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Judgment of the Court of Justice in Case C-133/06

Parliament v Council

6 May 2008

By making the future adoption of common lists of safe countries subject to mere consultation of the Parliament instead of the co-decision procedure, the Council exceeded the powers conferred on it by the Treaty in relation to asylum.

On 1 December 2005, the Council adopted a directive[1] on minimum standards on procedures in Member States for granting and withdrawing refugee status. The directive states that the Council, acting by a qualified majority, after consultation of the European Parliament, is to adopt a minimum common list of third countries which are to be regarded by Member States as safe countries of origin, and a common list of European safe third countries. The amendment of those two lists is also subject to the Council acting by a qualified majority after consultation of the Parliament.

The Parliament brought an action for annulment in respect of the provisions of the directive which provide for the Parliament merely to be consulted. It takes the view that those provisions should have provided for the lists to be adopted by the co-decision procedure, under which the Parliament acts as co-legislator. According to the Parliament, the Council unlawfully made use, in an act of secondary legislation (the directive), of legal bases enabling it to adopt those lists, thereby 'reserving to itself a right to legislate'.

The Council, conversely, submits that the use of secondary legal bases is an established legislative technique and that nothing in the EC Treaty precludes it. The Council refers also to the sensitivity of this area, which requires quick and effective reactions to changes in the situation of the third countries in question. Finally, it takes the view that the conditions laid down for transition to the co-decision procedure have not been fulfilled.

[1] 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).

In essence, the question before the Court is whether the Council could lawfully provide in the directive for the adoption and amendment of the lists of safe countries by a qualified majority on a proposal from the Commission and after consulting the Parliament.

The Court observes that each institution is to act within the limits of the powers conferred upon it by the Treaty. The procedure for the adoption of the lists introduced by the directive differs from that which is laid down in the Treaty. However, the rules regarding the manner in which the Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member States or of the institutions themselves. The Court goes on to say that to acknowledge that an institution can establish secondary legal bases is tantamount to according that institution a legislative power which exceeds that provided for by the Treaty.

Therefore, the Council exceeded the powers conferred on it by the Treaty by including secondary legal bases in the directive. In those circumstances, the Court annuls the contested provisions.

The Court adds that, as regards the future adoption of the lists of safe countries and their amendment, the Council will have to comply with the procedures established by the Treaty. The Court holds that the co-decision procedure is applicable both to the adoption and amendment of the lists of safe countries through legislation and to any decision to apply the third indent of Article 202 EC concerning implementing powers.

Judgment of the Court of Justice in Case C-19/08

Migrationsverket v. Edgar Petrosian and Others

29 January 2009

The time limit for the period of implementation of the transfer begins to run, not as from the time of the provisional judicial decision suspending transfer but from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent its implementation.

In March 2006 the Petrosian family applied for asylum in Sweden and subsequently it was discovered they had applied for asylum earlier in France. The French authorities confirmed that they would take the family back in accordance with the Dublin Regulation. The family appealed against this decision to the Skane County Administrative Court claiming their application should be examined in Sweden. The Court suspended the Applicants appeal in August 2006 pending a final decision in the case in 2007 which rejected it and ordered the suspension of transfer to be no longer applicable. The family appealed to the Court of Appeal in Sweden and that was stayed in 2007 with a final ruling in the case which referred it back to the local Administrative Court on grounds of procedural error. That local Administrative Court then gave a fresh ruling annulling the administrative decision of the Migrationsverket and referred the case back to the initial administrative authority for reassessment. The Court decided to suspend execution of the decision which meant that the time-limit for execution of the transfer expired meaning the persons could no longer be transferred.

The case dealt with whether Article 20(1)(d) and 20(2) are to be interpreted as meaning that where in the context of a procedure to transfer an asylum seeker, the legislation of the requesting Member State provides for suspensive effect of an appeal, the period for implementation of the transfer begins to run as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, or only as from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent the implementation

taking place. The Court noted that the direct meaning was not evidence from the wording of the provisions.

The Court noted that 20(1)(d) allows 6 months in which to carry out the Dublin transfer. This is in view of practical complexities and organisational difficulties potentially along the way. The Court also noted the explanatory memorandum to the Dublin Regulation proposal by the Commission in explaining why the transfer time limit was increased from 1 month to 6 months. In order to ensure the effectiveness of that provision laying down the period for implementation of the transfer, in cases where an appeal has suspensive effect the period of time must begin to run not as from the time of the provisional judicial decision suspending its implementation but only as from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent its implementation (Para 46). This finding is supported by the observance of the principles judicial protection and procedural autonomy. The Court noted that States which introduced suspensive appeals would be placed in an awkward position if the time just ran from the initial decision as it would not be able to organise the transfer of the asylum seeker within the brief period between the appeal decision on the merits and the expiry of the time-limit running the risk of becoming responsible for the asylum claim itself by default. Also the Court noted if time ran from the initial decision, a national court wishing to reconcile compliance with a time limit with compliance with a provision judicial decision having suspensive effect would be placed in the position of having to rule on the merits of the transfer procedure before expiry of that time-limit by a decision which may, owing to lack of sufficient time granted to the courts, have been unable to take satisfactory account of the complex nature of the proceedings. Such a practice would not be in line with the principle of procedural autonomy.

In a procedure to transfer an asylum seeker, in order to ensure the effectiveness of Article 20(1)(d) and Article 20(2) of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, that article must be interpreted as meaning that, where the legislation of the requesting Member State provides for suspensive effect of an appeal, the period for implementation of the transfer begins to run, not as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, but only as from the time of the judicial decision which rules on the merits of the procedure

and which is no longer such as to prevent its implementation. In the light of the objective pursued by setting a period for the Member States, the start of that period should be determined in such a manner as to allow the Member States a six-month period which they are deemed to require in full in order to determine the practical details for carrying out the transfer.

Judgment of the Court of Justice in Case C-465/07

Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie

17 February 2009

The degree of indiscriminate violence in the applicant's country of origin can exceptionally suffice for the competent authorities to decide that a civilian, if returned to his country of origin, would face a real risk of being subject to serious and individual threat

The main objective of Directive 2004/83/EC[2] is, on the one hand, to ensure that all 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.

On 13 December 2006 Mr and Mrs Elgafaji submitted applications for temporary residence permits in the Netherlands, together with evidence seeking to prove the real risk to which they would be exposed if they were expelled to their country of origin, in this case, Iraq. By orders of 20 December 2006, the competent minister refused to grant temporary residence permits to Mr and Mrs Elgafaji. He found, inter alia, that they had not proved satisfactorily the circumstances on which they were relying and, therefore, had not established the real risk of serious and individual threat to which they claimed to be exposed in their country of origin.

Following the refusal of their applications, Mr and Mrs Elgafaji brought actions before the Rechtbank te 's-Gravenhage. Their actions before that court were successful. The Raad van State, seised on appeal, held that there were difficulties in interpreting the relevant provisions of Directive 2004/83/EC and decided to refer questions to the Court of Justice for a preliminary ruling. The referring court wishes to know, inter alia, whether the relevant provisions of the directive[3] must be interpreted as meaning that the existence of a serious and individual threat to the life or person of the

[2] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).
[3] Article 15(c) of the directive, in conjunction with Article 2(e) thereof.

applicant for subsidiary protection is subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his circumstances.

Judgment of the Court of Justice in Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08

Aydin Salahadin Abdulla and Others

2 March 2010

A person may lose refugee status when the circumstances in the third country on which his fear of persecution was founded have ceased to exist. That change in circumstances must be of a significant and non-temporary nature

The Council Directive of 29 April 2004 on the determination of who qualifies for refugee status[4] sets out the conditions which third-country nationals must satisfy in order to qualify for refugee status in a Member State of the European Union. It also provides that a person ceases to be classified as a refugee when the circumstances which led him to be recognised as such have ceased to exist.

Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, his wife Hamrin Mosa Rashi and Dler Jamal, Iraqi nationals, were granted refugee status in Germany in 2001 and 2002. In support of their applications, they relied before the German Federal Office for Migration and Refugees on a variety of reasons which made them fear being persecuted in Iraq by the regime of Saddam Hussein's Baath Party. In 2005, as a result of the changed circumstances in Iraq, their recognition as refugees was revoked.

Citing a fundamental change in the situation in Iraq, the higher administrative courts in Germany ruled that the parties concerned were now safe from the persecution suffered under the previous regime and that they were not under any significantly likely new threat of further persecution on any other grounds. It is against that background that the Bundesverwaltungsgericht (Federal Administrative Court), before which the disputes had been brought, referred to the Court of Justice

[4] 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).

questions on the interpretation of the provisions in the 2004 Directive which relate to the loss of refugee status.

The Court states first that, in order to be classified as a refugee, the national must, by reason of circumstances existing in his country of origin, have a well-founded fear of being himself persecuted on the basis of race, religion, nationality, political opinion or membership of a particular social group. Those circumstances form the reason why it is impossible for the person concerned, or why he justifiably refuses, to avail himself of the protection of his country of origin in terms of that country's ability to prevent or punish acts of persecution.

As regards the revocation of refugee status, the Court holds that a person loses that status when, following a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which had justified the person's fear of persecution no longer exist and he has no other reason to fear being persecuted.

The Court points out that, in order to reach the conclusion that the refugee's fear of being persecuted is no longer well founded, the competent authorities must verify that the actor or actors of protection of the third country have taken reasonable steps to prevent the persecution. They must therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and ensure that the national concerned will have access to such protection if he ceases to have refugee status.

The Court points out that the change in circumstances will be of a 'significant and non-temporary' nature when the factors which formed the basis of the refugee's fear of persecution may be regarded as having been permanently eradicated. That implies that there are no well-founded fears of being exposed to acts of persecution amounting to 'severe violations of basic human rights'. The Court states that the actor or actors of protection with respect to which the reality of a change of circumstances in the country of origin is to be assessed are either the State itself or parties or organisations, including international organisations, which control the State or a part of the territory of the State. As regards the latter point, the Court acknowledges that the Directive does not preclude the protection guaranteed by international organisations from being ensured through the presence of a multinational force in the territory of the third country.

The Court then goes on to analyse the situation in which a finding has been made that the circumstances on the basis of which refugee status was granted have ceased to exist, and the conditions in which the competent authorities must verify, if necessary, whether there are other circumstances which may give rise to a well-founded fear of persecution on the part of the person concerned.

In the context of this analysis, the Courts states, inter alia, that, both at the stage of the granting of refugee status and at the stage of examination of the question of whether that status should be maintained, the assessment relates to the same question of whether or not the circumstances established constitute such a threat of persecution that the person concerned may reasonably fear, in the light of his individual situation, that he will in fact be subjected to acts of persecution. Consequently, the Court holds that the standard of probability used to assess that risk is the same as that applied when refugee status was granted.

Judgment of the Court of Justice in Case C-31/09

Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal

17 June 2010

A displaced Palestinian receives protection or assistance from the United Nations Agency for Palestine Refugees only when that person has actually availed himself of that protection or assistance

The United Nations established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in order to provide aid and assistance to displaced Palestinians in the Lebanon, Syria, Jordan, the West Bank and the Gaza Strip. UNRWA's services are, in principle, available to Palestinians living in those territories who lost both their home and means of livelihood as a result of the 1948 conflict and to their descendants.

The Geneva Convention[5] defines who must be granted refugee status, under what conditions, and what that status means. In the context of the European Union, the obligations arising under the Convention are reproduced in Directive 2004/83[6].

Under the Convention, the term 'refugee' is to apply to any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

However, the Convention provides that those provisions do not apply to persons who are at present receiving protection or assistance from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees (HCR), such as UNRWA. Nevertheless, when such protection or assistance has

[5] Geneva Convention of 28 July 1951 relating to the Status of Refugees.
[6] 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).

ceased for any reason, without the position of such persons being definitively settled, those persons are *ipso facto* entitled to the benefits of the Convention.

In 2007, Nawras Bolbol, a stateless person of Palestinian origin, arrived in Hungary in the company of her husband, with a visa, having come from the Gaza Strip. She submitted an application for asylum to the Hungarian Immigration Office because she did not want to return to the Gaza Strip on account of the unsafe situation there caused by the daily clashes between Fatah and Hamas.

Ms Bolbol did not avail herself of the protection or assistance of UNRWA while she was still in the Gaza Strip, but she claims that she was eligible for such protection and assistance on the basis of family connections. She claims to be entitled to unconditional refugee status as a resident of Palestine now living outside UNRWA's area of operations.

The Hungarian Immigration Office refused her application on the grounds that she had not left her country of origin owing to persecution for reasons of race, religion, nationality or because of political persecution and that she was not automatically entitled to refugee status.

Ms Bolbol brought an appeal against that decision before the Fővárosi Bíróság (Budapest Municipal Court, Hungary), which must ascertain whether the specific Convention rules applicable to displaced Palestinians can be relied on in respect of Ms Bolbol. In that context, the Hungarian court asked the Court of Justice whether a person receives protection and assistance from URWA merely by virtue of the fact that that person is entitled to that protection or assistance, or must that person have availed himself of that protection or assistance.

The Court recalls that while the term 'Palestine Refugee' applies to everyone who lost both their home in Palestine and means of livelihood as a result of the 1948 conflict, other persons are also eligible to receive protection or assistance from UNRWA. The Court observes, in particular, that, following subsequent hostilities in that region, other groups of Palestinians became displaced and are entitled to receive assistance from UNRWA.

However, the specific Convention rules applicable to displaced Palestinians concern only those persons who are at present receiving protection or assistance from UNRWA. Accordingly, only those persons who have actually availed themselves of the assistance provided by UNRWA come within those specific rules. On the other

hand, persons who are, or were, merely eligible to receive protection and assistance from that agency are still covered by the general provisions of the Convention. Thus, their applications for refugee status must be examined on a case-by-case basis and can be accepted only where there is persecution for reasons of race, religion, nationality, or because of political persecution.

In relation to the issue of proof of actually receiving assistance from UNWRA, the Court states that, while registration with UNWRA is sufficient proof, the beneficiary must be permitted to adduce evidence of that assistance by other means.

Judgment of the Court of Justice in Joined Cases C-57/09 and C-101/09

Bundesrepublik Deutschland v B and D

9 Novembre 2010

The Court of Justice clarifies the conditions on which persons may be excluded from refugee status if they have been members of a terrorist organisation

Directive 2004/83/EC of 29 April 2004 establishes minimum standards for the qualification and status of third country nationals or stateless persons as refugees. According to Article 12(2)(b) and (c), persons regarding whom there are serious reasons for considering that they have committed a serious non-political crime outside the country of refuge or been guilty of acts contrary to the purposes and principles of the United Nations are excluded from this protection.

Seized by the German Federal Administrative Court in the context of a dispute between the Federal Office for Migration and Refugees and two Turkish nationals of Kurdish origin to whom refugee status had been refused or withdrawn on the grounds of their past membership of the PKK, the Court interpreted these exclusion clauses provided for by the Directive.

Firstly, the Court stated that the competent authorities of the Member States can apply Article 12(2) of the Directive to a person who, in the course of his membership of an organisation which is on the list forming the Annex to Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism, has been involved in terrorist acts with an international dimension. However, the mere fact that the person concerned was a member of such an organisation cannot automatically mean that that person must be excluded from refugee status. The competent authorities must undertake a specific, full investigation into all the circumstances of each individual case, in order to determine whether it is possible to attribute to the person concerned a share of the responsibility for the acts committed by the organisation in question while that person was a member.

That individual responsibility is assessed in the light of both objective and subjective criteria such as the true role played by the person concerned in the perpetration of

the acts in question; his position within the organisation; the extent of the knowledge he had, or was deemed to have, of its activities; any pressure to which he was exposed; or other factors likely to have influenced his conduct.

Secondly, where, in the light of this assessment, it appears that the provisions of Article 12(2) of the Directive apply, the resulting exclusion from refugee status is not conditional upon a further proportionality test being undertaken in relation to the particular case.

Thirdly, the application of these provisions is not conditional on the person concerned representing a present danger to the host Member State. It is a matter here of a penalty for acts committed in the past.

Finally, the Court rules that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status under the abovementioned provisions of Directive 2004/83/EC, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the latter.

Judgment of the Court of Justice in Case C-69/10

Brahim Samba Diouf v Ministre du Travail, de l'Emploi et de l'Immigration

28 July 2011

The right to an effective remedy under EU law does not require the specific preliminary decision to place an applicant for international protection under the accelerated procedure to be itself subject to judicial review, provided that this decision is reviewable as part of judicial consideration of the final substantive decision to grant or refuse protection.

The Applicant applied for international protection in Luxembourg, alleging that he fled slavery in Mauritania and persecution by his former employer. His application was dealt with under an accelerated procedure, and was rejected as unfounded, and his removal was ordered.

He was informed that his placement under the accelerated procedure was due to (a) he clearly did not qualify for the status conferred by international protection and (b) he had misled the authorities by presenting false information or documents.

His application was rejected because (a) he presented a forged passport, (b) his application reasons were economic, and not in line with international protection criteria, (c) his fear of persecution by his former employer did not have a political ethnic or religious basis, (d) his fear was hypothetical and not established, (e) Mauritania criminalised slavery with a punishment of up to 10 years imprisonment.

The Applicant brought an action in the Tribunal Administratif seeking annulment of the decision to place him under the accelerated procedure. The Tribunal took issue with the fact that under Luxembourg law, such a decision, unlike the substantive decision to grant or refuse protection, is not open to any appeal, which raises questions concerning the right to an effective remedy under Article 39 of the Procedures Directive. The accelerated procedure (a) reduces the time-limit for bringing an action against the substantive decision from 1 month to 15 days, and (b) the judicial remedy entails only one level of jurisdiction, rather than two.

The position of the Luxembourg government was that the decision to place under the accelerated procedure can indirectly be reviewed by the Tribunal when it considers an appeal to the final substantive decision. The Tribunal in these proceedings rejected this argument because it appeared to run against the intention of the legislature to exempt the procedural decision from judicial review.

It is clear from the wording of Article 39(1)(a) of Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status and, in particular, from the non-exhaustive list of decisions contained therein, that the concept of a 'decision taken on [the] application for asylum' covers a series of decisions which, because they entail rejection of an application for asylum or are taken at the border, amount to a final decision rejecting the application on the substance. The same is true of the other decisions which, under Article 39(1)(b) to (e) of Directive 2005/85, are expressly made subject to the right to an effective judicial remedy. Accordingly, the decisions against which an applicant for asylum must have a remedy under Article 39(1) of Directive 2005/85 are those which entail rejection of the application for asylum for substantive reasons or, as the case may be, for formal or procedural reasons which preclude any decision on the substance. It follows that decisions that are preparatory to the decision on the substance or decisions pertaining to the organisation of the procedure are not covered by that provision.

Moreover, if the wording of Article 39 of Directive 2005/85 were interpreted as meaning that 'a decision taken on [the] application' referred to any decision given in relation to an application for asylum and as also referring to decisions in preparation for the final decision on the application for asylum, or decisions pertaining to the organisation of the procedure, that would not be consistent with the interest in the expediency of procedures relating to applications for asylum. That interest in a procedure in that domain being, in accordance with Article 23(2) of Directive 2005/85, concluded as soon as possible, without prejudice to an adequate and complete examination, is, as is clear from recital 11 to the directive, common to both Member States and applicants for asylum.

On a proper construction, Article 39 of Council Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status, and the principle of effective judicial protection, do not preclude national rules under which no separate action may be brought against the decision of the

competent national authority to deal with an application for asylum under an accelerated procedure, provided that the reasons which led that authority to examine the merits of the application under such a procedure can in fact be subject to judicial review in the action which may be brought against the final decision rejecting the application – a matter which falls to be determined by the national court.

The decision relating to the procedure to be applied for the examination of the application for asylum, viewed separately and independently from the final decision which grants or rejects the application, is a measure preparatory to the final decision on the application. Accordingly, the absence of a remedy at that stage of the procedure does not constitute an infringement of the right to an effective remedy, provided, however, that the legality of the final decision adopted in an accelerated procedure – and, in particular, the reasons which led the competent authority to reject the application for asylum as unfounded – may be the subject of a thorough review by the national court, within the framework of an action against the decision rejecting the application.

The effectiveness of such an action would not be guaranteed if – because of the impossibility of bringing an appeal against the decision of the competent authority to examine an asylum application under an accelerated procedure – the reasons which led that authority to examine the merits of the application under such a procedure could not be reviewed by a court, when those reasons are the same as those which led to the application being rejected. Such a situation would render review of the legality of the decision impossible, as regards both the facts and the law. What is important, therefore, is that the reasons justifying the use of an accelerated procedure may be effectively challenged at a later stage before the national court and reviewed by it within the framework of the action that may be brought against the final decision closing the procedure relating to the application for asylum. It would not be compatible with European Union law if national rules were to be construed as precluding all judicial review of the reasons which led the competent administrative authority to examine the application for asylum under an accelerated procedure.

As regards the interpretation of national law by the national court, the principle that national law must be interpreted in conformity with European Union law requires national courts to do whatever lies within their jurisdiction in order to ensure that Directive 2005/85 is fully effective and achieves an outcome consistent with the

objective pursued by it The objective of Directive 2005/85 is to establish a common system of safeguards serving to ensure that the Geneva Convention and the fundamental rights are fully complied with. The right to an effective remedy is a fundamental principle of European Union law. In order for that right to be exercised effectively, the national court must be able to review the merits of the reasons which led the competent administrative authority to hold the application for international protection to be unfounded or made in bad faith, there being no irrebuttable presumption as to the legality of those reasons. It is also within the framework of that remedy that the national court hearing the case must establish whether the decision to examine an application for asylum under an accelerated procedure was taken in compliance with the procedures and basic guarantees laid down in Chapter II of Directive 2005/85, as provided for in Article 23(4) of the directive.

When, under national rules concerning the procedures for granting and withdrawing refugee status, the time-limit for bringing an action against the final decision on an asylum application is 15 days in the case of an accelerated procedure, whereas it is one month in the case of a decision adopted under the ordinary procedure, the important point is that the period prescribed must be sufficient in practical terms to enable the applicant to prepare and bring an effective action. With regard to abbreviated procedures, a 15-day time limit for bringing an action does not seem, generally, to be insufficient in practical terms to prepare and bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved. It is, however, for the national court to determine – should that time-limit prove, in a given situation, to be insufficient in view of the circumstances – whether that element is such as to justify, on its own, upholding the action brought indirectly against the decision of the competent national authorities to examine an application for asylum under an accelerated procedure, so that, in upholding the action, the national court would order that the application be examined under the ordinary procedure.

Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status does not require there to be two levels of jurisdiction. All that matters is that there should be a remedy before a judicial body, as is guaranteed by Article 39 of Directive 2005/85. The principle of effective judicial protection affords an individual a right of access to a court or tribunal but not to a number of levels of jurisdiction.

Judgment of the Court of Justice in Joined Cases C-411/10 and C-493/10

N.S. v Secretary of State for the Home Department and M.E. and Others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform

21 December 2011

An asylum seeker may not be transferred to a Member State where he risks being subjected to inhuman treatment. EU law does not permit a conclusive presumption that Member States observe the fundamental rights conferred on asylum seekers

The common policy on asylum is a constituent part of the EU's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union. The 'Dublin II' Regulation[7] sets out the criteria for determining the Member State responsible for examining an asylum application lodged in the EU, a single Member State being, in principle, responsible. Where a third country national has applied for asylum in a Member State which the Regulation does not indicate as the State responsible, the Regulation provides for a procedure for transferring the asylum seeker to the Member State responsible.

In Case C-411/10, Mr N.S., an Afghan national, came to the United Kingdom after travelling through, among other countries, Greece, where he was arrested in 2008. He was released by the Greek authorities four days later and ordered to leave Greece within 30 days. Mr N.S. did not make an asylum application. According to him, when he tried to leave Greece he was arrested by the police and expelled to Turkey, where he was detained in appalling conditions for two months. He states that he escaped from his place of detention in Turkey and travelled to the United Kingdom, where he arrived in January 2009 and lodged an asylum application. In July, Mr N.S. was informed that he would be transferred to Greece in August, under the 'Dublin II' ReguIation. In legal proceedings then brought challenging that decision he alleged that there was a risk that his fundamental rights would be

[7] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

infringed were he to be sent back to Greece. The national court points out that asylum procedures in Greece have serious shortcomings, the proportion of asylum applications which are granted is extremely low, judicial remedies are inadequate and very difficult to access and the conditions for reception of asylum seekers also inadequate.

Case C-493/10 concerns five persons, all unconnected with each other, originating from Afghanistan, Iran and Algeria. Each of them travelled via Greece where they were arrested for illegal entry without applying for asylum. They then travelled to Ireland, where they claimed asylum. They resist their return to Greece and claim that the procedures and conditions for asylum seekers there are inadequate.

In that context, both the Court of Appeal of England and Wales (United Kingdom) and the High Court (Ireland) ask the Court of Justice whether – in the light of the overloading of the Greek asylum system and its effects on the treatment of asylum seekers and on the examination of their claims – the authorities of a Member State which should transfer the applicants to Greece (the Member State responsible for the examination of the asylum application under the Regulation) must first check whether that State actually observes fundamental rights. They also ask whether, if that State does not observe fundamental rights, those authorities are bound to assume responsibility for examining the application themselves.

In the course of the proceedings before the Court in these cases, thirteen Member States, the Swiss Confederation, the United Nations High Commissioner for Refugees, Amnesty International and the AIRE Centre have intervened. The parties which have submitted observations agree that in 2010 Greece was the point of entry in the European Union of almost 90% of illegal immigrants, resulting in a disproportionate burden being borne by that State compared to other Member States and the inability of the Greek authorities to cope with the situation in practice.

In today's judgment the Court notes, first, that the Common European Asylum System was conceived in a context making it possible to assume that all the participating States observe fundamental rights and that the Member States can have confidence in each other in that regard. It is precisely because of that principle of mutual confidence that the European Union legislature adopted the 'Dublin II' Regulation, the main objective of which is to speed up the handling of asylum claims in the interests both of asylum seekers and the participating Member States.

Proceeding on the basis of that principle, the Court examines whether the national authorities which should carry out the transfer to the Member State responsible for the asylum application, indicated by the Regulation, must first examine whether the fundamental rights of persons in that State are observed.

The Court states that the slightest infringement of the norms governing the right to asylum cannot be sufficient to prevent the transfer of an asylum seeker to the Member State primarily responsible, since that would deprive States' obligations in the Common European Asylum System of their substance and endanger the objective of quickly designating the Member State responsible.

However, the Court holds that EU law precludes a conclusive presumption that the Member State indicated by the Regulation as responsible observes the fundamental rights of the EU.

The Member States, including the national courts, may not transfer an asylum seeker to the Member State indicated as responsible where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union. The Court considers that the Member States have a number of sufficient instruments at their disposal enabling them to assess compliance with fundamental rights and, therefore, the real risks to which an asylum seeker would be exposed were he to be transferred to the Member State responsible[8].

The Court adds that, subject to the right itself to examine the application, the Member State which should transfer the applicant to the Member State responsible under the Regulation and which finds it is impossible to do so, must examine the other criteria set out in the Regulation, in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application.

In that regard, it must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, it must itself examine the application.

[8] Including the reports of international non-governmental organisations or the United Nations Refugee Agency.

Finally, the Court states that its answers do not require to be qualified in any respect so as to take account of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom.

Judgment of the Court of Justice in the Case C-620/10

Migrationsverket v Nurije Kastrati and Others

3 May 2012

The withdrawal of an application for asylum, which occurs before the Member State responsible for examining that application has agreed to take charge of the Applicant, has the effect that that regulation can no longer be applicable

This case concerned a family, whereby Mrs. Kastrati and her minor children were from Kosovo and Mr. Kastrati lived in Sweden. In 2007 Mrs Kastrati lodged an application for permits to reside in Sweden on the basis of her husband. The Migrationsverket dismissed the application which was upheld by the Skane Regional Administrative Court. Mrs Kastrati then lodged an appeal to the Stockholm Administrative Court of appeal before withdrawing it. Mrs Kastrati in the meantime had been granted a French visa and on that basis entered Sweden with her children. She then submitted an asylum application in Sweden but as she had been granted a visa by France, the Swiss authorities requested France to take responsibility on the basis of Article 9(2) of the Dublin Regulation. Mrs Kastrati then submitted a new application for permits to reside in Sweden on the basis of her husband and subsequently withdrew her asylum claim in Sweden. However, the French authorities were unaware of that and accepted to take back the wife and children. The Migrationsverket once again refused them residence permits and rejected their asylum applications on the basis of the transfer to France.

According to the Court, Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that the effect of withdrawing an application for asylum within the terms of Article 2(c) of that regulation, which is done before the Member State responsible for examining that application has agreed to take charge of the applicant, is that that regulation can no longer be applicable. In such a case, it is for the Member State within whose territory the application was lodged to take the decisions required as a result of that withdrawal and, in particular, to discontinue the

examination of the application, with a record of the information relating to it being placed in the applicant's file.

Where the applicant withdraws his single asylum application before the requested Member State has agreed to take charge of him, the principal objective of Regulation No 343/2003, namely, the identification of the Member State responsible for examining an asylum application in order to guarantee effective access to an appraisal of the refugee status of the applicant, can no longer be attained.

Judgment of the Court of Justice in Joined Cases C-71/11 and C-99/11

Bundesrepublik Deutschland v Y and Z

5 September 2012

Certain forms of serious interference with the public manifestation of religion may constitute persecution for reasons of religion. Where that persecution is sufficiently serious, refugee status must be granted

Pursuant to the Directive on the status of refugees[9], Member States must, in principle, grant refugee status to third country nationals who fear persecution in their country of origin for reasons of race, religion, nationality, political opinion, or membership of a particular social group. An act may be considered as persecution if it is sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights.

The Muslim Ahmadiyya community is an Islamic reformist movement. In Pakistan, the Criminal Code provides that members of the Ahmadiyya religious community may face imprisonment of up to three years or a fine if they claim to be Muslim, describe their faith as Islam, preach or propagate or invite others to accept their faith. The same code provides that any person who defiles the name of the Prophet Mohammed may be punished by death or life imprisonment and a fine.

Y and Z, Pakistani nationals, currently live in Germany where they applied for asylum and protection as refugees. They are members of the Ahmadiyya community and claim that they were forced to leave Pakistan because of their membership of that community. In particular, Y stated that on several occasions he had been beaten in his home village by a group of people and had stones thrown at him at his community's place of prayer. Those people threatened to kill him and reported him to the police for insulting the Prophet Mohammed. Z claimed that he was mistreated and imprisoned as a result of his religious beliefs.

[9] 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; addendum OJ 2005 L 204, p. 24) .

The German authorities rejected Y and Z's applications for asylum, finding that the restrictions on the public practice of faith imposed on Ahmadis in Pakistan do not constitute persecution for the purposes of the right of asylum.

The Bundesverwaltungsgericht (Federal Administrative Court, Germany), before which the disputes have been brought, asks the Court of Justice to specify what restrictions on the practice of a religion may be considered as persecution justifying the grant of refugee status.

In today's judgment, the Court finds, first, that only certain forms of severe interference with the right to freedom of religion, and not any interference with that right, may constitute an act of persecution requiring the competent authorities to grant refugee status. Hence, limitations on the exercise of that right which are provided by law cannot be considered as persecution as long as the essence of the right is respected. Moreover, even the violation of the right constitutes an act of persecution only if it is sufficiently serious and has a significant effect on the person concerned.

Secondly, the Court points out that acts which may constitute a severe violation include serious acts which interfere with a person's freedom not only to practice his faith in private circles but also to live that faith publicly. Therefore, it is not the public or private, or collective or individual, nature of the manifestation and practice of the religion which will determine whether a violation of the right to freedom of religion should be regarded as persecution, but the severity of the measures and sanctions adopted or liable to be adopted against the person concerned.

In that context, the Court holds that a violation of the right to freedom of religion may constitute persecution where, because of the exercise of that liberty in his country of origin, there is a genuine risk that the asylum applicant will, inter alia, be prosecuted or subject to inhumane or degrading punishment. The Court observes that where the participation in formal worship, either alone or in community with others, may give rise to such a risk, the violation of the right to freedom of religion may be sufficiently serious.

The Court also finds that in assessing such a risk, the competent authorities must take account of a number of factors, both objective and subjective. In that respect, the Court notes that the subjective circumstance that the observance of a certain religious practice in public, which is subject to the restrictions at issue, is of particular

importance to the person concerned in order to preserve his religious identity is a relevant factor to be taken into account in determining the level of risk to which the applicant will be exposed in his country of origin on account of his religion, even if the observance of such a religious practice does not constitute a core element of faith for the religious community concerned.

Indeed, the protection afforded on the basis of persecution on religious grounds extends both to forms of personal or communal conduct which the person concerned considers to be necessary to him – namely those 'based on … any religious belief' – and to those prescribed by religious doctrine – namely those 'mandated by any religious belief'.

Finally the Court holds that, where it is established that, upon his return to his country of origin, the person concerned will engage in a religious practice which will expose him to a real risk of persecution, he should be granted refugee status. The Court considers that, in assessing an application for refugee status on an individual basis, the national authorities cannot reasonably expect the applicant to abstain from the manifestation or practice of certain religious acts.

Judgment of the Court of Justice in Case C-179/11

Cimade and GISTI v Ministre de L'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'immigration

27 September 2012

The minimum conditions for the reception of asylum seekers must be granted by the Member State in receipt of an application for asylum even when it calls upon another Member State which it considers to be responsible for the examination of the application

Directive 2003/9/EC lays down inter alia the minimum standards concerning the material conditions for the reception of asylum seekers (in particular housing, food and clothing, provided in kind or as financial allowances). Those standards make it possible to guarantee them a dignified standard of living and comparable living conditions in all Member States. The directive applies to all third-country nationals or stateless persons who have submitted an application for asylum in accordance with the conditions of the regulation known as 'Dublin II'[10]. That regulation lays down the criteria which make it possible to determine the Member State responsible for examining the application for asylum, which is not necessarily the State in which that application was lodged.

If a Member State in receipt of an application for asylum (requesting State) considers that another Member State is responsible (requested State), it may request that second State to take charge of the asylum seeker.

On 26 January 2010, an application was made to the Conseil d'État (Council of State) (France) by two French associations, the Cimade and the GISTI, seeking annulment of the inter-ministerial circular of 3 November 2009 concerning the ATA (*allocation temporaire d'attente* – temporary tideover allowance). A subsistence benefit, that allowance is paid monthly to asylum seekers throughout the period of examination of their application. Those two associations maintain that the circular is contrary to the

[10] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

objectives of Directive 2003/9 because it excludes asylum seekers from enjoyment of the ATA where, pursuant to the Dublin II Regulation, France calls upon another Member State, which it considers responsible for the examination of the claim of the persons concerned.

The Conseil d'État decided to make a reference to the Court concerning the interpretation of the relevant provisions of European Union law.

The Court replies, first, that a Member State in receipt of an asylum claim is obliged to grant the minimum conditions for the reception of asylum seekers even to an asylum seeker in respect of whom it decides to call upon another Member State, as the State responsible for the application, to take charge of him or take him back.

The Court states that the obligation on the Member State in receipt of an asylum claim to grant those minimum reception conditions begins when the applicant 'applies for asylum', even if that

State is not the Member State responsible for the examination of the application for asylum pursuant to the criteria laid down by the Dublin II Regulation. Directive 2003/9 provides for only one category of asylum seekers, encompassing all third-country nationals and stateless persons who apply for asylum. Accordingly, those minimum reception conditions must be granted not only to asylum seekers present in the territory of the responsible Member State, but also to those who remain pending the determination of the responsible Member State, a procedure which can last for a number of months.

The Court also notes that the obligation on a Member State in receipt of an asylum claim to grant the minimum reception conditions applies only to those asylum seekers who are allowed to remain in the territory of the Member State concerned as asylum seekers.

In that regard, the Court considers that European Union law3 allows asylum seekers to remain not only in the territory of the State in which the application for asylum is being examined but also, until the actual transfer of the persons concerned, in the territory of the Member State in which that application was lodged.

The Court holds, second, that the obligation to guarantee the minimum reception conditions for asylum seekers applies from the moment the application is lodged and throughout the procedure for determining the Member State responsible until the actual transfer of the applicant by the requesting State.

The Court states in that regard that only the actual transfer of the asylum seeker by the requesting Member State brings to an end both the procedure before that State and its liability to bear the financial burden of the reception conditions. The Court notes that the minimum reception conditions can be reduced or withdrawn in situations, listed in the directive, where the asylum seeker does not comply with the reception rules laid down by the Member State concerned (for example, where the person concerned fails to appear for personal interviews at which his claim is to be examined).

Judgment of the Court of Justice in Case C-245/11

K v Bundesasylamt

6 November 2012

A State is obliged to apply, of its own motion, the Dublin Regulation's humanitarian clause where it would "bring together" dependent family members. That State must therefore assume responsibility for an asylum seeker who would otherwise be required to seek asylum elsewhere under the Regulation's criteria.

The Applicant entered Poland irregularly and made her first application for asylum there. Then she rejoined one of her adult sons who already had refugee status in Austria along with his spouse and minor children. K then made an asylum claim there. The Asylum Court in Austria accepted that the daughter-in-law is dependent on K because she has a new-born baby and suffers from a serious illness and handicap following a serious and traumatic occurrence which took place in a third country. The daughter-in-law could also be at risk of violent treatment at the hands of male members of the family, on account of cultural traditions seeking to re-establish family honour. K has appropriate professional experience to support her and is her closest friend. Within those circumstances the Austrian authorities requested Poland to take back responsibility for K's asylum claim under the Dublin Regulation. K appealed against this decision and the Asylgerichtshof found that the application of Article 15 or Article 3(2) should have been considered. It was in these circumstances that a preliminary reference was submitted to the Court.

The Court held that, in circumstances such as those in the main proceedings, Article 15(2) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that a Member State which is not responsible for examining an application for asylum pursuant to the criteria laid down in Chapter III of that regulation becomes so responsible. It is for the Member State which has become the responsible Member State within the meaning of that regulation to assume the obligations which go along with that

responsibility. It must inform in that respect the Member State previously responsible. This interpretation of Article 15(2) also applies where the Member State which was responsible pursuant to the criteria laid down in Chapter III of Regulation No 343/2003 did not make a request in that regard in accordance with the second sentence of Article 15(1) of that regulation.

Judgment of the Court of Justice in Case C-277/11

M. M. v Minister for Justice, Equality and Law Reform and Others

22 November 2012

The obligation to cooperation under Article 4(1) of the Qualification Directive cannot be interpreted in that way but in such a separate system the fundamental rights of the Applicant must be respected and in particular the principle of the right to be heard

Mr. M applied for asylum in May 2008 after the expiry of his visa. His asylum application was rejected and a subsequent application for subsidiary protection this was also rejected. Mr. M disputed the legality of the subsidiary protection decision before the High Court by holding that it did not comply with EU law, in particular with regard to the right to defence due to the fact that there is no oral hearing at that stage of the process in Ireland.

The Court held that, the requirement that a Member State cooperate with an applicant for asylum, as stated in the second sentence of Article 4(1) of Directive 2004/83 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, cannot be interpreted as meaning that, where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that second application as well, the authority is on that basis obliged – before adopting its decision – to inform the applicant that it proposes to reject his application and notify him of the arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard.

However, in the case of a national system a feature of which is that there are two separate procedures, one following upon the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance, in each of those procedures, of the applicant's fundamental rights and, more particularly, of the right to be heard in the sense that

the applicant must be able to make known his views before the adoption of any decision that does not grant the protection requested. In such a system, the fact that the applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection.

The right to be heard in all proceedings, which is affirmed by Articles 41, 47 and 48 of the Charter of Fundamental Rights of the European Union, must apply in all proceedings which are liable to culminate in a measure adversely affecting a person and must be observed even where the applicable legislation does not expressly provide for such a procedural requirement. Consequently, that right must apply fully to the procedure in which the competent national authority examines an application for international protection pursuant to rules adopted in the framework of the Common European Asylum System. When a Member State has chosen to establish two separate procedures, one following upon the other, for examining asylum applications and applications for subsidiary protection, it is important that the applicant's right to be heard, in view of its fundamental nature, be fully guaranteed in each of those two procedures.

Judgment of the Court of Justice in Case C-364/11

Abed El Karem El Kott and Others v Bevándorlási és Állampolgársági Hivatal

19 December 2012

A Palestinian who has been forced to leave the UNRWA area of operations in which he is no longer able to benefit from assistance provided by that agency may qualify as a refugee without being required to show fear of persecution. Where such a person has left the UNRWA area of operations voluntarily, he cannot be granted refugee status without being required to show fear of persecution

The United Nations established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in order to provide aid and assistance to displaced Palestinians in Lebanon, Syria, Jordan, the West Bank and the Gaza Strip. UNRWA services are, in principle, available to Palestinians and their descendants living in those territories when they have lost both their home and livelihood as a result of conflict in the region.

The Geneva Convention defines the term 'refugee' as applying, inter alia, to any person with a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'. It also identifies the circumstances in which a person may qualify as a refugee. In the EU, the obligations under the convention are set out in Directive 2004/83.

Referring to the Geneva Convention, the directive provides that persons who are currently receiving protection or assistance from United Nations organs or agencies other than the United Nations High Commissioner for Refugees, such as UNRWA, are excluded from being refugees. However, where such protection or assistance has ceased for any reason, without the position of such persons being definitely settled, those persons are *ipso facto* entitled to protection under the directive.

A number of stateless persons of Palestinian origin were forced to leave UNRWA refugee camps in Lebanon as a result of the destruction of their homes during clashes between armed groups or as a result of death threats. Subsequently, they

went to Hungary, where they applied for refugee status. Although the Hungarian authorities rejected their applications for asylum, they permitted the applicants to remain in Hungary.

The Palestinian applicants for refugee status have brought proceedings before the Fővárosi Bíróság (Budapest Municipal Court, Hungary), which asks the Court of Justice whether, in those circumstances, those persons should automatically be recognised as refugees in the EU.

By its judgment today, the Court points out, first, that persons who are at present receiving assistance from UNWRA cannot qualify as refugees. Moreover, the fact that such persons are merely absent or have voluntarily departed from UNRWA's area of operations is not sufficient to end the exclusion from refugee status.

The Court sets out, second, the circumstances in which assistance from UNRWA may be deemed to have ceased in such a way that Palestinian applicants for asylum are *ipso facto* entitled to the refugee status conferred by the directive. Accordingly, UNRWA assistance ceases not only as a result of the abolition of that agency but also where it is impossible for it to carry out its mission. Similarly, assistance may also cease as a result of circumstances which have forced the person concerned to leave the UNRWA area of operations as they are beyond that person's control. That interpretation is consistent with the objective of ensuring that Palestinian refugees continue to receive protection by means of effective protection or assistance.

A Palestinian refugee must be regarded as having been forced to leave UNRWA's area of operations if his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency.

Third, the Court states that, where UNRWA assistance has ceased, the persons who have lost that protection are *ipso facto* entitled to the protection conferred by the directive. Consequently, it cannot be said that the only right available for the persons concerned where UNRWA assistance has ceased and the ground for exclusion is no longer applicable is that of applying for refugee status.

Lastly, the Court points out that the fact that the persons concerned are *ipso facto* entitled to the protection conferred by the directive does not, however, entail an unconditional right to refugee status. While they are not necessarily required to show that they have a well-founded fear of being persecuted, they must nevertheless

submit, as in the present case, an application for refugee status, which must be examined by the competent authorities. In carrying out that examination, those authorities must verify not only that the applicant actually sought assistance from UNRWA and that the assistance has ceased but also that the applicant is not caught by any of the grounds for exclusion laid down in the directive. Those grounds exclude from refugee status, inter alia, persons who have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime and persons who have been guilty of acts contrary to the purposes and principles of the United Nations.

Judgment of the Court of Justice in Case C-175/11

H. I. D. and B. A. v Refugee Applications Commissioner and Others

31 January 2013

Article 39 of Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status must be interpreted as not precluding national legislation which allows an applicant for asylum either to lodge an appeal against the decision of the determining authority before a court or tribunal such as the Refugee Appeals Tribunal, and to bring an appeal against the decision of that tribunal before a higher court, or to contest the validity of that determining authority's decision before that higher court, the judgments of which may be the subject of an appeal before the supreme court of the relevant Member State

Two asylum applications were refused by ORAC. Ms. D and Mr. A each appealed to the High Court seeking annulment of a ministerial direction of 2003 which prioritised all asylum applications by Nigerian nationals claiming it was incompatible with Directive 2005/85.

The Court ruled that Article 23(3) and (4) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status must be interpreted as not precluding a Member State from examining by way of prioritised or accelerated procedure, in compliance with the basic principles and guarantees set out in Chapter II of that directive, certain categories of asylum applications defined on the basis of the criterion of the nationality or country of origin of the applicant. Article 39 of Directive 2005/85 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows an applicant for asylum either to lodge an appeal against the decision of the determining authority before a court or tribunal such as the Refugee Appeals Tribunal (Ireland), and to bring an appeal against the decision of that tribunal before a higher court such as the High Court (Ireland), or to contest the validity of that determining authority's decision before the High Court, the judgments of which may be the subject of an appeal to the Supreme Court (Ireland).

Judgment of the Court of Justice in Case C-528/11

Zuheyr Frayeh Halaf v Darzhavna agentsia za bezhantsite pri Ministerskia savet

30 May 2013

The Member State in which the asylum seeker is present is not obliged, during the process of determining the Member State responsible, to request the Office of the United Nations High Commissioner for Refugees (UNHCR) to present its views where it is apparent that an application is in breach of the rules of European Union law on asylum.

Mr Halaf is an Iraqi national who on 1 June 2010 applied for asylum in Bulgaria. A search in the Eurodac system having revealed that he had already made an application for asylum in Greece on 6 August 2008, the DAB on 6 July 2010 requested the Greek authorities to take him back, in accordance with Article 16(1)(c) of the Regulation. By decision of 21 July 2010, the DAB therefore refused to commence a procedure for granting refugee status to Mr Halaf and authorised his transfer to Greece. On 1 December 2010, Mr Halaf brought an action before the referring court seeking annulment of that decision of the DAB and requesting the court to order the DAB to commence a procedure for granting refugee status. He based his action inter alia on the fact that the UNHCR had called on European governments to refrain from sending asylum seekers back to Greece.

The Court noted that according to settled case-law, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of European Union law that is sought is unrelated 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.

Article 3(2) of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as permitting a Member State, which is not indicated as responsible by the criteria in Chapter III of that regulation, to examine an application for asylum even though no circumstances exist which establish the applicability of the humanitarian clause in Article 15 of that regulation. That possibility is not conditional on the Member State responsible under those criteria having failed to respond to a request to take back the asylum seeker concerned.

The Member State in which the asylum seeker is present is not obliged, during the process of determining the Member State responsible, to request the Office of the United Nations High Commissioner for Refugees (UNHCR) to present its views where it is apparent from the documents of that Office that the Member State indicated as responsible by the criteria in Chapter III of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national is in breach of the rules of European Union law on asylum.

Although Articles 8(2)(b) and 21 of Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status provide for various forms of cooperation between the UNHCR and the Member States during the latter's examination of an application for asylum, those rules do not apply during the process of determining the Member State responsible governed by Regulation No 343/2003, as specified in recital 29 in the preamble to Directive 2005/85. However, there is nothing to prevent a Member State from requesting the UNHCR to present its views if it deems it appropriate.

Judgment of the Court of Justice in Case C-534/11

Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie

30 May 2013

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers and Directive 2005/85 do not preclude a third-country national who has applied for international protection from being kept in detention on the basis of a provision of national law, where it appears, that the application was made solely to delay or jeopardise the enforcement of the return decision

A Turkish national arrested and detained in the Czech Republic with a view to his administrative removal, who, during that detention, made an application for international protection within the meaning of the national legislation on asylum.

By decision of 25 March 2011, Mr Arslan's detention was extended by a further 120 days on the ground that the extension was necessary for preparing for enforcement of the decision to remove him, in view of the fact, in particular, that the procedure relating to his application for international protection was still ongoing and it was not possible to enforce the removal decision while that application was being considered. In the decision of 25 March 2011 it was stated that the application for international protection had been made with the intention of hindering enforcement of the removal decision. The decision also disclosed that the embassy of the Republic of Turkey had not yet issued an emergency travel document for Mr Arslan, which was also capable of hindering enforcement of the removal decision. Mr Arslan brought an action against the decision to extend his detention, claiming, inter alia, that at the time that decision was taken, in view of his application for international protection, there was no reasonable prospect that his removal could still take place within the maximum detention period of 180 days laid down by Law No 326/1999. In that connection, he stated that if his application for asylum were rejected he would make use of all available remedies. Given the usual length of judicial proceedings relating to that type of action, the enforcement of the removal decision before the expiry of

the maximum duration of detention was not, in his opinion, realistic. In those circumstances, Mr Arslan considered that the decision of 25 March 2011 was contrary to Article 15(1) and (4) of Directive 2008/115 and the case-law of the European Court of Human Rights. the application for international protection was rejected by decision of 12 April 2011 of the Czech Ministry of the Interior, against which Mr Arslan brought an action.

The Court ruled that Article 2(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with recital 9 in the preamble, must be interpreted as meaning that that directive does not apply to a third-country national who has applied for international protection within the meaning of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status during the period from the making of the application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known.

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers and Directive 2005/85 do not preclude a third-country national who has applied for international protection within the meaning of Directive 2005/85 after having been detained under Article 15 of Directive 2008/115 from being kept in detention on the basis of a provision of national law, where it appears, after an assessment on a case-by-case basis of all the relevant circumstances, that the application was made solely to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return.

Judgment of the Court of Justice in Case C-648/11

The Queen, on the application of MA and Others v Secretary of State for the Home Department

6 June 2013

Where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible'.

The request has been made in proceedings between MA, BT and DA, three children who are third-country nationals, and the Secretary of State for the Home Department ('the Secretary of State') concerning the Secretary of State's decision not to examine their asylum applications which had been lodged in the United Kingdom and to propose that they be transferred to the Member State in which they had first lodged an application for asylum. This request for a preliminary ruling concerns the interpretation of the second paragraph of Article 6 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

The second paragraph of Article 6 of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that, in circumstances where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible'.

In that regard, the expression, 'the Member State … where the minor has lodged his or her application for asylum', which appears in that provision, cannot be construed as meaning the first Member State where the minor has lodged his or her application for asylum. Since unaccompanied minors form a category of particularly vulnerable

persons, it is important not to prolong more than is strictly necessary the procedure for determining the Member State responsible, and to ensure that unaccompanied minors have prompt access to the procedures for determining refugee status. Consequently, although express mention of the best interest of the minor is made only in the first paragraph of Article 6 of that regulation, the effect of Article 24(2) of the Charter of Fundamental Rights, in conjunction with Article 51(1) thereof, is that the child's best interests must also be a primary consideration in all decisions adopted by the Member States on the basis of the second paragraph of Article 6. It follows from this that unaccompanied minors who have lodged an asylum application in one Member State must not, as a rule, be transferred to another Member State with which they lodged the first asylum application.

Judgment of the Court of Justice in Cases C-199/12 to C-201/12
Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel

7 November 2013

When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation

X, Y and Z, who were born in 1987, 1990 and 1982 respectively, lodged applications for residence permits for a fixed period (asylum) in the Netherlands on 1 July 2009, 27 April 2011 and 25 July 2010. In support of their applications, they claim that they should be granted refugee status on the ground that they have reason to fear persecution in their respective countries of origin on account of their homosexuality. According to the Minister, although the sexual orientation of the applicants is credible, they have not proved to the required legal standard the facts and circumstances relied on and, therefore, have failed to demonstrate that on return to their respective countries of origin they have a well-founded fear of persecution by reason of their membership of a particular social group.

The Court ruled that Article 10(1)(d) of Directive 2004/83 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 the existence of criminal laws which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group. Article 10(1) of the directive, which defines what constitutes a particular social group, membership of which may give rise to a genuine fear of persecution, requires, inter alia, that two cumulative conditions be satisfied. First, members of that group must share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. Second, that group has a distinct identity in the

relevant country because it is perceived as being different by the surrounding society. As far as concerns the first of those conditions, it is common ground that a person's sexual orientation is a characteristic so fundamental to his identity that he should not be forced to renounce it. That interpretation is supported by the second subparagraph of Article 10(1)(d) of Directive 2004/83, from which it appears that, according to the conditions prevailing in the country of origin, a specific social group may be a group whose members have sexual orientation as the shared characteristic. The second condition assumes that, in the country of origin concerned, the group whose members share the same sexual orientation has a distinct identity because it is perceived by the surrounding society as being differen Article 9(1) of Directive 2004/83 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, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the mere fact that homosexual acts are criminalised does not, in itself constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution. Where an applicant for asylum relies on the existence in his country of origin on legislation criminalising homosexual acts, it is for the national authorities to undertake, in the course of their assessments of the facts and circumstances under Article 4 of Directive 2004/83, an examination of all the relevant facts concerning that country of origin, including its laws and regulations and the manner in which they are applied, as provided for in Article 4(3)(a) of that directive. In undertaking that assessment it is, in particular, for those authorities to determine whether, in the applicant's country of origin, the term of imprisonment provided for by such legislation is applied in practice. It is in the light of that information that the national authorities must decide whether it must be held that in fact the applicant has a well-founded fear of being persecuted on return to his country of origin.

Article 10(1)(d) of Directive 2004/83 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, read together with Article 2(c) thereof, must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the

Member State are excluded from its scope. When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation. In that connection, requiring members of a social group sharing the same sexual orientation to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it. It follows that the person concerned must be granted refugee status, in accordance with Article 13 of the directive, where it is established that on return to his country of origin his homosexuality would expose him to a genuine risk of persecution within the meaning of Article 9(1) of the directive. The fact that he could avoid the risk by exercising greater restraint than a heterosexual in expressing his sexual orientation is not to be taken into account in that respect.

Judgment of the Court of Justice in Case C-4/11

Bundesrepublik Deutschland v Kaveh Puid

14 November 2013

The Member State in which the asylum seeker is located must, however, ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time.

Mr Puid, who was born in 1979, arrived in Greece with false identity papers on 20 October 2007 on a flight from Tehran (Iran) to Athens (Greece). After staying in Greece for four days, he travelled on to Frankfurt am Main (Germany) where he lodged his application for asylum. Mr Puid was then ordered to be detained until 25 January 2008 in order to ensure that he might be removed. He then applied to the Verwaltungsgericht Frankfurt am Main (Administrative Court, Frankfurt am Main) for interim measures, seeking, inter alia, an order that the Bundesrepublik Deutschland assume responsibility for examining his application for asylum under Article 3(2) of the Regulation. That court ordered that Mr Puid not be transferred to Greece before 16 January 2008. On 14 December 2007, the Bundesamt declared his application for asylum inadmissible and ordered his transfer to Greece. However, in the meantime, on 25 December 2007, Mr Puid had brought an action before the Verwaltungsgericht Frankfurt am Main seeking the annulment of the Bundesamt's decision and an order that the Bundesrepublik Deutschland assume responsibility in respect of his application for asylum. By judgment of 8 July 2009, the Verwaltungsgericht Frankfurt am Main annulled the decision of the Bundesamt and concluded that the enforcement of the order for Mr Puid's return had been unlawful. That decision was based on the fact that the Bundesrepublik Deutschland was required to exercise the right to assume responsibility conferred by Article 3(2) of the Regulation in light of, inter alia, the conditions in Greece in relation to the reception of asylum seekers and processing of asylum applications. On 20 January 2011, the Bundesamt decided to examine Mr Puid's application for asylum under Article 3(2) of the Regulation. The

Bundesamt subsequently recognised him as having refugee status by decision of 18 May 2011.

The Court has held that the Member States may not transfer an asylum seeker to the Member State which the criteria set out in Chapter III of the Regulation indicate is responsible, where they cannot be unaware that systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in that Member State provide substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union. It is for the referring court to examine whether such systemic deficiencies existed on the date on which the decision to transfer Mr Puid to Greece was enforced.

The Member State in which the asylum seeker is located must, however, ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of the Regulation.

In light of the foregoing, the answer to the question referred is that where the Member States cannot be unaware that systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible in accordance with the criteria set out in Chapter III of the Regulation provide substantial grounds for believing that the asylum seeker concerned would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, which is a matter for the referring court to verify, the Member State which is determining the Member State responsible is required not to transfer the asylum seeker to the Member State initially identified as responsible and, subject to the exercise of the right itself to examine the application, to continue to examine the criteria set out in that chapter, in order to establish whether another Member State can be identified as responsible in accordance with one of those criteria or, if it cannot, under Article 13 of the Regulation.

Conversely, in such a situation, a finding that it is impossible to transfer an asylum seeker to the Member State initially identified as responsible does not in itself mean that the Member State which is determining the Member State responsible is

required itself, under Article 3(2) of the Regulation, to examine the application for asylum.

Judgment of the Court of Justice in Case C-394/12

Shamso Abdullahi v Bundesasylamt

10 December 2013

In circumstances where a Member State has agreed to take charge of an applicant for asylum the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure

Ms Abdullahi is a Somali national aged 22. She entered Syria by air in April 2011 and then travelled through Turkey in July of the same year before entering Greece illegally by boat. Ms Abdullahi did not lodge an asylum application with the Greek Government. With the assistance of people smugglers, she travelled to Austria, in the company of other persons, passing through the Former Yugoslav Republic of Macedonia, Serbia and Hungary. She crossed the borders of all of those countries illegally. Ms Abdullahi was arrested in Austria. In Austria, Ms Abdullahi lodged an application for international protection with the Bundesasylamt, the competent authority, on 29 August 2011. On 7 September 2011, the Bundesasylamt requested that Hungary take charge of Ms Abdullahi in accordance with Article 10(1) of Regulation No 343/2003. By letter of 29 September 2011, Hungary agreed to do so. By decision of 30 September 2011, the Bundesasylamt rejected as inadmissible Ms Abdullahi's asylum application in Austria and ordered her removal to Hungary. Ms Abdullahi brought an appeal against that decision, which the Asylgerichtshof allowed by judgment of 5 December 2011 on account of procedural flaws. The appeal entailed a number of criticisms of the asylum situation in Hungary in the light of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), prohibiting torture and inhuman and degrading treatment, and it was submitted that the Bundesasylamt had assessed the situation prevailing in Hungary on the basis of obsolete sources. Ms Abdullahi brought an appeal before the Verfassungsgerichtshof (Constitutional Court) essentially repeating the argument that the Member State responsible for examining the application was not Hungary but the Hellenic Republic.

According to the Court, Article 19(2) of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that, in circumstances where a Member State has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Article 10(1) of that regulation — namely, as the Member State of the first entry of the applicant for asylum into the European Union — the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.

As regards the scope of the appeal provided for in Article 19(2) of Regulation No 343/2003, that regulation must be construed not only in the light of the wording of its provisions, but also in the light of its general scheme, its objectives and its context, in particular its evolution in connection with the system of which it forms part.

Judgment of the Court of Justice in Case C-285/12

Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides

30 January 2014

An internal armed conflict exists if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other

Mr Diakité applied for asylum in Belgium. The Commissaire général refused to recognise Mr Diakité as having refugee status or to grant him subsidiary protection. On 15 July 2010, not having returned to his country of origin in the meantime, Mr Diakité applied again to the Belgian authorities for asylum. On 22 October 2010, the Commissaire général once again refused to recognise Mr Diakité as having refugee status or to grant him subsidiary protection. Mr Diakité brought an appeal against that twofold decision before the Conseil du contentieux des étrangers, which, by judgment of 6 May 2011, upheld the Commissaire général's twofold refusal. In that context, the referring court holds that, t is possible that, as Mr Diakité asserts, the concept of 'armed conflict' as referred to in Article 15(c) of Directive 2004/83 may be interpreted independently of, and have a different meaning from, the concept of 'armed conflict' as defined in the case-law of the International Criminal Tribunal for the Former Yugoslavia.

The Court ruled that on a proper construction of Article 15(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, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.

Judgement of the Court of Justice in Case C-79/13

Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others

27 February 2014

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

On 11 October 2010 the Saciri family lodged an asylum application with the Aliens Office and immediately lodged an application for reception with Fedasil. On the same day, Fedasil informed the Saciri family that it was unable to provide reception and directed it to the competent OCMW. 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. 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.

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. 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. On 21 January 2011, Fedasil placed the family in a reception centre for asylum seekers.

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. 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. 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.

The Court held that 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. 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.

Judgement of the Court of Justice in Case C-604/12

H. N. versus Minister for Justice, Equality and Law Reform ja teised

8 May 2014

The principle of effectiveness and the right to good administration do not preclude a national procedural rule 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

Mr N. is a Pakistani national who entered Ireland on a student visa in 2003. After marrying an Irish national, he was granted permission to remain in Ireland until 31 December 2005. 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. On 16 June 2009, without having first submitted an asylum application, Mr N. applied to the Minster 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.

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. 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. 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. As that application for judicial review was refused, Mr N. appealed to the Supreme Court.

The Court held that 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 refuges 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.

Judgement of the Court of Justice in Joined Cases C-148/13 to C-150/13

A and Others v Staatssecretaris van Veiligheid en Justitie

2 December 2014

In the context of the assessment of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum whose application is based on a fear of persecution on grounds of that sexual orientation, the competent national authorities are precluded from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution

A, B and C, third country nationals, each lodged an application for a temporary residence permit (asylum) in the Netherlands. In support of their applications, they stated that they feared persecution in their respective countries of origin on account, in particular, of their homosexuality. Following the rejection of their applications for temporary residence permits (asylum), A, B and C lodged appeals against those decisions dismissing their applications before the Rechtbank's-Gravenhage. According to the applicants in the main proceedings, in the course of assessing the credibility of the statements made by an applicant for asylum, those authorities ask questions in respect of the declared sexual orientation which breach, in particular, the applicant's right to human dignity and his right to respect for private life and which, furthermore, take account neither of the shame that the applicant could feel during the hearings nor of the cultural reservations that would prevent him from speaking freely of that orientation. In addition, the fact that the Staatssecretaris found that the accounts given by the applicants for asylum were not credible should not lead to the same conclusion as regards the credibility of the sexual orientation itself.

According to the Court the competent authorities examining an application for asylum based on a fear of persecution on grounds of the sexual orientation of the applicant for asylum are not required to hold that the declared sexual orientation is an established fact on the basis solely of the declarations of the applicant. Those declarations constitute, having regard to the particular context in which the

applications for asylum are made, merely the starting point in the process of assessment of the facts and circumstances envisaged under Article 4 of Directive 2004/83 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.

Although it is for the applicant for asylum to identify his sexual orientation, which is an aspect of his personal identity, applications for the grant of refugee status on the basis of a fear of persecution on grounds of that sexual orientation may, in the same way as applications based on other grounds for persecution, be subject to an assessment process, provided for in Article 4 of that directive.

However, the methods used by the competent authorities to assess the statements and documentary or other evidence submitted in support of those applications must be consistent with the provisions of Directives 2004/83 and 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status and, as is clear from recitals 10 and 8 in the preambles to those directives respectively, with the fundamental rights guaranteed by the Charter, such as the right to respect for human dignity, enshrined in Article 1 of the Charter, and the right to respect for private and family life guaranteed by Article 7 thereof.

Article 4(3)(c) of Directive 2004/83 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 and Article 13(3)(a) of Directive 2005/85, on minimum standards on procedures in Member States for granting and withdrawing refugee status, must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on stereotyped notions concerning homosexuals.

While questions based on stereotyped notions may be a useful element at the disposal of competent authorities for the purposes of the assessment, the assessment of applications for the grant of refugee status on the basis solely of stereotyped notions associated with homosexuals does not satisfy the requirements

of the provisions referred to above, in that it does not allow those authorities to take account of the individual situation and personal circumstances of the applicant for asylum concerned. Therefore, the inability of the applicant for asylum to answer such questions cannot, in itself, constitute sufficient grounds for concluding that the applicant lacks credibility.

Article 4 of Directive 2004/83 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, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of the assessment of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum whose application is based on a fear of persecution on grounds of that sexual orientation, the competent national authorities from carrying out detailed questioning as to the sexual practices of an applicant for asylum.

While the national authorities are entitled to carry out, where appropriate, interviews in order to determine the facts and circumstances as regards the declared sexual orientation of an applicant for asylum, questions concerning details of the sexual practices of that applicant are contrary to the fundamental rights guaranteed by the Charter and, in particular, to the right to respect for private and family life as affirmed in Article 7 thereof.

Article 4 of Directive 2004/83 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, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of the assessment of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum whose application is based on a fear of persecution on grounds of that sexual orientation, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of films of such acts.

Besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by Article 1 of the Charter.

Article 4(3) of Directive 2004/83 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 and Article 13(3)(a) of Directive 2005/85, on minimum standards on procedures in Member States for granting and withdrawing refugee status, must be interpreted as precluding, in the context of the assessment of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum whose application is based on a fear of persecution on grounds of that sexual orientation, the competent national authorities from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution.

It is clear from Article 4(1) of Directive 2004/83 that Member States may consider it the duty of the applicant to submit 'as soon as possible' all elements needed to substantiate the application for international protection. However, having regard to the sensitive nature of questions relating to a person's personal identity and, in particular, his sexuality, it cannot be concluded that the declared sexuality lacks credibility simply because, due to his reticence in revealing intimate aspects of his life, that person did not declare his homosexuality at the outset.

Judgment of the Court of Justice in Case C-542/13

Mohamed M'Bodj v Belgian State

18 December 2014

Article 3 of the directive precludes a Member State from introducing or retaining provisions granting the subsidiary protection status provided for in the directive to a third country national suffering from a serious illness on the ground that there is a risk that that person's health will deteriorate as a result of the fact that adequate treatment is not available in his country of origin, as such provisions are incompatible with the directive

Mr M'Bodj arrived in Belgium on 3 January 2006. He applied for asylum and, subsequently, for leave to reside on medical grounds. Both applications being refused, he made a number of unsuccessful appeals against the decisions rejecting those applications. On 27 May 2008, Mr M'Bodj made a further application for leave to reside on medical grounds, pursuant to Article 9b of the Law of 15 December 1980, on the basis of the serious after-effects he was suffering as a result of an assault he had been the victim of in Belgium. That application was accepted as admissible on 19 September 2008 and, as a result, Mr M'Bodj was registered in the Register of Foreign Nationals. After receiving a general certificate recognising a reduction in earnings capacity and loss of independence, Mr M'Bodj applied, on 21 April 2009, for loss of income allowance and income support. By judgment of 8 November 2012, the tribunal de travail de Liège decided to refer to the Cour constitutionnelle (Constitutional Court) a question for a preliminary ruling, the purpose of which was, in essence, to determine whether Article 4 of the Law of 27 February 1987 infringes certain provisions of the Belgian constitution, read in conjunction with Article 28(2) of Directive 2004/83, in so far as it precludes the grant of disability allowances to persons residing in Belgium on the basis of Article 9b of the Law of 15 December 1980 and thus enjoying international protection status provided for by that directive, whereas that provision permits the payment of such allowances to refugees, who, according to that court, enjoy the same international protection.

The Court held that Articles 28 and 29 of Directive 2004/83 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, read in conjunction with Articles 2(e), 3, 15, and 18 of that directive, are to be interpreted as not requiring a Member State to grant the social welfare and health care benefits provided for in those measures to a third country national who has been granted leave to reside in the territory of that Member State under national legislation which allows a foreign national who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment to reside in that Member State, where there is no appropriate treatment in that foreign national's country of origin or in the third country in which he resided previously, unless such a foreign national is intentionally deprived of health care in that country.

Serious harm, as defined in Article 15(b) of Directive 2004/83, does not cover such a situation. Moreover, Article 3 of the directive precludes a Member State from introducing or retaining provisions granting the subsidiary protection status provided for in the directive to a third country national suffering from a serious illness on the ground that there is a risk that that person's health will deteriorate as a result of the fact that adequate treatment is not available in his country of origin, as such provisions are incompatible with the directive. It would be contrary to the general scheme and objectives of Directive 2004/83 to grant refugee status and subsidiary protection status to third country nationals in situations which have no connection with the rationale of international protection. It follows that such national legislation cannot be regarded, for the purpose of Article 3 of the directive, as introducing a more favourable standard for determining who is eligible for subsidiary protection. Accordingly, third country nationals granted leave to reside under such national legislation are not persons with subsidiary protection status to whom Articles 28 and 29 of the directive would be applicable. Moreover, the grant by a Member State of such national protection status for reasons other than the need for international protection within the meaning of Article 2(a) of Directive 2004/83 — that is to say, on a discretionary basis on compassionate or humanitarian grounds — does not, as stated in recital 9 thereof, fall within the scope of that directive.

Judgement of the Court of Justice in Case C-472/13

Andre Lawrence Shepherd v Bundesrepublik Deutschland

26 February 2015

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, unless that applicant proves that no procedure of that nature would have been available to him in his specific situation

In December 2003 Mr Shepherd, a national of the United States of America, enlisted for service in that country's army, for a period of active service of 15 months. He was trained as a helicopter maintenance mechanic and, in September 2004, was transferred to an air support battalion in Katterbach (Germany). His unit was at that time deployed in Iraq and he was accordingly sent on to Camp Speicher, near Tikrit (Iraq). On 1 April 2007, he received a travel order to return to Iraq. Before his planned departure from Germany, he left the army on 11 April 2007, believing that he must no longer play any part in a war in Iraq he considered illegal, and in the war crimes that were, in his view, committed there. He stayed with an acquaintance until applying to the competent German authorities for asylum in August 2008. In support of his application, he submitted, in essence, that because of his refusal to perform military service in Iraq, he was at risk of criminal prosecution and that, desertion being a serious offence in the United States, it affected his life by putting him at risk of social ostracism in his country.

The Court held that Article 9(2)(e) of 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.

In the event that the national authorities responsible for examining the application for refugee status of a person having refused to perform military service consider that it is not established that the military service he refused to perform would have included the commission of war crimes for the purpose of Article 9(2)(e) of Directive 2004/83 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, Article 9(2)(b) and (c) of that directive must be interpreted as meaning that it does not appear that the measures incurred by the asylum seeker, such as the imposition of a prison sentence or discharge from the army, may be considered, having regard to the legitimate exercise, by the State concerned, 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.

Judgement of the Court of Justice in Case C-373/13

H. T. v Land Baden-Württemberg

24 June 2015

Support for a terrorist organisation may constitute one of the 'compelling reasons of national security or public order' within the meaning of Article 24(1) of Directive 2004/83, even if the conditions set out in Article 21(2) of that directive are not met

Mr T., born in 1956, is a Turkish national of Kurdish origin. He has been living in Germany since 1989 with his wife, who is also a Turkish national, and their eight joint children, five of whom are German nationals. Since 24 June 1993, Mr T. has been recognised as a refugee within the meaning of the Geneva Convention. That recognition was motivated by the political activities he carried out in exile in support of the 'Kurdistan Workers' Party' ('the PKK') and by the threat of political persecution he would face were he to return to Turkey. Since 7 October 1993, Mr T. has been in possession of an indefinite residence permit in Germany. By decision of 21 August 2006, the competent authorities revoked Mr T.'s refugee status on the grounds that the political situation in Turkey had changed and that he was therefore no longer considered to be at risk of persecution in that country. During the 1990s, Mr T. engaged, in various ways, in political activities for the PKK and organisations associated with it or which had succeeded it. By decision of 22 November 1993, the Federal Ministry of the Interior prohibited the PKK and other organisations connected with that party from engaging in activities in Germany. Pursuant to Paragraph 20 of the Vereinsgesetz, the competent authorities instituted criminal proceedings against Mr T. on account of support he had provided to the PKK, after having obtained documents in his possession during a search of his home. In the course of those proceedings, it was established that he had collected donations on behalf of the PKK and, on occasion, distributed the periodical *Serxwebûn*, published by the PKK.

By decision of 27 March 2012, the Regierungspräsidium Karlsruhe (Karlsruhe Regional Government) ordered, in the name of the Land Baden-Württemberg, the expulsion of Mr T. from the Federal Republic of Germany However, given that

Mr T. was living with his wife and minor children as a family unit and taking into account the indefinite residence permit he had been previously issued, the right of asylum he had been granted and the refugee status he had been afforded, the expulsion decision was taken in the form of a discretionary administrative decision on the basis of Paragraph 56, subparagraph 1 of the Aufenthaltsgesetz and the competent authority decided to suspend Mr T.'s expulsion. The appeal brought by Mr T. against that decision was dismissed by judgment of the Verwaltungsgericht Karlsruhe of 7 August 2012. Mr T. filed an appeal against that judgment with the referring court and the court, by order of 28 November 2012, allowed the appeal.

The Court ruled that 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 a residence permit, once granted to a refugee, may be revoked, either pursuant to Article 24(1) of that directive, where there are compelling reasons of national security or public order within the meaning of that provision, or pursuant to Article 21(3) of that directive, where there are reasons to apply the derogation from the principle of non-refoulement laid down in Article 21(2) of the same directive.

Support for a terrorist organisation included on the list annexed to Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism, in the version in force at the material date, may constitute one of the 'compelling reasons of national security or public order' within the meaning of Article 24(1) of Directive 2004/83, even if the conditions set out in Article 21(2) of that directive are not met. In order to be able to revoke, on the basis of Article 24(1) of that directive, a residence permit granted to a refugee on the ground that that refugee supports such a terrorist organisation, the competent authorities are nevertheless obliged to carry out, under the supervision of the national courts, an individual assessment of the specific facts concerning the actions of both the organisation and the refugee in question. Where a Member State decides to expel a refugee whose residence permit has been revoked, but suspends the implementation of that decision, it is incompatible with that directive to deny access to the benefits guaranteed by Chapter VII of the same directive, unless an exception expressly laid down in the directive applies.

Judgement of the Court of Justice in Case C-239/14

Abdoulaye Amadou Tall v Centre public d'action sociale de Huy (CPAS de Huy)

17 December 2015

The Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not confer suspensory effect on an appeal brought against a decision, such as the one at issue in the main proceedings, not to further examine a subsequent application for asylum

Mr Tall, a Senegalese national, submitted an application for asylum in Belgium, the rejection of which was confirmed by a decision of the Conseil du contentieux des étrangers (Belgian Asylum and Immigration Board) of 12 November 2013. He brought an action against that decision before the Conseil d'État (Council of State) which, by a judgment of 10 January 2014, declared that action inadmissible. On 16 January 2014, Mr Tall submitted a second application for asylum, relying on evidence which he presented as new evidence. On 10 February 2014, Mr Tall was served with an order to leave the territory. On 19 February 2014, he appealed to the Conseil du contentieux des étrangers against the decision refusing to take his second application for asylum into consideration. In parallel with that appeal, Mr Tall brought an action before the referring court on 27 February 2014 against the decision of the CPAS to withdraw his social assistance.

The Court held that Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, read in the light of Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not confer suspensory effect on an appeal brought against a decision, such as the one at issue in the main proceedings, not to further examine a subsequent application for asylum.

Judgement of the Court of Justice in Case C-601/15

J. N. v Staatssecretaris van Veiligheid en Justitie

15 February 2016

If the execution of a measure depriving a person of liberty is to be in keeping with the objective of protecting the individual from arbitrariness, that means, in particular, that there can be no element of bad faith or deception on the part of the authorities, that execution of the measure is consistent with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5(1) ECHR and that the deprivation of liberty concerned is proportionate in relation to the ground relied on

The appellant in the main proceedings (Mr N.) entered the Netherlands on 23 September 1995 and made his first application for asylum on the same date. The application was rejected by decision of 18 January 1996. By a judgment of 5 June 1997, the rechtbank Den Haag (District Court, The Hague) declared the action brought by Mr N. against that decision to be unfounded. That judgment became final. The police records pertaining to Mr N., which have been made available to the referring court, indicate that, between 25 November 1999 and 17 June 2015, he was convicted on 21 charges, mostly for theft-related offences, with sentences that varied from fines to terms of imprisonment. On 19 December 2012, Mr N. made a second application for asylum but withdrew it on 24 December 2012. On 8 July 2013 Mr N. made a third asylum application. By decision of 8 January 2014 the State Secretary rejected that application, ordered Mr N. to leave the European Union immediately and imposed a ten-year entry ban on him. By judgment of 4 April 2014, the rechtbank Den Haag (District Court, The Hague) declared the action brought by Mr N. against that decision unfounded. That judgment also became final. On 28 January 2015, Mr N. was arrested in the Netherlands for theft and failure to comply with the entry ban imposed on him. He was convicted of those two offences on 11 February 2015 and was sentenced to two months' imprisonment.

Mr N. brought an action challenging the detention decision of 14 September 2015 and claiming damages. The rechtbank Den Haag (District Court, The Hague), adjudicating at first instance, dismissed that action by a judgment of 28 September

2015. On 28 September 2015 a police doctor found that Mr N. was still not in a fit state to be heard on his asylum application. On 23 October 2015, Mr N.'s detention was lifted to enable him to serve a further term of imprisonment to which he had been sentenced.

The Court noted that, according to the case-law of the European Court of Human Rights relating to Article 5(1) of the ECHR, if the execution of a measure depriving a person of liberty is to be in keeping with the objective of protecting the individual from arbitrariness, that means, in particular, that there can be no element of bad faith or deception on the part of the authorities, that execution of the measure is consistent with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5(1) ECHR and that the deprivation of liberty concerned is proportionate in relation to the ground relied on (see, to that effect, judgment of the European Court of Human Rights in *Saadi v. the United Kingdom*, no. 13229/03, § 68 to 74, ECHR 2008). As is apparent from the reasoning set out in connection with the examination of its validity in the light of Article 52(1) of the Charter, point (e) of the first subparagraph of Article 8(3) of Directive 2013/33 — whose scope, in view of the context of the provision, is strictly circumscribed — satisfies those requirements.

Consideration of point (e) of the first subparagraph of Article 8(3) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection has disclosed no factor of such a kind as to affect the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union.

Judgement of the Court of Justice in Joined Cases C-443/14 and C-444/14

Kreis Warendorf v Ibrahim Alo and Amira Osso v and Region Hannover

1 March 2016

A residence condition imposed on a beneficiary of subsidiary protection status, such as the conditions at issue in the main proceedings, constitutes a restriction of the freedom of movement guaranteed by that article, even when it does not prevent the beneficiary from moving freely within the territory of the Member State that has granted the protection

Mr Alo and Ms Osso are Syrian nationals. They travelled, in 1998 and 2001 respectively, to Germany where they both made unsuccessful applications for asylum. They then resided in Germany having been granted provisional leave to remain. They have been in receipt of social security benefits since their asylum procedures first began. Following the submission of fresh asylum applications, Mr Alo and Ms Osso were granted subsidiary protection status. The residence permits which were issued to Mr Alo and Ms Osso by decisions of Warendorf District of 12 October 2012 and Hanover Region of 5 April 2012, respectively, included a condition requiring them to take up residence, in Mr Alo's case, in the town of Ahlen (Germany) and, in Ms Osso's case, in Hanover Region (Germany), with the exception of the capital of the Land of Lower Saxony. The authorities, in taking those decisions, relied on points 12.2.5.2.1 and 12.2.5.2.2 of the Administrative Instructions concerning the AufenthG. Mr Alo and Ms Osso object, in the two cases in the main proceedings, to the residence conditions imposed on them. Their actions were dismissed at first instance. The appeal brought by Mr Alo before the Oberverwaltungsgericht für das Land Nordrhein Westfalen (Higher Administrative Court for the Land of North Rhine-Westphalia) was successful. The court lifted the residence condition and, in essence, held that the decision of Warendorf District was in breach of Article 28(1), in conjunction with Article 32, 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), provisions which correspond to Articles 29(1) and 33 of Directive 2011/95. By contrast, the Niedersächsisches Oberverwaltungsgericht (Higher Administrative Court for the Land of Lower Saxony) dismissed Ms Osso's appeal. It held, in particular, that the contested decision was compatible with the applicable provisions because Ms Osso was in receipt of certain social security benefits. The court also held that that decision was not in breach of either international or EU law.

According to the Court Article 33 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, must be interpreted as meaning that a residence condition imposed on a beneficiary of subsidiary protection status, such as the conditions at issue in the main proceedings, constitutes a restriction of the freedom of movement guaranteed by that article, even when it does not prevent the beneficiary from moving freely within the territory of the Member State that has granted the protection and from staying on a temporary basis in that territory outside the place designated by the residence condition. Articles 29 and 33 of Directive 2011/95 must be interpreted as precluding the imposition of a residence condition, such as the conditions at issue in the main proceedings, on a beneficiary of subsidiary protection status in receipt of certain specific social security benefits, for the purpose of achieving an appropriate distribution of the burden of paying those benefits among the various institutions competent in that regard, when the applicable national rules do not provide for the imposition of such a measure on refugees, third-country nationals legally resident in the Member State concerned on grounds that are not humanitarian or political or based on international law or nationals of that Member State in receipt of those benefits.

Article 33 of Directive 2011/95 must be interpreted as not precluding a residence condition, such as the conditions at issue in the main proceedings, from being imposed on a beneficiary of subsidiary protection status, in receipt of certain specific social security benefits, with the objective of facilitating the integration of third-country nationals in the Member State that has granted that protection — when the applicable national rules do not provide for such a measure to be imposed on third-country nationals legally resident in that Member State on grounds that are not

humanitarian or political or based on international law and who are in receipt of those benefits — if beneficiaries of subsidiary protection status are not in a situation that is objectively comparable, so far as that objective is concerned, with the situation of third-country nationals legally resident in the Member State concerned on grounds that are not humanitarian or political or based on international law, it being for the referring court to determine whether that is the case.

Judgement of the Court of Justice in Case C-695/15

Shiraz Baig Mirza v Bevándorlási és Állampolgársági Hivatal

17 March 2016

The right to send an applicant for international protection to a safe third country may also be exercised by a Member State after that Member State has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that Member State before a decision on the substance of his first application for international protection had been taken

Mr Mirza, a Pakistani national, illegally entered Hungary from Serbia in August 2015. On 7 August 2015, he lodged a first application for international protection in Hungary. During the procedure opened following his application, Mr Mirza left the place of residence which had been assigned to him. By decision of 9 October 2015, the Office discontinued the examination of that application, which it considered, in accordance with Article 28(1)(b) of Directive 2013/32, to have been implicitly withdrawn. Subsequently, Mr Mirza was taken in for questioning in the Czech Republic when attempting to reach Austria. The Czech authorities requested Hungary to take him back, a request to which Hungary acceded pursuant to Article 18(1)(c) of the Dublin III Regulation.

According to the referring court, it is not evident from the procedural documents which were submitted to it that, in the course of the take-back procedure, the Czech authorities had been informed of the Hungarian legislation or of the practice of the Hungarian authorities under which Mr Mirza's application for international protection had to be subject to a prior examination of admissibility which could result, owing to the fact that the Republic of Serbia, as a State which is a candidate for accession to the European Union, was included in the list of safe third countries determined by the Hungarian legislation, in the applicant being sent to Serbia without an examination of his application on the substance. After he was taken back by

Hungary, Mr Mirza submitted a second application for international protection in Hungary on 2 November 2015. Following that application, a second procedure for granting international protection was opened during which the applicant was held in detention. Mr Mirza was heard in the context of that second procedure on 2 November 2015. In the course of that interview, the Office drew his attention to the fact that his application for international protection could be rejected as inadmissible unless he could prove that, in the light of his particular circumstances, the Republic of Serbia did not constitute a safe third country for him. Mr Mirza stated in his response that he was not safe in that State. In its decision of 19 November 2015, the Office dismissed Mr Mirza's application as inadmissible on the ground that, with regard to Mr Mirza, a safe third country existed, namely Serbia, which was classified as a safe third country by Paragraph 2 of the Government Decree of 21 July 2015. As set out in the decision of the Office, Mr Mirza could have established that, in his particular case, Serbia did not constitute a safe third country, but he failed to do so. In that decision, the Office ordered his return and removal. Mr Mirza brought an action against that decision before the referring court, claiming that he did not wish to be returned to Serbia because he would not be safe there.

The Court ruled that Article 3(3) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that the right to send an applicant for international protection to a safe third country may also be exercised by a Member State after that Member State has accepted that it is responsible, pursuant to that regulation and within the context of the take-back procedure, for examining an application for international protection submitted by an applicant who left that Member State before a decision on the substance of his first application for international protection had been taken. Article 3(3) of Regulation No 604/2013 must be interpreted as not precluding the sending of an applicant for international protection to a safe third country when the Member State carrying out the transfer of that applicant to the Member State responsible has not been informed, during the take-back procedure, either of the rules of the latter Member State relating to the sending of applicants to safe third countries or of the relevant practice of its competent authorities. Article 18(2) of Regulation No 604/2013 must be interpreted as not requiring that, in the event that an applicant for international

protection is taken back, the procedure for examining that applicant's application be resumed at the stage at which it was discontinued.

Judgement of the Court of Justice in Case C-63/15

Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie

7 June 2016

An asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility in particular the criterion relating to the grant of a visa

After making submissions to the Netherlands authorities on 3 March 2014, Mr Ghezelbash filed an application for a residence permit for a fixed period, on grounds of asylum, on 4 March 2014. As a search in the EU Visa Information System (VIS) disclosed that the French Republic's External Representation in Iran had granted Mr Ghezelbash a visa covering the period from 17 December 2013 to 11 January 2014, the State Secretary requested the French authorities, on 7 March 2014, to take charge of Mr Ghezelbash on the basis of Regulation No 604/2013. The French authorities accepted the request to take charge of Mr Ghezelbash on 5 May 2014. Mr Ghezelbash made further submissions to the Netherlands authorities on 15 May 2015 and, on that occasion, was questioned more closely. In a written statement of 20 May 2014, he requested the State Secretary to examine his application under the extended asylum application procedure in order to allow him to submit original documents proving that he returned to Iran and remained there from 19 December 2013 to 20 February 2014, that is after visiting France, which means, according to the applicant, that France was not the Member State responsible for examining his asylum application. By decision of 21 May 2014, the State Secretary rejected Mr Ghezelbash's application for a residence permit for a fixed period on grounds of asylum. On 22 May 2014, Mr Ghezelbash brought proceedings challenging that decision and requested the judge dealing with interim relief proceedings at the Rechtbank Den Haag (District Court, The Hague) to adopt an interim measure. Moreover, on 28 May 2014 he produced various items of circumstantial evidence to show that he had returned to Iran after his stay in France, namely a declaration from his employer, a doctor's certificate and a contract relating

to the sale of immovable property. By decision of 13 June 2014, the judge dealing with interim relief proceedings at the Rechtbank Den Haag (District Court, The Hague) granted Mr Ghezelbash's application for an interim measure and ordered that the effects of the State Secretary's decision of 21 May 2014 be suspended.

According to the Court, Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 of the regulation, must be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, in particular the criterion relating to the grant of a visa set out in Article 12 of the regulation.