Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

18 December 2014*

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 19(2) — Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or subsidiary protection status — Person eligible for subsidiary protection — Article 15(b) — Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin — Article 3 — More favourable standards — Applicant suffering from a serious illness — No appropriate treatment available in the country of origin — Article 28 — Social protection — Article 29 — Health care)

In Case C-542/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour constitutionnelle (Belgium), made by decision of 26 September 2013, received at the Court on 17 October 2013, in the proceedings

Mohamed M'Bodj

v

État belge,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, M. Ilešič, L. Bay Larsen (Rapporteur), T. von Danwitz, J.-C. Bonichot and K. Jürimäe, Presidents of Chambers, A. Rosas, E. Juhász, A. Arabadjiev, C. Toader, M. Safjan, D. Šváby, M. Berger and A. Prechal, Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 24 June 2014,

after considering the observations submitted on behalf of:

— Mr M'Bodj, by S. Benkhelifa, avocate,

— the Belgian Government, by C. Pochet and T. Materne, acting as Agents, and J.-J. Masquelin, D. Matray, J. Matray, C. Pironf and N. Schynts, avocats,

— the German Government, by T. Henze and B. Beutler, acting as Agents,

— the Greek Government, by M. Michelogiannaki, acting as Agent,

* Language of the case: French.

— the French Government, by F.-X. Bréchot and D. Colas, acting as Agents,

— the United Kingdom Government, by C. Banner, Barrister,

— the European Commission, by M. Condou-Durande and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 July 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 2(e) and (f), 15, 18, 20(3), 28 and 29 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; corrigenda OJ 2005 L 204, p. 24, and OJ 2011 L 278, p. 13).

2 The request has been made in proceedings between Mr M'Bodj, a Mauritanian national, and the État belge (Belgian State) concerning the rejection by the Service public fédéral Sécurité sociale of Mr M'Bodj's application for loss of income allowance and income support.

Legal context

The European Convention for the Protection of Human Rights and Fundamental Freedoms

3 The European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 3 November 1950 ('the ECHR'), provides in Article 3, which is headed 'Prohibition of torture', as follows:

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

EU law

4 Recitals 5, 6, 9, 10, 24 and 26 in the preamble to Directive 2004/83 are worded as follows:

'(5) The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

(6) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States.

…

(9) Those third-country nationals or stateless persons, who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds, fall outside the scope of this Directive.

(10) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union ['the Charter']. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members.

…

(24) Minimum standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Convention (relating to the Status of Refugees, which was signed in Geneva on 28 July 1951 [*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954)]).

…

(26) Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.'

5 Article 2(a), (c), (e), (f) and (g) of Directive 2004/83 provides as follows:

'For the purposes of this Directive:

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

…

(c) "refugee" means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country …;

…

(e) "person eligible for subsidiary protection" means a third-country national or a stateless person 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, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 … and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(f) "subsidiary protection status" means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection;

(g) "application for international protection" means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;'.

6 Article 3 of Directive 2004/83 provides as follows:

'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.'

7 Article 6 of Directive 2004/83 is worded as follows:

'Actors of persecution or serious harm include:

(a) the State;

(b) parties or organisations controlling the State or a substantial part of the territory of the State;

(c) non-State actors, if it can be demonstrated that the actors mentioned in (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm …'

8 Under the heading 'Serious harm', Article 15 in Chapter V of Directive 2004/83, entitled 'Qualification for subsidiary protection', provides as follows:

'Serious harm consists of:

(a) death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

9 Article 18 of Directive 2004/83 states as follows:

'Member States shall grant subsidiary protection status to a third-country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.'

10 Article 20(3) of Directive 2004/83 provides as follows:

'When implementing [Chapter VII], Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.'

11 Articles 28 and 29 of Directive 2004/83, which are in Chapter VII, provide that beneficiaries of refugee or subsidiary protection status are to receive social assistance benefits and to have access to health care.

Belgian law

12 Article 9b of the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and removal of foreign nationals, in the version applicable at the material time ('the Law of 15 December 1980'), provides in paragraph 1 thereof as follows:

'A foreign national residing in Belgium who can prove his identity in accordance with paragraph 2 and who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment where there is no appropriate treatment in his country of origin or in the country in which he resides may apply to the Minister or his representative for leave to reside in the Kingdom of Belgium.'

13 Article 48/4 of the Law of 15 December 1980 is worded as follows:

'(1) Subsidiary protection status shall be granted to a foreign national who does not qualify as a refugee and to whom Article 9b is not applicable, and with regard to whom there are substantial grounds for believing that, if returned to his country of origin or, in the case of a stateless person, to his country of former habitual residence, he would face a real risk of serious harm as referred to in paragraph 2, and who is unable or, owing to that risk, unwilling to avail himself of the protection of that country, in so far as that person is not covered by the exclusion clauses set out in Article 55/4.

(2) The following are considered to constitute serious harm:

(a) death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in his country of origin; or

(c) serious threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.'

14 Article 4 of the Law of 27 February 1987 concerning disability allowances ('the Law of 27 February 1987') provides as follows:

'(1) The allowances referred to in Article 1 may be granted only to a person who is actually residing in Belgium and is:

1° Belgian;

2° a national of a Member State of the European Union;

…

5° a refugee …

…

(2) The King may, by Decree deliberated in the Council of Ministers, extend the application of the present law, on such conditions as he may determine, to categories of persons other than those referred to in paragraph 1 who are actually resident in Belgium.

…'

15 By Royal Decree of 9 February 2009, amending the Royal Decree of 17 July 2006 implementing Article 4(2) of the Law of 27 February 1987 concerning disability allowances, the King extended the application of that law, with effect from 12 December 2007, to foreign nationals who are registered in the Population Register.

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

16 Mr M'Bodj arrived in Belgium on 3 January 2006. He applied for asylum and, subsequently, for leave to reside on medical grounds. Both applications being refused, he made a number of unsuccessful appeals against the decisions rejecting those applications.

17 On 27 May 2008, Mr M'Bodj made a further application for leave to reside on medical grounds, pursuant to Article 9b of the Law of 15 December 1980, on the basis of the serious after-effects he was suffering as a result of an assault he had been the victim of in Belgium. That application was accepted as admissible on 19 September 2008 and, as a result, Mr M'Bodj was registered in the Register of Foreign Nationals.

18 After receiving a general certificate recognising a reduction in earnings capacity and loss of independence, Mr M'Bodj applied, on 21 April 2009, for loss of income allowance and income support.

19 On 5 October 2009, that application was refused by the Service public fédéral Sécurité sociale (Federal Public Social Security Authority) on the ground that Mr M'Bodj did not fulfil the nationality requirements under Article 4(1) of the Law of 27 February 1987. That authority also stated that Mr M'Bodj was registered in the Register of Foreign Nationals and was not therefore entitled to settle in Belgium.

20 On 31 December 2009, Mr M'Bodj brought an action for annulment of the decision rejecting that application before the tribunal du travail de Liège (Labour Court, Liège).

21 Independently of that action, Mr M'Bodj was granted indefinite leave to remain in Belgium on account of his state of health on 17 May 2010.

22 By judgment of 8 November 2012, the tribunal de travail de Liège decided to refer to the Cour constitutionnelle (Constitutional Court) a question for a preliminary ruling, the purpose of which was, in essence, to determine whether Article 4 of the Law of 27 February 1987 infringes certain provisions of the Belgian constitution, read in conjunction with Article 28(2) of Directive 2004/83, in so far as it precludes the grant of disability allowances to persons residing in Belgium on the basis of Article 9b of the Law of 15 December 1980 and thus enjoying international protection status provided for by that directive, whereas that provision permits the payment of such allowances to refugees, who, according to that court, enjoy the same international protection.

23 In its order for reference, the Cour constitutionnelle states that, while it has already given a ruling on a question concerning the different treatment of those two categories of foreign nationals, that question did not require it to take account of Directive 2004/83.

24 In those circumstances, the Cour constitutionnelle decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 2(e) and (f), 15, 18, 28 and 29 Directive 2004/83 be interpreted as meaning that not only a person who has been granted, at his request, subsidiary protection status by an independent authority of the Member State must be eligible for the social welfare and health care referred to in Articles 28 and 29 of that directive, but also a foreign national who has been granted leave by an administrative authority of a Member State to reside in the territory of that Member State and who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment where there is no appropriate treatment in his country of origin or in the country in which he resides?

(2) If the answer to the first question referred for a preliminary ruling is that the two categories of persons who are there described must be eligible for the social welfare and health care referred to therein, must Articles 20(3), 28(2) and 29(2) of Directive 2004/83 be interpreted as meaning that the obligation imposed on Member States to take into account the specific situation of vulnerable persons such as the disabled implies that the latter must be granted the allowances provided for

by the Law of 27 February 1987 … in view of the fact that social assistance which takes account of the disability may be granted pursuant to the Basic Law of 8 July 1976 on public social welfare centres?'

Consideration of the questions referred

Question 1

25 By its first question, the referring court is asking, in essence, whether Articles 28 and 29 of Directive 2004/83, read in conjunction with Articles 2(e), 3, 15 and 18 thereof, are to be interpreted as requiring a Member State to grant the social welfare and health care benefits provided for in those measures to a third country national who has been granted leave to reside in the territory of that Member State under national legislation such as that at issue in the main proceedings, which allows a foreign national who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment to reside in the Member State, where there is no appropriate treatment in that foreign national's country of origin or in the third country in which he resided previously.

26 It is apparent from Articles 28 and 29 of Directive 2004/83 that those provisions are applicable to persons with refugee status and subsidiary protection status.

27 It is common ground, first, that the national legislation at issue in the main proceedings does not govern the right of residence of third country nationals who have a well-founded fear of being persecuted within the meaning of Article 2(c) of Directive 2004/83 and, second, that its purpose is not to confer refugee status on third country nationals who are granted leave to reside on the basis of that legislation.

28 It follows that the Kingdom of Belgium would be required, pursuant to Articles 28 and 29 of Directive 2004/83, to grant the benefits covered by those provisions to third country nationals granted leave to reside in Belgium under the national legislation at issue in the main proceedings only if the leave to remain were to be regarded as also conferring subsidiary protection status.

29 Article 18 of Directive 2004/83 provides that Member States are to grant that status to a third-country national eligible for subsidiary protection.

30 It should be noted, in that regard, that the three types of serious harm defined in Article 15 of Directive 2004/83 constitute the conditions to be fulfilled if a person is to be eligible for subsidiary protection, where, in accordance with Article 2(e) of that directive, substantial grounds have been shown for believing that the applicant faces a real risk of such harm if returned to the country of origin concerned (judgments in *Elgafaji*, C-465/07, EU:C:2009:94, paragraph 31, and *Diakité*, C-285/12, EU:C:2014:39, paragraph 18).

31 The risks faced by a third country national of a deterioration in his state of health which is not the result of that person being intentionally deprived of health care — against which the national legislation at issue in the main proceedings provides protection — are not covered by Article 15(a) and (c) of Directive 2004/83, as harm as defined by those provisions, consists of the death penalty or execution and serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict, respectively.

32 Article 15(b) of Directive 2004/83 defines serious harm as the torture or inhuman or degrading treatment or punishment of a third country national in his country of origin.

33 It is clear from that provision that it is applicable only to the inhuman or degrading treatment of an applicant in his country of origin. It follows that the EU legislature envisaged that subsidiary protection should be granted only in those cases in which such treatment occurred in the applicant's country of origin.

34 Certain factors specific to the context in which Article 15(b) of Directive 2004/83 occurs must, in the same way as the directive's objectives, also be taken into account for the purpose of interpreting that provision (see, to that effect, judgment in *Maatschap L.A. en D.A.B. Langestraat en P. Langestraat-Troost*, C-11/12, EU:C:2012:808, paragraph 27 and the case-law cited).

35 Accordingly, Article 6 of Directive 2004/83 sets out a list of those deemed responsible for inflicting serious harm, which supports the view that such harm must take the form of conduct on the part of a third party and that it cannot therefore simply be the result of general shortcomings in the health system of the country of origin.

36 Similarly, recital 26 in the preamble to Directive 2004/83 states that risks to which the population of a country or a section of the population is generally exposed do not normally in themselves create an individual threat which would qualify as serious harm. It follows that the risk of deterioration in the health of a third country national suffering from a serious illness as a result of the absence of appropriate treatment in his country of origin is not sufficient, unless that third country national is intentionally deprived of health care, to warrant that person being granted subsidiary protection.

37 That interpretation is also supported by recitals 5, 6, 9 and 24 in the preamble to Directive 2004/83, from which it is apparent that, while the directive is intended to complement and add to, by means of subsidiary protection, the protection of refugees enshrined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, through the identification of persons genuinely in need of international protection (see, to that effect, judgment in *Diakité*, EU:C:2014:39, paragraph 33), its scope does not extend to persons granted leave to reside in the territories of the Member States for other reasons, that is, on a discretionary basis on compassionate or humanitarian grounds.

38 The requirement to interpret Article 15(b) of Directive 2004/83 in a manner consistent with Article 19(2) of the Charter (see, to that effect, judgment in *Abed El Karem El Kott and Others*, C-364/11, EU:C:2012:826, paragraph 43 and the case-law cited), to the effect that no person may be returned to a State in which there is a serious risk that that person will be subjected to inhuman and degrading treatment, and having due regard for Article 3 of the ECHR, to which Article 15(b), in essence, corresponds (judgment in *Elgafaji*, EU:C:2009:94, paragraph 28), is not such as to call that interpretation into question.

39 It should be noted in that regard that, according to the case-law of the European Court of Human Rights that, while non-nationals subject to a decision authorising their removal cannot, in principle, claim any entitlement to remain in the territory of a State in order to continue to benefit from medical, social or other forms of assistance and services provided by that State, a decision to remove a foreign national suffering from a serious physical or mental illness to a country where the facilities for the treatment of the illness are inferior to those available in that State may raise an issue under Article 3 ECHR in very exceptional cases, where the humanitarian grounds against removal are compelling (see, inter alia, European Court of Human Rights, judgment in *N. v. the United Kingdom* [GC], no. 26565/05, § 42, ECHR 2008).

40 None the less, the fact that a third country national suffering from a serious illness may not, under Article 3 ECHR as interpreted by the European Court of Human Rights, in highly exceptional cases, be removed to a country in which appropriate treatment is not available does not mean that that person should be granted leave to reside in a Member State by way of subsidiary protection under Directive 2004/83.

41 In the light of the foregoing, Article 15(b) of Directive 2004/83 must be interpreted as meaning that serious harm, as defined by the directive, does not cover a situation in which inhuman or degrading treatment, such as that referred to by the legislation at issue in the main proceedings, to which an applicant suffering from a serious illness may be subjected if returned to his country of origin, is the result of the fact that appropriate treatment is not available in that country, unless such an applicant is intentionally deprived of health care.

42 None the less, Article 3 of Directive 2004/83 allows Member States to introduce or retain more favourable standards for determining, inter alia, who qualifies as a person eligible for subsidiary protection, in so far as those standards are compatible with the directive (see, to that effect, judgment in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 114).

43 The reservation set out in Article 3 of Directive 2004/83 precludes a Member State from introducing or retaining provisions granting the subsidiary protection status provided for in the directive to a third country national suffering from a serious illness on the ground that there is a risk that that person's health will deteriorate as a result of the fact that adequate treatment is not available in his country of origin, as such provisions are incompatible with the directive.

44 In the light of the considerations set out at paragraphs 35 to 37 above, it would be contrary to the general scheme and objectives of Directive 2004/83 to grant refugee status and subsidiary protection status to third country nationals in situations which have no connection with the rationale of international protection.

45 It follows that legislation such as that at issue in the proceedings before the referring court cannot be regarded, for the purpose of Article 3 of Directive 2004/83, as introducing a more favourable standard for determining who is eligible for subsidiary protection. Third country nationals granted leave to reside under such legislation are not, therefore, persons with subsidiary protection status to whom Articles 28 and 29 of the directive would be applicable.

46 Moreover, the grant by a Member State of such national protection status for reasons other than the need for international protection within the meaning of Article 2(a) of Directive 2004/83 — that is to say, on a discretionary basis on compassionate or humanitarian grounds — does not, as stated in recital 9 thereof, fall within the scope of that directive (judgment in *B and D*, EU:C:2010:661, paragraph 118).

47 In the light of the foregoing considerations, the answer to Question 1 is that Articles 28 and 29 of Directive 2004/83, read in conjunction with Articles 2(e), 3, 15, and 18 of that directive, are to be interpreted as not requiring a Member State to grant the social welfare and health care benefits provided for in those measures to a third country national who has been granted leave to reside in the territory of that Member State under national legislation such as that at issue in the main proceedings, which allows a foreign national who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment to reside in that Member State, where there is no appropriate treatment in that foreign national's country of origin or in the third country in which he resided previously, unless such a foreign national is intentionally deprived of health care in that country.

Question 2

48 Having regard to the reply given to the first question, there is no need to reply to the second question.

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 (Grand Chamber) hereby rules:

Articles 28 and 29 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, read in conjunction with Articles 2(e), 3, 15, and 18 of that directive, are to be interpreted as not requiring a Member State to grant the social welfare and health care benefits provided for in those measures to a third country national who has been granted leave to reside in the territory of that Member State under national legislation such as that at issue in the main proceedings, which allows a foreign national who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment to reside in that Member State, where there is no appropriate treatment in that foreign national's country of origin or in the third country in which he resided previously, unless such a foreign national is intentionally deprived of health care in that country.

[Signatures]