ECLI:EU:C:2018:776

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

26 September 2018 (*)

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Directive 2005/85/EC — Article 39 — Directive 2008/115/EC — Article 13 — Charter of Fundamental Rights of the European Union — Article 18, Article 19(2) and Article 47 — Right to an effective remedy — Principle of non-refoulement — Decision rejecting an application for asylum and imposing an obligation to return — National legislation providing for a second level of jurisdiction — Automatic suspensory effect limited to the action at first instance)

In Case C-175/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Netherlands), made by decision of 29 March 2017, received at the Court on 6 April 2017, in the proceedings

X

v

Belastingdienst/Toeslagen,

THE COURT (Fourth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Vajda, E. Juhász, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– X, by E.C. Cerezo-Weijsenfeld, advocaat,

– the Netherlands Government, by J. Langer, M.K. Bulterman and H.S. Gijzen, acting as Agents,

– the Belgian Government, by C. Pochet, M. Jacobs and C. Van Lul, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by M. Condou-Durande, C. Cattabriga and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 January 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2005 L 326, p. 13) and of Article 13 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 (OJ 2008 L 348, p. 98), read in the light of Article 18, Article 19(2) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between X and the Belastingdienst/Toeslagen (Tax and Customs Administration/Benefits, Netherlands) concerning the latter's decision ordering X, a third-country national, to reimburse contributions which he received for rental and healthcare costs.

Legal context

The Convention relating to the Status of Refugees

3 Article 33 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol. 189, p. 137, No 2545 (1954)), as supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967, entitled 'Prohibition of expulsion or return ("refoulement")', provides in paragraph 1:

'No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

The ECHR

4 Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), entitled 'Prohibition of torture', provides:

‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’

5 Article 13 of that convention is worded as follows:

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

EU law

Directive 2005/85

6 Recitals 5 and 8 of Directive 2005/85 state:

‘(5) The main objective of this Directive is to introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status.

...

(8) This Directive respects the fundamental rights and observes the principles recognised in particular by the [Charter].’

7 Paragraph 1 of Article 3 of that directive, entitled ‘Scope’, provides:

‘This Directive shall apply to all applications for asylum made in the territory, including at the border or in the transit zones of the Member States, and to the withdrawal of refugee status.’

8 Under Article 39 of Directive 2005/85, headed ‘The right to an effective remedy’:

‘1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for asylum ...

...

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:

(a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;

(b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an *ex officio* remedy ...;

...’

Directive 2008/115

9 Recitals 2, 4 and 24 of Directive 2008/115 state:

‘(2) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.

...

(4) Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well-managed migration policy.

...

(24) This Directive respects the fundamental rights and observes the principles recognised in particular by the [Charter].’

10 Article 2(1) of Directive 2008/115 states that the directive applies to third-country nationals staying illegally on the territory of a Member State.

11 According to Article 3 of that directive:

‘For the purposes of this Directive, the following definitions shall apply:

...

(4) “return decision” means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

...’

12 Article 12(1) of Directive 2008/115 provides:

‘Return decisions and, if issued, entry-ban decisions and decisions on removal shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies.

...’

13 Article 13 of that directive, entitled ‘Remedies’, is worded as follows:

‘1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

...’

Netherlands law

14 Under Netherlands law, an action at first instance before the rechtbank (District Court, Netherlands) against a decision of the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, Netherlands) on an asylum matter has automatic suspensory effect. While it is possible to appeal against a judgment of the rechtbank (District Court) confirming a decision rejecting an application for asylum and imposing an obligation to return, the appeal proceedings do not have automatic suspensory effect. It is nevertheless possible for an applicant to apply to the voorzieningenrechter (judge hearing applications for interim measures) of the Raad van State (Council of State, Netherlands) for interim measures, with a view in particular to avoiding expulsion, pending the outcome of the substantive appeal proceedings. That application for interim measures does not itself have automatic suspensory effect.

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

15 On 1 July 2011, X, an Iraqi national, was notified of a decision withdrawing the fixed-period residence permit which he had obtained, and refusing to grant his application for international protection whilst imposing on him an obligation to return. X appealed against that decision before the rechtbank Den Haag (District Court, The Hague, Netherlands), which annulled the decision whilst maintaining its legal effects. By judgment of 25 February 2013, the Raad van State (Council of State) dismissed the appeal brought by X against that judgment.

16 Moreover, X had applied for and been granted advances on the financial contributions to rental and healthcare costs provided for by Netherlands law. Further to the judgment of 25 February 2013 of the Raad van State (Council of State), the Belastingdienst/Toeslagen (Tax and Customs Administration/Benefits) sought the reimbursement of those contributions, including for the period during which the proceedings at first instance and on appeal against the decision of 1 July 2011 were pending.

17 The referring court states that X has brought an appeal before it against a judgment of the rechtbank (District Court) upholding the obligation imposed on him to reimburse the contributions at issue. In that regard, the referring court states that, pursuant to national law, the question of whether X was entitled to those contributions, over the course of the period in which the proceedings at first instance and on appeal against the decision of 1 July 2011 were pending, depends on the suspensory effect of those actions. The automatic suspensory effect of the action at first instance, laid down in Netherlands law, would thus entitle X to those contributions. However, since Netherlands law makes no provision for the automatic suspensory effect of appeal proceedings, and since X did not apply to the voorzieningenrechter (judge hearing the application for interim relief) of the Raad van State (Council of State) for interim measures, the referring court takes the view that X would be entitled to those contributions during the appeal proceedings only if EU law required that the appeal be given automatic suspensory effect.

18 In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 13 of Directive 2008/115 …, read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter, be interpreted as meaning that under EU law, if national law makes provision to that effect, in proceedings challenging a decision which includes a return decision within the meaning of Article 3(4) of that directive, the legal remedy of an appeal has automatic suspensory effect where the third-country national claims that enforcement of the return decision would result in a serious risk of infringement of the principle of non-refoulement? In other words, in such a case, should the expulsion of the third-country national concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that

appeal, without the third-country national concerned being required to submit a separate request to that effect?

(2) Must Article 39 of Directive 2005/85 …, read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter be interpreted as meaning that, under EU law, if national law makes provision to that effect, in proceedings relating to the rejection of an application for asylum within the meaning of Article 2 of that directive, the legal remedy of an appeal has automatic suspensory effect? In other words, in such a case, should the expulsion of the asylum-seeker concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the asylum-seeker concerned being required to submit a separate request to that effect?'

The request for the oral procedure to be reopened

19 By document lodged with the Court Registry on 5 February 2018, the Netherlands Government requested the Court to reopen the oral part of the procedure, on the assumption that the Court might decide to determine the present case on the basis of the question, discussed by the Advocate General in his Opinion, of whether the power of the court of first instance to annul the decision of 1 July 2011 whilst maintaining its legal effects requires that the appeal brought against that decision be given automatic suspensory effect. That question, it is contended, was neither submitted to the Court by the referring court nor debated between the parties.

20 In that connection, Article 83 of the Rules of Procedure of the Court of Justice permits the Court, after hearing the Advocate General, to order at any time the reopening of the oral part of the procedure, inter alia where the case must be decided on the basis of a legal argument which has not been debated between the parties.

21 In the present case, the Court finds that it is not necessary to take a position on the question referred to in the request for the reopening of the oral procedure. Moreover, the Court considers, after hearing the Advocate General, that it has all the information necessary to give judgment and that that information has been the subject of debate before it. Consequently, there is no need to order that the oral part of the procedure be reopened (see, to that effect, judgment of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraphs 24 and 25).

The jurisdiction of the Court

22 The Belgian Government argues that the Court of Justice does not have jurisdiction to answer the questions referred for a preliminary ruling, on the ground that the subject of those questions — namely the bringing of an appeal, and the decision to confer on it, where appropriate, automatic suspensory effect, against judgments delivered at first instance such as that of 1 July 2011 — comes within the exclusive jurisdiction of the Member States.

23 In that connection, it should be noted that Article 39 of Directive 2005/85 and Article 13 of Directive 2008/115 contain provisions governing the right to an effective remedy against decisions by which the competent authorities of the Member States refuse to grant applications for international protection and impose an obligation to return on the applicants, such as the decision of 1 July 2011.

24 As regards the question of whether the bringing of an appeal against judgments delivered at first instance concerning such decisions, and the decision to confer on that remedy, where appropriate, automatic suspensory effect, come within the exclusive remit of the Member States,

that question is inextricably linked to the answers to be given to the questions referred for a preliminary ruling, since they relate specifically to the scope of the right to an effective remedy provided for in Article 39 of Directive 2005/85 and in Article 13 of Directive 2008/115, read in the light of the guarantees provided in Articles 18, 19(2) and 47 of the Charter. In those circumstances, the Court has jurisdiction to answer those questions (see, to that effect, judgment of 7 March 2017, *X and X*, C-638/16 PPU, EU:C:2017:173, paragraph 37 and the case-law cited).

Consideration of the questions referred

25 By its questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 39 of Directive 2005/85 and Article 13 of Directive 2008/115, read in the light of Articles 18, 19(2) and 47 of the Charter, must be interpreted as precluding national legislation which, whilst making provision for appeals against judgments at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.

26 Under Article 39(1) of Directive 2005/85, Member States are required to ensure that applicants for international protection have the right to an effective remedy before a court against, inter alia, a decision concerning their application for international protection. According to the wording of Article 39(3)(a) and (b) of that directive, Member States are, where appropriate, required to provide for rules in accordance with their international obligations dealing with (i) the question of whether that remedy will have the effect of allowing applicants to remain in the Member State concerned pending the outcome of the application; or (ii) the possibility of a legal remedy or protective measures if that remedy does not have that effect.

27 Under Article 13(1) of Directive 2008/115, read in conjunction with Article 12(1) thereof, the third-country national concerned is to be afforded an effective remedy to appeal against or seek review of decisions related to return before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

28 Thus, while the provisions of Directives 2005/85 and 2008/115 require the Member States to provide for an effective remedy against decisions rejecting an application for international protection and against return decisions, none of those provisions requires the Member States to grant a right to appeal to applicants for international protection whose appeals against the decision refusing their application have been unsuccessful at first instance, let alone that the exercise of such a right should be given automatic suspensory effect.

29 No more can such requirements be inferred from the scheme or purpose of those directives. The respective objectives of those directives in fact consist, as is clear from recital 5 of Directive 2005/85, in the introduction of a minimum framework in the European Union on procedures for granting and withdrawing refugee status; and, in accordance with recitals 2 and 4 of Directive 2008/115, the establishment of an effective removal and repatriation policy that fully respects the fundamental rights and dignity of the persons concerned (see, with regard to Directive 2008/115, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 48 and the case-law cited). By contrast, it is in no way apparent from the recitals of those directives that they seek to make the Member States introduce a second level of jurisdiction.

30 Thus, whilst not precluding a Member State from making provision for a second level of jurisdiction for appeals against decisions refusing an application for international protection and

return decisions, Directives 2005/85 and 2008/115 do not contain any rule on the introduction and organisation of such a level of jurisdiction. In particular, and as the Advocate General notes in point 41 of his Opinion, it does not follow either from the terms, general scheme or purpose of those directives that, where a Member State makes provision for a second level of jurisdiction against such decisions, the appeal procedure thus introduced must necessarily give automatic suspensory effect to the appeal brought by the applicant.

31 Nevertheless, it should be pointed out that the interpretation of Directive 2008/115 or of Directive 2005/85, must — as is apparent from recital 24 of the former and recital 8 of the latter — be consistent with the fundamental rights and principles recognised, in particular, by the Charter (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 51).

32 In that respect, it is settled case-law of the Court that when a Member State decides to return an applicant for international protection to a country where there are substantial grounds for believing that he will be exposed to a real risk of ill-treatment contrary to Article 18 of the Charter, read in conjunction with Article 33 of the Convention relating to the Status of Refugees, as supplemented by the Protocol, or to Article 19(2) of the Charter, the right to an effective remedy provided for in Article 47 of the Charter requires that that applicant should have available to him a remedy enabling automatic suspension of enforcement of the measure authorising his removal (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 54 and the case-law cited).

33 The Court has also stated that, in respect of a return decision and a possible removal decision, the protection inherent in the right to an effective remedy and in the principle of non-refoulement must be guaranteed by affording the applicant for international protection the right to an effective remedy enabling automatic suspensory effect, before at least one judicial body. Moreover, it is for the Member States to ensure the full effectiveness of an appeal against a decision rejecting the application for international protection by suspending all the effects of the return decision during the period prescribed for bringing the appeal and, if such an appeal is brought, until resolution of the appeal (see, to that effect, judgment of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraphs 56, 58 and 61 and the case-law cited, and order of 5 July 2018, *C and Others*, C-269/18 PPU, EU:C:2018:544, paragraph 50).

34 Nevertheless, it is apparent from the Court's case-law that neither Article 39 of Directive 2005/85, nor Article 13 of Directive 2008/115, nor Article 47 of the Charter, read in the light of the safeguards laid down in Articles 18 and 19(2) of the Charter, requires that there be two levels of jurisdiction. The only requirement is that there must be a remedy before a judicial body (see, to that effect, judgments of 28 July 2011, *Samba Diouf*, C-69/10, EU:C:2011:524, paragraph 69, and of 19 June 2018, *Gnandi*, C-181/16, EU:C:2018:465, paragraph 57).

35 In that connection, it should also be recalled that, in so far as the Charter contains rights corresponding to rights guaranteed by the ECHR, Article 52(3) of the Charter seeks to ensure the necessary consistency between the rights contained in it and the corresponding rights guaranteed by the ECHR, without thereby adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union (see, to that effect, judgments of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 47, and of 14 September 2017, *K.*, C-18/16, EU:C:2017:680, paragraph 50 and the case-law cited). According to the explanations on Article 47 of the Charter, the first paragraph of that article is based on Article 13 of the ECHR. The Court must, accordingly, ensure that its interpretation of the first paragraph of Article 47 of the Charter ensures a level of protection which does not disregard that guaranteed by Article 13 of the ECHR, as interpreted by the European Court of Human Rights (see, by analogy, judgments of 15 February 2016, *N.*,

C-601/15 PPU, EU:C:2016:84, paragraph 77, and of 20 March 2018, *Menci*, C-524/15, EU:C:2018:197, paragraph 62).

36 According to the case-law of the European Court of Human Rights, even in the case of a complaint whereby the expulsion of the person concerned will expose him to a real risk of suffering treatment contrary to Article 3 of the ECHR, Article 13 thereof does not compel the High Contracting Parties to set up a second level of jurisdiction or to give, where appropriate, automatic suspensory effect to appeal proceedings (see, to that effect, judgment of the ECtHR of 5 July 2016, *A.M. v.Netherlands*, CE:ECHR:2016:0705JUD002909409, paragraph 70).

37 It follows that the protection conferred on an applicant for international protection by Article 39 of Directive 2005/85 and Article 13 of Article 2008/115, read in the light of Article 18, Article 19(2) and Article 47 of the Charter, against a decision rejecting an application for international protection and imposing an obligation to return is confined to the existence of a single judicial remedy.

38 In that connection, it should be stated that the introduction of a second level of jurisdiction against decisions rejecting an application for international protection and against return decisions, as well as the decision to give that level of jurisdiction, where appropriate, automatic suspensory effect, constitute — contrary to the argument relied upon by the Belgian Government set out in paragraph 22 of the present judgment — procedural rules implementing the right to an effective remedy against such decisions provided for in Article 39 of Directive 2005/85 and Article 13 of Directive 2008/115. While such procedural rules are a matter for the domestic legal order of the Member States pursuant to the principle of procedural autonomy of the latter, the Court has pointed out that those rules must observe the principles of equivalence and effectiveness (see, by analogy, judgment of 17 July 2014, *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraphs 31, 36 and 50 and the case-law cited, and order of 16 July 2015, *Sánchez Morcillo and Abril García*, C-539/14, EU:C:2015:508, paragraph 33).

39 It therefore follows from the settled case-law of the Court that procedural rules governing actions for safeguarding the rights which individuals derive from EU law must not be any less favourable than those governing similar domestic actions (principle of equivalence) and must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by the legal order of the European Union (principle of effectiveness) (see, to that effect, judgments of 5 June 2014, *Kone and Others*, C-557/12, EU:C:2014:1317, paragraph 25, and of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 27 and the case-law cited).

40 The observance of the requirements stemming from the principles of equivalence and effectiveness must be analysed by reference to the role of the rules concerned in the procedure viewed as a whole, to the conduct of that procedure and to the special features of those rules, before the various national instances (judgments of 1 December 1998, *Levez*, C-326/96, EU:C:1998:577, paragraph 44, and of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 38 and the case-law cited).

41 It is settled case-law of the Court that the principle of equivalence requires equal treatment of claims based on a breach of national law and of similar claims based on a breach of EU law, but not equivalence of national procedural rules applicable to different types of proceedings (judgment of 6 October 2015, *Târşia*, C-69/14, EU:C:2015:662, paragraph 34 and the case-law cited).

42 It is therefore appropriate, on the one hand, to identify the comparable procedures or actions and, on the other hand, to determine whether the actions based on national law are handled in a

more favourable manner than comparable actions concerning the safeguarding of the rights which individuals derive from EU law (see, to that effect, judgments of 12 February 2015, *Baczó and Vizsnyiczai*, C-567/13, EU:C:2015:88, paragraph 45, and of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 19).

43 With regard to the comparability of actions, it is for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (judgments of 27 June 2013, *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 39, and of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 20).

44 So far as concerns the similar handling of the actions, it must be borne in mind that every case in which the question arises as to whether a procedural rule of national law based on EU law is less favourable than those governing similar domestic actions must be analysed by the national court taking into account the role played by that provision in the procedure as a whole, as well as the operation and any special features of that procedure before the different national courts (see, to that effect, judgment of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 21).

45 In the present case, the referring court states in the order for reference that, in certain areas of administrative law other than the field of international protection, Netherlands law confers on appeals automatic suspensory effect. Nevertheless, it should be noted that none of the parties which submitted observations to the Court has expressed doubts as to the observance of the principle of equivalence by the national legislation at issue in the main proceedings. In any event, the file before the Court does not contain any criterion allowing an assessment to be made as to whether appeals brought in those areas are comparable, as regards their purpose, cause of action and essential characteristics, to that at issue in the main proceedings, or an examination of whether the former category of appeals must be considered as being more favourable than the latter by taking into account the aspects referred to in paragraph 44 of the present judgment.

46 In those circumstances, it is for the national court to examine whether there is compliance with the principle of equivalence, by taking into account the aspects referred to in paragraphs 40 to 45 of the present judgment (see, by analogy, judgment of 9 November 2017, *Dimos Zagoriou*, C-217/16, EU:C:2017:841, paragraph 24).

47 As regards the principle of effectiveness, the view must be taken that this does not, in the present case, involve requirements going beyond those deriving from fundamental rights — in particular from the right to an effective remedy — guaranteed by the Charter. Since, as is apparent from paragraph 34 of the present judgment, Article 47 of the Charter, read in the light of the guarantees contained in Articles 18 and 19(2) thereof, requires only that an applicant for international protection whose application has been refused, and in respect of whom a return decision has been adopted, should be able to enforce his rights effectively before a judicial authority, the mere fact that an additional level of jurisdiction, provided for by national law, does not have automatic suspensory effect, does not justify a finding that the principle of effectiveness has been disregarded.

48 In the light of the foregoing, the answer to the questions referred for a preliminary ruling is that Article 39 of Directive 2005/85 and Article 13 of Directive 2008/115, read in the light of Articles 18, 19(2) and 47 of the Charter, must be interpreted as not precluding national legislation which, whilst making provision for appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return,

does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.

Costs

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

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

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, and Article 13 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 the light of Articles 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which, whilst making provision for appeals against judgments delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.

[Signatures]

* Language of the case: Dutch.