



List of Relevant Asylum Cases from Court of Justice of the European Union
August 2011

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Asylum-related judgments from the Court of Justice of the European Union

Case C-19/08 Petrosian (interpretation of Articles 20(1)(d) and 20(2) of the Dublin Regulation, 2003/343/CE, 29 Jan. 2009):

Article 20(1)(d) and Article 20(2) of Regulation No 343/2003 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 are to 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.

Case C-465/07 Elgafaji (interpretation of Council Directive 2004/83/EC, Article 15(c), on qualification of refugees, 17 Feb. 2009):

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, in conjunction with Article 2(e) thereof, must be interpreted as meaning that:

- the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.

Cases C-175/08 to C-179/08 Abdulla and others (Council Directive 2004/83/EC, Article 11(1)(e), 2 March 2010):

1. Article 11(1)(e) 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 must be interpreted as meaning that:

- refugee status ceases to exist when, having regard to a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the person's fear of persecution for one of the reasons referred to in Article 2(c) of Directive 2004/83, on the basis of which refugee status was granted, no longer exist and that person has no other reason to fear being 'persecuted' within the meaning of Article 2(c) of Directive 2004/83;
- for the purposes of assessing a change of circumstances, the competent authorities of the Member State must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in Article 7(1) of Directive 2004/83 have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status;
- the actors of protection referred to in Article 7(1)(b) of Directive 2004/83 may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.

2. When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of Directive 2004/83, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.

3. In so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of Directive 2004/83 may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of that directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee. However, that may normally be the case only when the reason for persecution is different from that accepted at the time when refugee status was granted and only when there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage.

Case C-31/09 Bolbol (exclusion of Palestinians under Article 1D, Geneva Convention on refugee status, Council Directive 2004/83/EC, Article 12(1)(a), 17 June 2010):

For the purposes of the first sentence of Article 12(1)(a) 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, a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance.

Cases C-57/09 and C-101/09 B and D (exclusion and terrorism, Council Directive 2004/83/EC, Articles 12(2)(b) and (c), 9 Nov. 2010):

1. Article 12(2)(b) and (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 must be interpreted as meaning that:

- the fact that a person has been a member of an organisation which, because of its involvement in terrorist acts, is on the list forming the Annex to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and that that person has actively supported the armed struggle waged by that organisation does not automatically constitute a serious reason for considering that that person has committed 'a serious non-political crime' or 'acts contrary to the purposes and principles of the United Nations';
- the finding, in such a context, that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment on a case-by-case basis of the specific facts, with a view to determining whether the acts committed by the organisation concerned meet the conditions laid down in those provisions and whether individual responsibility for carrying out those acts can be attributed to the person concerned, regard being had to the standard of proof required under Article 12(2) of the directive.

2. Exclusion from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on the person concerned representing a present danger to the host Member State.

3. The exclusion of a person from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on an assessment of proportionality in relation to the particular case.

4. Article 3 of Directive 2004/83 must be interpreted as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to Article 12(2) of the directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the directive.

Case C-431/10 Commission v Ireland (non-transposition of Council Directive 2005/85/EC, 7 April 2011)

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Ireland has failed to fulfil its obligations under Article 43 of that directive;

2. Orders Ireland to pay the costs.

Case C-69/10 Samba Diouf (interpretation of Council Directive 2005/85/EC, Article 39, on asylum procedures, 28 July 2011)

On a proper construction, 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 the principle of effective judicial protection, do not preclude national rules such as those at issue in the main proceedings, 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 referring court.

Pending preliminary references before the Court of Justice

Case C-411/10 NS, heard jointly with Case C-493/10 (reference from Court of Appeal (England and Wales) concerning Dublin Regulation, 2003/343/CE, Article 3(2))

1. Does a decision made by a Member State under Article 3(2) of Council Regulation 343/2003 ('the Regulation') whether to examine a claim for asylum which is not its responsibility under the criteria set out in Chapter III of the Regulation fall within the scope of EU law for the purposes of Article 6 of the Treaty of European Union and/or Article 51 of the Charter of Fundamental Rights of the European Union ('the Charter')?

If the answer to Question 1 is 'yes':

2. Is the duty of a Member State to observe EU fundamental rights (including the rights set out in Articles 1,4, 18, 19(2) and 47 of the Charter) discharged where that State sends the asylum seeker to the Member State which Article 3(1) designates as the responsible State in accordance with the criteria set out in Chapter III of the Regulation ('the Responsible State'), regardless of the situation in the Responsible State?

3. In particular, does the obligation to observe EU fundamental rights preclude the operation of a conclusive presumption that the Responsible State will observe (i) the claimant's fundamental rights under EU law; and/or (ii) the minimum standards imposed by Directives 2003/9/EC ('the Reception Directive'); 2004/83/EC ('the Qualification Directive') and/or 2005/85/EC ('the Procedures Directive') (together referred to as 'the Directives')?

4. Alternatively, is a Member State obliged by EU law, and if so, in what circumstances, to exercise the power under Article 3(2) of the Regulation to examine and take responsibility for a claim, where transfer to the Responsible State would expose the claimant to a risk of violation of his fundamental rights, in particular the rights set out in Articles 1,4, 18, 19(2), and/or 47 of the Charter, and/or to a risk that the minimum standards set out in the Directives will not be applied to him?

5. Is the scope of the protection conferred upon a person to whom the Regulation applies by the general principles of EU law, and, in particular, the rights set out in Articles 1,18, and 47 of the Charter wider than the protection conferred by Article 3 of the European Convention on Human Rights and Fundamental Freedoms ('the Convention')?

6. Is it compatible with the rights set out in Article 47 of the Charter for a provision of national law to require a Court, for the purpose of determining whether a person may lawfully be removed to another Member State pursuant to the Regulation, to treat that Member State as a State from which the person will not be sent to another State in contravention of his rights pursuant to the Convention or his rights pursuant to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees?

7. Insofar as the preceding questions arise in respect of the obligations of the United Kingdom, are the answers to Questions 2-4 qualified in any respect so as to take account of the Protocol (No. 30) on the application of the Charter to Poland and to the United Kingdom?

Case C-493/10 M.E and others, heard jointly with Case C-411/10 (Irish High Court reference on Dublin Regulation, 2003/343/CE)

1. Is the transferring Member State under Council Regulation (EC) No. 343/2003 obliged to assess the compliance of the receiving Member State with Article 18 of the Charter of Fundamental Rights and Freedoms of the EU, Council Directives 2003/9EC, 2004/83/EC and 2005/85/EC and Council Regulation (EC) No. 343/2003?

2. If the answer is yes, and if the receiving Member State is found not to be in compliance with one or more of those provisions, is the transferring Member State obliged to accept responsibility for examining the application under Article 3(2) of Council Regulation (EC) No. 343/2003?

Case C-620/10 Kastrati (Swedish Kammarrätten i Stockholm – Migrationsöverdomstolen reference on Dublin Regulation, 2003/343/CE)

1. In the light *inter alia* of the stipulations of Article 5(2) of Regulation No 343/2003 and/or the absence of provisions in the regulation on the cessation of a Member State's responsibility to examine an asylum application other than those contained in the second subparagraph of Article 4(5) and Article 16(3) and (4), is Regulation No 343/2003 to be interpreted as meaning that the withdrawal of an asylum application does not affect the possibility of applying the regulation?

2. Is the stage in the process at which the asylum application is withdrawn relevant in answering the question set out above?

Case C-4/11 Puid (German Hessischer Verwaltungsgerichtshof reference on Dublin Regulation, 2003/343/CE, Article 3(2))

1. Is the first sentence of Article 3(2) of Regulation 343/2003, pursuant to which a Member State is entitled to examine an asylum application made to it which, under Article 3(1) of the regulation, another Member State is responsible for ('the Member State assuming responsibility'), in derogation from that responsibility (the so-called 'right to assume responsibility'), to be interpreted as meaning that the duty of a Member State to exercise the right granted to it under that provision to the benefit of asylum-seekers can also be inferred from reasons not directly associated with the asylum-seeker himself or other particularities of an individual case, but which result from a situation in the Member State assuming responsibility which poses a threat to the fundamental rights of asylum-seekers under the Charter of Fundamental Rights of the European Union ('Charter of Fundamental Rights')?

2. If the first question should be answered in the affirmative:

Does the case where the Member State assuming responsibility has failed to satisfy in a serious manner and for an uncertain period of time one or several of the requirements laid down in Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (OJ 2003 L 31, p. 18) and 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) provide relevant grounds for a Member State to be required to assume responsibility as a result of the situation in the Member State required to assume responsibility with a view to protecting the fundamental rights in Article 3(1), Article 4, Article 18, Article 19(2) and Article 47 of the Charter of Fundamental Rights?

3. If the second question should be answered in the negative:

Is there a duty on the part of the Member States to exercise their right under the first sentence of Article 3(2) of Regulation 343/2003 in view of the guarantees laid down in the Charter of Fundamental Rights referred to above at any rate if, in the Member State assuming responsibility, particularly serious deficiencies exist which could fundamentally compromise the procedural guarantees for asylum-seekers or pose a threat to the existence or the physical integrity of the transferred asylum-seeker?

4. If either the second or third question should be answered in the affirmative:

Does an enforceable personal right on the part of the asylum-seeker to force a Member State to assume responsibility result from the duty of the Member States to exercise their right under the first sentence of Article 3(2) of Regulation 343/2003?

Joined Cases C-71/11 Y and C-99/11 Z (German Bundesverwaltungsgericht references on Council Directive 2004/83/EC, Article 9(1)(a))

1. Is Article 9(1)(a) of Directive 2004/83/EC to be interpreted as meaning that not every interference with religious freedom which breaches Article 9 of the European Convention on Human Rights constitutes an act of persecution within the meaning of Article 9(1)(a) of Directive 2004/83/EC, but that a severe violation of religious freedom as a basic human right arises only if the core area of that religious freedom is adversely affected?

2. If Question 1 is to be answered in the affirmative:

(a) Is the core area of religious freedom limited to the profession and practice of faith in the areas of the home and neighbourhood, or can there also be an act of persecution, within the meaning of Article 9(1)(a) of Directive 2004/83/EC, in cases where, in the country of origin, the practice of faith in public gives rise to a risk to body, life or physical freedom and the applicant accordingly abstains from such practice?

(b) If the core area of religious freedom can also comprise certain religious practices in public:

- does it suffice in that case, in order for there to be a severe violation of religious freedom, that the applicant feels that such practice of his faith is indispensable in order for him to preserve his religious identity,
- or is it further necessary that the religious community to which the applicant belongs should regard that religious practice as constituting a central part of its doctrine,
- or can further restrictions arise as a result of other circumstances, such as the general conditions in the country of origin?

3. If Question 1 is to be answered in the affirmative:

Is there a well-founded fear of persecution, within the meaning of Article 2(c) of Directive 2004/83/EC, if it is established that the applicant will carry out certain religious practices — other than those falling within the core area — after returning to the country of origin, even though these will give rise to a risk to body, life or physical freedom, or is the applicant to be expected to abstain from engaging in such religious practices in the future?

Case C-277/11 MM v Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Irish High Court reference on Council Directive 2004/83/EC, Article 4(1))

In a case where an applicant seeks subsidiary protection status following a refusal to grant refugee status and it is proposed that such an application should be refused, does the requirement to cooperate with an applicant imposed on a Member State in Article 4(1) of Council Directive 2004/83/EC require the administrative authorities of the Member State in question to supply such applicant with the results of such an assessment before a decision is finally made so as to enable him or her to address those aspects of the proposed decision which suggest a negative result?

Case C-175/11 HID, BA v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Irish High Court reference on Council Directive 2005/85/EC)

1. Is a Member State precluded by the provisions of Council Directive 2005/85/EC of 1st December, 2005, or by general principles of European Union Law from adopting administrative measures which require that a class of asylum applications defined on the basis of the nationality or country of origin of the asylum applicant be examined and determined according to an accelerated or prioritised procedure?

2. Is Article 39 of the above Council Directive when read in conjunction with its Recital (27) and Article 267 TFEU to be interpreted to the effect that the effective remedy thereby required is provided for in national law when the function of review or appeal in respect of the first instance determination of applications is assigned by law to an appeal to the Tribunal established under Act of Parliament with competence to give binding decisions in favour of the asylum applicant on all matters of law and fact relevant to the application notwithstanding the existence of administrative or organisational arrangements which involve some or all of the following:

- The retention by a government Minister of residual discretion to override a negative decision on an application;
- The existence of organisational or administrative links between the bodies responsible for first instance determination and the determination of appeals;
- The fact that the decision making members of the Tribunal are appointed by the Minister and serve on a part-time basis for a period of three years and are remunerated on a case by case basis;
- The retention by the Minister of powers to give directions of the kind specified in §§ 12, 16(2B)(b) and 16(11) of the above Act?

Case C-179/11 CIMADE, Groupe d'information et de soutien des immigrés (GISTI) v Ministre de l'Intérieur, de l'Outre-Mer, des Collectivités Territoriales et de l'Immigration (French Conseil d'État reference on Council Directive 2003/9/EC)

1. Does Council Directive 2003/9/EC of 27 January 2003 guarantee the minimum reception conditions to which it refers to applicants in respect of whom a Member

State in receipt of an application for asylum decides, under Council Regulation (EC) No 343/2003 of 18 February 2003, to refer a request to another Member State which it deems to have jurisdiction to examine that asylum application, throughout the duration of the procedure for taking charge of them or for taking them back by that other Member State?

2. If the answer to that question is in the affirmative:

(a) Does the obligation, incumbent on the first Member State, to guarantee the minimum reception conditions cease at the moment of the acceptance decision by the State to which the referral was made, upon the actual taking charge or taking back of the asylum seeker, or at some other date?

(b) Which Member State should thus assume the financial burden of providing the minimum reception conditions during that period?

Other related cases

Case C-357/09 Kadzoev (interpretation of Council Directive 2008/115/EC, Articles 15(4)-(6), 30 Nov. 2009)

1. Article 15(5) and (6) 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 must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include a period of detention completed in connection with a removal procedure commenced before the rules in that directive become applicable.

2. A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Directive 2008/115.

3. Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.

4. Article 15(4) of Directive 2008/115 must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted.

5. Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.

6. Article 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the

person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.

Case C-61/11 Mrad (interpretation of Council Directive 2008/115/EC, Articles 15 and 16, 28 Apr. 2011)

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, in particular Articles 15 and 16 thereof, must be interpreted as precluding a Member State's legislation, such as that at issue in the main proceedings, which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.

Joined Cases C-188/10 Melki and C-189/10 Abdeli (interpretation of Articles 67 and 267, TFEU, and Regulation 2006/562/EC, 16 Apr. 2010)

1. Article 267 TFEU precludes Member State legislation which establishes an interlocutory procedure for the review of the constitutionality of national laws, in so far as the priority nature of that procedure prevents – both before the submission of a question on constitutionality to the national court responsible for reviewing the constitutionality of laws and, as the case may be, after the decision of that court on that question – all the other national courts or tribunals from exercising their right or fulfilling their obligation to refer questions to the Court of Justice for a preliminary ruling. On the other hand, Article 267 TFEU does not preclude such national legislation, in so far as the other national courts or tribunals remain free:

- to refer to the Court of Justice for a preliminary ruling, at whatever stage of the proceedings they consider appropriate, even at the end of the interlocutory procedure for the review of constitutionality, any question which they consider necessary,
- to adopt any measure necessary to ensure provisional judicial protection of the rights conferred under the European Union legal order, and
- to disapply, at the end of such an interlocutory procedure, the national legislative provision at issue if they consider it to be contrary to European Union law.

It is for the referring court to ascertain whether the national legislation at issue in the main proceedings can be interpreted in accordance with those requirements of European Union law.

2. Article 67(2) TFEU, and Articles 20 and 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), preclude national legislation which grants to the police authorities of the Member State in question the power to check, solely within an area of 20 kilometres from the land border of that State with States party to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990, the identity of any person, irrespective of his behaviour and of specific circumstances giving rise to a risk of

breach of public order, in order to ascertain whether the obligations laid down by law to hold, carry and produce papers and documents are fulfilled, where that legislation does not provide the necessary framework for that power to guarantee that its practical exercise cannot have an effect equivalent to border checks.