisdiction of the Court)

In Case C-481/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Bamberg (Germany), made by decision of 29 August 2013, received at the Court on 9 September 2013, in the criminal proceedings against

**Mohammad Ferooz Qurbani,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, M. Safjan, J. Malenovský, A. Prechal and K. Jürimäe, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Qurbani, by M. Koch, Rechtsanwalt,
- the Staatsanwaltschaft Würzburg, by D. Geuder, Leitender Oberstaatsanwalt,
- the German Government, by T. Henze and A. Wiedmann, acting as Agents,
- the Netherlands Government, by M. Bulterman and J. Langer, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, by W. Bogensberger and M. Condou-Durande, 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 31 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) ('the Geneva Convention')), as supplemented by the Protocol relating to the Status of Refugees of 31 January 1967, which entered into force on 4 October 1967.

2 The request has been made in criminal proceedings brought against Mr Qurbani for forgery of documents, illegal entry, unauthorised stay and unauthorised stay without a passport.

## Legal context

### *International law*

#### The Geneva Convention

3 According to Article 31 of the Geneva Convention, entitled ‘Refugees unlawfully in the country of refuge’:

‘1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.’

### *EU law*

#### Directive 2004/83/EC

4 According to Article 14 of the 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):

‘ ...

4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:

- (a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;
- (b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State.’

### *German law*

5 Paragraph 267(1) of the Strafgesetzbuch (Criminal Code) provides:

‘A person who for the purpose of deception in legal transactions produces a counterfeit document, forges a genuine document or uses a counterfeit or a forged document, shall be liable to imprisonment for a term not exceeding five years or a fine.’

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

6 Mr Qurbani is an Afghan national who, having used the services of a human trafficker, entered Greece after passing through Iran and Turkey.

7 On 17 August 2010, Mr Qurbani left Greece to travel, by plane, to Munich (Germany), under a forged Pakistani passport obtained from another human trafficker.

8 Mr Qurbani was arrested at Munich airport, after the authorities responsible for carrying out checks recognised that his passport was forged.

9 Mr Qurbani immediately indicated that he wished to apply for refugee status.

10 On 18 August 2010, Mr Qurbani was brought to the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees) where he submitted a formal application to that end.

11 According to the information provided by the referring court, the proceedings relating to that application for asylum are still pending.

12 On 11 April 2011, the Staatsanwaltschaft Würzburg (Public Prosecution Service, Würzburg) applied under a simplified procedure to the Amtsgericht Würzburg (Local Court, Würzburg) for a penal order against Mr Qurbani in respect of (i) unauthorised entry, unauthorised stay and unauthorised stay without a passport and (ii) forgery of documents. The order made by the Amtsgericht was the subject of a challenge by Mr Qurbani before that court itself.

13 By judgment of 4 February 2013, the Amtsgericht acquitted Mr Qurbani of all those charges.

14 According to that court, the right of asylum, enshrined in the German Constitution, precludes Mr Qurbani being convicted of unauthorised stay and unauthorised stay without a passport, while the exemption from penalties provided for in Article 31 of the Geneva Convention applies to the offences of unauthorised entry and forgery of documents.

15 The Staatsanwaltschaft Würzburg brought an appeal on a point of law (*Revision*) before the Oberlandesgericht Bamberg (Higher Regional Court, Bamberg), pleading, in essence, that Article 31 of the Geneva Convention does not apply to the present case, since Mr Qurbani did not enter German territory directly from the State of persecution but passed through a Member State other than the Republic of Germany, in this case, the Hellenic Republic. The Staatsanwaltschaft also argued that Article 31 concerns only unauthorised entry and cannot deprive the German authorities of the possibility of punishing offences connected to that entry.

16 In those circumstances, the Oberlandesgericht Bamberg, which has doubts as to the interpretation of Article 31 of the Geneva Convention, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the personal ground for exemption from penalties in Article 31 of the [Geneva Convention] also include, beyond its wording, forgery of documents, which took place on presentation of a forged passport to a police officer on the occasion of entry by air into [Germany], when the forged passport is not in fact necessary to apply for asylum in that State?’

(2) Does the use of human traffickers preclude reliance on Article 31 of the [Geneva Convention]?’

(3) Is the factual requirement in Article 31 of the [Geneva Convention], of coming “directly” from a territory where the life or freedom of the person concerned was threatened, to be interpreted as meaning that that condition is also satisfied if the person concerned first entered another Member State (here: [the Hellenic Republic]) from where he continued to another Member State (here: the Federal Republic of Germany) in which he seeks asylum?’

## The jurisdiction of the Court of Justice

- 17 By its questions, the referring court asks, in essence, whether Article 31 of the Geneva Convention must be interpreted as precluding a person, on the one hand, from being punished, under criminal law, in the Member State in which he seeks asylum, for offences connected with his unauthorised entry into that Member State's territory, such as, in particular, unauthorised entry with the assistance of human traffickers and use of a forged identity document, and, on the other, from relying on the exemption from penalties provided for in that article, where the person concerned has entered that Member State's territory after passing through another Member State of the European Union.
- 18 It must be observed at the outset that the present request for a preliminary ruling raises the question of the Court's jurisdiction.
- 19 In that regard, the German and Netherlands governments together with the European Commission contend that the Court has no jurisdiction to reply to the questions referred as such, since they would result in the Court interpreting directly Article 31 of the Geneva Convention.
- 20 In those circumstances, it should be noted that, in light of the fact that the Geneva Convention does not contain a clause conferring jurisdiction on the Court, the Court can interpret the provisions of that convention, in the present case Article 31 thereof, as requested only if the performance by it of such tasks is covered by Article 267 TFEU (*TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 58).
- 21 It is settled case-law that the power, resulting from Article 267 TFEU, to provide interpretations by way of preliminary rulings extends only to rules which are part of EU law (*TNT Express Nederland*, EU:C:2010:243, paragraph 59 and the case-law cited).
- 22 In the case of international agreements, it is settled that such agreements concluded by the European Union form an integral part of its legal order and can therefore be the subject of a request for a preliminary ruling. On the other hand, the Court does not, in principle, have jurisdiction to interpret, in preliminary ruling proceedings, international agreements concluded between Member States and non-member countries (*TNT Express Nederland*, EU:C:2010:243, paragraphs 60 and 61 and the case-law cited).
- 23 It is only where and in so far as the European Union has assumed the powers previously exercised by the Member States in the field to which an international convention not concluded by the European Union applies and, therefore, the provisions of the convention have the effect of binding the European Union that the Court has jurisdiction to interpret such a convention (*TNT Express Nederland*, EU:C:2010:243, paragraph 62 and the case-law cited).
- 24 In the present case, although several pieces of EU legislation have been adopted in the field to which the Geneva Convention applies as part of the implementation of a Common European Asylum System, it is undisputed that the Member States have retained certain powers falling within that field, in particular relating to the subject-matter covered by Article 31 of that convention. Therefore, the Court does not have jurisdiction to interpret directly Article 31, or any other article, of that convention.
- 25 The fact that Article 78 TFEU provides that the common policy on asylum must be in accordance with the Geneva Convention and that Article 18 of the Charter of Fundamental Rights of the European Union makes clear that the right to asylum is to be guaranteed with due respect for that convention and the Protocol relating to the status of refugees of 31 January 1967 is not such as to call into question the finding in paragraph 24 above that the Court does not have jurisdiction.
- 26 In addition, as previously held at paragraph 71 of the judgment in *B and D* (C-57/09 and C-101/09, EU:C:2010:661), although it is true that it is clearly in the interests of the European Union that, in order to forestall future differences of interpretation, the provisions of international agreements which have been taken over by national law and by EU law should be given a uniform interpretation, irrespective of the circumstances in which

they are to apply, it must be noted that Article 31 of the Geneva Convention has not been taken over in a piece of EU legislation, a number of provisions of EU law referring to that article.

- 27 In this connection, the Commission points out, in its written observations, that Article 14(6) of Directive 2004/83 refers to Article 31 of the Geneva Convention.
- 28 Although in *Bolbol* (C-31/09 EU:C:2010:351) and *Abed El Kareem El Kott and Others* (C-364/11, EU:C:2012:826) the Court did indeed accept that it had jurisdiction to interpret the provisions of the Geneva Convention to which EU law made a *renvoi*, it must be noted that the present request for a preliminary ruling contains no mention of any rule of EU law which makes a *renvoi* to Article 31 of the Geneva Convention and, in particular, no mention of Article 14(6) of Directive 2004/83. The point should also be made that the present request contains nothing which suggests that the latter provision is relevant in the case in the main proceedings.
- 29 It follows from all the foregoing that it has not been established in the present case that the Court has jurisdiction to interpret Article 31 of the Geneva Convention.
- 30 In those circumstances, it must be held that the Court does not have jurisdiction to reply to the questions referred for a preliminary ruling by the Oberlandesgericht Bamberg.

### Costs

- 31 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 (Fourth Chamber) hereby rules:

**The Court of Justice of the European Union does not have jurisdiction to reply to the questions referred for a preliminary ruling by the Oberlandesgericht Bamberg (Germany), by decision of 29 August 2013 in Case C-481/13.**

[Signatures]

---

\* Language of the case: German.