Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

31 January 2017 (1)

(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum — Directive 2004/83/EC — Minimum standards for the qualification and status of third country nationals or stateless persons as refugees — Article 12(2)(c) and Article 12(3) — Exclusion from being a refugee — Concept of 'acts contrary to the purposes and principles of the United Nations' — Scope — Member of the leadership of a terrorist organisation — Criminal conviction of participation in the activities of a terrorist group — Individual assessment)

In Case C-573/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decision of 13 November 2014, received at the Court on 11 December 2014, in the proceedings

Commissaire général aux réfugiés et aux apatrides

v

Mostafa Lounani,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, M. Ilešič, L. Bay Larsen, J.L. da Cruz Vilaça, E. Juhász, M. Berger and E. Regan, Presidents of Chambers, A. Rosas (Rapporteur), A. Borg Barthet, J. Malenovský, E. Levits, K. Jürimäe and C. Lycourgos, Judges,

Advocate General : E. Sharpston,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 16 February 2016,

after considering the observations submitted on behalf of:

– the **Commissaire général** aux réfugiés et aux apatrides, by E. Derriks, avocat,

– Mr Lounani, by C. Marchand and D. Alamat, avocats,

– the Belgian Government, by C. Pochet, M. Jacobs and S. Vanrie, acting as Agents, and by D. Matray, C. Piront and N. Schynts, avocats,

– the Greek Government, by M. Michelogiannaki, acting as Agent,

– the Spanish Government, by A. Rubio González and L. Banciella Rodríguez-Miñón, acting as Agents,

– the French Government, by F.-X. Bréchot and D. Colas, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by M. Salvatorelli, avvocato dello Stato,

– the Hungarian Government, by M. Z. Fehér and M. Tátrai, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the United Kingdom Government, by M. Holt, S. Brandon and V. Kaye, acting as Agents, and by D. Blundell, Barrister,

– the European Commission, by M. Condou-Durande and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 May 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 12(2)(c) and Article 12(3) 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 (OJ 2004 L 304, p. 12, and corrigenda OJ 2005 L 204, p. 24, and OJ 2011 L 278, p. 13).

2 The request has been made in proceedings between the **Commissaire général** aux réfugiés et aux apatrides (the Belgian Commissioner General for Refugees and Stateless Persons; 'the CGRA') and Mr Mostafa Lounani, a Moroccan national, concerning the question whether Mr Lounani should be excluded from being a refugee on the ground that he was guilty of acts contrary to the purposes and principles of the United Nations.

Legal context

International law

The Charter of the United Nations

3 Article 1, points 1 and 3, of the Charter of the United Nations, signed in San Francisco (United States) on 26 June 1945, state:

'The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

...

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or

religion.'

The Geneva Convention

4 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 itself entered into force on 4 October 1967 ('the Geneva Convention').

5 Article 1 of the Geneva Convention, following the definition, in section A, of the term 'refugee' for the purposes of that convention, states in section F:

'The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

...

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.'

The resolutions of the United Nations Security Council

6 On 28 September 2001 the United Nations Security Council ('the Security Council') adopted Resolution 1373 (2001), the preamble of which reaffirms, inter alia, 'the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts'.

7 Under point 3(f) and (g) of that resolution, all States are called upon to, on the one hand, 'take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts' and, on the other, 'ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts…'.

8 In point 5 of that resolution, the Security Council declares 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'.

9 On 12 November 2001 the Security Council adopted Resolution 1377 (2001), in which it '[s]tresses that acts of international terrorism are contrary to the purposes and principles of the Charter of the United Nations, and that the financing, planning and preparation of, as well as any other form of support for acts of international terrorism, are similarly contrary to the purposes and principles of [that Charter]'.

10 Resolution 1624 (2005), adopted on 14 September 2005 by the Security Council, recalls, inter alia, that 'all States must cooperate fully in the fight against terrorism, in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice … any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens'.

11 In point 1 of Resolution 1624 (2005), the Security Council calls upon 'all States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law, to:

(a) prohibit by law incitement to commit a terrorist act or acts;

(b) prevent such conduct;

(c) deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct'.

12 Resolution 2178 (2014), adopted by the Security Council on 24 September 2014, states, in point 5, that 'Member States shall… prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities'.

13 In point 6 of Resolution 2178 (2014), the Security Council recalls:

'… its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and *decides* that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense:

...

(c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;

…'.

EU law

Directive 2004/83

14 According to recital (3) of Directive 2004/83, the Geneva Convention provides the cornerstone of the international legal regime for the protection of refugees.

15 Recitals 16, 17 and 22 of that directive are worded as follows:

'(16) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

(17) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.'

…

(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".'

16 Article 12(2) and (3) of Directive 2004/83, that article being headed ‘Exclusion’ and forming part of Chapter III of that directive, itself headed ‘Qualification for being a refugee’, provide:

‘2. A third country national or a stateless person is excluded from being a refugee, where there are serious reasons for considering that:

...

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.’

Framework Decision 2002/475/JHA

17 Recital 6 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ 2002, L 164, p. 3) states:

‘The definition of terrorist offences should be approximated in all Member States, including those offences relating to terrorist groups. Furthermore, penalties and sanctions should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences.’

18 Article 1(1) of that Framework Decision, that article being headed ‘Terrorist offences and fundamental rights and principles’, provides:

‘Each Member State shall take the necessary measures to ensure that the intentional acts referred to below in points (a) to (i), as defined as offences under national law, which, given their nature or context, may seriously damage a country or an international organisation [shall be deemed to be terrorist offences]:

...

(a) attacks upon a person’s life which may cause death;

(b) attacks upon the physical integrity of a person;

(c) kidnapping or hostage taking;

(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility...;

(e) seizure of aircraft, ships …;

(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives ... ;

(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;

(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource ... ;

(i) threatening to commit any of the acts listed in (a) to (h)’.

19 Article 2 of that Framework Decision, headed ‘Offences relating to a terrorist group’, provides:

‘1. For the purposes of this Framework Decision, “terrorist group” shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. “Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.’

2. Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:

(a) directing a terrorist group;

(b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.’

20 Articles 3 and 4 of Framework Decision 2002/475 were amended by Framework Decision 2008/919/JHA (OJ 2008 L 330, p. 21), recital 10 of which states that ‘the definition of terrorist offences, including offences linked to terrorist activities, should be further approximated in all Member States, so that it covers public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism, when committed intentionally’.

21 Article 3(1) and (2) of Framework Decision 2002/475, as amended by Framework Decision 2008/919, that article being headed ‘Offences linked to terrorist activities’, provide:

‘1. For the purposes of this Framework Decision:

...

(b) “recruitment for terrorism” shall mean soliciting another person to commit one of the offences listed in Article 1(1)(a) to (h), or in Article 2(2);

...

2. Each Member State shall take the necessary measures to ensure that offences linked to terrorist activities include the following intentional acts:

...

(b) recruitment for terrorism;

...

(f) drawing up false administrative documents with a view to committing one of the offences listed in Article 1(1)(a) to (h), or in Article 2(2)(b).’

22 Article 4 of Framework Decision 2002/475, as amended by Framework Decision 2008/919, relates to acts constituting incitement to commit certain offences described in Articles 1 to 3 of Framework Decision 2002/475, aiding or abetting those offences, and attempting to commit those offences.

Belgian law

23 Article 55/2 of the loi du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et

l'éloignement des étrangers (Moniteur belge of 31 December 1980, page 14584, [Law of 15 December 1980 on entry to Belgian territory, residence, establishment and the expulsion of foreign nationals; 'Law of 15 December 1980') provides:

'A foreign national shall be excluded from being a refugee where he or she falls within the scope of Article 1, section D, E or F of the Geneva Convention. That exclusion extends to individuals who instigate offences or acts listed in Article 1, section F, of the Geneva Convention, or who otherwise participate in such offences or acts'.

24 The loi du 19 décembre 2003 relative aux infractions terroristes (Moniteur belge of 29 December 2003, p. 61689), [Law of 19 December 2003 on terrorist offences; 'the Law of 19 December 2003'] adopted in order to transpose into Belgian law Framework Decision 2002/475, inserted, in Book II of the Belgian Criminal Code, Title 1c, headed 'Terrorist offences', that title containing Articles 137 to 141c of that code.

25 Article 137(1) of the Criminal Code, as amended by the Law of 19 December 2003 ('the amended Criminal Code'), provides:

'A terrorist offence is defined to include offences specified in paragraphs 2 and 3 which, by their very nature or due to their context, may seriously damage a country or an international organisation, and are committed intentionally with the aim of seriously intimidating a population or improperly compelling a government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or international organisation.'

26 The first subparagaph of Article 139 of the amended Criminal Code states:

'A terrorist group is defined as a structured group of more than two persons, established over a period of time, and acting in concert to commit terrorist offences referred to in Article 137.'

27 Article 140 of the amended Criminal Code, which corresponds to Article 2 of Framework Decision 2002/475, provides:

'1. Any person who participates in the activities of a terrorist group, including by supplying information or material resources to the terrorist group, or by funding the activities of the terrorist group in any way, with knowledge of the fact that that participation will contribute to the commission by the terrorist group of an offence, shall be liable on conviction to a period of imprisonment of not less than five and not more than ten years and a fine of not less than EUR 100 and not more than EUR5 000.

2. Any person who directs a terrorist group shall be liable on conviction to a period of imprisonment of not less than 15 and not more than 20 years and a fine of not less than EUR 1000 and not more than EUR200 000.'

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

28 Mr Lounani left Morocco in 1991 and travelled to Germany where he submitted an application for asylum, which was rejected. In 1997 he arrived in Belgium, where he has resided illegally since then.

29 By a judgment of 16 February 2006, Mr Lounani was convicted by the tribunal correctionnel de Bruxelles (Criminal Court, Brussels, Belgium) of participation in the activities of a terrorist group,

namely the Belgian cell of the ‘groupe islamique des combattants marocains’ [the Moroccan Islamic Combatant Group; ‘the MICG’], as a member of its leadership, as well as for criminal conspiracy, use of forged documents, and illegal residence, and sentenced, under, inter alia, Article 140 of the amended Criminal Code, to a period of six years imprisonment.

30 The findings of fact made by the tribunal correctionnel de Bruxelles (Criminal Court, Brussels) in support of its finding that Mr Lounani was guilty of participation in the activities of a terrorist group were summarised as follows in the order for reference: ‘providing logistical support to a terrorist group by the provision of, inter alia, material resources or information’; ‘forgery of passports’ and ‘fraudulent transfer of passports’, ‘active participation in the organisation of a network for sending volunteers to Iraq’. In particular, the fraudulent transfer of passports was described in the judgment of 16 February 2006 as ‘an act of participation in the activities of a cell providing logistical support to a terrorist movement’.

31 On 16 March 2010 Mr Lounani applied to the Belgian authorities for refugee status, claiming that he feared persecution in the event of his being returned to Morocco because of the likelihood that he would be regarded by the Moroccan authorities as a radical Islamist and jihadist, following his conviction in Belgium. A decision was made on that application on 8 December 2010 by the CGRA, whereby Mr Lounani was excluded from refugee status under Article 55/2 of the Law of 15 December 1980 and Article 1F(c) of the Geneva Convention.

32 On 24 December 2010 Mr Lounani brought an action seeking the annulment of that decision before the Conseil du contentieux des étrangers (Council for asylum and immigration proceedings; ‘the CCE’ Belgium). By a judgment of 13 January 2011, the CCE annulled the decision of 8 December 2010 and referred the case back to the CGRA, on the ground that the documents before it did not contain essential information, in the absence of which the CCE was not in a position to uphold or vary that decision without further enquiries having been made.

33 On 2 February 2011 the CGRA adopted a second decision excluding Mr Lounani from refugee status. An action for annulment of that second decision having been brought on 18 February 2011, the CCE, by a judgment of 3 March 2011, annulled that decision and referred the case back to the CGRA, holding that the CGRA had not made genuine further enquiries.

34 On 24 May 2011 the CGRA adopted a third decision excluding Mr Lounani from refugee status. On 14 June 2011 Mr Lounani brought before the CCE an action seeking variation of that decision and recognition of his refugee status. By judgment of 1 July 2011, the CCE held that Mr Lounani ought to be granted refugee status.

35 An administrative appeal against that judgment on a point of law having been brought before it, the Conseil d’État (Council of State, Belgium), by a judgment of 13 July 2012, set aside that judgment and referred the case back to the CCE, sitting in a different composition.

36 The CCE, in its ruling on the case referred back to it, held that the acts of which Mr Lounani was specifically convicted did not constitute terrorist offences as such because, in its judgment of 16 February 2006, the tribunal correctionnel de Bruxelles (Criminal Court, Brussels) had found Mr Lounani to be guilty of belonging to a terrorist group, but had not convicted him of committing or participating in a terrorist act, as defined in Article 137 of the amended Criminal Code. According to the CCE, no specific act by the MICG, even in inchoate form, falling within the scope of that type of offence, had been established, nor had the fact of any personal conduct on the part of Mr Lounani giving rise to his individual liability for the performance of such an act, been established.

37 Since the CCE therefore held that none of the acts with respect to which Mr Lounani had been convicted reached the required degree of gravity to be categorised as 'acts contrary to the purposes and principles of the United Nations', within the meaning of Article 12(2)(c) of Directive 2004/83, by judgment of 12 February 2013 the CCE varied the decision of the CGRA of 24 May 2011 and granted Mr Lounani refugee status.

38 The CGRA brought an administrative appeal on a point of law against that judgment before the Conseil d'État (Council of State).

39 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer to the Court the following questions for a preliminary ruling :

'(1) Is Article 12(2)(c) of Directive 2004/83 to be interpreted as necessarily implying that, for the exclusion clause provided for therein to be applied, the asylum seeker must have been convicted of one of the terrorist offences referred to in Article 1(1) of Framework Decision 2002/475?

(2) If the first question is answered in the negative, can acts such as those … of which Mr Lounani was found guilty by the Tribunal correctionnel de Bruxelles (Criminal Court, Brussels) on 16 February 2006 and of which he was convicted with respect to his participation in a terrorist organisation, be considered to be acts contrary to the purposes and principles of the United Nations within the meaning of Article 12(2)(c) of Directive 2004/83?

(3) For the purposes of considering the exclusion, on the grounds of his participation in a terrorist organisation, of a person seeking international protection, is the judgment convicting him of being a member of the leadership of a terrorist organisation, which finds that the person seeking international protection has not committed, attempted to commit or threatened to commit a terrorist act, sufficient for a finding of the existence of an act of participation or instigation within the meaning of Article 12(3) of Directive 2004/83 imputable to that person, or is it necessary for an individual examination of the facts of the case to be made and participation demonstrated in the commission of a terrorist offence or instigation of a terrorist offence as defined in Article 1 of Framework Decision 2002/475?

(4) For the purposes of considering the exclusion, on the grounds of his participation, possibly as a leader, in a terrorist organisation, of a person seeking international protection, must the act of instigation or participation referred to in Article 12(3) of Directive 2004/83 relate to the commission of a terrorist offence as defined in Article 1 of Framework Decision 2002/475, or may it relate to participation in a terrorist group as referred to in Article 2 of that framework decision?

(5) So far as terrorism is concerned, is the exclusion from international protection provided for in Article 12(2)(c) of Directive 2004/83 possible when there has been no commission or instigation of, or participation in, a violent act of a particularly cruel nature, as referred to in Article 1 of Framework Decision 2002/475?'

Consideration of the questions referred

The first question

40 By this question, the referring court seeks, in essence, to ascertain whether Article 12(2)(c) of Directive 2004/83 must be interpreted as meaning that a prerequisite for the ground for exclusion of refugee status specified in that provision to be held to be established is that an applicant for

international protection should have been convicted of one of the terrorist offences referred to in Article 1(1) of Framework Decision 2002/475.

41 In that regard, it must be noted that it is clear from recitals 3, 16 and 17 of Directive 2004/83 that the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of that directive for determining who qualifies for refugee status and the content of that status were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria (judgment of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 45).

42 The provisions of Directive 2004/83 must, consequently, 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(judgments of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 78, and of 2 December 2014, *A and Others*, C-148/13 to C-150/13, EU:C:2014:2406, paragraph 46).

43 In that regard, Article 12(2)(c) of Directive 2004/83 corresponds, in essence, to Article 1F(c) of the Geneva Convention, which states that the provisions of that convention are not to apply to any person with respect to whom there are serious reasons for considering that he has been guilty of acts contrary to the purposes and principles of the United Nations.

44 Article 12(2)(c) of Directive 2004/83 refers, more specifically, to acts contrary to the purposes and principles of the United Nations ‘as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations’.

45 As stated in recital 22 of Directive 2004/83, acts contrary to the purposes and principles of the United Nations, covered by Article 12(2)(c) of that directive, are set out in, inter alia, ‘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”.’

46 One of those resolutions is Security Council Resolution 1377 (2001), from which it is apparent that not only are ‘acts of international terrorism’ contrary to the purposes and principles stated in the Charter of the United Nations, but so are ‘the financing, planning and preparation of, as well as any other form of support for, acts of international terrorism’.

47 Further, it can be inferred from Security Council Resolution 1624 (2005) that acts contrary to the purposes and principles of the United Nations are not confined to ‘acts, methods and practices of terrorism’. The Security Council, in that resolution, calls upon all States, in order to fight against terrorism, in accordance with their obligations under international law, to deny safe haven to and bring to justice ‘any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts, or provides safe haven’. Moreover, in point 1(c), that resolution calls upon all States to deny a safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts.

48 It follows that the concept of ‘acts contrary to the purposes and principles of the United Nations’, to be found in Article 1F(c) of the Geneva Convention and in Article 12(2)(c) of Directive 2004/83, cannot be interpreted as being confined to the commission of terrorist acts as specified in the Security Council Resolutions (hereafter: ‘terrorist acts’).

49 A fortiori, contrary to what is claimed by Mr Lounani, that concept cannot be interpreted as applying solely to terrorist offences specified in Article 1(1) of Framework Decision 2002/475, or, therefore, as requiring the existence of a criminal conviction imposing punishment for such offences.

50 It must, in that regard, be observed that, as is apparent from recital 6 of Framework Decision 2002/475, the objective of that framework decision is that, in all the Member States, the definition of terrorist offences, including those relating to terrorist groups, should be approximated.

51 As noted by the European Commission, Framework Decision 2002/475 lists, for that purpose, various forms of conduct which may fall within the scope of the general concept of terrorism and classifies them within four categories of offences: ‘terrorist offences’ (Article 1); ‘offences relating to a terrorist group’ (Article 2); ‘offences linked to terrorist activities’ (Article 3), and, last, ‘inciting, aiding or abetting, or attempting to commit some of those offences’ (Article 4).

52 If the EU legislature had intended to restrict the scope of Article 12(2)(c) of Directive 2004/83, and to confine the concept of ‘acts contrary to the purposes and principles of the United Nations’ solely to the offences listed in Article 1(1) of Framework Decision 2002/475, it could easily have done so, by expressly stipulating those offences or by referring to that framework decision.

53 Article 12(2)(c) of Directive 2004/83 makes no reference, however, either to Framework Decision 2002/475, although that framework decision was in existence when Article 12(2)(c) was drafted, or to any other European Union instrument adopted in the context of the fight against terrorism.

54 The answer therefore to the first question is that Article 12(2)(c) of Directive 2004/83 must be interpreted as meaning that it is not a prerequisite for the ground for exclusion of refugee status specified in that provision to be held to be established that an applicant for international protection should have been convicted of one of the terrorist offences referred to in Article 1(1) of Framework Decision 2002/475.

The second and third questions

Admissibility

55 The CGRA and the Belgian Government maintain that the third question, as formulated by the referring court, is inadmissible, in that, first, it does not set out to the requisite standard the reasons why that court considers that an answer to that question is required to resolve the dispute in the main proceedings and, second, an answer to that question provides no assistance in resolving that dispute. In this case, Mr Lounani has not only been convicted, on the basis of Article 140 of the amended Criminal Code, as a member of the leadership of a terrorist organisation, but also of other acts, classed as criminal offences under Belgian law, committed with terrorist intent.

56 In that regard, it should be noted that questions on the interpretation of EU law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 14 April 2016, *Polkomtel*, C-397/14, EU:C:2016:256, paragraph 37; of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 20, and of 13 October 2016, *Prezes Urzędu Komunikacji Elektronicznej and Petrotel*, C-231/15,

EU:C:2016:769, paragraph 16).

57 That does not, however, apply in this case.

58 It must, in that regard, be observed that the referring court has referred the second and third questions against the background of an administrative appeal on a point of law against the judgment of 12 February 2013, in which the CCE held that the acts of which the defendant in the main proceedings was specifically convicted do not reach a level of gravity that is sufficient to classify them as 'acts contrary to the purposes and principles of the United Nations', within the meaning of Article 12(2)(c) of Directive 2004/83. According to that judgment, Mr Lounani's conviction by the tribunal correctionnel de Bruxelles (Criminal Court, Brussels) by reason of his participation in the activities of a terrorist group, even as a member of the leadership of that group, while no responsibility for terrorist offences as such was imputed to him, is not sufficient ground to hold that it can be said of Mr Lounani that there are serious reasons for considering that he committed acts contrary to the purposes and principles of the United Nations.

59 It is against that background that the referring court seeks, in essence, to ascertain whether the acts in respect of which Mr Lounani was convicted may in themselves be considered to be contrary to the purposes and principles of the United Nations within the meaning of Article 12(2)(c) of Directive 2004/83 and, if not, whether Mr Lounani's conviction as a member of the leadership of a terrorist group is sufficient ground for the finding that there are serious reasons for considering that he instigated acts contrary to the purposes and principles of the United Nations or that he otherwise participated in such acts, within the meaning of Article 12(3) of that directive.

60 The order for reference accordingly makes it plain that the referring court seeks to determine the extent to which the participation in the activities of a terrorist group of which Mr Lounani was convicted is capable of justifying the application of the ground for exclusion laid down in Article 12(2)(c) of Directive 2004/83 and asks itself, in that context, whether a conviction by reason of his participation in the activities of that group as a member of its leadership may result in the exclusion of refugee status pursuant to Article 12(2)(c) and Article 12(3) of that directive, read together.

61 The third question is, consequently, admissible.

Substance

62 By its second and third questions, which can be examined together, the referring court seeks, in essence, to ascertain whether Article 12(2)(c) of Directive 2004/83 and Article 12(3) of Directive 2004/83 must be interpreted as meaning that acts constituting participation in the activities of a terrorist group, such as the acts of which the defendant in the main proceedings was convicted, can fall within the scope of the ground for exclusion laid down in those provisions, even though the person concerned did not commit, attempt to commit, or threaten to commit a terrorist act.

63 As regards the acts of which Mr Lounani was convicted by a criminal court, it is apparent from the order for reference that that conviction is based, in particular, on Article 140 of the amended Criminal Code, that article representing the transposition into Belgian law of Article 2 of Framework Decision 2002/475, which defines the offences relating to terrorist groups and includes, in Article 2(2)(b), participation in the activities of a terrorist group.

64 More specifically, in order to find Mr Lounani guilty of those offences, the tribunal correctionnel de Bruxelles (Criminal Court, Brussels) stated, in its judgment of 16 February 2006, that he had participated, as a member of the leadership, in the activities of the Belgian cell of the MICG, providing to that group logistical support through, inter alia, the supply of information or material

resources, engaging in forgery and the fraudulent transfer of passports, and participating actively in the organisation of a network for sending volunteers to Iraq.

65 Accordingly, no finding was made that Mr Lounani personally committed terrorist acts, or instigated such acts, or participated in their commission.

66 Nonetheless, it is clear from the relevant Security Council resolutions, as indicated in paragraph 48 of the present judgment, that the concept of 'acts contrary to the purposes and principles of the United Nations' is not confined to terrorist acts.

67 It must, in particular, be observed that, in Resolution 2178 (2014), the Security Council expressed its 'grave concern over the acute and growing threat posed by foreign terrorist fighters, namely individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning or preparation of … terrorist acts' and its concern with regard to the international networks established by terrorist entities enabling them to move, between States, fighters of all nationalities and the resources to support them.

68 Among the measures to be adopted to counter this phenomenon, States must ensure the prevention and suppression of activities consisting in the recruitment, organisation, transportation or equipment of individuals who travel to a State other than their States of residence or nationality for the purpose of, inter alia, the perpetration, planning or preparation of terrorist acts.

69 It follows that application of the ground for exclusion of refugee status laid down in Article 12(2)(c) of Directive 2004/83 cannot be confined to the actual perpetrators of terrorist acts, but can also extend to those who engage in activities consisting in the recruitment, organisation, transportation or equipment of individuals who travel to a State other than their States of residence or nationality for the purpose of, inter alia, the perpetration, planning or preparation of terrorist acts.

70 Moreover, it is apparent from reading together Article 12(2)(c) and Article 12(3) of Directive 2004/83 that the exclusion from refugee status laid down in Article 12(2)(c) of that directive is also applicable to persons with respect to whom there are serious reasons for considering that they have instigated acts contrary to the purposes and principles of the United Nations, or that they have otherwise participated in such acts. In the light of what is held in paragraphs 48 and 66 of the present judgment, it is not a prerequisite for the application of those provisions, read together, that an applicant for international protection should have instigated a terrorist act or should have otherwise participated in the commission of such an act.

71 In that regard, the Commission correctly observes that participation in the activities of a terrorist group can cover a wide range of conduct, of varying degrees of seriousness.

72 In those circumstances, the competent authority of the Member State concerned may apply Article 12(2)(c) of Directive 2004/83 only after undertaking, for each individual case, an assessment of the specific facts brought to its attention with a view to determining whether there are serious reasons for considering that the acts committed by the person in question, who otherwise satisfies the qualifying conditions for refugee status, fall within the scope of that particular exclusion (see, to that effect, judgment of 9 November 2010, *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraphs 87 and 94).

73 As regards the question whether conduct such as that of which Mr Lounani was found guilty may fall within the scope of acts contrary to the purposes and principles of the United Nations within the meaning of Article 12(2)(c) of Directive 2004/83, or constitute instigating or otherwise participating in such acts, within the meaning of Article 12(3) of that directive, the final assessment of an

application for international protection falls to the competent national authorities, subject to review by the national courts.

74 As to the factors to be taken into consideration, it should be observed that the order for reference indicates that Mr Lounani was a member of the leadership of a terrorist group that operated internationally, was registered, on 10 October 2002, on the United Nations list which identifies certain individuals and entities that are subject to sanctions, and continues to be named on that list, as updated since that date. His logistical support to the activities of that group has an international dimension in so far as he was involved in the forgery of passports and assisted volunteers who wanted to travel to Iraq.

75 Such conduct may justify the exclusion of refugee status.

76 In that regard, it must be recalled that, as was stated in paragraphs 12, 13 and 67 to 69 of the present judgment, the Security Council Resolutions, in particular Resolution 2178(2014), in points 5 and 6(c), identify, among the activities to be combated by States as part of the fight against international terrorism, the wilful organisation of the travel of individuals who travel to a State other than their State of residence or nationality, for the purpose of the perpetration, planning or preparation of terrorist acts.

77 Consequently, the fact, were it to be established as such, that the group of which Mr Lounani was one of the leaders may not have perpetrated any terrorist acts or that the volunteers who wanted to travel to Iraq and were helped by that group may not ultimately have committed such acts, is not, in any event, such as to preclude the conduct of Mr Lounani from falling to be regarded as contrary to the purposes and principles of the United Nations. The same is true, in the light of what is stated in paragraphs 41 to 54 and 66 to 70 of the present judgment, of the fact, mentioned by the referring court in its third question, that Mr Lounani has not committed, nor attempted to commit, nor threatened to commit terrorist offences, within the meaning of Article 1(1) of Framework Decision 2002/475. For the same reasons, the application of Article 12(3) of Directive 2004/83 does not require it to be established that Mr Lounani instigated such offences or that he otherwise participated in such offences.

78 Further, the fact that Mr Lounani was convicted by the courts of a Member State on a charge of participation in the activities of a terrorist group and that that conviction has become final is, in the context of the individual assessment that must be undertaken by the competent authority, of particular importance.

79 In the light of all the foregoing, the answer to the second and third questions is that Article 12(2)(c) and Article 12(3) of Directive 2004/83 must be interpreted as meaning that acts constituting participation in the activities of a terrorist group, such as those of which the defendant in the main proceedings was convicted, may justify exclusion of refugee status, even though it is not established that the person concerned committed, attempted to commit or threatened to commit a terrorist act. For the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that person was convicted by the courts of a Member State on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.

The fourth and fifth questions

80 In the light of the answer given to the first three questions, there is no need to answer the fourth and fifth questions.

Costs

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

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

1. **Article 12(2)(c) 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 must be interpreted as meaning that it is not a prerequisite for the ground for exclusion of refugee status specified in that provision to be held to be established that an applicant for international protection should have been convicted of one of the terrorist offences referred to in Article 1(1) of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.**

2. **Article 12(2)(c) and Article 12(3) of Directive 2004/83 must be interpreted as meaning that acts constituting participation in the activities of a terrorist group, such as those of which the defendant in the main proceedings was convicted, may justify exclusion of refugee status, even though it is not established that the person concerned committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council. For the purposes of the individual assessment of the facts that may be grounds for a finding that there are serious reasons for considering that a person has been guilty of acts contrary to the purposes and principles of the United Nations, has instigated such acts or has otherwise participated in such acts, the fact that that person was convicted, by the courts of a Member State, on a charge of participation in the activities of a terrorist group is of particular importance, as is a finding that that person was a member of the leadership of that group, and there is no need to establish that that person himself or herself instigated a terrorist act or otherwise participated in it.**

[Signatures]

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1 Language of the case: French.