

JUDGMENT OF THE COURT (Fourth Chamber)

8 May 2014 (*)

(Directive 2004/83/EC — Minimum standards for granting refugee status or subsidiary protection status — Directive 2005/85/EC — Minimum standards on procedures in Member States for granting or withdrawing refugee status — National procedural rule under which an application for subsidiary protection may be considered only after an application for refugee status has been refused — Lawfulness — Procedural autonomy of the Member States — Principle of effectiveness — Right to good administration — Charter of Fundamental Rights of the European Union — Article 41 — Impartiality and expeditiousness of the procedure)

In Case C-604/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 19 December 2012, received at the Court on 27 December 2012, in the proceedings

H. N.

v

Minister for Justice, Equality and Law Reform,

Ireland,

Attorney General,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the Fourth Chamber, M. Safjan, J. Malenovský and A. Prechal, Judges,

Advocate General: Y. Bot,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 17 October 2013,

after considering the observations submitted on behalf of:

- H. N., by T. Coughlan, Solicitor, J. O'Reilly, SC, and M. McGrath, BL,
- the Minister for Justice, Equality and Law Reform, by E. Creedon, acting as Agent,
- the Belgian Government, by T. Materne and C. Pochet, acting as Agents,
- the German Government, by T. Henze and J. Möller, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and G. Palatiello, avvocato dello Stato,

– the European Commission, by M. Condou-Durande and M. Wilderspin, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 7 November 2013,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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; corrigendum OJ 2005 L 204, p. 24) and of Article 41 of the Charter of Fundamental Rights of the European Union (‘the Charter’).
- 2 The request has been made in proceedings between Mr. N., a Pakistani national, the applicant in the main proceedings, and the Minister for Justice, Equality and Law Reform (‘the Minister’), Ireland and the Attorney General concerning the Minister’s refusal to consider Mr N.’s application for subsidiary protection status on the basis that he had not previously submitted an application for refugee status.

Legal context

European Union law

Directive 2004/83

- 3 Recitals 5, 6 and 24 in the preamble to Directive 2004/83 are worded as follows:

‘(5) The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

(6) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States.

...

(24) Minimum standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the [Geneva Convention relating to the Status of Refugees of 28 July 1951 [*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)], which entered into force on 22 April 1954 (‘the Geneva Convention’)].’

- 4 Article 2(a), (c) (e) and (f) of Directive 2004/83 provide as follows:

‘(a) “international protection” means the refugee and subsidiary protection status as defined in (d) and (f);

...

- (c) “refugee” means 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;

...

- (e) “person eligible for subsidiary protection” means a third country national ... who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin ... would face a real risk of suffering serious harm as defined in Article 15...;
- (f) “subsidiary protection status” means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection’.

5 Under the heading ‘Serious harm’, Article 15 of Directive 2004/83, in Chapter V, entitled ‘Qualification for subsidiary protection’, provides in paragraph (c) thereof, that serious harm consists, inter alia of:

- ‘(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict’.

6 Article 18 of Directive 2004/83 reads as follows:

‘Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.’

Directive 2005/85/EC

7 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; corrigendum OJ 2006 L 236, p. 36) provides in Article 3(3) and (4) thereof as follows:

‘3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.

4. Moreover, Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international protection.’

8 Under Article 23(4) of Directive 2005/85, Member States may accelerate the procedure for examining whether an applicant is eligible for refugee status, inter alia where the applicant clearly does not qualify as a refugee.

Irish law

9 In Ireland, a distinction is to be drawn, for the purpose of granting international protection, between

two types of application, namely:

- an asylum application and, where a negative decision is given on that application,
- an application for subsidiary protection.

10 In Ireland, each of those applications is dealt with in a distinct procedure, with one procedure following the other.

11 The provisions governing the processing of asylum applications are to be found, essentially, in the Refugee Act 1996, in the version applicable at the material time.

12 Section 3 of the Immigration Act 1999 conferred on the Minister the power to make orders for the deportation of people, including, as provided in Section 3(2)(f), ‘a person whose application for asylum has been refused by the [Minister]’.

13 The provisions governing the processing of applications for subsidiary protection are contained in the European Communities (Eligibility for Protection) Regulations 2006 (Statutory Instrument No 518/2006), whose purpose is, among other things, to transpose Directive 2004/83 (‘the 2006 Regulations’).

14 Regulation 3 of the 2006 Regulations states as follows:

‘(1) ...these Regulations apply to the following decisions ...,

...

(c) the notification of an intention to make a deportation order under section 3(3) of the 1999 [Immigration] Act in respect of a person to whom subsection (2)(f) of that section relates ...’.

15 Regulation 4 of the 2006 Regulations provides as follows:

‘(1)(a) A notification of a proposal under section 3(3) of the [Immigration Act] 1999 shall include a statement that, where a person to whom section 3(2)(f) of that Act applies considers that he or she is a person eligible for subsidiary protection, he or she may, in addition to making representations under section 3(3)(b) of that Act, make an application for subsidiary protection to the Minister within the 15 day period referred to in the notification.

...

(2) The Minister shall not be obliged to consider an application for subsidiary protection from a person other than a person to whom section 3(2)(f) of the [Immigration Act] 1999 Act applies or which is in a form other than that mentioned in paragraph (1)(b).’

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

16 Mr N. is a Pakistani national who entered Ireland on a student visa in 2003.

17 After marrying an Irish national, he was granted permission to remain in Ireland until 31 December 2005.

- 18 On 23 February 2006, the Minister informed Mr N. that, first, his residence permit was not to be renewed since he was no longer living with his wife and that, second, he was considering making an order, pursuant to statutory powers, for his deportation.
- 19 On 16 June 2009, without having first submitted an asylum application, Mr N. applied to the Minister for consideration of his claim for subsidiary protection, his principal argument being that, while he did not fear persecution, he was afraid to return to his country of origin due to the risk of suffering ‘serious harm’ within the meaning of Article 15 of Directive 2004/83.
- 20 On 23 June 2009, the Minister informed Mr N. that it was not possible to consider his application for subsidiary protection, stating that, under Irish law, the basis for making an application for subsidiary protection status was that the person applying had been refused refugee status.
- 21 Following further attempts by Mr N. to have his application for subsidiary protection status considered, the Minister repeated the reason for refusing to consider the application, by letter of 27 July 2009.
- 22 On 12 October 2009, Mr N. commenced proceedings before the High Court for judicial review of the Minister’s decision, arguing that the national legislation transposing Directive 2004/83 must grant him the right to make an ‘autonomous’ application for subsidiary protection.
- 23 As that application for judicial review was refused, Mr N. appealed to the Supreme Court.
- 24 In those circumstances, the Supreme Court decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Does ... Directive 2004/83 ..., interpreted in the light of the principle of good administration in the law of the European Union and, in particular, as provided by Article 41 of the Charter ..., permit a Member State to provide in its law that an application for subsidiary protection status can be considered only if the applicant has applied for and been refused refugee status in accordance with national law?’

Consideration of the question referred

- 25 By its question, the Supreme Court asks, in essence, whether Directive 2004/83 and the right to good administration are to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for two separate procedures in succession for the purpose of considering, respectively, an asylum application and an application for subsidiary protection status, and under which the application for subsidiary protection will be considered only if the application for refugee status has been refused
- 26 It should be recalled, first of all, that in its definition of ‘international protection’, Directive 2004/83 refers to two separate systems of protection, namely the system governing refugee status and that relating to subsidiary protection status.
- 27 It should be noted in that regard that, as is apparent from recitals 3, 16 and 17 in the preamble to Directive 2004/83, the Geneva Convention constitutes the cornerstone of the international legal regime for the protection of refugees and that the provisions of the directive 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 (Joined Cases C-199/12 to C-201/12 *X and Others* EU:C:2013:720,

paragraph 39 and the case-law cited).

- 28 Directive 2004/83 must for that reason 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 (Case C-364/11 *Abed El Kareem El Kott and Others* EC:C:2012:826, paragraph 43 and the case-law cited).
- 29 Article 2(e) of Directive 2004/83 defines persons eligible for subsidiary protection as third country nationals or stateless persons who do not qualify as a refugee.
- 30 The use of the term ‘subsidiary’ and the wording of Article 2(e) of Directive 2004/83 indicate that subsidiary protection status is intended for third country nationals who do not qualify for refugee status.
- 31 Moreover, it is apparent from recitals 5, 6 and 24 in the preamble to Directive 2004/83 that the minimum requirements for granting subsidiary protection must serve to complement and add to the protection of refugees enshrined in the Geneva Convention through the identification of persons genuinely in need of international protection and through such persons being offered an appropriate status (Case C-285/12 *Diakite* EU:C:2014:39, paragraph 33).
- 32 It is clear from the above that the subsidiary protection provided by Directive 2004/83 is complementary and additional to the protection of refugees enshrined in the Geneva Convention.
- 33 That interpretation is also consistent with the objectives laid down by Article 78(2)(a) and (b) TFEU, which provide that the European Parliament and the Council of the European Union are to adopt measures for a common European asylum system comprising, *inter alia*, ‘a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection’.
- 34 Furthermore, as the Advocate General observed at points 46 and 49 of his Opinion, given that a person seeking international protection is not necessarily in a position to ascertain the kind of protection applicable to their application and that refugee status offers greater protection than that conferred by subsidiary protection, it is, in principle, for the competent authorities to determine the status that is most appropriate to the applicant’s situation.
- 35 It is apparent from the foregoing considerations that an application for subsidiary protection should not, in principle, be considered before the competent authority has reached the conclusion that the person seeking international protection does not qualify for refugee status.
- 36 It follows that Directive 2004/83 does not preclude national legislation which provides that the requirements for granting refugee status must be considered before those relating to subsidiary protection.
- 37 However, it remains to be considered whether other rules of EU law preclude national legislation, such as that at issue in the main proceedings, which establishes two separate procedures for purpose of examining, respectively, an asylum application and an application for subsidiary protection, it being possible to submit the latter application only if the former has been refused.
- 38 It should be recalled that Directive 2004/83 does not contain any procedural rules applicable to the examination of an application for international protection. It is Directive 2005/85 which establishes minimum standards applicable to procedures for examining applications and specifies the rights of asylum seekers.

- 39 However, Directive 2005/85 applies to applications for subsidiary protection only where a Member State establishes a single procedure under which an application is examined by reference to both forms of international protection, namely asylum and subsidiary protection (Case C-277/11 *M.* EU:C:2012:744, paragraph 79).
- 40 That is not the situation in Ireland, however, as is apparent from paragraph 37 above.
- 41 Accordingly, in the absence of EU rules concerning the procedural requirements attaching to the examination of an application for subsidiary protection, the Member States remain competent, in accordance with the principle of procedural autonomy, to determine those requirements, while at the same time ensuring that fundamental rights are observed and that EU provisions on subsidiary protection are fully effective (see, to that effect, Case C-439/08 *VEBIC* EU:C:2010:739, paragraph 64).
- 42 It follows that a national procedural rule, such as that at issue in the main proceedings, under which an application for subsidiary protection will be considered only after an application for refugee status has been refused, must ensure that persons seeking subsidiary protection are actually in a position to avail themselves of the rights conferred on them by Directive 2004/83.
- 43 In that regard, as is apparent from the considerations set out in paragraphs 29 to 35 above, the simple fact that an application for subsidiary protection may be considered only after a decision refusing refugee status has been given is not, in principle, likely to compromise the ability of applicants for subsidiary protection actually to avail themselves of the rights conferred on them by Directive 2004/83.
- 44 Nevertheless, the effect of legislation such as that at issue in the main proceedings is that a third country national seeking only subsidiary protection will necessarily be required to follow two separate procedural stages, while the introduction of a two-stage procedure for obtaining international protection risks extending the duration of the procedure and, accordingly, delaying the determination of the application for subsidiary protection.
- 45 The requirement for genuine access to subsidiary protection status means that, first, it should be possible to submit the application for refugee status and the application for subsidiary protection at the same time and, second, the application for subsidiary protection should be considered within a reasonable period of time, which is a matter to be determined by the national court.
- 46 Account must be taken of both of the duration of the examination of the application for refugee status culminating in the refusal of the application and the duration of the examination of the application for subsidiary protection.
- 47 It should also be noted that, where a third country national submits an application for international protection which discloses nothing to support the conclusion that that person has a well-founded fear of being persecuted, it is for the competent authority to establish, within a reasonable time period, that the person in question does not qualify for refugee status, so that the examination of the application for subsidiary protection may be considered in good time.
- 48 It is open to the authorities responsible for considering applications for international protection, *inter alia*, to accelerate the procedure for examining the requirements for granting refugee status, in accordance with Article 23(4) of Directive 2005/85, where the applicant clearly does not qualify as a ‘refugee’ within the meaning of Article 2(c) of Directive 2004/83.
- 49 As regards the right to good administration, enshrined in Article 41 of the Charter, that right reflects a

general principle of EU law.

- 50 Accordingly, where, in the main proceedings, a Member State implements EU law, the requirements pertaining to the right to good administration, including the right of any person to have his or her affairs handled impartially and within a reasonable period of time, are applicable in a procedure for granting subsidiary protection, such as the procedure in question in the main proceedings, which is conducted by the competent national authorities.
- 51 It is therefore necessary to ascertain whether the right to good administration precludes a Member State from including in its national law a procedural rule to the effect that an application for subsidiary protection must be covered by a separate procedure and can be made only after an asylum application has been refused.
- 52 As regards, in particular, the requirement for impartiality, that requirement encompasses, *inter alia*, objective impartiality, in so far as there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the national authorities concerned (see, by analogy, Case C-439/11 P *Ziegler v Commission* EU:C:2013:513, paragraph 155).
- 53 It should be noted, first of all, that in circumstances such as those in the main proceedings, the fact that, before commencing the examination of an application for subsidiary protection, the national authorities inform the applicant that they are considering making a deportation order cannot, of itself, be construed as a lack of objective impartiality on the part of those authorities.
- 54 It is in fact common ground that the reason for that disclosure on the part of the competent authorities is that it has been found that the third country national does not qualify for refugee status. That finding does not, therefore, mean that the competent authorities have already adopted a position on whether that third country national satisfies the requirements for being granted subsidiary protection.
- 55 Accordingly, the procedural rule at issue in the main proceedings is not at odds with the requirement of impartiality pertaining to the right to good administration.
- 56 Nevertheless, that right ensures, in the same way as the requirements imposed by the principle of effectiveness referred to at paragraphs 41 and 42 above, that the entire procedure for considering an application for international protection does not exceed a reasonable period of time, which is a matter to be determined by the referring court.
- 57 In the light of all the foregoing considerations, the answer to the question referred is that Directive 2004/83, the principle of effectiveness and the right to good administration do not preclude a national procedural rule, such as that at issue in the main proceedings, under which an application for subsidiary protection may be considered only after an application for refugee status has been refused, provided that, first, it is possible to submit the application for refugee status and the application for subsidiary protection at the same time and, second, the national procedural rule does not give rise to a situation in which the application for subsidiary protection is considered only after an unreasonable length of time, which is a matter to be determined by the referring court.

Costs

- 58 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:

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, the principle of effectiveness and the right to good administration do not preclude a national procedural rule, such as that at issue in the main proceedings, under which an application for subsidiary protection may be considered only after an application for refugee status has been refused, provided that, first, it is possible to submit the application for refugee status and the application for subsidiary protection at the same time and, second, the national procedural rule does not give rise to a situation in which the application for subsidiary protection is considered only after an unreasonable length of time, which is a matter to be determined by the referring court.

[Signatures]

* Language of the case: English.