

**Case C-373/13**

**T.**  
**v**  
**Land Baden-Württemberg**

(Request for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg  
(Germany))

(Area of freedom, security and justice — Asylum and immigration — Rules on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees and the content of the protection granted — Revocation of a residence permit under Article 24(1) of Directive 2004/83/EC — Conditions — Concept of compelling reasons of national security or public order — Participation of a recognised refugee in the activities of a terrorist organisation)

1. This reference from the Verwaltungsgerichtshof Baden-Württemberg (Administrative Court, Baden-Württemberg (Germany)) raises a number of sensitive and complex issues. The referring court seeks guidance as to the interpretation of Articles 21 and 24(1) of the Qualification Directive. (2) It asks whether and, if so, how those provisions apply where the competent authorities of a Member State expel a person who has been granted refugee status under the Qualification Directive and revoke his residence permit. Where the refugee in question is nevertheless granted leave to remain within the territory of the Member State concerned, is the fact that he no longer holds a residence permit and therefore under national law is not entitled (to a greater or lesser extent) to certain benefits, such as access to employment, compatible with EU law? Where that person has been expelled because he infringed national law by supporting a terrorist organisation, what factors should be taken into account to show that there are compelling reasons of national security or public order justifying a decision to revoke that person's residence permit?

**International law**

*The Geneva Convention relating to the Status of Refugees*

2. The Geneva Convention relating to the Status of Refugees (3) is founded upon the Universal Declaration of Human Rights, which recognises the rights of individuals to seek asylum from persecution in other countries. The first subparagraph of Article 1(A)(2) of 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’.

3. Apart from making provision for declaring refugee status the Geneva Convention also confers rights and gives rise to obligations. Thus, Article 2 states that every refugee has duties to the country in which he finds himself, which require in particular that he conforms to its laws and regulations as well as to measures taken for the maintenance of public order.

4. The Geneva Convention lays down a number of minimum rights that apply to a person who qualifies as a refugee. Contracting States are required to afford to refugees lawfully staying in their territory rights such as: (i) to engage in wage-earning employment; (4) (ii) to receive the same treatment as nationals in respect of remuneration (including family allowances) and social security; (5) (iii) to choose a place of residence and to move freely within that territory subject to any regulations applicable to aliens generally in the same circumstances. (6)

5. Article 32 (entitled ‘Expulsion’) prohibits a Contracting State from expelling a refugee who is lawfully within its territory save on grounds of national security or public order. Any expulsion decision must be reached in accordance with due process of law. A refugee must be allowed the opportunity to contest an expulsion decision by submitting evidence, and/or lodging an appeal against such a decision, unless compelling reasons of national security otherwise require. Pending enforcement of an expulsion decision the Contracting States must allow a refugee a reasonable period within which to seek legal admission to another country. The Contracting States retain the right to apply during that period such internal measures as they consider necessary.

6. The Convention contains no express provision on the revocation of refugee status. (7)

7. The principle of non-refoulement is among the fundamental principles that underpin the Geneva Convention. Contracting States must not expel or return (*refouler*) a refugee to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. (8) However, where there are reasonable grounds for regarding the refugee as a danger to the security of the country concerned, or where he has been convicted by a final judgment of a particularly serious crime and thus is a danger to the community of that country, he is not entitled to claim the benefit of the principle of non-refoulement. (9)

#### *The European Convention for the Protection of Human Rights and Fundamental Freedoms*

8. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (10) prohibits torture, inhuman and degrading treatment or punishment. Article 8 guarantees the right to respect for private and family life. Article 1 of Protocol 7 to the ECHR provides certain procedural safeguards relating to the expulsion of aliens, including that person’s right to submit reasons against his expulsion, the right to have his case reviewed and the right to representation for those purposes. (11)

#### **European Union law**

##### *The Charter of Fundamental Rights of the European Union*

9. The prohibition of torture and inhuman or degrading treatment or punishment in Article 4 of the Charter of Fundamental Rights of the European Union (12) corresponds to Article 3 of the ECHR. Article 7 of the Charter provides: ‘[e]veryone has the right to respect for his or her private and family life, home and communications.’ The right to asylum with due respect for the

rules of the Geneva Convention and the Treaty on the functioning of the European Union is guaranteed by Article 18 of the Charter. Article 19 provides protection from removal, expulsion or extradition. No one may be removed, expelled or extradited to a State where there is a serious risk that he would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. (13) Article 52(1) states that any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and is subject to the principle of proportionality. Limitations are permissible only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. Article 52(3) states that the rights enshrined in the Charter should be interpreted consistently with corresponding rights guaranteed by the ECHR.

### *The Schengen acquis*

10. The Schengen area is founded upon the Schengen Agreement of 1985, (14) by which the States signatory agreed to abolish all internal borders and to establish a single external frontier. Within the Schengen area, common rules and procedures are applied in relation to visas for short stays, asylum requests and border controls. Article 1 of the Convention implementing the Schengen Agreement (15) defines an ‘alien’ as any person other than a national of a Member State. Article 5(1) provides that where certain conditions are met an alien may be granted entry for periods not exceeding three months into the territories of the Contracting Parties. By virtue of Article 21, aliens holding valid residence permits issued by one of the Contracting Parties may move freely for up to three months within the territories of the other Contracting Parties where the conditions of Article 5(1)(a), (c) and (e) are met. (16)

### *Restrictive measures against persons and entities involved in terrorist acts*

11. The European Union first adopted restrictive measures against persons and entities involved in terrorist acts in December 2001, in the wake of the terrorist attacks in the United States of America, in particular at the World Trade Centre in New York on 11 September of that year. The EU list was established in order to implement UNSCR 1373 (2001), adopted under Chapter VII of the UN Charter. To that end, the Council adopted Common Position 2001/931/CFSP (17) and Regulation No 2580/2001. (18) The former lays down the criteria for listing persons, groups or entities involved in terrorist acts and identifies the actions that constitute terrorist acts. The latter introduces specific restrictive measures concerning certain persons and entities in order to combat terrorism.

### *The Common European Asylum System and the Qualification Directive*

12. The Common European Asylum System (‘the CEAS’) is designed to implement the Geneva Convention. (19) Measures adopted for the purposes of the CEAS respect fundamental rights and observe the principles recognised in the Charter. (20) In their treatment of persons coming within the scope of those measures, Member States are bound by their obligations under instruments of international law to which they are party. (21) The aim of the CEAS is to harmonise the legal framework applied in the Member States on the basis of common minimum standards. It is intrinsic to measures providing minimum standards that Member States have the power to introduce or maintain more favourable provisions. (22) The introduction of the CEAS led to the adoption of a number of measures. (23) Following a review of the CEAS, new rules were adopted in 2013. (24)

13. The Qualification Directive seeks to establish minimum standards and common criteria for all Member States for the recognition of refugees and other persons genuinely in need of international protection; the content or benefits of refugee status; and a fair and efficient asylum procedure. (25) Once established, the recognition of refugee status is a declaratory act. (26)

14. The following recitals are relevant:

(22) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism, which declare that “acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations” and that “knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations”.

...

(28) The notion of national security and public order covers cases where a third-country national belongs to an association which supports international terrorism or supports such an association.

...

(30) Within the limits set by their international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit.

...’

15. Mirroring Article 1(A)(2) of the Geneva Convention, a refugee is defined as ‘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’. (27) Refugee status means the recognition by a Member State of a third-country national or a stateless person as a refugee. (28) A residence permit is ‘any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State’s legislation, allowing a third-country national or stateless person to reside on its territory’. (29)

16. An individual who fulfils the conditions in Chapter II of the Qualification Directive concerning the assessment of applications for international protection may qualify as a refugee, if he is able to demonstrate that he has been subjected to, or has reason to fear, acts of persecution within the meaning of Article 9.

17. Such acts must be sufficiently serious by their nature as to constitute a severe violation of basic human rights, in particular the inalienable rights (set out in Article 15(2) of the ECHR), or involve an accumulation of various measures which is sufficiently severe as to amount to such a violation of basic human rights. (30) Acts of physical or mental violence are capable of falling within the definition of acts of persecution. (31) There must be a connection between the reasons mentioned in Article 10 and the acts of persecution in Article 9 of the Qualification Directive. (32)

18. The reasons for persecution listed in Article 10 include the concepts of race, religion, nationality, membership of a particular social group and political opinion.

19. Article 11 sets out the circumstances under which refugee status ceases. Those circumstances involve, in one way or another, the refugee regaining the protection of the country of his nationality or former residence or acquiring protection from his new country nationality. Thus, for example where a refugee voluntarily: (i) re-avails himself of the protection of the country of his nationality; or (ii) reacquires his nationality; or (iii) has acquired a new

nationality, and enjoys the protection of the country of his new nationality; or (iv) re-establishes himself in the country which he has left; or (v) where he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality; or (vi) being a stateless person with no nationality, he is able, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

20. A third-country national is excluded from the scope of the Qualification Directive if he falls within Article 12. For present purposes, the relevant exclusion is Article 12(2), namely where there are serious reasons for considering that the person concerned has committed: a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (33) a serious non-political crime outside the country of refuge prior to his or her admission as a refugee which means the time of issuing a residence permit based on the granting of refugee status; in that context, particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes; (34) or acts contrary to the purposes and principles of the United Nations as set out in the preamble to, and Articles 1 and 2 of, the Charter of the United Nations. (35)

21. Member States may revoke, end or refuse to renew refugee status where the conditions in Article 14 are met. In particular, they may do so under Article 14(4), when there are reasonable grounds for regarding the refugee as a danger to the security of the Member State in which he is present (36) or when, having been convicted by a final judgment of a particularly serious crime, the refugee constitutes a danger to the community of that Member State. (37)

22. The content of international protection is set out in Chapter VII of the Qualification Directive. The provisions of that chapter are without prejudice to the rights guaranteed by the Geneva Convention. (38) They apply both to refugees and to persons eligible for subsidiary protection unless otherwise stated. (39) Article 20(6) states: ‘Within the limits set out by the Geneva Convention, Member States may reduce the benefits of this Chapter, granted to a refugee whose refugee status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a refugee’. (40) No other general rule empowers Member States to reduce the benefits conferred under Chapter VII.

23. Article 21(1) requires Member States to respect the principle of non-refoulement in accordance with their international obligations. Article 21(2) states that in circumstances where their international obligations do not prohibit them from so doing, ‘Member States may refoule a refugee, whether formally recognised or not, when: (a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State’. According to Article 21(3), ‘Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom [Article 21(2)] applies’.

24. Article 24(1) states: ‘As soon as possible after their status has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least three years and renewable unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3). ...’

25. In relation to beneficiaries of refugee status, Member States must also: (i) issue travel documents unless compelling reasons of national security or public order otherwise require; (41) (ii) authorise engagement in employed or self-employed activities; (42) (iii) ensure that activities such as employment-related education opportunities for adults are offered under equivalent conditions as nationals; (43) (iv) ensure that the necessary social assistance, as

provided to nationals of the Member State concerned, is received; (44) (v) ensure access to health care under the same eligibility conditions as nationals of the Member State concerned; (45) (vi) ensure access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories; (46) (vii) allow freedom of movement within their territory under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories; (47) (viii) make provision for integration programmes or create pre-conditions which guarantee access to such programmes. (48)

#### *Council Directive 2003/109*

26. Council Directive 2003/109/EC (49) is based upon Article 63(3) and (4) EC (now Article 79 TFEU) concerning the common immigration policy. It determines the rules for conferring long-term resident status on, and withdrawing such status from, third-country nationals legally residing in the territory of the Member States. (50) Member States may issue residence permits of permanent or limited validity on terms that are more favourable than those laid down in the Long-Term Residents' Directive. (51) A third-country national is defined as any person who is not a citizen of the Union within the meaning of what is now Article 20(1) TFEU; (52) and a long-term resident's EC (now EU) residence permit means a residence permit issued by the Member State concerned upon the acquisition of long-term resident status. (53) The Long-Term Residents' Directive applies to a person who is a refugee or who otherwise needs international protection within the meaning of Article 2(a) of the Qualification Directive. (54) Member States must grant long-term resident status to third-country nationals who have resided legally and continuously within their territories for five years. (55) Status as a long-term resident is permanent, subject to withdrawal or loss of that status under the conditions set out in Article 9. (56) Long-term residence permits granted pursuant to Directive 2003/109 must be valid for at least five years and are automatically renewable upon expiry. (57)

27. Long-term residence status may be withdrawn or lost in the circumstances laid down in Article 9, including cases where an expulsion measure is adopted (58) or the person concerned constitutes a threat to public policy because of the seriousness of offences he has committed, but such a threat is not a reason for expulsion within the meaning of Article 12 of the directive. (59) Reasons must be given for any decision rejecting an application for long-term residence status or for withdrawing that status; and a redress procedure must be made available. (60) Long-term residents enjoy equal treatment with nationals as regards a number of social benefits, (61) such as access to employment. The provisions governing the expulsion of long-term residents are found in Article 12. Essentially, Member States may take such a decision solely where the person concerned 'constitutes an actual and sufficiently serious threat to public policy or public security'. (62)

#### *The Citizenship Directive*

28. Directive 2004/38/EC (63) lays down the conditions governing, inter alia, the exercise of the right of free movement and residence within the territory of the Member States by EU citizens and their family members. (64) Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health are set out in Chapter VI. Article 28, entitled 'Protection against expulsion', provides:

‘ ...

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

3. An expulsion decision may not be taken against Union citizens, except if the decision is

based on imperative grounds of public security, as defined by Member States, if they:

(a) have resided in the host Member State for the previous 10 years;

...'

### **National law**

29. Article 16a of the Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany) provides for a right to asylum. The admission procedure for asylum seekers is governed by the Asylverfahrensgesetz (Law on Asylum Procedure). Where the competent authorities grant refugee status the applicant receives a temporary residence permit. He is then eligible for the same benefits as a German national with regard to social welfare and child benefits, as well as integration assistance which includes certain allowances as well as access to language courses.

30. By virtue of the Gesetz zur Regelung des öffentlichen Vereinsrechts ('the Vereinsgesetz') (Law governing the public law of associations), operations of the PKK (65) were proscribed. Under Paragraph 20 of the Vereinsgesetz, anyone who infringes that prohibition commits a criminal offence.

31. Under the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet ('the Aufenthaltsgesetz') (Law on residence, employment and integration of foreign nationals in the Federal Territory), third-country nationals who enter and stay in Germany must be in possession of a residence entitlement which may take the form of, inter alia, a residence permit or a settlement permit. (66) Residence permits are granted for a temporary period. (67) A settlement permit is a permanent residence permit which allows the holder to pursue an economic activity. (68)

32. Where the competent authorities grant asylum or refugee status to a third-country national, they must also provide a residence permit. (69) A residence permit granted in those circumstances may be issued and extended for periods of up to three years. (70) An individual who holds such a residence permit is entitled to a settlement permit in accordance with Paragraph 26(3) of the Aufenthaltsgesetz. (71)

33. Third-country nationals who do not possess a residence permit and a right to residence are obliged to leave Germany. (72) A residence permit expires where, inter alia, the period of validity ends, the permit is withdrawn or revoked, or the third-country national is expelled. (73)

34. The competent authorities may expel a third-country national where there is reason to believe that he belongs to (or has belonged to) an organisation which supports terrorism, or has supported such an organisation; past membership or support may also justify expulsion if they give rise to a current threat. (74) Where an expulsion order is issued under Paragraph 54(5) of the Aufenthaltsgesetz, the individual concerned must report to his local police station at least once a week; and the area in which he may reside is restricted to the administrative territory of the competent authority which has responsibility for his file. (75) Special protection from expulsion is afforded to refugees, unless there are serious grounds pertaining to public security and law and order. Those grounds are generally considered to apply where an expulsion order is issued, inter alia, under Paragraph 54(5) of the Aufenthaltsgesetz.

35. Expulsion leads to automatic withdrawal of the residence permit. A new residence permit is not issued even if the conditions for so doing are otherwise met. (76) The referring court states that that has implications for the refugee's access to employment and to other social rights provided in national law.

36. However, in certain circumstances the third-country national may not be expelled. Those circumstances include: (i) where, as envisaged in the Geneva Convention, his life or liberty is under threat on account of his race, religion, nationality, membership of a social group or political convictions; (ii) where he faces serious harm; or (iii) where his expulsion would be incompatible with the ECHR. (77) Expulsion may be suspended, inter alia, for reasons of international law or on humanitarian grounds, for as long as it is impossible to deport the individual concerned (i.e. to remove him from the territory) in fact or in law; but no residence permit is granted during that period. (78) The fact that expulsion is suspended does not affect the third-country national's obligation to leave Germany. (79) The competent authorities issue a certificate confirming the suspension of the expulsion. (80)

### **Facts, procedure and questions referred**

37. Mr H. T. was born in 1956. He is a Turkish national of Kurdish origin. He has been living with his wife, who is also a Turkish national, in Germany since 1989. They live together with their eight children, five of whom are German nationals.

38. On 24 June 1993, the competent authorities accepted Mr H. T.'s request for asylum. That decision took into account his political activities in exile for, or in support of, the PKK and the threat of persecution that he faced for his political beliefs if he were to return to Turkey. From 7 October 1993, Mr H. T. held a permanent residence permit in Germany. He has been afforded refugee status within the meaning of the Geneva Convention. On 21 August 2006, the competent authorities revoked Mr H. T.'s refugee status on the grounds that the political situation in Turkey had changed and he was accordingly no longer considered to be at risk of persecution. That decision was challenged and overturned by order of the Verwaltungsgericht Karlsruhe (Administrative Court, Karlsruhe) on 30 November 2007. In consequence, Mr H. T. retained his refugee status.

39. The competent authorities subsequently prosecuted Mr H. T. under Paragraph 20 of the Vereinsgesetz for supporting the PKK, having obtained evidence against him from a search of his home. In those proceedings it was established that he had collected donations on behalf of the PKK and transmitted them to that organisation and that he had, on occasion, distributed the periodical *Serxwebûn*, a publication of the PKK. He was therefore ordered to pay a fine by judgment of the Landgericht Karlsruhe (Regional Court, Karlsruhe) of 3 December 2008. Following the dismissal by the Bundesgerichtshof (Federal Court of Justice) of his appeal, that judgment became final on 8 April 2009.

40. On 27 March 2012, the Regierungspräsidium Karlsruhe (Karlsruhe Regional Government) issued a decision in the name of the Land Baden-Württemberg ordering Mr H. T.'s expulsion from Germany on the grounds laid down in Paragraph 54(5) of the Aufenthaltsgesetz (support of an organisation that supports terrorism) ('the decision of 27 March 2012'). By virtue of that decision, certain conditions were imposed upon Mr H. T. (as set out in Paragraph 54(a) of the Aufenthaltsgesetz), such as that he had to report regularly to a local police station and that his place of residence was restricted to the town of Mannheim. However, the competent authorities decided that enforcement of the expulsion order should be suspended, (81) having regard to Mr H. T.'s status as a refugee with a permanent right of residence, his family ties and his right to a family life enshrined in Article 8 of the ECHR (the corresponding guarantee is in Article 7 of the Charter). Mr H. T.'s appeal against the decision of 27 March 2012 was dismissed by the Verwaltungsgericht Karlsruhe on 7 August 2012.

41. On 28 November 2012, the Verwaltungsgerichtshof Baden-Württemberg became seised of the appeal against that judgment. In those proceedings Mr H. T. contends that: (i) the PKK is not a terrorist organisation; (ii) whilst it is true that as a Kurd he celebrates events such as *Newroz* (the Kurdish New Year) and has participated in authorised meetings relating to the PKK in Germany, he did not support that organisation; (iii) the requirements of Articles 21 and 24 of



the Qualification Directive were not taken into account in the decision of 27 March 2012; and (iv) his expulsion is not permissible unless there are serious reasons, which do not exist in his case, for considering that there is a threat to national security. The respondent in the main proceedings considers that neither Article 21 nor Article 24 of the Qualification Directive preclude Mr H. T.'s expulsion from Germany.

42. The referring court seeks guidance as to the interpretation of Articles 21 and 24 of the Qualification Directive; and wishes to know how the expression 'serious reasons' in Paragraph 56 of the Aufenthaltsgesetz should be interpreted in the light of those provisions. Accordingly, it has referred the following questions to the Court for a preliminary ruling:

- '(1) (a) Must the rule contained in the first subparagraph of Article 24(1) of [the Qualification Directive], concerning the obligation of Member States to issue a residence permit to persons who have been granted refugee status, be observed even in the case of revocation of a previously issued residence permit?
  - (b) Must that rule therefore be interpreted as meaning that it precludes the revocation or termination of the residence permit (by expulsion under national law, for example) of a beneficiary of refugee status in cases where the conditions laid down in Article 21(3) in conjunction with (2) of [the Qualification Directive] are not fulfilled and there are no "compelling reasons of national security or public order" within the meaning of the first subparagraph of Article 24(1) of [the Qualification Directive]?
- (2) If the answer to both parts of Question 1 is "yes":
- (a) How must the ground for exclusion of "compelling reasons of national security or public order" in the first subparagraph of Article 24(1) of [the Qualification Directive] be interpreted in relation to the risks represented by support for a terrorist association?
  - (b) Is it possible for "compelling reasons of national security or public order" within the meaning of the first subparagraph of Article 24(1) of [the Qualification Directive] to exist in the case where a beneficiary of refugee status has supported the PKK, in particular by collecting donations and regularly participating in PKK-related events, even if the conditions for non-compliance with the principle of non-refoulement laid down in Article 33(2) of the [Geneva Convention] and also, therefore, the conditions laid down in Article 21(2) of [the Qualification Directive] are not fulfilled?

- (3) If the answer to Question 1(a) is "no":

Is the revocation or termination of the residence permit issued to a beneficiary of refugee status (by expulsion under national law, for example) permissible under [EU] law only in cases where the conditions laid down in Article 21(3) in conjunction with (2) of the [Qualification Directive] (or the identically-worded provisions of its successor, Directive 2011/95/EU) are satisfied?

43. Written observations were submitted by Mr H. T., Germany, Greece, Italy and the European Commission. Apart from Italy, all parties attended and made oral observations at the hearing on 4 June 2014.

## **Assessment**

### *Preliminary remarks*

44. It is settled law that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees. (82) The Qualification Directive was adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria. (83) That directive must therefore be interpreted in the light of its general scheme and purpose, and in a manner consistent with the Geneva Convention and the other relevant treaties referred to in Article 78(1) TFEU; it must also be interpreted in a manner consistent with the rights recognised by the Charter. (84)

45. Before an individual is granted refugee status under the Qualification Directive his position is governed, *inter alia*, by the Reception Conditions Directive and the Procedures Directive. Such a person is not entitled to a residence permit while a decision on his application for refugee status is pending. (85) Mr H. T. has, however, been granted refugee status under the Qualification Directive and has been issued with a residence permit. Where the competent authorities of a Member State consider expulsion, they must take account of their obligations under the Geneva Convention to ensure that nobody is sent back to a place where he risks being persecuted, that is to say, they must maintain the principle of non-refoulement. (86) The referring court indicates that the competent authorities have indeed borne this in mind; and that what is at issue here is Mr H. T.'s expulsion from Germany and whether his residence permit can therefore be revoked, rather than his refoulement.

46. There is a degree of overlap between the three questions referred. I understand the essential issues to be, first, whether a residence permit, once granted, may be revoked (i) where there are *either* compelling reasons of national security or public order under Article 24(1) of the Qualification Directive *or* grounds for applying the exception to the principle of non-refoulement under Article 21(2), or (ii) only where there are grounds for applying the exception to the principle of non-refoulement under Article 21(2) (Questions 1 and 3). Second, if the answer to the first question is (i), how should the phrase 'compelling reasons of national security or public order' in Article 24(1) be interpreted (Question 2)?

#### *Mr H. T.'s position*

47. Do Articles 21(2) and (3) or 24(1) of the Qualification Directive (87) cover the circumstances of Mr H. T.'s case? It is difficult to resolve that question in the abstract, I shall therefore start by summarising Mr H. T.'s position as explained by the referring court.

48. Mr H. T. is a recognised refugee within the meaning of Article 2(d) of the Qualification Directive. The competent authorities took action to expel him following his conviction under Paragraph 20 of the Vereinsgesetz for supporting the PKK. The referring court states that it considers the PKK to be an organisation that supports terrorism and that Mr H. T. supported the PKK's activities for the purposes of Paragraph 54(5) of the Aufenthaltsgesetz, in particular by collecting and transferring donations to that organisation. However, those circumstances do not fulfil the conditions in Article 21(2) of the Qualification Directive. Mr H. T. therefore continues to be protected against refoulement.

49. The residence permit allowing Mr H. T. to reside in Germany (see Article 2(j) of the Qualification Directive) has been revoked because he is subject to an expulsion order. The enforcement of that order has been suspended. Thus, Mr H. T.'s position might be described as being *de jure* expelled, but *de facto* he remains lawfully in Germany, as he has been granted leave to do so by the competent national authorities. (88)

50. According to the referring court, enforcement of the expulsion decision is at the discretion of the competent national authorities. That court considers that the suspension of the enforcement of Mr H. T.'s expulsion is proportionate under national law for humanitarian reasons, in particular his right to a family life, (89) since five of his eight children are German nationals living with him and his wife. (90)

51. The referring court explains that an expulsion decision does not necessarily lead to the removal of the refugee from Germany. However, under national law such a decision means that the refugee's residence permit is withdrawn ('revoked'). (91) Mr H. T. is still a refugee for the purposes of the Qualification Directive. However, the expulsion decision means that he does not have access to employment, training and/or social rights. Under German law, access to those rights is contingent upon holding a valid residence permit rather than upon the person's status as a refugee. A further issue in the main proceedings is whether it is consistent with the directive for Mr H. T.'s presence in Germany to be merely 'tolerated' ('*Duldungen*') now that his residence permit has been revoked.

*Does Article 21(2) and (3) or Article 24(1) of the Qualification Directive apply?*

52. Questions 1 and 3 concern whether Member States are able to revoke a residence permit *either* under Article 21(2) and (3) *or* under Article 24(1), or whether a residence permit can only be revoked under Article 21(3) if the refugee is no longer protected against refoulement (because the exception in Article 21(2) applies).

The parties' observations

53. Mr H. T. submits that Articles 21 and 24 introduce distinct and exhaustive regimes. Where a Member State grants a residence permit to a refugee, Article 21(3) lays down the conditions under which that permit may subsequently be revoked, making revocation contingent upon loss of protection against refoulement (Article 21(2)). In contrast, Article 24(1) sets out the obligations and conditions applying to issuing (or refusal to issue) a residence permit after refugee status has been granted. A residence permit cannot be revoked under Article 24(1). There is no reason to apply Article 24(1) by analogy with, or as an alternative to, Article 21(3). If that were the case the legislator would have inserted a cross-reference to Article 24 into Article 21(3). Therefore, the answer to Question 1 should be no.

54. All of the Member States that made submissions in these proceedings together with the Commission consider that a refugee's residence permit can be revoked under Article 24(1).

55. In essence they submit, first, that it is implicit in the wording of Article 24(1) that Member States have the discretion to refuse (i) to *issue* or (ii) to *renew* a residence permit where compelling reasons of national security or public order exist. It is therefore logical and consistent that Member States should also be entitled to *revoke* a residence permit where those grounds are present. Second, it is consistent with the scheme of the legislation that Member States should be able to revoke a residence permit before it is due for renewal. Since there is such provision under Article 21(3), there is no reason why there should not be a similar facility under Article 24(1). Third, a narrow interpretation of Article 24(1) would mean that Member States would never be able to revoke a residence permit unless they were also entitled to refoule the refugee. Fourth, reading Article 24(1) as containing no power of revocation leads to arbitrary results. Whether a Member State could refuse a residence permit in any particular case would depend on whether information giving rise to compelling reasons of national security or public order became available at the moment of issue or renewal (refusal possible) or at some other time (refusal not possible). Finally, a third-country national who holds a valid residence permit can move freely within the Schengen area. (92) It is therefore important for Member States to be able to revoke residence permits also in situations where refoulement is not in issue: there are implications not only for the State concerned, but for all those States that form part of the Schengen area and for the joint struggle against international terrorism.

56. The Commission submits that all measures which have the effect of ending a residence permit must respect the principle of non-refoulement in Article 33 of the Geneva Convention and Article 21 of the Qualification Directive.

## Article 21(2) and (3) of the Qualification Directive

57. Article 21(1) provides that Member States must respect the principle of non-refoulement in accordance with their international obligations. That principle is not defined in the Qualification Directive itself, although recital 2 affirms the principle of non-refoulement in the Geneva Convention and explains that nobody should be sent back to persecution. According to Article 33(1) of the Geneva Convention the principle of non-refoulement means that a refugee should not be expelled or returned (*refouler*) to the frontiers or territories where he would face persecution and his life or freedom would be threatened. (93) Thus, refoulement includes only circumstances where the refugee concerned is subject to expulsion from the Member State where he seeks protection and is returned by that State to the territory (or its frontiers) from which he has fled persecution. It does *not* cover the expulsion to another, safe, third country.

58. The express wording of Article 21(2) provides that subject to their international obligations, Member States have a discretion as to whether to refoule a refugee where: (a) there are reasonable grounds for considering him to be a danger to the security of the Member State in which he is present; or (b) having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of that Member State ('the Article 21(2) exception'). That wording reflects Article 33(2) of the Geneva Convention. There is no express wording in Article 21 of the directive covering the expulsion of refugees where refoulement is not in issue.

59. Furthermore, in relation to Member States' international obligations Article 32(1) of the Geneva Convention provides that the Contracting States retain the right to expel refugees on grounds of national security or public order. (94) That wording is not reflected in Article 21 of the directive (and it differs from the text of Article 24(1)). (95)

60. The ECHR does not provide for a right to refugee status. (96) The European Court of Human Rights has consistently recognised that the Contracting States have the right to control the entry, residence and expulsion of aliens. (97) It has stated, however, that expulsion orders may give rise to issues under Article 3 of the ECHR and therefore engage the responsibility of the State concerned where there are substantial grounds for believing that the refugee, if expelled, would face a real risk of being subject to treatment contrary to that provision. In those circumstances Article 3 of the ECHR implies an obligation not to expel the refugee to that country. (98)

61. In my view, expulsion of a refugee from the territory of the Member State concerned is a wider concept than refoulement, which involves not only removal *from* that State but return *to* a country where the person in question might be at risk. I also note that, where a refugee's situation meets the conditions in Article 21(2) Member States are not obliged to refoule. Rather, they have the following three options: (i) refoulement, (ii) expulsion to a safe third country or (iii) allowing the refugee to remain within their territory.

62. In circumstances where the Article 21(2) exception applies, Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee under Article 21(3). Once a refugee is subject to refoulement there is no need for him to be granted (or, as the case may be, to continue to hold a residence permit or to have it renewed). It follows that if the Article 21(2) exception cannot be invoked then Article 21(3) cannot apply. Thus, where a Member State takes proceedings against a refugee in circumstances like those in Mr H. T.'s case, but does not seek his refoulement, because the Article 21(2) exception is not satisfied, that person's residence permit cannot be revoked under Article 21(3). (99) Whether it is consistent with the Qualification Directive for Member States nevertheless to revoke a refugee's residence permit in such circumstances is the issue at the heart of the present case.

## Article 24(1) of the Qualification Directive

63. The general rule under Article 24(1) is that Member States must issue, as soon as possible, a (renewable) residence permit valid for at least three years to a person who is granted refugee status, unless compelling reasons of national security or public order otherwise require ('the Article 24(1) exception'). Granting a residence permit is expressly linked to the initial grant of refugee status or to the renewal of a residence permit.

64. The purpose of Article 24(1) is (at least) twofold. First, it normally ensures that the individual concerned has the necessary administrative papers to obtain access to, for example, employment and social and welfare assistance, as well as to begin the process of integration within the Member State where he lives. Second, it affords Member States a margin of discretion in so far as it provides for a limited exception to the general rule that they are required to issue or renew a residence permit.

65. Article 24(1) applies 'without prejudice to Article 21(3)'. The clear implication is that there is a link between the two provisions and that the application of Article 24(1) is not affected by Member States' (separate) rights to revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee under Article 21(3).

66. In the absence of express wording, can Member States also *revoke* a residence permit under Article 24(1) after it has been issued but before it is due for renewal?

67. It seems to me that the better view is that Member States are so entitled.

68. First, the text of Article 24(1) does not expressly exclude the (additional) possibility of revocation.. Second, revocation is consistent with the purpose of that provision, which expressly allows Member States to withhold a residence permit either at the point of issue or upon renewal where there are compelling reasons of national security or public order. Third, it is coherent with the scheme of the directive inasmuch as Article 21(3) already provides expressly for revocation of a residence permit where the conditions of Article 21(2) are fulfilled. Fourth, the legislative history shows that the Article 24(1) exception was inserted by the Member States in Council following a proposal from Germany. (100) Those changes were made in the wake of the terrorist attacks in the United States of America on 11 September 2001, in order to combat terrorism by restricting the movement of third-country nationals within the Schengen area, with a view to containing threats to national security or public order. (101) An implied power also to revoke a residence permit in such circumstances is entirely congruent with that objective. Finally, such an interpretation has the advantage of avoiding possible anomalies: (i) otherwise the point in time when information becomes available as to whether there are compelling reasons of national security or public order becomes determinative; (ii) it facilitates the reading of the Qualification Directive together with the Long-Term Residents' Directive in so far as the latter allows long-term resident status to be withdrawn following the adoption of an expulsion measure. (102)

69. I therefore conclude that where a Member State expels a refugee because the conditions of the Article 24(1) exception are met, it can also revoke his residence permit. That position is consistent with the legislative scheme of the directive. Where a refugee is obliged to quit the territory as a result of an expulsion order, there is no need for him to hold a residence permit.

70. It is true that Mr H. T. does not fall within that situation. He has been expelled by a legal decision, but in fact he has permission to remain in Germany. None the less I consider that Article 24(1) allows the Member State's authorities to take account of the legal expulsion and to revoke his residence permit. I shall consider the consequences of that position below. (103)

71. I mention here in passing that the Qualification Directive has been recast in Directive 2011/95. (104) The purpose of a recast is normally to clarify and simplify the legislative act that is to be revised, although here the later directive also introduced certain substantive changes. It

is a pity that the legislator did not take the opportunity to clarify the scope of Article 24(1) (the recast text is almost the same as the original). It is particularly important that legislative provisions that concern the fundamental rights of individuals should be clear and accessible in order to enable individuals to be aware of their rights and to allow the governments of Member States to discharge their functions.

72. To summarise thus far: I take the view that a residence permit once granted to a refugee may be revoked either where there are compelling reasons of national security or public order within the meaning of Article 24(1), or (under Article 21(3)) where there are grounds for applying the Article 21(2) exception.

*What is meant by the exception in Article 24(1) of the Qualification Directive?*

73. The referring court's second question is in two parts. I shall deal here with the first point raised, which comprises two strands. What is meant by the expression '... compelling reasons of national security or public order ...' in Article 24(1)? And is there an overlap between that provision and Article 21(2)?

Compelling reasons of national security or public order

74. Mr H. T. submits that the grounds for refusing to issue (or to renew) a residence permit under Article 24(1) are more stringent than under Article 21(2) and (3). He suggests that it is helpful to refer by analogy to Article 28 of the Citizenship Directive where the expression '... imperative grounds of public security ...' is used to describe the basis on which a Member State may issue an expulsion decision against an EU citizen residing in its territory. If the legislator had intended that expression and the words 'compelling reasons' in Article 24(1) of the Qualification Directive to be interpreted differently, that would have been made clear in the text of the legislation.

75. It is common ground amongst the Member States submitting observations that there is some overlap between Article 21(2) and (3) and Article 24(1) of the Qualification Directive. Germany considers that the grounds for applying the Article 21(2) exception are stricter than those in the Article 24(1) exception, because the consequences of refoulement under Article 21(2) are more serious for the refugee than the consequences of merely revoking his residence permit (in the latter case, the refugee does not necessarily have to quit the territory). Germany thus regards the two provisions as complementary. Greece submits that the requirement to demonstrate 'compelling reasons' should be construed so to ensure that its application is restricted to exceptional cases, as is the position under the case-law concerning the Citizenship Directive. Italy submits that the expression 'compelling reasons' in Article 24(1) should be interpreted less restrictively than the words 'reasonable grounds' in Article 21(2) of the Qualification Directive.

76. The Commission points out that the German text of Article 33(2) of the Geneva Convention uses the term '*schwerwiegende Gründe*' (weighty reasons), unlike the English and French versions which state respectively 'reasonable grounds' and '*des raisons sérieuses*'. The German text of Article 21(2) of the Qualification Directive also differs from both the English and French texts and from the Geneva Convention, as it refers to '*stichhaltige Gründe*' (valid grounds), whereas the English and French texts mirror their respective language versions of the Geneva Convention. According to the Commission, a literal interpretation of the German text would set a lower standard for the grounds of exception in Article 21(2) of the Qualification Directive than the standard set by the English and French texts. The Commission considers that such a position does not reflect the legislator's intention; and that the standard set in the English and French versions should therefore apply.

77. It seems to me that although Articles 21 and 24 give rise to different regimes, there is

indeed an overlap inasmuch as both provisions concern the refusal to grant, revoke or renew a refugee's residence permit; and that has implications for his status in the Member State where he seeks protection.

78. Whilst the Commission is right that there are differences between the English, French and German language versions of the texts of both Article 33(2) of the Geneva Convention and Article 21(2) of the Qualification Directive, I find it impossible to derive any guidance from that fact as to whether *Article 24(1)* of that directive covers the revocation of a residence permit in circumstances such as those of Mr H. T.

79. I add for the sake of good order that it is settled case-law that where there is a difference between the linguistic versions of a text the provision at issue must be interpreted and applied in the light of the versions existing in all EU languages; (105) and that the provision must be interpreted by reference to the purpose and general scheme of the rules of which it forms part. (106) Article 21 of the Qualification Directive is based upon Article 33 of the Geneva Convention. The English and French texts are the authentic texts of the Convention. The expressions 'reasonable grounds' and '*des raisons sérieuses*' that are used in those two texts of the Geneva Convention are also used in those two language versions of the Qualification Directive. They would therefore seem to me to reflect more closely the legislator's intentions.

80. Within the Qualification Directive, both Article 21 and Article 24 are part of Chapter VII ('Content of international protection'); and Article 20(2) tells the reader that '[t]his chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated'. Sequentially, this Chapter comes after 'General Provisions', 'Assessment of applications for international protection', 'Qualification for being a refugee', 'Refugee status' and 'Subsidiary protection'. Chapter VII is therefore concerned with defining the benefits to which successful applicants for refugee status or subsidiary protection may aspire.

81. My starting point is the principle (contained in Article 21(1)) that refugees are normally protected against refoulement. The two limbs of Article 21(2) together constitute the exception to that principle. Those two limbs permit refoulement of 'a refugee, whether formally recognised or not' when 'there are reasonable grounds for considering him or her to be a danger to the security of the Member State in which he or she is present' (Article 21(2)(a)) or 'he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State' (Article 21(2)(b)). The consequences for the person concerned of applying the Article 21(2) exception are potentially very drastic. He or she may be returned to a country where he or she may be at risk. (On my reading, that also explains why Article 21(2) is merely permissive: 'Member States may refoule', leaving other options open.) (107) For that very reason, the wording of the two limbs of the Article 21(2) exception is more specific than the rather abstract wording of Article 24(1) ('unless compelling reasons of national security or public order otherwise require'). That is logical. The potential consequences, for a refugee, of finding oneself (after application of Article 24(1)) without a residence permit are certainly undesirable; but they are much less severe than the consequences of having lost one's protection against refoulement (after application of Article 21(2)). The fact that one may then also lose one's residence permit (Article 21(3)) is merely a further woe.

82. Is further light (rather than further confusion and darkness) shed by looking at other provisions of the Qualification Directive: for example, by bringing Article 14 ('Revocation of, ending of or refusal to renew refugee status'), which forms part of Chapter IV ('Refugee status'), into the equation?

83. Article 14(4) sets out the two possible conditions under which 'Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body'. Those conditions, which appear without the conjunction 'or' (presumably, omitted through inadvertence), do precisely mirror the two limbs of the Article

21(2) exception. So far, so good; but that parallelism does not assist in deciding how to interpret Article 24(1), which is about residence permits for persons who *retain* their refugee status (not who have been stripped of it). (I cannot forbear from recalling — a little sadly — that Point 6 of the Inter-institutional Agreement of 22 December 1998 on common guidelines for the quality of Community legislation ([108](#)) states that the terminology used in an act must be consistent both internally and with acts already in force especially in the same field.)

84. Against that background, I do not consider it to be particularly fruitful to focus upon the words ‘reasonable grounds for’ (Articles 14(4) and 21(2)) as against ‘compelling reasons of’ (Article 24(1)). Each expression should be read within the context of the provision of which it forms part. It is necessary to look at the wording of each exception in its entirety and, as an exception to rights guaranteed by EU law, each should then be interpreted narrowly.

85. Doing the best that I can with the text, it seems to me that Article 24(1) is wider than Article 21(2) and that circumstances may trigger the Article 24(1) exception (leaving the refugee with his refugee status but without a residence permit) that would not satisfy the Article 21(2) exception and open the way to his losing his protection against refoulement.

86. As I read the text, ‘compelling reasons of national security and public order’ must always include an objective element. There must be plausible evidence demonstrating that the reason invoked can fairly be considered to be ‘compelling’. At the same time, the use of the term ‘compelling’ suggests a degree of subjectivity, inasmuch as those reasons are considered to be compelling by the Member State concerned at the point when it takes action. It follows that the same reasons will not necessarily be ‘compelling’ in each and every case. ([109](#))

87. Finally, I do not consider it either necessary or helpful to attempt some kind of interpretation-by-analogy with either the Citizenship Directive or the Long-Term Residents’ Directive.

88. As regards the former, it is true that the Qualification Directive and the Citizenship Directive were adopted on the same day. It is also true that, whilst the method of interpretation legitimately used by the Court leaves room, where appropriate, for a specific interpretation in the light of the purpose of each directive in order to ensure its effectiveness, fundamental rights and principles should not be applied differently according to the area in which they are found, if they are not to lose their fundamental character. ([110](#)) That said, there are important differences between the two directives. The Qualification Directive was adopted under Article 63 EC (now Articles 78 and 79 TFEU); it is part of the CEAS, which comes within the ambit of Title V of the TFEU (the ‘Area of Freedom, Security and Justice’); and (perhaps most importantly) it must be interpreted by reference to the Geneva Convention. The Citizenship Directive was adopted on the basis of what is now Part Two of the TFEU, concerning citizenship of the Union and non-discrimination. The two measures are therefore very different in scope and subject matter.

89. As regards the latter, whilst the Long-Term Residents’ Directive is not part of the CEAS, its provenance is the same as the Qualification Directive inasmuch as it too can trace its origins to the European Council meeting in Tampere on 15 and 16 October 1999. However, Articles 9 and 12 of Directive 2003/109 (entitled ‘Withdrawal or loss of status’ and ‘Protection against expulsion’ respectively) are expressed in terms that are (yet) again different from those used in the Qualification Directive. Scrutinising the Long-Term Residents’ Directive does not help to establish a consistent or systematic approach to the drafting. It does not, therefore, aid the task of interpretation. ([111](#))

*Does support for a terrorist organisation trigger the Article 24(1) exception?*

90. By the second part of Question 2 the referring court seeks guidance as to whether (and, if so, in what circumstances) support for a terrorist organisation will constitute ‘compelling



reasons of national security or public order' for the purposes of Article 24(1) of the Qualification Directive.

91. The Member States and the Commission agree in their observations that support for a terrorist organisation could meet the conditions for the application of the Article 24(1) exception and therefore justify revocation of (or refusal to issue or to renew) a refugee's residence permit. Mr H. T. takes the opposite view, arguing that even if he is found to have infringed national law (specifically, Paragraph 20 of the Vereinsgesetz), the conditions for applying the Article 24(1) exception are not met.

92. Article 1(3) of Common Position 2001/931 defines what constitutes a terrorist act. (112) The PKK is included in the list annexed to that measure and to Regulation No 2580/2001. Recital 28 in the preamble to the Qualification Directive states that '[t]he notion of national security and public order also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association'. (113)

93. Support for a listed organisation that commits acts falling within the scope of Common Position 2001/931 and/or Regulation No 2580/2001 could therefore meet the conditions for applying the Article 24(1) exception, but does not always necessarily do so. Everything turns on what is precisely meant by 'support'.

94. In assessing the facts of any individual case at issue (an exercise that falls within the domain of the competent national authorities), it is necessary to begin by asking whether the acts of the organisation in question give rise to compelling reasons of national security or public order for the purposes of Article 24(1) of the Qualification Directive. First, it is clear that terrorist acts which are characterised by, for example, violence towards civilian populations, even if committed with a purportedly political objective, fall to be regarded as serious non-political crimes and could therefore be viewed as providing compelling reasons of national security or public order. (114) Second, international terrorist acts are, generally speaking and irrespective of any State participation, contrary to the purposes and principles of the United Nations. (115)

95. There is no information before the Court indicating whether the acts committed by the PKK fall into either of the categories I have just outlined. The inclusion of an organisation on a list annexed to Common Position 2001/931 is a strong prima facie indication that it either is a terrorist organisation or is suspected (on the basis of evidence that may itself be open to legitimate challenge) to be such an organisation. (116) Such listing is therefore a factor which the national competent authorities are entitled to take into account when determining, initially, whether that organisation has committed terrorist acts. (117)

96. That said, it is necessary to bear in mind that the aims pursued by, respectively, Common Position 2001/931 and the Qualification Directive are very different. In consequence, it is not justifiable in my view for a competent authority, when considering whether to exclude a person from the benefits that flow from refugee status guaranteed in Chapter VII of the Qualification Directive, to base its decision solely on the fact that that person has expressed some kind of support for an organisation which is on a list adopted outside the framework set up by the Qualification Directive and the Geneva Convention. (118)

97. What of the role of the individual concerned in 'supporting' that listed organisation? What is sufficient to trigger the Article 24(1) exception?

98. It seems to me, first, that where an individual's support has involved activities that might plausibly trigger either limb of the Article 21(2) exception, the conditions for applying the Article 24(1) exception are necessarily met. It is not so easy to put forward a clear rule for classifying other activities. Because the Article 24(1) exception is based on 'compelling reasons

of national security or public order’, it is plainly not necessary for the competent authorities to demonstrate (for example) that there are reasonable grounds for considering the individual in question to be a danger to the security of the Member State concerned. What is needed, I think, is a fair and balanced assessment of the extent to which the activities of the individual concerned provide significant support for the organisation in question. Thus, the competent authorities of the Member State should ascertain, for example, whether the person in question has: (i) committed terrorist acts himself; (ii) been involved in the planning, decision making or directing others to commit such acts; or (iii) funded or procured the means in order to enable others to commit terrorist acts. (I should make it clear that, whilst *every* donation to a listed organisation, however small, is technically ‘funding’ that organisation — many drops make an ocean — I would myself consider it a disproportionate use of the Article 24(1) exception to deprive a refugee of his residence permit on the basis of occasional small donations. It is for the competent authorities of the Member State, under the judicial supervision of the national courts, to evaluate the precise facts in any individual case.)

99. What if those elements are not present? It is then necessary to ascertain whether there are other compelling reasons for considering that a threat to national security or public order exists. Here, I treat ‘compelling reasons’ as being approximately synonymous with ‘serious reasons’ — certainly less than ‘overwhelming reasons’, but equally certainly more than ‘possible reasons’. The facts must be carefully examined and assessed, because an adverse decision could lead to the expulsion of the individual in question and perhaps an interference with his fundamental rights.

100. I note in passing that a refugee within the meaning of Article 2(d) of the Qualification Directive might have ‘resided legally and continuously within [the territory of the Member State] for five years’ (Article 4(1) of the Long-Term Residents’ Directive) and might therefore apply for long-term resident status under that directive. (119) Article 6(1) of the Long-Term Residents’ Directive permits a Member State to ‘refuse to grant long-term resident status on grounds of public policy or public security’, making it clear that, ‘[w]hen taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, while also having proper regard to the duration of residence and to the existence of links with the country of residence’. Once such status is acquired, Article 12(1) of the Long-Term Residents’ Directive provides for an exception to the protection that a long-term resident otherwise enjoys against expulsion where that person ‘constitutes an actual and sufficiently serious threat to public policy or public security’.

101. At the risk of stating the obvious, neither of those two tests (set out in the Long-Term Residents’ Directive) corresponds with any degree of precision to the wording of the exception in Article 24(1) of the Qualification Directive.

102. Returning to Article 24(1): I conclude that the following elements are relevant to the assessment of the facts in any particular case: (i) the refugee’s own precise actions; (ii) the actions of the organisation he is deemed to have supported; and (iii) whether there are further elements or circumstances that create an enhanced likelihood of a threat to national security or public order. It is for the competent authorities of the Member State, under the judicial supervision of the national courts, to evaluate the precise facts in any individual case.

103. The material before the Court indicates that Mr H. T.’s expressions of support for the PKK have included attending lawful meetings and participating in acts (such as celebrating *Newroz*) confirming his cultural identity as a Kurd. (120) It does not automatically follow from such activities that he supports terrorist activities himself; and acts of that nature do not automatically constitute terrorist acts. More would be needed, I think, before one could legitimately conclude that a person in such a position was a terrorist and/or that he was actively affiliated to a proscribed organisation and that the conditions of the Article 24(1) exception were accordingly

met. However, these are all matters for the referring court to verify and to assess.

*What are the consequences if the exception in Article 24(1) applies?*

104. Where the Article 24(1) exception applies and is relied upon by the Member State of reception, there are both formal and substantive consequences for the refugee. The formal consequence is, naturally, that the refugee no longer holds a residence permit indicating that he has permission or authorisation from that Member State allowing him to reside within its territory (121) (although he may — like Mr H. T. in the present case — be permitted to remain lawfully in the territory on some other basis). However, the refugee retains his refugee status, (122) unless and until this is brought to an end. (123) In the present case, it is clear that Mr H. T. still remains a refugee. As such, he remains entitled to the substantive benefits afforded to all refugees under Chapter VII of the Qualification Directive. These include the following: protection from non-refoulement; (124) maintaining family unity; (125) the right to a travel document; (126) access to employment, education, social welfare, healthcare and accommodation; (127) freedom of movement within the Member State in question; (128) and access to integration facilities.(129)

105. The referring court explains that revocation of a residence permit affects a refugee's rights under national law, as it has an impact on his access to employment, vocational training and other social rights for which a residence permit is required. (130) There are thus clearly implications for Mr H. T.'s enjoyment of his substantive rights under Chapter VII of the Qualification Directive.

106. I consider that whilst it is possible to revoke a refugee's residence permit where the Article 24(1) exception applies, it is *not* permissible also to withdraw or reduce the minimum level of guarantees provided for by Chapter VII of the Qualification Directive, unless any specific express conditions for withdrawing those benefits are also met. (131) The referring court has not suggested that those circumstances arise here. It follows that the Member State concerned does not enjoy any discretion as to whether to continue to grant those substantive benefits.

107. It is true that recital 30 in the preamble to the Qualification Directive states that, '[w]ithin the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit'. However, that bare recital does not provide a legal basis for Member States to reduce the benefits guaranteed in Chapter VII where a refugee's residence permit is revoked. To hold otherwise would run counter to the purpose of a recital in a legal act. (132) A recital is a statement of reasons for a substantive provision or provisions. It cannot itself determine the substantive law: in the absence (as here) of any corresponding substantive provision, it can have no effect.

108. It will be for the referring court to review and verify the facts of the present case, to assess whether the consequences for Mr H. T. of losing his residence permit are compatible with his continuing rights as a refugee under the Qualification Directive and to act as necessary to safeguard those rights. I offer the following observations merely in case they may be of assistance.

109. It seems to me that the restrictions imposed upon Mr H. T.'s movements within Germany as a result of his conviction for infringing Paragraph 20 of the Vereinsgesetz (133) are not necessarily inconsistent with the Qualification Directive interpreted in the light of the Geneva Convention: the latter instrument confirms that refugees have obligations to conform to the laws and regulations of the State in which they seek protection. (134) A direct consequence of the revocation of Mr H. T.'s residence permit is that he no longer enjoys free movement rights within Schengen. (135) It may be that the circumstances that trigger the Article 24(1) exception also mean that he no longer has a travel document because he falls within the exception in

Article 25(1) (the referring court has not taken a position on this point). However, there is no express exception to the rights to access to employment, education, social welfare, healthcare and accommodation guaranteed in Chapter VII. (136)

110. If — as seems to be the case — Mr H. T. continues to have a right to access those substantive benefits because he continues to hold refugee status, it must follow that the Member State is required to make the necessary provision to enable a person in that position to enjoy those benefits. How that is done is a matter for the Member State.

111. It seems to me that, in any particular case, a Member State might (for example) take one of the following courses of action. First, it might decide that although the Article 24(1) exception applies, it will choose not to revoke that refugee's residence permit (Member States are always at liberty, under the Qualification Directive, to introduce or to retain more favourable standards). (137)

112. Alternatively, the Member State may — as has happened here — choose to revoke the residence permit but for other reasons permit the refugee to remain lawfully within its territory. Whilst I have no detailed information on whether (a number of) other Member States have similar arrangements to the 'tolerated status' represented by the '*Duldungen*' in Germany, it seems not implausible to suppose that they may. (138) If the Member State chooses that course of action, it will need to devise some appropriate mechanism to ensure that access to those Chapter VII benefits to which the refugee is still entitled is maintained. What it may *not* do, in my view, is to place the refugee in a kind of legal limbo that tolerates his presence within the territory but deprives him of (at least some of) the substantive benefits that flow from his refugee status. That would be inconsistent with the text, the objectives and the scheme of the Qualification Directive. The proportionality of such action also seems to me to be questionable; and any measures taken by a Member State in applying Article 24(1) must be proportionate.

113. The principle of proportionality (one of the general principles of EU law) is relevant when considering the interpretation of EU legislation. (139) When acting within the sphere of EU law that principle requires that the measures employed by Member States must be suitable for the purpose of achieving the desired objective. (140) Here, revocation of a refugee's residence permit unquestionably falls within the scope of EU law (in the shape of the Qualification Directive) as do the consequences of such revocation to the extent that they may jeopardize access to substantive benefits guaranteed by that directive to persons holding refugee status. Whilst the aim here pursued is legitimate (indeed, expressly endorsed by Article 24(1) of the Qualification Directive), the consequent loss of benefits guaranteed by the Qualification Directive while the refugee nevertheless remains within the territory of the Member State is not appropriate or necessary to achieve that aim.

114. If the result of applying national rules is that a person who no longer has a residence permit but who still retains refugee status is refused the substantive benefits to which that status entitles him, those national rules are incompatible with the directive. It follows from settled case-law that where national law is inconsistent with a directive, a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation. (141)

## **Conclusion**

115. In the light of all the foregoing considerations, I am of the opinion that the Court should answer the request for a preliminary ruling to the following effect:

A residence permit once granted to a refugee may be revoked either where there are compelling reasons of national security or public order within the meaning of Article 24(1) of 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) or where there are grounds for applying the exception to the principle of non-refoulement in Article 21(2) of that directive.

The words ‘compelling reasons of national security or public order’ in Article 24(1) of Directive 2004/83 mean that there are serious reasons for considering that national security or public order are threatened. That expression is wider in scope than the condition in Article 21(2) of that directive, namely, reasonable grounds for considering the refugee concerned to be a danger to the security of the Member State in question (within Article 21(2)(a)) or where, having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of that State (within Article 21(2)(b)).

Before a residence permit granted to a refugee may be revoked under Article 24(1) of Directive 2004/83 on the grounds that he supports a proscribed organisation, there must first be an individual assessment of the specific facts. The following elements are relevant to that assessment: (i) the refugee’s own precise actions; (ii) the actions of the organisation he is deemed to have supported; and (iii) whether there are further elements or circumstances that create an enhanced likelihood of a threat to national security or public order. It is for the competent authorities of the Member State, under the judicial supervision of the national courts, to evaluate the precise facts in any individual case.

In circumstances where a Member State expels a refugee but suspends enforcement of that decision, it is incompatible with Directive 2004/83 to deny that person access to the benefits guaranteed by Chapter VII thereof, unless an express exception applies; and any measures taken by a Member State in pursuing the aims of that provision must be proportionate.

An individual’s refugee status may only be revoked pursuant to the express provisions of Directive 2004/83. Thus, where a refugee retains his status under that directive but the effect of national rules is to deny him the benefits that he is entitled to as a refugee under that measure, such national rules are incompatible with Directive 2004/83. Where national law is inconsistent with a directive, a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation.

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1 – Original language: English.

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2 – 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) (‘the Qualification Directive’). That directive was repealed and replaced in recast form by 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). The latter act came into effect from 21 December 2013, see footnote 104 below. The gist of Articles 21 and 24(1) of the Qualification Directive is set out at points 23 and 24 below.

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3 – The Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954)), entered into force on 22 April 1954. It was supplemented by the Protocol Relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967. I shall refer to the Convention and the

Protocol together as ‘the Geneva Convention’.

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[4](#) – Article 17.

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[5](#) – Article 24.

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[6](#) – Article 26.

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[7](#) – It may be thought that this possibility is nevertheless implied by the juxtaposition of (for example) the definitions in Articles 1(A) and 1(C) (conditions under which the Convention ceases to apply) or Articles 1(A) and 1(F) (exclusion of war criminals etc.), if refugee status had been granted before the events justifying the Article 1(F) exclusion had come to light.

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[8](#) – Article 33(1).

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[9](#) – Article 33(2).

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[10](#) – Signed at Rome on 4 November 1950 (‘the ECHR’).

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[11](#) – The inalienable rights under Article 15(2) of the ECHR are the right to life (Article 2), the prohibitions against torture and slavery and forced labour (respectively Articles 3 and 4) and an individual’s right not to be punished without prior due legal process (Article 7); see point 17 below.

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[12](#) – OJ 2010 C 83, p. 389 (‘the Charter’).

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[13](#) – Article 19(2).

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[14](#) – The Schengen *acquis* — Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p. 13).

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[15](#) – Of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239 p. 19) .

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[16](#) – See further Article 5 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1), recently revised by Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013 (OJ 2013 L 295, p. 1).

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[17](#) – Council Common Position of 27 December 2001 on the application of specific measures to

combat terrorism (OJ 2001 L 344, p. 93) ('Common Position 2001/931'). The Annex attached to Common Position 2001/931 was recently revised by Council Decision 2014/72/CFSP (OJ 2014 L 40, p. 56), and the Partiya Karkerên Kurdistan (Kurdistan Workers' Party) ('the PKK') appears at point 16 of the revised list.

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[18](#) – Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combatting terrorism (OJ 2001 L 344, p. 70). That list was declared illegal in proceedings concerning the PKK, chiefly because the Council failed to state its reasons in full; see judgment in *PKK v Council*, T-229/02, EU:T:2008:87, see further judgment in *E and F*, C-550/09, EU:C:2010:382, paragraph 38. However, the Council subsequently issued new regulations in order to remedy that deficiency: see Council Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combatting terrorism and repealing Decision 2009/62/EC (OJ 2009 L 151, p. 14), which includes the PKK in the revised list (at point 17).

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[19](#) – See recitals 2 and 3.

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[20](#) – See recital 10.

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[21](#) – See recital 11.

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[22](#) – See recital 8.

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[23](#) – The original CEAS measures include Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ 2003 L 31, p. 18) ('the Reception Conditions Directive'). That act applies to all third-country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers. See subsequently Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13) ('the Procedures Directive'), which applies to all applications for asylum made within the territory of the Union.

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[24](#) – I have not listed all the measures that comprise the CEAS as they are not relevant to the present matter. For the same reason, I shall not therefore list the corresponding revised measures.

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[25](#) – See recitals 1 to 4, 6, 7, 8, 10, 11 and 17.

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[26](#) – Recital 14; see point 15 below.

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[27](#) – Article 2(c). As to the scope of the exclusion in Article 12, see point 19 below.

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[28](#) – Article 2(d).

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[29](#) – Article 2(j).

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[30](#) – Article 9(1).

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[31](#) – Article 9(2).

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[32](#) – Article 9(3).

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[33](#) – Article 12(2)(a).

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[34](#) – Article 12(2)(b).

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[35](#) – Article 12 (2)(c).

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[36](#) – Article 14(4)(a).

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[37](#) – Article 14(4)(b). Member States may decide not to grant refugee status to an applicant where a decision under Article 14(4) is pending (Article 14(5)). See further Chapter IV of the Procedures Directive regarding the revocation of refugee status.

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[38](#) – Article 20(1).

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[39](#) – Article 20(2).

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[40](#) – A similar provision covering persons eligible for subsidiary protection is contained in Article 20(7).

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[41](#) – Article 25(1).

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[42](#) – Article 26(1).

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[43](#) – Article 26(2).

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[44](#) – Article 28(1).

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[45](#) – Article 29(1).

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[46](#) – Article 31.

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[47](#) – Article 32.

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[48](#) – Article 33.

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[49](#) – Of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44) ('the Long-Term Residents' Directive' or 'Directive 2003/109'). That directive has since been amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection (OJ 2011 L 132, p. 1) ('Directive 2011/51') with effect from 20 May 2011.

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[50](#) – See recitals 2 and 11 and Article 1.

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[51](#) – Article 13.

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[52](#) – Article 2(a) (the original text refers to 'Article 17(1) of the Treaty').

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[53](#) – Article 2(g).

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[54](#) – The Long-Term Resident's Directive was amended by Directive 2011/51. See recitals 1 to 4 in the preamble to and Article 3 of Directive 2011/51.

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[55](#) – Article 4(1).

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[56](#) – Article 8(1).

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[57](#) – Article 8(2).

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[58](#) – Article 9(1)(b).

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[59](#) – Article 9(3).

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[60](#) – Article 10.

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[61](#) – Article 11.

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[62](#) – Article 12(1).

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[63](#) – Of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC,

72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) ('the Citizenship Directive').

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[64](#) – Article 1.

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[65](#) – There are a number of successor organisations — for example, the Eniya Rizgariya Neteweyî ya Kurdistanê ('ENRK'), KADEK and KONGRA-GEL. For the purposes of this Opinion, the term PKK should be understood as also covering those organisations.

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[66](#) – Paragraph 4(1). See the exceptions in Paragraph 1(2). I have used the expression 'residence permit' as the generic term in this Opinion.

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[67](#) – Paragraph 7.

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[68](#) – Paragraph 9(1).

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[69](#) – Paragraph 25(1) of that provision does not apply if the third-country national concerned has been expelled on serious grounds relating to public safety and law and order.

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[70](#) – Paragraph 26(1).

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[71](#) – See also Paragraph 26(4).

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[72](#) – Paragraph 50.

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[73](#) – Paragraph 51(1).

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[74](#) – Paragraph 54(5).

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[75](#) – Paragraph 54(a).

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[76](#) – Paragraphs 11 and 25(2).

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[77](#) – Paragraph 60(1).

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[78](#) – Paragraph 60a(1) and (2).

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[79](#) – Paragraph 60a(3).

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[80](#) – Paragraph 60a(4).

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[81](#) – Under Paragraph 60a of the Aufenthaltsgesetz.

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[82](#) – Judgment in *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 52; judgment in *YandZ*, C-71/11 and C-99/11, EU:C:2012:518, paragraph 47; and judgment in *X, YandZ*, C-199/12, C-200/12 to C-201/12, EU:C:2013:720, paragraph 39.

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[83](#) – Judgment in *X, YandZ*, EU:C:2013:720, paragraph 40.

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[84](#) – Judgment in *X, YandZ*, EU:C:2013:720, paragraph 40. See also Article 10 of the Charter.

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[85](#) – See Article 6 of the Reception Conditions Directive and Article 7 of the Procedures Directive, cited in footnote 23.

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[86](#) – Judgment in *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraph 7; see further point 57 below.

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[87](#) – In general, I shall refer to Article 21(2) and (3) or 24(1) (as the case may be), without adding the words ‘of the Qualification Directive’, so as to simplify the text.

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[88](#) – See points 33, 34, 35, and 40 above.

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[89](#) – See points 37 and 40 above.

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[90](#) – The referring court raises no question in relation to the possible rights of a third-country national, some of whose children are Union citizens. I shall not therefore explore that aspect further.

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[91](#) – See point 34 above.

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[92](#) – See point 10 above.

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[93](#) – See point 7 above.

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[94](#) – See Article 1 of Protocol 7 to the ECHR as regards the procedural safeguards relating to the expulsion of aliens.

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[95](#) – See point 74 et seq. below where I discuss what constitutes ‘compelling reasons’.

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[96](#) – See for example, Eur. Court H. R., *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, paragraph 102, Series A no. 215.

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[97](#) – Eur. Court H. R., *S.F. and Others v. Sweden*, no. 52077/10, paragraph 62 and the case-law mentioned, 15 May 2012.

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[98](#) – Eur. Court H. R., *Chahal v. the United Kingdom*, 15 November 1996, paragraph 74, *Reports of Judgments and Decisions* 1996-V, paragraph 74, and Eur. Court H. R., *S.F. and Others v. Sweden*, cited in footnote 97, paragraph 62; see further Eur. Court H. R., *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, paragraphs 258 to 261, ECHR 2012 (extracts), concerning the right to a fair trial guaranteed by Article 6 of the ECHR.

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[99](#) – See point 48 above.

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[100](#) – See Council document 8919/03 of 12 May 2003, p. 24, concerning Article 22 of the proposal, which became Article 24 of the Qualification Directive.

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[101](#) – Third-country nationals legally staying within the territory of a Contracting State require a valid residence permit and a travel document to move within the Schengen area where they may stay for up to 90 days within the territory of the respective Contracting States; see point 10 above.

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[102](#) – See Article 9(1)(b) of the Long-Term Residents' Directive.

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[103](#) – See point 104 et seq. below.

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[104](#) – Directive 2011/95 repealed and replaced the Qualification Directive with effect from 12 December 2013, that is, after the expulsion order was made in the main proceedings (see point 40 above). It does not therefore apply to those proceedings.

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[105](#) – Judgment in *Endendijk*, C-187/07, EU:C:2008:197, paragraph 22.

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[106](#) – Judgment in *Endendijk*, EU:C:2008:197, paragraph 24.

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[107](#) – See point 62 above.

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[108](#) – OJ 1999 C 73, p. 1 ('the common guidelines'). Such inter-institutional agreements now have a legal basis within the Treaties: see Article 295 TFEU.

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[109](#) – Judgment in *Jipa*, C-33/07, EU:C:2008:396, paragraph 23 and the case-law cited.

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[110](#) – See the Opinion of Advocate General Bot in *Tsakouridis*, C-145/09, EU:C:2010:322, point 47.

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[111](#) – See recital 2 in the preamble to the Long-Term Residents’ Directive. I add for the sake of completeness that the legislative history of the Qualification Directive appears to shed no light on the matter, as neither what is now Article 14 nor Article 21(2) and (3) of that directive were in the text of the Commission’s original proposal, mentioned in footnote 100 above.

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[112](#) – See point 11 above.

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[113](#) – See Council document 8919/03 of 12 May 2003, cited at footnote 100 above.

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[114](#) – See judgment in *B*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 80 and 81, concerning the interpretation of Article 12(2) of the Qualification Directive, which I apply here by analogy.

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[115](#) – Judgment in *B*, EU:C:2010:661 cited in footnote 114, paragraphs 82 and 83.

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[116](#) – The rapidly expanding case-law of the General Court and of this Court involving challenges to listing decisions should make one chary of assuming that because a particular organisation is listed, it must indeed be a terrorist organisation: see footnote 18 above.

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[117](#) – Judgment in *B*, EU:C:2010:661 cited in footnote 114, paragraph 90.

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[118](#) – See judgment in *B*, EU:C:2010:661 cited in footnote 114, paragraph 89.

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[119](#) – See Articles 5 and 7 of the Long-Term Residents’ Directive.

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[120](#) – See points 39, 41 and 48 above.

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[121](#) – See Article 2(j) of the Qualification Directive.

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[122](#) – See Article 2(d) of the Qualification Directive.

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[123](#) – A person retains refugee status, once granted, under the Qualification Directive unless (in particular) Article 11 (cessation) or Article 14 (revocation, ending or refusal to renew refugee status) applies. It would also be necessary for the appropriate procedures in Chapter IV of the Procedures Directive to have been followed. It is common ground that none of this applies and/or has happened in the present case.

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[124](#) – Article 21.

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[125](#) – Article 23.

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[126](#) – Article 25.

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[127](#) – Respectively Articles 26, 27, 28, 29 and 31.

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[128](#) – Article 32.

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[129](#) – Article 33.

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[130](#) – See points 35 and 48 above.

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[131](#) – See notably Article 20(6) (and, for persons eligible for subsidiary protection, the corresponding provision in Article 20(7)).

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[132](#) – See point 10 of the common guidelines, cited in footnote 108 above.

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[133](#) – See point 40 above.

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[134](#) – See point 3 above.

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[135](#) – See point 10 above.

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[136](#) – Or integration facilities, which may or may not be relevant given that Mr H. T. has lived in Germany since 1989.

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[137](#) – See Article 3 of the Qualification Directive.

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[138](#) – Although in no sense an exact equivalent, the concept of ‘temporary admission’ in the national legal system with which I am most familiar comes to mind.

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[139](#) – See for example, the case-law concerning equal pay, such as the judgment in *Cadman*, C-17/05, EU:C:2006:633, paragraphs 31 and 32.

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[140](#) – Judgment in *ZhuandChen*, C-200/02, EU:C:2004:639, paragraphs 32 and 33.

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[141](#) – Judgment in *Filipiak*, C-314/08, EU:C:2009:719, paragraph 81.