ECLI:EU:C:2016:789

JUDGMENT OF THE COURT (Third Chamber)

20 October 2016 (*)

(Reference for a preliminary ruling — Directive 2004/83/EC — Minimum standards for granting refugee status or subsidiary protection status — National procedural rule laying down, for the submission of an application for subsidiary protection, a period of 15 working days from notification of the rejection of the application for asylum — Procedural autonomy of the Member States — Principle of equivalence — Principle of effectiveness — Proper conduct of the procedure for examining the application for subsidiary protection — Proper conduct of the return procedure — Not compatible)

In Case C-429/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decision of 29 July 2015, received at the Court on 5 August 2015, in the proceedings

Evelyn Danqua

v

Minister for Justice and Equality,

Ireland,

Attorney General,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: Y. Bot,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 16 June 2016,

after considering the observations submitted on behalf of:

– Ms Danqua, by M. Trayers, Solicitor, P. O'Shea BL and C. Power SC,

– the Minister for Justice and Equality, by R. Cotter and E. Creedon, acting as Agents, and F. O'Sullivan BL and R. Barron SC,

– the European Commission, by M. Condou-Durande and X. Lewis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the principle of equivalence.

2 The request has been made in proceedings between Ms Evelyn Danqua, a Ghanaian national, on the one hand, and the Minister for Justice and Equality ('the Minister'), Ireland and the Attorney General, on the other, concerning the Minister's refusal to examine Ms Danqua's application for subsidiary protection status.

Legal context

Directive 2004/83/EC

3 Under Article 2(a), (e) and (f) 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), the following terms had the following definitions:

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

...

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

(f) “subsidiary protection status” means the recognition by a Member State of a third country national ... as a person eligible for subsidiary protection’.

4 Article 18 of that directive stated as follows:

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

Directive 2005/85/EC

5 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) lays down, inter alia, the rights of applicants for asylum.

6 Under Article 3(1) of Directive 2005/85, that directive is to apply to all applications for asylum made in the territory of the Member States.

7 Article 3(3) of that directive provides that:

‘Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the [Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954))] and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive [2004/83], they shall apply this Directive throughout their procedure.’

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

8 The documents before the Court state that, on 13 April 2010, Ms Danqua, a Ghanaian national, made an application for refugee status, in Ireland; the reason for the application being Ms Danqua's fear of being subjected to *trokosi* practices, a form of ritual servitude practised in Ghana and predominantly affecting women.

9 In a report of 16 June 2010, the Refugee Applications Commissioner (Ireland) issued a negative recommendation in respect of that application because of its lack of credibility. That recommendation was confirmed on appeal by the Refugee Appeals Tribunal (Ireland) by decision of 13 January 2011.

10 On 9 February 2011, the Minister notified Ms Danqua of a decision rejecting her application for asylum and informed her of his proposal to make a deportation order against her (*proposal to deport*), telling her, inter alia, that she had the possibility of making an application for subsidiary protection within a period of 15 working days of that notification.

11 Following that decision, the Refugee Legal Service (Ireland) informed Ms Danqua that because of the rejection of her application for asylum, she would not be assisted in preparing her application for subsidiary protection.

12 The Refugee Legal Service did however submit, in Ms Danqua's name, an application for humanitarian leave to remain.

13 By letter of 23 September 2013, the Minister informed Ms Danqua that that application had been rejected and that a return decision had been issued against her on 17 September 2013.

14 On 8 October 2013, Ms Danqua lodged an application for subsidiary protection.

15 By letter of 5 November 2013, the Minister informed Ms Danqua that her application for subsidiary protection status could not be accepted, since that application had not been lodged within the period of 15 working days referred to in the Minister's notification of 9 February 2011 rejecting her application for asylum.

16 Ms Danqua challenged that decision before the High Court (Ireland), relying, inter alia, on a breach of the principle of equivalence based on the obligation, on an applicant for subsidiary protection, to comply with a time limit such as that at issue in the main proceedings for making an application for subsidiary protection, when compliance with a similar time limit was not required for making an application for asylum.

17 By judgment of 16 October 2014, the High Court dismissed Ms Danqua's action, holding, inter alia, that the principle of equivalence was not applicable in the case in point, since Ms Danqua was comparing two procedural rules based on EU law.

18 On 13 November 2014, Ms Danqua brought an appeal against that judgment before the Court of Appeal. Ms Danqua reiterated before that court her line of argument that the

obligation, on an applicant for subsidiary protection, to comply with a time limit such as that at issue in the main proceedings was in breach of the principle of equivalence, since there was no similar time limit applicable to persons making an application for refugee status.

19 The Court of Appeal, whilst raising the question of the relevance of the principle of equivalence in the present case, considers that an application for asylum may constitute an appropriate comparator for the purposes of ensuring observance of the principle of equivalence.

20 In this connection, the referring court observes that, although the majority of applications for asylum are dealt with under the regime established by Directive 2004/83, the Member States, at least in theory, may still grant asylum in accordance with their national law. To that extent, applications for asylum fall partly within the scope of EU law and partly within the scope of national law.

21 As regards the obligation, on an applicant for subsidiary protection, to comply with a time limit such as that at issue in the main proceedings for making an application for subsidiary protection, the referring court considers that that time limit is justified by objective considerations. The national rules in force prior to the delivery of the judgment of 8 May 2014, *N.* (C-604/12, EU:C:2014:302), were characterised by the existence of two separate procedures, one following upon the other, for the purposes of examining, respectively, an application for asylum and an application for subsidiary protection, under which an application for subsidiary protection could be considered only after an application for refugee status had been refused.

22 According to the referring court, the rules in force at the material time in the main proceedings were intended to ensure that applications for international protection were dealt with within a reasonable period.

23 It is against that background that the Court of Appeal decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Can an application for asylum, which is governed by domestic legislation which reflects a Member State’s obligations under [Directive 2004/83], be regarded as an appropriate comparator in respect of an application for subsidiary protection for the purposes of the principle of equivalence?

(2) If the answer to the first question is in the affirmative, is it relevant for this purpose that the time limit imposed in respect of applications for subsidiary protection serves the important interest of ensuring that applications for international protection are dealt [with] within a reasonable time?’

Consideration of the questions referred

24 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether the principle of equivalence must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that the applicant whose asylum application has been rejected may make an application for subsidiary protection.

25 A preliminary point to note is that Directive 2004/83 did not contain any procedural rules applicable to the examination of an application for international protection.

26 Directive 2005/85 establishes, for its part, minimum standards concerning the procedures for examining applications for international protection and specifies the rights of applicants for asylum. Article 3(1) and (3) of that directive states that it is to apply to applications for asylum which are examined both as applications on the basis of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83.

27 Accordingly, the Court has held that Directive 2005/85 applies to applications for subsidiary protection only where a Member State has established a single procedure, under which an application is examined by reference to both forms of international protection, namely asylum and subsidiary protection (judgment of 8 May 2014, *N.*, C-604/12, EU:C:2014:302, paragraph 39).

28 However, it is apparent from the documents before the Court that that was not the case in Ireland at the material time in the main proceedings.

29 It follows that, in the absence of EU rules concerning the procedural requirements attaching to the submission and examination of an application for subsidiary protection applicable in Ireland, it is for the domestic legal system of that Member State to determine those requirements, provided, first, that the requirements are not less favourable than those governing similar domestic situations (principle of equivalence) and, second, that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness) (see, to that effect, judgment of 8 May 2014, *N.*, C-604/12, EU:C:2014:302, paragraph 41 and the case-law cited).

30 As regards the principle of equivalence, it should be recalled that observance of that principle requires that a national rule be applied without distinction to procedures based on EU law and those based on national law (see, to that effect, judgment of 28 January 2015, *ÖBB Personenverkehr*, C-417/13, EU:C:2015:38, paragraph 74).

31 The referring court is unsure whether an application for refugee status constitutes an appropriate comparator in respect of an application for subsidiary protection status for the purposes of ensuring observance of that principle.

32 In this case, as the Advocate General has observed in points 54 and 58 of his Opinion, the situation in the main proceedings concerns two applications based on EU law, namely Ms Danqua's application for refugee status and her application for subsidiary protection status.

33 It should, moreover, be observed that, according to the very wording of the first question, the national legislation governing the examination of applications for asylum 'reflects' the obligations of the Member States under Directive 2004/83.

34 Furthermore, it is not apparent from the documents before the Court that Irish law relating to asylum includes substantive national rules supplementing EU law.

35 In the light of the foregoing considerations, it must be held that, in a situation such as that in the main proceedings, which concerns two types of applications both based on EU law, invoking the principle of equivalence is irrelevant.

36 That being said, according to settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. With this in mind, the Court may have to reformulate the questions referred to it (judgment of 28 April 2016, *Oniors Bio*, C-233/15, EU:C:2016:305, paragraph 30 and the case-law cited).

37 Furthermore, it is for the Court to provide the national court with all those elements for the interpretation of EU law which may be of assistance in adjudicating on the case pending before it, whether or not the referring court has specifically referred to them in its questions (see, to that effect, judgment of 21 February 2006, *Ritter-Coulais*, C-152/03, EU:C:2006:123, paragraph 29 and the case-law cited).

38 In this case, and to that end, the two questions referred by the Court of Appeal must be understood as asking whether the principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that the applicant whose asylum application has been rejected may make an application for subsidiary protection.

39 So far as that principle is concerned, as recalled in paragraph 29 above, a national procedural rule, such as that at issue in the main proceedings, must not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order. Accordingly, such a rule must ensure, in the present case, that persons applying for subsidiary protection are actually in a position to avail themselves of the rights conferred on them by Directive 2004/83.

40 It is, therefore, appropriate to consider whether a person, such as Ms Danqua, who applies for subsidiary protection, is in concrete terms in a position to assert the rights she derives from Directive 2004/83, namely, in this case, the right to submit an application

for that protection and, should the conditions required in order to qualify for such protection be satisfied, the right to be granted subsidiary protection status.

41 It is apparent from the order for reference and the documents before the Court that, under the national procedural rule at issue in the main proceedings, the applicant for subsidiary protection may, in principle, no longer submit an application for subsidiary protection status after the expiry of a period of 15 working days from notification of the rejection of his application for refugee status.

42 In this connection, it must be noted that the Court has held that every case in which the question arises as to whether a national procedural provision renders the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary, inter alia, to take into consideration, where relevant, the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the procedure (see, to that effect, judgment of 11 November 2015, *Klausner Holz Niedersachsen*, C-505/14, EU:C:2015:742, paragraph 41 and the case-law cited).

43 In this case, it is appropriate to consider, in particular, whether a time limit such as that at issue in the main proceedings may be justified for the purposes of ensuring the proper conduct of the procedure for examining an application for subsidiary protection, in the light of its implications for the application of EU law (see, by analogy, judgment of 3 September 2009, *Fallimento Olimpiclub*, C-2/08, EU:C:2009:506, paragraph 28).

44 As regards time limits, the Court has held that, in respect of national rules which come within the scope of EU law, it is for the Member States to establish those time limits in the light of, inter alia, the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration (see, to that effect, judgment of 29 October 2009, *Pontin*, C-63/08, EU:C:2009:666, paragraph 48).

45 As regards the legislation at issue in the main proceedings, it should be observed that, as the Advocate General has stated in points 75 to 78 of his Opinion, the procedure for examining applications for subsidiary protection is of particular importance inasmuch as it enables applicants for international protection to safeguard their most basic rights by the grant of such protection.

46 In that context, taking account of the difficulties such applicants may face because of, inter alia, the difficult human and material situation in which they may find themselves, it must be held that a time limit, such as that at issue in the main proceedings, is particularly short and does not ensure, in practice, that all those applicants are afforded a genuine opportunity to submit an application for subsidiary protection and, where appropriate, to be granted subsidiary protection status. Therefore, such a time limit cannot

reasonably be justified for the purposes of ensuring the proper conduct of the procedure for examining an application for that status.

47 That conclusion, moreover, cannot be called into question by the need to ensure the effectiveness of return procedures, since the time limit at issue in the main proceedings is not directly linked to the return procedure, but to the rejection of the application for refugee status.

48 Accordingly, it must be held that a national procedural rule, such as that at issue in the main proceedings, is capable of compromising the ability of applicants for subsidiary protection actually to avail themselves of the rights conferred on them by Directive 2004/83.

49 In the light of all the foregoing considerations, the answer to the questions referred is that the principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection.

Costs

50 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 (Third Chamber) hereby rules:

The principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection.

[Signatures]

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* Language of the case: English.