ECLI:EU:C:2020:1010

JUDGMENT OF THE COURT (First Chamber)

10 December 2020 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Asylum policy – Procedure for granting and withdrawing refugee status – Directive 2005/85/EC – Article 25(2) – Grounds for inadmissibility – Rejection by one Member State of an application for international protection as inadmissible due to the earlier grant to the applicant of subsidiary protection in another Member State – Regulation (EC) No 343/2003 – Regulation (EU) No 604/2013)

In Case C-616/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 2 July 2019, received at the Court on 16 August 2019, in the proceedings

M.S.,

M.W.,

G.S.

v

Minister for Justice and Equality,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– M.S., by J. Brick, Advocate, J. Buckley, Barrister, and C. O’Dwyer, Senior Counsel,

– M.W., by J. Watters, Solicitor, J. Buckley, Barrister, and C. O'Dwyer, Senior Counsel,

– G.S., by D. Leonard, Barrister, M. Conlon QC and C. Ó Briain, Solicitor,

– Ireland, by M. Browne, G. Hodge and A. Joyce, acting as Agents,

– the European Commission, by J. Tomkin, A. Azéma and M. Condou-Durande, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 25 of 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).

2 The request has been made in three sets of proceedings between, on the one hand, M.S., M.W. and G.S., respectively, and the Minister for Justice and Equality (Ireland), on the other, concerning the latter's rejection of their applications for international protection on the ground that they benefit from subsidiary protection in another Member State.

Legal context

EU law

Directive 2005/85

3 Recitals 1, 6 and 22 of Directive 2005/85 read as follows:

'(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

…

(6) The approximation of rules on the procedures for granting and withdrawing refugee status should help to limit the secondary movements of applicants for asylum between Member States, where such movement would be caused by differences in legal frameworks.

…

(22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with 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)], except where the present Directive provides otherwise, in particular where it can be reasonably assumed that another country would do

the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.'

4 Under Article 1 of Directive 2005/85, the purpose of that directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

5 Article 2 of that directive, headed 'Definitions', states:

'For the purposes of this Directive:

…

(k) "remain in the Member State" means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for asylum has been made or is being examined.'

6 Article 25 of that directive, entitled 'Inadmissible applications' provides:

'1. In addition to cases in which an application is not examined in accordance with [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)], Member States are not required to examine whether the applicant qualifies as a refugee in accordance with Directive [2004/83] where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:

(a) another Member State has granted refugee status;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 26;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27;

(d) the applicant is allowed to remain in the Member State concerned on some other grounds and as a result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive [2004/83];

(e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of status pursuant to point (d);

…'

Directive 2013/32/EU

7 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60) recast Directive 2005/85.

8 Recital 58 of Directive 2013/32 states:

‘In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the [EU Treaty] and the [FEU Treaty], and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.’

9 Under Article 1 of that directive, the purpose of that directive is to establish common procedures for granting and withdrawing international protection pursuant to [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 (OJ 2011 L 337, p. 9)].

10 Article 33 of Directive 2013/32, entitled ‘Inadmissible applications’, is worded as follows:

‘1. In addition to cases in which an application is not examined in accordance with [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 (OJ 2013 L 180, p. 31)], Member States are not required to examine whether the applicant qualifies for international protection in accordance with [Directive 2011/95] where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

(a) another Member State has granted international protection;

…’

11 Article 53 of Directive 2013/32, entitled ‘Repeal’, provides in the first paragraph:

‘Directive [2005/85] is repealed for the Member States bound by this Directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directive set out in Annex II, Part B.’

The Dublin III Regulation

12 Recitals 2 and 41 of Regulation No 604/2013 (‘the Dublin III Regulation’) which repealed and replaced Regulation No 343/2003 (‘the Dublin II Regulation’) state:

‘(2) A common policy on asylum, including a Common European Asylum System (CEAS), is a constituent part of the European Union’s objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.

…

(41) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the [EU Treaty] and to the [FEU Treaty], those Member States have notified their wish to take part in the adoption and application of this Regulation.'

13 The purpose of that regulation, as is apparent from Article 1, is to lay down the criteria and mechanisms relating to applications for international protection, it being stipulated that such applications, according to the definition set out in Article 2(h) of Directive 2011/95, to which Article 2(b) of the Dublin III Regulation refers, cover the granting of refugee status or subsidiary protection status.

14 Article 18(1)(d) of that regulation provides:

'The Member State responsible under this Regulation shall be obliged to:

…

(d) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document.'

15 Article 48 of that regulation provides:

'[The Dublin II Regulation] is repealed.

…

References to the repealed Regulation or Articles shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.'

Irish law

16 Under section 21(2)(a) of the International Protection Act 2015, an application for international protection is inadmissible where another Member State has granted refugee status or subsidiary protection status.

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

17 M.S., M.W. and G.S. are third-country nationals who, having been granted subsidiary protection status in Italy, entered Ireland in the course of 2017 and there submitted applications for international protection to the International Protection Office (Ireland).

18 By decisions of 1 December 2017, 2 February 2018 and 29 June 2018, the International Protection Office rejected those applications on the ground that the interested parties had already been granted subsidiary protection status in another Member State, namely in Italy.

19 M.S., M.W. and G.S. each brought appeals against those decisions to the International Protection Appeals Tribunal (Ireland) which, by decisions of 23 May, 28 September and 18 October 2018 respectively, dismissed the appeals.

20 The applicants in the main proceedings brought actions before the High Court (Ireland) to annul those decisions.

21 Referring to paragraphs 58 and 71 of the judgment of 19 March 2019, *Ibrahim and Others* (C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219), the referring court observes that Article 33(2)(a) of Directive 2013/32 permits a Member State to reject an application for asylum as being inadmissible where the applicant has been granted international protection by another Member State, whether in the form of refugee status or subsidiary protection status. However, under Article 25(2)(a) of Directive 2005/85, that discretionary power was limited to cases where the applicant had been granted refugee status in another Member State.

22 Thus, under the combined application of Directive 2013/32 and the Dublin III Regulation, a Member State is not required to process an application for international protection in a case where that protection has already been granted in another Member State.

23 However, the referring court states that Ireland, whilst taking part in the adoption and application of the Dublin III Regulation, decided not to take part in the adoption and application of Directive 2013/32, with the result that that Member State is still bound by Directive 2005/85.

24 In that context, the referring court asks, in essence, whether, in cases where the Member State is bound by the combined application of Directive 2005/85 and the Dublin III Regulation, Article 25 of that directive must be interpreted as meaning that it precludes legislation of that Member State under which an application for international protection is considered to be inadmissible where the applicant has already been granted subsidiary protection in another Member State. In particular, that court is uncertain as to the scope of the grounds of inadmissibility laid down in Article 25(2)(d) and (e) of that directive as regards, inter alia, the interpretation of the notion of 'the Member State concerned' contained in those provisions.

25 Furthermore, the referring court seeks to ascertain whether the fact that a third-country national, who has been granted subsidiary protection status in one Member State, lodges an application for international protection in another Member State constitutes an abuse of rights, with the result that, if it does, the latter Member State may consider such an application to be inadmissible.

26 It was in that context that the High Court decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the reference to "the Member State concerned" in Article 25(2)(d) and (e) of Directive 2005/85 mean (a) a first Member State which has granted protection equivalent to asylum to an applicant for international protection or (b) a second Member State to which a subsequent application for international protection is made or (c) either of those Member States?

(2) Where a third-country national has been granted international protection in the form of subsidiary protection in a first Member State, and moves to the territory of a second Member State, does the making of a further application for international protection in the second Member State constitute an abuse of rights such that the second Member State is permitted to adopt a measure providing that such a subsequent application is inadmissible?

(3) Is Article 25 of Directive 2005/85 to be interpreted so as to preclude a Member State which is not bound by [Directive 2013/32] but is bound by [the Dublin III Regulation], from adopting legislation such as that at issue in the present case which deems inadmissible an application for asylum by a third-country national who has previously been granted subsidiary protection by another Member State?'

The questions referred for a preliminary ruling

The first and third questions

27 By its first and third questions, which it is appropriate to answer together, the referring court asks, in essence, whether Article 25(2) of Directive 2005/85 must be interpreted as meaning that it precludes legislation of a Member State which is subject to the Dublin III Regulation, but which is not bound by Directive 2013/32, in accordance with which an application for international protection is considered to be inadmissible where the applicant benefits from subsidiary protection status in another Member State.

28 As a preliminary point, it should be noted that, as is apparent from paragraphs 8, 11 and 12 above, Ireland decided, on the one hand, not to take part in the adoption and application of Directive 2013/32 which, for the Member States bound by that directive, repealed Directive 2005/85, and on the other, to take part in the adoption and application of the Dublin III Regulation which repealed and replaced the Dublin II Regulation.

29 Consequently, as far as the rules on asylum procedure are concerned, Ireland is subject to the combined application of Directive 2005/85 and the Dublin III Regulation.

30 Under Article 25(2) of Directive 2005/85, Member States may consider an application for asylum to be inadmissible in the situations laid down in that provision.

31 As is apparent from paragraph 24 above, the referring court is unsure whether the grounds of inadmissibility under Article 25(2)(d) and (e) of Directive 2005/85 enable a Member State to reject as inadmissible an application for asylum made by a third-country national who previously obtained subsidiary protection status in another Member State. According to that court, that would be the case if the words 'the Member State concerned' in those provisions must be interpreted as meaning that they may cover the Member State in which that national was previously granted subsidiary protection.

32 In that regard, Article 25(2)(d) of Directive 2005/85 provides that Member States may consider an application to be inadmissible where the applicant is allowed to remain in 'the Member State concerned' on some other ground and as a result of this, he/she has been granted a status equivalent to the rights and benefits of refugee status by virtue of Directive 2004/83.

33 Article 25(2)(e) of that directive provides that Member States may consider an application to be inadmissible where the applicant is allowed to remain in the territory of 'the Member State concerned' on some other grounds which protect him or her against refoulement pending the outcome of a procedure for the determination of status pursuant to Article 25(2)(d) of that directive.

34 While the words 'another Member State' in Article 25(2)(a) of Directive 2005/85 designate the Member State in which the applicant was previously granted refugee status, the words 'the Member State concerned' referred to in Article 25(2)(d) and (e) of that directive, for their part, refer

to the Member State in which the applicant is allowed to remain for the other reasons laid down in the latter provisions.

35 As the Advocate General stated in point 41 of his Opinion, the use of different words in Article 25(2)(a), on the one hand, and in Article 25(2)(d) and (e) of Directive 2005/85, on the other, is explained by the fact that the EU legislature intended to cover two different situations, so that the words 'the Member State concerned' could not be regarded as being equivalent to the words 'another Member State'.

36 It follows that 'the Member State concerned', referred to in Article 25(2)(d) and (e) of Directive 2005/85, could not designate the Member State which previously granted the applicant concerned subsidiary protection status.

37 That interpretation is corroborated by the context in which those provisions are to be found. According to Article 2(k) of that directive, 'remain in the Member State' means to remain in the territory of the Member State in which the application for asylum was made or is being examined. The provisions of Article 25(2)(d) and (e) of that directive refer specifically to a situation where the applicant is allowed to remain in the Member State concerned or on the territory of the Member State concerned.

38 Consequently, as the Advocate General stated, in essence, in paragraph 44 of his Opinion, the words 'the Member State concerned', mentioned in Article 25(2)(d) and (e) of Directive 2005/85, refer to the Member State in which the third-country national lodged an asylum application and on whose territory he or she may remain, either because that Member State already gave him or her a status equivalent to the rights and benefits of refugee status or because the procedure for determining such status is still ongoing.

39 It follows that the grounds of inadmissibility under Article 25(2)(d) and (e) of that directive do not enable a Member State to reject as inadmissible an application for asylum made by a third-country national who previously obtained subsidiary protection status in another Member State.

40 It is true that Article 25 of Directive 2005/85 stipulates, in paragraph 1, that the reasons for inadmissibility, listed in paragraph 2, are to be added to the 'cases in which an application is not examined in accordance with [the Dublin II Regulation]', and that one of those reasons for not carrying out an examination, in Article 16(1)(e) of that regulation, states that the Member State responsible for examining an application for asylum under that regulation is required to take back a third-country national whose application it has rejected and who is in the territory of another Member State without permission.

41 In that regard, in a combined application of Directive 2005/85 and of the Dublin II Regulation, the Court held that Article 25(2)(a) of Directive 2005/85 makes it possible to reject an application for asylum as being inadmissible only where the applicant has been granted refugee status in another Member State (see, to that effect, judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraphs 58 and 71). A Member State in which an asylum application has been lodged by a third-country national who enjoys subsidiary protection in another Member State therefore may not reject that application as being inadmissible on the basis of Article 25(2)(a) of Directive 2005/85. Nevertheless, the first Member State may still initiate a take-back procedure on the basis of Article 16(1)(e) of the Dublin II Regulation.

42 However, it should be recalled that, as is apparent from paragraph 28 above, Ireland, while continuing to be subject to the application of Directive 2005/85, which was repealed by Directive 2013/32, decided to take part in the adoption and application of the Dublin III Regulation, which repealed the Dublin II Regulation. That Member State could not therefore be regarded as being bound either by Directive 2013/32 or by the Dublin II Regulation.

43 The reference to the Dublin II Regulation in Article 25(1) of Directive 2005/85 must therefore be understood as a reference to the Dublin III Regulation, in accordance with Article 48 of the latter regulation. Moreover, according to the correlation table in Annex II to the Dublin III Regulation, the reason for not examining the application, which was laid down in Article 16(1)(e) of the Dublin II Regulation, is now laid down in Article 18(1)(d) of the Dublin III Regulation.

44 However, with regard to the reason for not examining the application, laid down in Article 18(1)(d) of the Dublin III Regulation, in the context of a combined application of Directive 2013/32 and of the Dublin III Regulation, the Court held that, under the procedures defined by that regulation, a Member State cannot reasonably require another Member State to take charge of or to take back a third-country national who has lodged an application for international protection in the first Member State after being granted the benefit of subsidiary protection by the second Member State. In that situation, the EU legislature considered that the rejection of such an application must be made by means of an inadmissibility decision, pursuant to Article 33(2)(a) of Directive 2013/32, rather than by means of a decision to transfer and not to examine the application, under Article 26 of the Dublin III Regulation (see order of 5 April 2017, *Ahmed*, C-36/17, EU:C:2017:273, paragraphs 39 and 41, and judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraphs 78 and 79).

45 Thus, given that Ireland is not bound by either Directive 2013/32 or the Dublin II Regulation, in a situation in which the asylum applicant benefits from subsidiary protection in another Member State, the competent authorities in Ireland may not adopt an inadmissibility decision under Directive 2013/32 or initiate a taking-charge or taking-back procedure on the basis of the Dublin II Regulation, such that those authorities are required, in principle, to examine the asylum application.

46 However, such a solution, even if it were to stem from Ireland’s choice not to apply certain measures coming under the Common European Asylum System, would conflict with, not only the logic of that system, but also the objectives pursued by Directive 2005/85 and by the Dublin III Regulation.

47 In that regard, as is apparent from paragraphs 41 and 44 above, the EU legislature considered, in the context both of the combined application of Directive 2005/85 and the Dublin II Regulation and the combined application of Directive 2013/32 and the Dublin III Regulation, that a Member State was not required to examine an asylum application where the applicant already benefited from subsidiary protection in another Member State. That finding is reflected, in particular, in recital 22 of Directive 2005/85, according to which Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country.

48 In that context, it should be recalled that the principle of mutual trust between the Member States, on which the Common European Asylum System is based, is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained (see, to that effect, judgment of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 84).

49 Under Article 25(2)(b) and (c) of Directive 2005/85, a Member State may reject as inadmissible an application for international protection brought by a third-country national who benefits from protection deemed to be sufficient in a third country.

50 In those circumstances, as the Advocate General stated in essence in point 70 of his Opinion, forcing Ireland, which takes part in the Dublin III Regulation, to examine an application for international protection brought by a third-country national who previously obtained subsidiary protection in another Member State would not be consistent with the fact that Ireland could reject as inadmissible such an application brought by a third-country national who benefits from protection deemed to be sufficient in a third country.

51 In addition, as is apparent from recital 6 and Article 1, Directive 2005/85 is intended to establish minimum standards on procedures for granting and withdrawing refugee status in Member States for the purposes, inter alia, of limiting the secondary movements of asylum applicants between Member States, where such movement would be caused by differences in the legal frameworks of those Member States. With regard to the Dublin III Regulation, the Court held that it is specifically intended to prevent such movements by establishing uniform mechanisms and criteria for determining the Member State responsible for examining an application for international protection (see, to that effect, judgment of 2 April 2019, *H. and R.*, C-582/17 and C-583/17, EU:C:2019:280, paragraph 77 and the case-law cited).

52 Although a Member State bound by Directive 2005/85 and the Dublin III Regulation, such as Ireland, was required to examine asylum applications brought by third-country nationals who already benefit from subsidiary protection in another Member State, that situation would risk encouraging those nationals to travel to other Member States, thereby causing secondary movements of people which is specifically what that directive and that regulation seek to prevent (see, by analogy, concerning the Dublin III Regulation, judgment of 17 March 2016, *Mirza*, C-695/15 PPU, EU:C:2016:188, paragraph 52).

53 It follows that, although Member States may reject as inadmissible an asylum application where the applicant benefits from sufficient protection in a third country, in view of the context and the objectives pursued by the Common European Asylum System, they must a fortiori be able to do the same where the applicant has already been granted subsidiary protection in another Member State.

54 In view of all of the foregoing considerations, the answer to the first and third questions is that Article 25(2) of Directive 2005/85 must be interpreted as meaning that it does not preclude legislation of a Member State which is subject to the Dublin III Regulation, but which is not bound by Directive 2013/32, in accordance with which an application for international protection is considered to be inadmissible where the applicant benefits from subsidiary protection status in another Member State.

The second question

55 In view of the answer given to the first and third questions, it is unnecessary to answer the second question.

Costs

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

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

Article 25(2) 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 legislation of a Member State which is subject to 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, but which is not bound by Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, in accordance with which an application for international protection is considered to be inadmissible where the applicant benefits from subsidiary protection status in another Member State.

Bonichot Silva de Lapuerta Toader
Safjan Jääskinen

Delivered in open court in Luxembourg on 10 December 2020.

A. Calot Escobar
Registrar

J.-C. Bonichot
President of the First Chamber

* Language of the case: English.