

JUDGMENT OF THE COURT (Fourth Chamber)

27 February 2014 (\*)

(Directive 2003/9/EC – Minimum standards for the reception of asylum seekers in the Member States – Article 13(1) – Time-limits for material reception conditions – Article 13(2) – Provisions on material reception conditions – Guarantees – Article 13(5) – Setting and grant of minimum reception conditions for asylum seekers – Size of the aid granted – Article 14 – Modalities for material reception conditions – Saturation of the reception facilities – Referral to national social protection systems – Provision of the material reception conditions in the form of financial allowances)

In Case C-79/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Arbeidshof te Brussel (Belgium), made by decision of 7 February 2013, received at the Court on 15 February 2013, in the proceedings

**Federaal agentschap voor de opvang van asielzoekers**

v

**Selver Saciri,**

**Danijela Dordevic,**

**Danjel Saciri,** represented by Selver Saciri and Danijela Dordevic,

**Sanela Saciri,** represented by Selver Saciri and Danijela Dordevic,

**Denis Saciri,** represented by Selver Saciri and Danijela Dordevic,

**Openbaar Centrum voor Maatschappelijk Welzijn van Diest,**

THE COURT (Fourth Chamber),

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

Advocate General: P. Mengozzi,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 November 2013,

after considering the observations submitted on behalf of:

- the Belgian Government, by C. Pochet and T. Materne, acting as Agents, and by S. Ishaque, advocaat,
- the French Government, by D. Colas, F.-X. Bréchet and B. Beaupère-Manokha, acting as Agents,
- the Polish Government, by B. Majczyna, K. Pawłowska and B. Czech, acting as Agents,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 13(5) of 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), read in conjunction with Articles 13(1) and (2) and 14(1), (3), (5) and (8) thereof.
- 2 The request has been made in proceedings between the Federaal agentschap voor de opvang van asielzoekers (Federal agency for the reception of asylum seekers; ‘Fedasil’) and Mr Selver Saciri and Ms Danijela Dordevic, in their own name and as the legal representatives of their minor children, Danjel Saciri, Denis Saciri and Sanela Saciri (‘the Saciri family’), and the Openbaar Centrum voor Maatschappelijk Welzijn van Diest (Diest public centre for social welfare; ‘the OCMW’), concerning Fedasil’s refusal to grant the Saciri family social assistance because it was not possible to ensure their reception in a reception centre for asylum seekers.

### Legal context

#### *European Union law*

- 3 Recital 7 in the preamble to Directive 2003/9 reads as follows:  
  
‘Minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.’
- 4 Article 1 of that directive provides:  
  
‘The purpose of this Directive is to lay down minimum standards for the reception of asylum seekers in Member States.’
- 5 Article 2 of that directive states that, for the purposes of the directive:  
  
‘...  
  
(j) “Material reception conditions” mean the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;  
  
...’
- 6 Article 5(1) of the directive provides:  
  
‘States shall inform asylum seekers, within a reasonable time not exceeding fifteen days after they have lodged their application for asylum with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.  
  
...’

7 Article 13 of Directive 2003/9, containing the general rules on the material reception conditions and health care, reads as follows:

'1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.

2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.

Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.

...

5. Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions.

Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles set out in this Article.'

8 Article 14 of that directive is worded as follows:

'1. Where housing is provided in kind, it should take one or a combination of the following forms:

- (a) premises used for the purpose of housing applicants during the examination of an application for asylum lodged at the border;
- (b) accommodation centres which guarantee an adequate standard of living;
- (c) private houses, flats, hotels or other premises adapted for housing applicants.

...

3. Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom.

...

5. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work.

...

8. Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

- an initial assessment of the specific needs of the applicant is required,
- material reception conditions, as provided for in this Article, are not available in a certain geographical area,
- housing capacities normally available are temporarily exhausted,

- the asylum seeker is in detention or confined to border posts.

These different conditions shall cover in any case basic needs.'

- 9 Article 17(1) of that directive provides:

'Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.'

- 10 Article 18(1) of the directive states:

'The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.'

#### *Belgian law*

- 11 The provisions of Directive 2003/9 have been transposed by the Law of 12 January 2007 on the reception of asylum seekers and of certain other categories of aliens (Wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen) (*Belgisch Staatsblad*, 7 May 2007, p. 24027; 'the Reception Law').

- 12 Article 3 of the Reception Law provides as follows:

'Every asylum seeker has the right to a reception which enables him to lead a life compatible with human dignity.

Reception means the material aid which is granted under this law or the social assistance provided by the public centres for social welfare under the Organic Law of 8 July 1976 on public centres for social welfare [Organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijk welzijn (*Belgisch Staatsblad*, 5 August 1976, p. 9876)].'

- 13 Article 9 of the Reception Law states:

'The reception referred to in Article 3 shall be granted by the reception facilities or the public centre for social welfare designated as the mandatory place of registration without prejudice to the application of the last subparagraph of Article 11(3) or of Article 13.'

- 14 Under Article 10 of that Law, Fedasil is to designate a mandatory place of registration for aliens.

- 15 By virtue of Article 11(3) of the Reception Law, when designating a mandatory place of registration, Fedasil is to ensure that that place is suitable for the recipient of the aid, in so far as such places are available. The assessment of whether that place is suitable is based, in particular, on criteria such as the family composition of the recipient of the aid, his state of health, his knowledge of one of the national languages or of the language of the proceedings. In that context, Fedasil is to give particular attention to the situation of the vulnerable persons referred to in Article 36 of that law. In those specific circumstances, Fedasil may derogate from the provisions of paragraph 1 of that article by not designating a mandatory place of registration.

- 16 In accordance with Article 11(4) of the Reception Law, in exceptional circumstances connected to the availability of places in the reception facilities, Fedasil may, after a decision of the Council of Ministers, on the basis of a report drawn up by it, for a period which it is to determine, either change the mandatory place of registration of an asylum seeker, to the

extent that it refers to a reception facility to designate a public centre for social welfare, or, as a last resort, designate one of those centres for an asylum seeker as his mandatory place of registration.

- 17 In accordance with Article 1 of the Organic Law of 8 July 1976 on public centres for social welfare, all persons have the right to social assistance. In principle, aliens have the right to social assistance provided for in Article 1 of that law, provided that they are legally in the territory.

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

- 18 On 11 October 2010 the Saciri family lodged an asylum application with the Aliens Office and immediately lodged an application for reception with Fedasil.
- 19 On the same day, Fedasil informed the Saciri family that it was unable to provide reception and directed it to the competent OCMW.
- 20 Having been unable to find housing, the Saciri family turned to the private rental market but, being unable to pay the rent, it lodged an application for financial aid with the OCMW.
- 21 That application was rejected by the OCMW on the ground that the Saciri family ought to have stayed in a reception facility managed by Fedasil.
- 22 On 10 December 2010 the Saciri family brought an application for interim measures before the Arbeidsrechtbank te Leuven (Labour Court, Leuven) against Fedasil and against the OCMW.
- 23 By an order of 12 January 2011, the Arbeidsrechtbank te Leuven ordered Fedasil and the OCMW to offer the Saciri family reception facilities and to pay it an amount as financial aid respectively.
- 24 On 21 January 2011, Fedasil placed the family in a reception centre for asylum seekers.
- 25 On 14 December 2010 and 7 January 2011, the Saciri family appealed on the merits against the decision of Fedasil and the OCMW before the Arbeidsrechtbank te Leuven.
- 26 By judgment of 17 October 2011, the Arbeidsrechtbank te Leuven declared the action against the OCMW to be unfounded, while ordering Fedasil to pay the Saciri family the sum of EUR 2 961.27, the equivalent of three months' minimum guaranteed income for a person with a dependent family.
- 27 Fedasil appealed against that judgment before the referring court. In turn, the Saciri family lodged a cross-appeal and sought an order that Fedasil and the OCMW pay, jointly and severally, a sum corresponding to the equivalent of the minimum guaranteed income in respect of the entire period during which the family had not been housed.
- 28 The Arbeidshof te Brussel (Brussels Higher Labour Court) has stated that, when the reception network for asylum seekers is saturated, neither the Reception Law nor any national provision lays down a specific system enabling asylum seekers who cannot be accommodated by Fedasil to be given, within a reasonable period, housing meeting the standards laid down in Directive 2003/9.
- 29 That court has stated that, where Fedasil decides not to designate a place of registration, the asylum seekers receive social assistance the amount of which does not, however, guarantee them housing, even temporarily.

- 30 In those circumstances, the Arbeidshof te Brussel decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. When a Member State elects, pursuant to Article 13(5) of Directive 2003/9 ..., to provide the material support in the form of a financial allowance, does the Member State then still have any responsibility to ensure that the asylum seeker, in one way or another, enjoys the minimum protection measures of that directive as contained in Articles 13(1), 13(2), 14(1), 14(3), 14(5) and 14(8) of the Directive?
  2. Should the financial allowance, provided for by Article 13(5) of ... Directive [2003/9], be granted from the date of the application for asylum and the reception request, or from the expiry of the period provided for in Article 5(1) of the directive, or from another date. Should the financial allowance be of such a nature that it allows the asylum seeker, in the absence of material reception facilities provided by the Member State or by an institution designated by the Member State, to provide for his own accommodation at all times, if necessary in the form of hotel accommodation, until such time as he is offered permanent accommodation or as he is able to acquire more permanent accommodation himself?
  3. Is it compatible with ... Directive [2003/9] that a Member State only grants the material reception facilities to the extent that the existing reception structures, as established by the State, are able to ensure that accommodation, and refers the asylum seeker who does not find place there for assistance which is available to all the residents of the State, without providing for the necessary statutory rules and structures so that institutions which have not been established by the State itself are effectively able to extend a dignified reception to the asylum applicants within a short period?'

### **Consideration of the questions referred**

#### *The first and second questions*

- 31 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 13(5) of Directive 2003/9 is to be interpreted as meaning that, when a Member State has opted to grant the material reception conditions in the form of financial allowances, that State is bound to award those allowances from the time of the introduction of the asylum application while ensuring that the amount of those allowances is such as to enable asylum seekers to obtain accommodation, in compliance with the conditions laid down in Articles 13(1) and (2) and 14(1), (3), (5) and (8) of that directive.
- 32 First of all, it must be pointed out that, under Article 13(5) of Directive 2003/9, the material reception conditions may be provided in kind or as financial allowances or in vouchers or as a combination thereof.
- 33 With regard, firstly, to the time from which the Member States are required to provide the material reception conditions, it is appropriate to note that the Court has already held that, regarding the period during which the material reception conditions must be granted to the applicants, that period is to begin when the asylum seeker applies for asylum (see, to that effect, Case C-179/11 *Cimade and GISTI* [2012] ECR, paragraph 39).
- 34 It is apparent from the very terms of Article 13(1) of Directive 2003/9 that the material reception conditions must be available to asylum seekers, whether provided in kind or in the form of financial allowances, when they make their application for asylum.
- 35 In addition, the general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the Charter of Fundamental Rights of the European Union, under which human dignity must be respected and protected, preclude the asylum seeker from being deprived – even for a temporary period of time after the making of the application for asylum and before being actually transferred to the

responsible Member State – of the protection of the minimum standards laid down by that directive (see *Cimade and GISTI*, paragraph 56).

- 36 With regard, secondly, to the amount of the financial allowances granted, it is apparent from the second subparagraph of Article 13(5) of Directive 2003/9 that, where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof is to be determined in accordance with the principles set out in that article.
- 37 In that regard, it follows from Article 13(2) of that directive that the amount of the financial aid granted must be sufficient to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.
- 38 Furthermore, it must be noted that, under Article 2(j) of Directive 2003/9, 'material reception conditions' is to be understood as meaning the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance.
- 39 Moreover, it is apparent from recital 7 in the preamble to that directive that the directive seeks to lay down minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States.
- 40 It follows therefrom that, although the amount of the financial aid granted is to be determined by each Member State, it must be sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence.
- 41 In the context of setting the material reception conditions in the form of financial allowances, pursuant to the second subparagraph of Article 13(2) of Directive 2003/9, the Member States are required to adjust the reception conditions to the situation of persons having specific needs, as referred to in Article 17 of the directive. Accordingly, the financial allowances must be sufficient to preserve family unity and the best interests of the child which, pursuant to Article 18(1), are to be a primary consideration.
- 42 Consequently, where a Member State has opted to provide the material reception conditions in the form of financial allowances, those allowances must be sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence by enabling them to obtain housing, if necessary, on the private rental market.
- 43 Nevertheless, the provisions of Directive 2003/9 cannot be interpreted as meaning that it is appropriate to leave the asylum seekers to make their own choice of housing suitable for themselves.
- 44 Thirdly, as regards the referring court's question concerning the obligation on the Member States providing the material reception conditions in the form of financial allowances to ensure compliance with the modalities of the material reception conditions laid down in Article 14(1), (3), (5) and (8) of Directive 2003/9, it must be noted that paragraph 1 of that article concerns the forms of housing which the Member States may choose and limits the scope of the obligations in that article in the event that the Member States have opted to grant the material reception conditions in kind.
- 45 However, although Article 14(3) of that directive does not apply where the material reception conditions are provided exclusively in the form of financial allowances, the fact remains that those allowances must enable, if necessary, minor children of asylum seekers to be housed with their parents, so that the family unity, as referred to in paragraph 41 of the present judgment, is maintained.
- 46 Accordingly, the answer to the first and second questions is that Article 13(5) of Directive 2003/9 is to be interpreted as meaning, where a Member State has opted to grant the

material reception conditions in the form of financial allowances or vouchers, that those allowances must be provided from the time the application for asylum is made, in accordance with the provisions of Article 13(1) of that directive, and must meet the minimum standards set out in Article 13(2) thereof. That Member State must ensure that the total amount of the financial allowances covering the material reception conditions is sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence, enabling them in particular to find housing, having regard, if necessary, to the preservation of the interests of persons having specific needs, pursuant to Article 17 of that directive. The material reception conditions laid down in Article 14(1), (3), (5) and (8) of Directive 2003/9 do not apply to the Member States where they have opted to grant those conditions in the form of financial allowances only. Nevertheless, the amount of those allowances must be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.

#### *The third question*

- 47 By its third question, the referring court asks, in essence, whether Directive 2003/9 is to be interpreted as precluding, where the accommodation facilities specifically for asylum seekers are overloaded, the Member States from referring the asylum seekers to bodies within the general public assistance system, which are responsible for providing asylum seekers with the necessary financial aid.
- 48 In that regard, it is necessary to bear in mind that, if the Member States are not in a position to grant the material reception conditions in kind, Directive 2003/9 leaves them the possibility of opting to grant the material reception conditions in the form of financial allowances. Those allowances must, however, be sufficient to meet the basic needs of asylum seekers, including a dignified standard of living, and must be adequate for their health.
- 49 Given that the Member States have a certain margin of discretion as regards the methods by which they provide the material reception conditions, they may thus make payment of the financial allowances using the bodies which form part of the general public assistance system as intermediary, provided that those bodies ensure that the minimum standards laid down in that directive as regards the asylum seekers are met.
- 50 In that regard, it must be pointed out that it is for the Member States to ensure that those bodies meet the minimum standards for the reception of asylum seekers, saturation of the reception networks not being a justification for any derogation from meeting those standards.
- 51 Accordingly the answer to the third question is that Directive 2003/9 must be interpreted as meaning that it does not preclude, where the accommodation facilities specifically for asylum seekers are overloaded, the Member States from referring the asylum seekers to bodies within the general public assistance system, provided that that system ensures that the minimum standards laid down in that directive as regards the asylum seekers are met.

#### **Costs**

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

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

- 1. Article 13(5) of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers must be interpreted as meaning, where a Member State has opted to grant the material reception**



conditions in the form of financial allowances or vouchers, that those allowances must be provided from the time the application for asylum is made, in accordance with the provisions of Article 13(1) of that directive, and must meet the minimum standards set out in Article 13(2) thereof. That Member State must ensure that the total amount of the financial allowances covering the material reception conditions is sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence, enabling them in particular to find housing, having regard, if necessary, to the preservation of the interests of persons having specific needs, pursuant to Article 17 of that directive. The material reception conditions laid down in Article 14(1), (3), (5) and (8) of Directive 2003/9 do not apply to the Member States where they have opted to grant those conditions in the form of financial allowances only. Nevertheless, the amount of those allowances must be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.

2. Directive 2003/9 must be interpreted as meaning that it does not preclude, where the accommodation facilities specifically for asylum seekers are overloaded, the Member States from referring the asylum seekers to bodies within the general public assistance system, provided that that system ensures that the minimum standards laid down in that directive as regards the asylum seekers are met.

[Signatures]