



## Reports of Cases

**Case C-175/11**

**H. I. D. and B. A.**

**v**

**Refugee Applications Commissioner and Others**

(Request for a preliminary ruling from the High Court (Ireland))

(Request for a preliminary ruling — Common European Asylum System — Application by a national of a third country seeking refugee status — Directive 2005/85/EC — Article 23 — Possibility of prioritising the processing of asylum applications — National procedure applying a prioritised procedure for the examination of applications by persons belonging to a certain category defined on the basis of nationality or country of origin — Right to an effective judicial remedy — Article 39 of Directive 2005/85 — Concept of ‘court or tribunal’ within the meaning of that article)

Summary – Judgment of the Court (Second Chamber), 31 January 2013

- 1. Border controls, asylum and immigration — Asylum policy — Procedures in Member States for granting or withdrawing refugee status — Directive 2005/85 — National legislation making it possible to examine an asylum application in the context of an accelerated or prioritised procedure — Lawfulness — No breach of the principle of non-discrimination*  
*(Council Directive 2005/85, Arts 8(2) and 23(3) and (4))*
- 2. European Union law — Principles — Right to effective judicial protection — Enshrined in the Charter of Fundamental Rights of the European Union*  
*(Charter of Fundamental Rights of the European Union, Art. 47; Council Directive 2005/85, Art. 39)*
- 3. Questions referred for a preliminary ruling — Reference to the Court — Definition of national court or tribunal within the meaning of Article 267 TFEU — ‘Refugee Appeals Tribunal’ (appeal body for the decisions of the Irish authority responsible for examining applications for asylum) included*  
*(Art. 267 TFEU)*
- 4. Border controls, asylum and immigration — Asylum policy — Procedures in Member States for granting and withdrawing refugee status — Directive 2005/85 — Right to an effective judicial remedy — National legislation which allows an applicant for asylum to lodge an appeal against the decision of the determining authority before a court or tribunal such as the Refugee Appeals Tribunal — Authority subject, in the event of a negative decision, to the residual discretion of the Minister — Possibility for the applicant for asylum to lodge an appeal against the decision of the appeal body before a higher court, and to contest the validity of the decision of the determining*

*authority directly before that court — Possibility of bringing an appeal against the decisions of the higher court — Lawfulness of the national legislation, the effectiveness of the remedy depending on the administrative and judicial system of each Member State considered as a whole*

*(Council Directive 2005/85, Art. 39)*

1. Article 23(3) and (4) of Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status must be interpreted as not precluding a Member State from examining by way of prioritised or accelerated procedure, in accordance with the basic principles and guarantees set out in Chapter II of that directive, certain categories of asylum applications defined on the basis of the criterion of the nationality or country of origin of the applicant.

Member States enjoy a discretion with regard to the implementation of the provisions of Directive 2005/85 in the light of the particular features of their national law, including when implementing the procedure for granting and withdrawing refugee status. First, under Article 23(3) of the directive, Member States may prioritise or accelerate any examination, including where the application is likely to be well-founded or where the applicant has special needs. Secondly, under Article 23(4), Member States may apply a prioritised or accelerated examination procedure on the basis of 15 specific reasons justifying the application of such a procedure. It is apparent from those provisions that the list of applications which can be subject to prioritised or accelerated examination is indicative and non-exhaustive, and that Member States may thus decide to examine in priority, or by way of an accelerated procedure, applications which do not fall within any of the categories listed in paragraph (4), provided that they comply with the basic principles and guarantees set out in Chapter II of the directive.

As to the principle of non-discrimination, under the system established by the directive, the country of origin and the nationality of the applicant play a decisive role. It is clear from Article 8(2)(b) of the directive that the country of origin of the applicant has a bearing on the determining authority's decision, given that the determining authority is required to keep abreast of the general situation existing in that country in order to determine whether a danger exists for the applicant for asylum and, if necessary, whether that person has need of international protection.

None the less, in order to avoid any discrimination between applicants for asylum from a specific third country whose applications might be the subject of a prioritised examination procedure and nationals of other third countries whose applications are subject to the normal procedure, that prioritised procedure must not deprive applicants in the first category of the guarantees required by Article 23 of Directive 2005/85, which apply to all forms of procedure.

(see paras 63, 64, 67, 69-71, 73, 74, 77, operative part 1)

2. See the text of the decision.

(see para. 80)

3. See the text of the decision.

(see paras 83, 88, 95-97, 105)

4. Article 39 of Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status must be interpreted as not precluding national legislation which allows an applicant for asylum either to lodge an appeal against the decision of the determining authority before a court or tribunal such as the Refugee Appeals Tribunal, and to bring an appeal

against the decision of that tribunal before a higher court, or to contest the validity of that determining authority's decision before that higher court, the judgments of which may be the subject of an appeal before the supreme court of the relevant Member State.

(see paras 98, 105, operative part 2)