

**Parties to the main proceedings**

*Appellant:* B. Martens

*Respondent:* Minister van Onderwijs, Cultuur en Wetenschap

**Operative part of the judgment**

Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the continued grant of funding for higher education outside that State subject to the rule that the student applying for such funding has resided in that Member State for a period of at least three out of the six years preceding his enrolment.

<sup>(1)</sup> OJ C 274, 21.9.2013.

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**Judgment of the Court (Second Chamber) of 26 February 2015 (request for a preliminary ruling from the Bayerisches Verwaltungsgericht München — Germany) — Andre Lawrence Shepherd v Bundesrepublik Deutschland**

(Case C-472/13) <sup>(1)</sup>

*(Reference for a preliminary ruling — Area of freedom, security and justice — Asylum — Directive 2004/83/EC — Article 9(2)(b), (c), and (e) — Minimum standards for the qualification and status of third-country nationals or stateless persons as refugees — Conditions for obtaining refugee status — Acts of persecution — Criminal penalties for a member of the armed forces of the United States for refusing to serve in Iraq)*

(2015/C 138/08)

Language of the case: German

**Referring court**

Bayerisches Verwaltungsgericht München

**Parties to the main proceedings**

*Applicant:* Andre Lawrence Shepherd

*Defendant:* Bundesrepublik Deutschland

**Operative part of the judgment**

1) Article 9(2)(e) 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 covers all military personnel, including logistical or support personnel;
- it concerns the situation in which the military service performed would itself include, in a particular conflict, the commission of war crimes, including situations in which the applicant for refugee status would participate only indirectly in the commission of such crimes if it is reasonably likely that, by the performance of his tasks, he would provide indispensable support to the preparation or execution of those crimes;
- it does not exclusively concern situations in which it is established that war crimes have already been committed or are such as to fall within the scope of the International Criminal Court's jurisdiction, but also those in which the applicant for refugee status can establish that it is highly likely that such crimes will be committed;

- the factual assessment which it is for the national authorities alone to carry out, under the supervision of the courts, in order to determine the situation of the military service concerned, must be based on a body of evidence capable of establishing, in view of all the circumstances of the case, particularly those concerning the relevant facts as they relate to the country of origin at the time of taking a decision on the application and to the individual position and personal circumstances of the applicant, that the situation in question makes it credible that the alleged war crimes would be committed;
  - the possibility that military intervention was engaged upon pursuant to a mandate of the United Nations Security Council or on the basis of a consensus on the part of the international community or that the State or States conducting the operations prosecute war crimes are circumstances which have to be taken into account in the assessment that must be carried out by the national authorities; and
  - the refusal to perform military service must constitute the only means by which the applicant for refugee status could avoid participating in the alleged war crimes, and, consequently, if he did not avail himself of a procedure for obtaining conscientious objector status, any protection under Article 9(2)(e) of Directive 2004/83 is excluded, unless that applicant proves that no procedure of that nature would have been available to him in his specific situation.
- 2) Article 9(2)(b) and (c) of Directive 2004/83 must be interpreted as meaning that, in circumstances such as those in the main proceedings, it does not appear that the measures incurred by a soldier because of his refusal to perform military service, such as the imposition of a prison sentence or discharge from the army, may be considered, having regard to the legitimate exercise, by that State, of its right to maintain an armed force, so disproportionate or discriminatory as to amount to acts of persecution for the purpose of those provisions. It is, however, for the national authorities to ascertain whether that is indeed the case.

<sup>(1)</sup> OJ C 336, 16.11.2013.

**Judgment of the Court (Fourth Chamber) of 5 March 2015 — European Commission v French Republic**

(Case C-479/13) <sup>(1)</sup>

**(Failure of a Member State to fulfil obligations — Taxation — VAT — Application of a reduced rate — Supply of digital books or electronic books)**

(2015/C 138/09)

Language of the case: French

**Parties**

*Applicant:* European Commission (represented by: C. Soulay and F. Dintilhac, acting as Agents)

*Defendant:* French Republic (represented by: D. Colas and J.-S. Pilczer, acting as Agents)

*Intervener in support of the defendant:* Kingdom of Belgium (represented by: M. Jacobs and J.-C. Halleux, acting as Agents)

**Operative part of the judgment**

*The Court:*

- (1) Declares that, by applying a reduced rate of value added tax to the supply of digital or electronic books, the French Republic has failed to fulfil its obligations under Articles 96 and 98 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax as amended by Council Directive 2010/88/EU of 7 December 2010, read in conjunction with Annexes II and III to that directive and Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC;