Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 29 June 2016[1]

Case C-429/15

Evelyn Danqua
v
The Minister for Justice and Equality, Ireland, Attorney General
(Request for a preliminary ruling

from the Court of Appeal (Ireland))

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2004/83/EC — Minimum standards for granting refugee status or subsidiary protection status — Directive 2005/85/EC — Minimum standards on procedures in Member States for granting and withdrawing refugee status — National procedural rule limiting to 15 working days the period within which an application for subsidiary protection must be made following the rejection of the application for refugee status — Lawfulness — Procedural autonomy of the Member States — Principles of equivalence and effectiveness)

1. This request for a preliminary ruling has arisen in proceedings between Ms Evelyn Danqua, a Ghanaian national, and the Minister for Justice and Equality,[2] Ireland and the Attorney General, concerning the lawfulness of the procedure followed by the Irish authorities in examining her application for subsidiary protection.

2. Subsidiary protection is international protection that, under Article 2(e) of Directive 2004/83/EC,[3] concerns third country nationals who do not qualify as refugees but in respect of whom substantial grounds have been shown for believing that they would face a real risk of suffering serious harm if returned to their country of origin. Under the Common European Asylum System, subsidiary protection supplements the rules governing refugee status laid down in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951.[4]

1 — Original language: French.

2 — 'The Minister'.

3 — Council Directive 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).

4 — *United Nations Treaty Series*, vol. 189, p. 150, No 2545 (1954). The Convention came into force on 22 April 1954.

3. The present case provides the Court with a further opportunity to rule on the procedural rules applicable to applications for subsidiary protection made in Ireland on the basis of Directive 2004/83. In its judgments of 22 November 2012 in *M.* (C-277/11, EU:C:2012:744),[5] 31 January 2013 in *D. and A.* (C-175/11, EU:C:2013:45),[6] and 8 May 2014 in *N.* (C-604/12, EU:C:2014:302),[7] the Court has already ruled on various aspects of that procedure in the light of fundamental principles of EU law, such as the right to be heard, the right to an effective judicial remedy or the right to good administration. The considerable number of those references for a preliminary ruling can be explained by the particularities that characterised until recently the procedure for granting international protection in Ireland.[8] Whereas the majority of the Member States have adopted a single procedure in which they consider the application for asylum made by the person concerned in the light of the two forms of international protection, Ireland originally introduced two separate procedures for the purposes of examining, respectively, an application for asylum and an application for subsidiary protection, it being possible to make the latter application only if the former had been rejected.

4. Thus, under Regulation 4(1) of the European Communities (Eligibility for Protection) Regulations 2006,[9] following the rejection of a person's application for asylum, the letter by which the Minister notifies the person concerned that the Minister proposes to make a deportation order[10] must include a statement informing that person that he may, within a period of 15 working days of that notification, make an application for subsidiary protection status and for temporary leave to remain in Ireland ('application for leave to remain').

5. It was pursuant to that provision that Ms Danqua's application for subsidiary protection was rejected, and it is therefore the compatibility of that national procedural rule, which requires that the application for subsidiary protection status be made within a period of 15 working days of notification of the rejection of the application for refugee status, that is being debated by the parties in this case, in the light of both the principle of equivalence and the principle of effectiveness laid down in the Court's case-law.

6. In this Opinion, I shall first set out the reasons why, in my view, application of the principle of equivalence is irrelevant in a situation such as that in the main proceedings, which concerns two types of applications, both based on EU law, the purpose of and criteria for which are distinct.

7. Second, I shall examine the national procedural rule at issue in the main proceedings in the light of the principle of effectiveness. Although the Court of Appeal (Ireland) has not expressly raised the question of the compatibility of the national provision at issue in the light of that principle, I shall explain why such an examination is necessary having regard to the cooperation that must prevail in

5 — Judgment in which the Court ruled on the scope of the right to be heard in the context of the examination of an application for subsidiary protection. Following that judgment, the Supreme Court (Ireland) made a further reference for a preliminary ruling by which it asked the Court to clarify what, in concrete terms, observance of the right to be heard requires in such a procedure. The Opinion of Advocate General Mengozzi in *M.* (C-560/14, EU:C:2016:320) was delivered on 3 May 2016 and that case is pending before the Court.

6 — Judgment in which the Court ruled on the scope of the right to an effective judicial remedy in the context of a procedure such as that established in Ireland and on the rules applicable to accelerated or prioritised procedures.

7 — Judgment in which the Court ruled on the compatibility, having regard to the need to observe the principle of effectiveness and to the right to good administration, of the procedural rule established in Ireland under which an application for subsidiary protection may be considered only after an application for refugee status has been refused.

8 — At point 11 of his Opinion in *M.* (C-560/14, EU:C:2016:320), Advocate General Mengozzi noted that the procedure for examining an application for international protection has been the subject of two reforms in Ireland. Whereas the first reform, adopted in 2013, maintained the 'bi-furcated' system, the second reform, adopted in 2015, substituted for that procedure a single procedure for examining the two forms of international protection in accordance with the requirements laid down in Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

9 — Adopted by the Minister for Justice, Equality and Law Reform on 9 October 2006 and intended, inter alia, to transpose Directive 2004/83 ('the 2006 Regulations').

10 — Section 3(3) of the Immigration Act 1999.

the preliminary reference procedure between the national court and the Court. I shall then set out the reasons why, in my view, that procedural rule is not likely to ensure that persons seeking subsidiary protection are actually in a position to avail themselves of the rights conferred on them by Directive 2004/83.

8. I shall consequently propose that the competent national court be invited to determine whether the period within which the application for subsidiary protection status was made is reasonable, taking into account all the human and material circumstances surrounding the examination of the application for international protection. To that end, I shall suggest that, in my view, that court should examine whether the person concerned was put in a position that made it possible for her to exercise her rights effectively, taking into consideration, inter alia, the conditions under which she was assisted in completing her applications and the conditions under which she was given notification of the rejection of her application for refugee status.

I – Facts, national procedure and questions referred

9. On 13 April 2010, Ms Danqua made an application for asylum to the Office of the Refugee Applications Commissioner. She claimed that she was at risk, if returned to her country of origin, of being subjected to the *trokosi* practice, a form of ritual servitude affecting women.

10. In its report of 16 June 2010, that office issued a negative recommendation in respect of her application because of doubts about the credibility of those claims. That recommendation was confirmed on appeal by the Refugee Appeals Tribunal by decision of 13 January 2011.

11. On 9 February 2011, the Minister notified Ms Danqua of the rejection of her application for asylum, pursuant to Regulation 4(1) of the 2006 Regulations, and of his proposal to make a deportation order under section 3 of the Immigration Act 1999. That notification was accompanied by a notice informing Ms Danqua that she was entitled to make an application for subsidiary protection within a period of 15 working days of that notification.

12. Following the rejection of her application for asylum, the Refugee Legal Service ('the RLS') informed Ms Danqua that she would not be assisted in preparing her application for subsidiary protection. The RLS did, however, submit in her name an application for humanitarian leave to remain.

13. The order for reference states that that application was rejected on 23 September 2013 and a deportation order was adopted with regard to Ms Danqua by the Minister.

14. Ms Danqua then secured the services of private solicitors, who lodged an application for subsidiary protection status on 8 October 2013. By letter of 5 November 2013, the Minister informed Ms Danqua that her application could not be accepted on the ground that it had not been lodged within a period of 15 working days, as set out in the notification of 9 February 2011.

15. Ms Danqua then challenged that decision before the High Court (Ireland), relying, inter alia, on breach of the principle of equivalence in so far as there is no similar time limit for making an application for asylum.

16. By judgment of 16 October 2014, the High Court dismissed Ms Danqua's action, holding that the principle of equivalence was not applicable in the case in point since Ms Danqua was seeking to compare two procedural rules based on EU law. Ms Danqua then brought an appeal against that judgment before the Court of Appeal.

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

18. 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.

19. As regards the imposition of a time limit for making an application for subsidiary protection such as that at issue in the main proceedings, the referring court considers that that time limit is justified by objective considerations, bearing in mind the particularities of the Irish system, which, at the material time in the main proceedings, was characterised by two separate procedures, one following upon the other. The imposition of such a time limit serves, in particular, to ensure that applications for international protection are dealt with within a reasonable period.

20. 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?’

II – Preliminary observations relating to the admissibility of the reference for a preliminary ruling

21. The order for reference does not set out the national legal framework applicable to the present case, a point which may raise a question as to the admissibility of the present request for a preliminary ruling.

22. According to settled case-law, Article 267 TFEU establishes a procedure for close and direct cooperation between the Court and national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them. [11]

23. In that court-to-court dialogue, the two judicial bodies, acting in a spirit of mutual respect for their respective grounds of jurisdiction, each assume their own responsibilities. While the Court must do its utmost to help the referring court to interpret and apply EU law correctly, by giving it the widest discretion to refer matters to it, [12] the referring court must, for its part, take into account the unique function performed by the Court in this process and thus endeavour to provide it with all the information and evidence necessary to enable it to exercise its function in accordance with the objective set out in Article 267 TFEU.

11 — Order of 8 September 2011 in *Abdallah* (C-144/11, EU:C:2011:565, paragraph 9 and the case-law cited), and judgment of 13 March 2014 in *FIRIN* (C-107/13, EU:C:2014:151, paragraph 29 and the case-law cited).

12 — Judgment of 5 October 2010 in *Elchinov* (C-173/09, EU:C:2010:581, paragraph 26 and the case-law cited).

24. For that purpose, setting out the factual and legal context of the case in the main proceedings is a constituent, if not essential, element of the request for a preliminary ruling and its absence may be a ground for declaring the request for a preliminary ruling manifestly inadmissible. [13]

25. As regards the factual and legal context of the case, the Court therefore requires that the referring court set out at least in summary form the relevant facts and set out the tenor of the national provisions applicable and, where appropriate, the relevant national case-law. [14]

26. It is clear that the present request for a preliminary ruling does not set out the national legal context; indeed the Court of Appeal refrained from setting out expressly the references to the national provision at issue.

27. That said, I do not think, having regard to the context of the present reference for a preliminary ruling and its subject matter, that that lacuna warrants the request being declared inadmissible.

28. First, the grounds of the order for reference enable the tenor of the national provision at issue to be understood.

29. Second, the Court has held that 'the requirements [concerning the content of a request for a preliminary ruling] can be more easily fulfilled where the context of [that] request … is already largely familiar from a previous reference for a preliminary ruling'. [15]

30. As I have already stated, the Court has already ruled on various aspects of the procedure for granting subsidiary protection in Ireland in its judgments of 22 November 2012 in *M.* (C-277/11, EU:C:2012:744), 31 January 2013 in *D. and A.* (C-175/11, EU:C:2013:45), and 8 May 2014 in *N.* (C-604/12, EU:C:2014:302), and will soon give its ruling in *M.* (C-560/14), a case currently pending before it. The present request for a preliminary ruling is thus the fifth reference made by an Irish court concerning the procedural rules applicable to applications for subsidiary protection made prior to the reforms introduced in 2013 and 2015. [16]

31. As the Court's previous judgments show, the legal context applicable, in Ireland, to an application for subsidiary protection is therefore familiar; indeed, the national provision at issue is expressly referred to in paragraph 15 of the judgment of 8 May 2014 in *N.* (C-604/12, EU:C:2014:302).

32. Third, the Court is more demanding where the request for a preliminary ruling is made in the context of proceedings characterised by complex factual and legal situations, such as proceedings relating to competition and public procurement. [17]

33. In the present case, although the procedure for granting international protection is notable for its many procedural steps, the question of law referred to the Court is simple since it is presented very precisely, the interpretation requested concerning a provision the substance of which sets a time limit.

13 — See, inter alia, order of 15 April 2011 in *Debiasi* (C-613/10, EU:C:2011:266), and judgment of 16 June 2015 in *Gauweiler and Others* (C-62/14, EU:C:2015:400, paragraph 25).

14 — Order of 13 December 2012 in *Debiasi* (C-560/11, EU:C:2012:802, paragraph 24 and the case-law cited), and judgment of 9 October 2014 in *Petru* (C-268/13, EU:C:2014:2271, paragraph 22). See, also, order of 8 September 2011 in *Abdallah* (C-144/11, EU:C:2011:565, paragraph 10 and the case-law cited). See Article 94(b) of the Rules of Procedure of the Court and point 22 of the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling procedures (OJ 2012 C 338, p. 1).

15 — Order of 17 July 2014 in *3D I* (C-107/14, EU:C:2014:2117, paragraph 12).

16 — See footnote 8 of this Opinion.

17 — See, in relation to competition law, order of 21 November 2012 in *Fontaine* (C-603/11, EU:C:2012:731, paragraph 15), and, in relation to public procurement, judgment of 11 December 2014 in *Azienda sanitaria locale n. 5 'Spezzino' and Others* (C-113/13, EU:C:2014:2440, paragraphs 47 and 48).

34. Fourth, I note that the information contained in the request for a preliminary ruling has enabled the parties to the main proceedings and the European Commission to submit their observations.

35. In the light of those considerations, I am therefore satisfied that the Court has all the information necessary to enable it to exercise its function in accordance with the objective set out in Article 267 TFEU, despite the lacunae in the order for reference.

III – My analysis

36. EU law does not lay down precise rules determining the procedure for an application for subsidiary protection, and, in particular, the period within which such an application must be submitted to the competent national authority.

37. Directive 2004/83 does not seek, by its content or purpose, either to prescribe the procedural rules applicable to the examination of an application for international protection or to determine the procedural safeguards that the asylum applicant must, in that respect, be afforded.[18] That directive has the sole purpose of laying down the criteria common to all the Member States as regards the substantive conditions to be met by nationals of third countries in order to qualify for international protection[19] and the substance of that protection.[20] It is against that background that Directive 2004/83 determines, in Article 2(c) and (e), the persons eligible for refugee status and subsidiary protection status and, in Chapter VII, the rights attaching to each of those statuses.

38. The procedural rules relating to the examination of an application for international protection are laid down in Directive 2005/85/EC.[21] Under Article 1, the purpose of that directive is to establish common minimum standards for all the Member States on procedures for granting and withdrawing refugee status, and Chapters II and III of that directive set out the procedural rights and obligations of the applicant and of the Member State as regards the assessment of an application for international protection.

39. Under Article 3 of that directive, the directive applies only when the Member State examines an application for refugee status or when it has established a single procedure in which it examines an application in the light of the two forms of international protection, namely, refugee status and subsidiary protection.

40. Directive 2005/85 thus allows the Member States full discretion in determining the conditions and procedural rules governing the examination of an application for subsidiary protection when they have opted to examine that application in a separate procedure from the procedure for obtaining refugee status, as was the case in Ireland at the material time in the main proceedings.

41. Nevertheless, this reference to the procedural autonomy of the Member States is traditionally tempered by the obligation to comply with fundamental rights, on the one hand, and observe the principles of equivalence and effectiveness, on the other.[22]

18 — See judgment of 22 November 2012 in *M.* (C-277/11, EU:C:2012:744, paragraph 73), and my Opinion in *M.* (C-277/11, EU:C:2012:253, point 19), and judgment of 8 May 2014 in *N.* (C-604/12, EU:C:2014:302, paragraph 38), and my Opinion in *N.* (C-604/12, EU:C:2013:714, point 27).

19 — See Article 1 of that directive.

20 — See judgment of 22 November 2012 in *M.* (C-277/11, EU:C:2012:744, paragraph 72), and point 19 of my Opinion in *M.* (C-277/11, EU:C:2012:253).

21 — Council Directive of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

22 — See, inter alia, judgments of 15 January 2013 in *Križan and Others* (C-416/10, EU:C:2013:8, paragraph 85 and the case-law cited), and 10 September 2013 in *G. and R.* (C-383/13 PPU, EU:C:2013:533, paragraph 35 and the case-law cited). See, also, judgment of 8 May 2014 in *N.* (C-604/12, EU:C:2014:302, paragraph 41 and the case-law cited).

42. Observance of the principle of equivalence requires, according to settled case-law, the application without distinction of a national rule to actions based on infringement of EU law and those based on infringement of national law. In other words, the procedural rules adopted by the Member States for an action based on EU law must not be less favourable than those governing a similar action based on national law. [23]

43. As regards the principle of effectiveness, observance of that principle requires that those procedural rules do not render impossible or excessively difficult in practice the exercise of rights conferred on the person concerned by EU law.

44. In this Opinion, because this involves the very subject matter of the questions posed by the referring court, I shall examine, first, the extent to which the procedural rule at issue may be examined from the perspective of the principle of equivalence.

45. I shall then examine the extent to which that procedural rule is likely to ensure that the provisions of EU law relating to subsidiary protection are fully effective.

46. Although the Court of Appeal has not expressly requested that the Court examine the procedural rule at issue in the light of the principle of effectiveness, I consider, as does the European Commission, that that examination is necessary in order to provide the referring court with a useful answer for the purposes of resolving the dispute before it. At the hearing, the Minister contended that such an examination would be inappropriate since that principle had not been relied on in the main proceedings and since such an approach would be contrary to the approach of the Court.

47. As I have stated, the preliminary reference procedure provided for in Article 267 TFEU is intended to establish a procedure for close and direct cooperation between the Court and national court, under which the Court is called on to provide the national court with a useful answer which enables that court to decide the dispute before it. [24] Furthermore, in accordance with settled case-law, the Court has a duty to provide interpretations of all the provisions of EU law that the referring court needs for that purpose, even if those provisions are not expressly referred to in the questions referred by that court, provided that the referring court has furnished the Court with the factual and legal material necessary to enable such an interpretation to be given, [25] which I consider is the case here.

48. I am therefore of the opinion that the referring court should be given guidance not only as to the scope of the principle of equivalence, but also as to the scope of the principle of effectiveness in order to resolve the dispute in the main proceedings.

A – *The principle of equivalence*

49. By its questions, the referring court asks the Court, in essence, whether the principle of equivalence must be interpreted as precluding a national procedural rule that requires an application for subsidiary protection status to be made within a period of 15 working days of notification of the rejection of an application for refugee status.

50. The referring court notes that there is no such time limit for making an application for refugee status, even though such an application may constitute an appropriate comparator for the purposes of ensuring observance of the principle of equivalence.

23 — Judgments of 28 January 2015 in *ÖBB Personenverkehr* (C-417/13, EU:C:2015:38, paragraph 74), and 6 October 2015 in *Târșia* (C-69/14, EU:C:2015:662, paragraph 32).

24 — Order of 8 September 2011 in *Abdallah* (C-144/11, EU:C:2011:565, paragraph 9 and the case-law cited), and judgment of 13 March 2014 in *FIRIN* (C-107/13, EU:C:2014:151, paragraph 29 and the case-law cited).

25 — Judgment of 21 February 2006 in *Ritter-Coulais* (C-152/03, EU:C:2006:123, paragraph 29 and the case-law cited).

51. In contrast to the opinion expressed by the referring court, I consider that application of the principle of equivalence is irrelevant to a situation such as that in the main proceedings.

52. Application of the principle of equivalence presupposes a position in which it is possible to compare the procedural rules applicable to an action based on EU law, on the one hand, and the procedural rules applicable to a similar action based on national law, on the other.

53. Those conditions are not satisfied.

54. First, the situation in the main proceedings concerns two actions based on EU law, namely the application for refugee status and the application for subsidiary protection status.

55. Directives 2004/83 and 2005/85[26] play a part in establishing a Common European Asylum System, which, under Article 78(1) TFEU, is intended to enable the European Union to develop a common policy on asylum and subsidiary protection, in accordance with the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951. In particular, under Article 78(2)(a), (b), (d) and (f) TFEU, the measures adopted under that framework include not only a uniform status of asylum and of subsidiary protection for nationals of third countries, but also common procedures for the granting and withdrawing of that status and standards concerning the conditions for the reception of those nationals.

56. As is apparent from recital 1 of Directives 2004/83 and 2005/85, those directives thus harmonise not only the rules on the recognition and content of refugee status and subsidiary protection status,[27] but also the procedural rules applicable in that connection.

57. While the Member States remain free to introduce or maintain more favourable standards for determining who qualifies for international protection and the procedural rules applicable to that end, those standards must nevertheless be compatible with those directives.

58. Under the Common European Asylum System, the conditions for the grant of international protection by a Member State are therefore now governed by provisions of EU law, whether refugee status or subsidiary protection status is concerned.

59. Consequently, the principle of equivalence, as defined in the Court's case-law, cannot be applied, since this would entail comparing the procedural rules applicable to an application for asylum based on EU law and the procedural rules applicable to an application for subsidiary protection also based on EU law.

60. Second, an application for refugee status and an application for subsidiary protection status do not constitute 'similar actions', contrary to what is required by the Court's case-law.

61. In the first place, it was to complement refugee status that the EU legislature wished to introduce, under Article 78(2)(b) TFEU, another form of international protection, described as 'subsidiary', which satisfied the specific eligibility conditions referred to in Article 2(e) of Directive 2004/83.[28]

26 — It will be recalled that those directives were adopted on the basis of point 1 of the first paragraph of Article 63 EC (now Article 78 TFEU).

27 — See, inter alia, recitals 6 and 7 of Directive 2004/83; recitals 3 to 6 of Directive 2005/85; recitals 8 to 10, 12 and 13 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9), and recital 13 of Directive 2013/32.

28 — See, in this regard, judgment of 8 May 2014 in *N.* (C-604/12, EU:C:2014:302, paragraphs 32 and 33).

62. The use of the term 'subsidiary' in, and the wording of, Article 2(e) of that directive thus clearly indicate that subsidiary protection status is intended for third country nationals who do not satisfy the specific conditions for qualifying for refugee status. [29] By introducing a subsidiary form of protection in the Common European Asylum System, the EU legislature did not therefore intend to offer two similar forms of international protection. Indeed, the Irish legislature introduced two separate procedures for the purposes of examining, respectively, an application for asylum and an application for subsidiary protection, it being possible to make the latter application only if the former had been rejected. As for the Member States that have opted for a single procedure, they examine the application for international protection first of all from the perspective of the conditions laid down for obtaining refugee status. [30]

63. In the second place, refugee status provides broader rights and economic and social benefits than those accorded by subsidiary protection. [31]

64. As the Court observed in its judgment of 22 November 2012 in *M.* (C-277/11, EU:C:2012:744), the nature of the rights attaching to refugee status and the nature of the rights attaching to subsidiary protection status are different. [32] In Chapter VII, entitled 'Content of international protection', Directive 2004/83 draws a distinction according to whether the person concerned is a refugee or is eligible for subsidiary protection. [33] With regard to those eligible for subsidiary protection, it permits the Member States to adopt stricter conditions governing the issue of residence permits or travel documents. [34] Thus, whilst the Member States are required to grant refugees a residence permit with a duration of at least three years, they may limit the duration of that permit to one year where it is granted to those eligible for subsidiary protection. The directive also permits the Member States to limit access to certain economic and social rights such as access to the labour market or to social welfare. [35] Thus, whilst those granted refugee status must be eligible for vocational training under conditions equivalent to those applicable to nationals, by contrast, the conditions under which those eligible for subsidiary protection status may have access to such training fall to be determined by the Member States. Similarly, although the Member States are obliged to grant those eligible for international protection the same necessary social assistance as is provided to nationals, they may nevertheless limit that assistance to core benefits in the case of those eligible for subsidiary protection.

65. In the light of those considerations, the principle of equivalence, as identified in the Court's case-law, is therefore irrelevant in a situation that concerns two types of applications, both based on EU, the purpose of and criteria for which are distinct. [36]

B – *The principle of effectiveness*

66. In order to provide a useful answer to the referring court, I propose to examine the national procedural rule at issue in the main proceedings from the perspective of the principle of effectiveness.

29 — See recitals 5 and 24 of Directive 2004/83.

30 — It will be recalled that although the establishment of a single procedure was an option under Directive 2005/85, it is now a mandatory requirement under Article 10(2) of Directive 2013/32. That provision, at present, unambiguously provides that '[w]hen examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection'.

31 — Directive 2013/32 eliminates the differences that existed as to the level of rights granted to refugees and those eligible for subsidiary protection that can no longer be considered justified. The amendments concern the duration of residence permits, and access to social welfare, health care and the labour market.

32 — See paragraph 92 of that judgment.

33 — That chapter details, inter alia, the conditions under which beneficiaries of international protection can obtain a residence permit and travel documents and have access to employment, education, social welfare, health care and accommodation.

34 — See, respectively, Articles 24 and 25 of that directive.

35 — See, respectively, Articles 26 and 28 of Directive 2004/83.

36 — See, by analogy, judgment of 28 January 2015 in *ÖBB Personenverkehr* (C-417/13, EU:C:2015:38, paragraphs 73 and 74), concerning a national procedural provision governing actions for the enforcement of salary claims.

67. The question arising in this case is, consequently, whether a national procedural rule such as that at issue in the main proceedings, which requires that an application for subsidiary protection status be made within a period of 15 working days of notification of the rejection of an application for refugee status, is likely to ensure that persons seeking international protection are actually in a position to avail themselves of the rights conferred on them by Directive 2004/83.

68. It will be recalled that, under Regulation 4(1) of the 2006 Regulations, following the rejection of a person's application for asylum, the letter by which the Minister notifies the person concerned that he proposes to make a deportation order must include a statement informing that person that he may, within a period of 15 working days of that notification, make an application for subsidiary protection status and for temporary leave to remain in Ireland. To that end, the letter encloses an information leaflet on subsidiary protection and the form on which the application may be made. In addition to personal information, the applicant is invited to forward all additional documentation and to set out fully the grounds relating specifically to the circumstances relied on in support of his application for subsidiary protection, giving details, in particular, of the serious harm that he might suffer on his return to his country of origin.

69. In its observations, the Commission submits that the period prescribed in Regulation 4(1) of the 2006 Regulations ensures the effectiveness of the applicant's rights 'provided that the application is not rejected on the sole ground that it was made out of time if the competent national authority … cannot be unaware of the real risk of suffering harm on deportation and that there are substantial grounds for believing that the applicant would face a real risk of suffering serious harm as defined in Article 15 of [Directive 2004/83]'.

70. While I share the view that, in proceedings such as those at issue, priority must be given to safeguarding the most basic rights of the applicant for international protection, I do not think that the assessment that the competent national authority has to carry out as to the existence, within the meaning of Article 2(e) and Article 15 of Directive 2004/83, of a risk of serious harm if that person were returned to his country of origin has its place at that stage of the procedure. The interpretation proposed by the Commission results in requiring the competent national authority to examine the substance of the application before it has even assessed its admissibility, thereby rendering compliance with a time limit set by law purely incidental. If a time limit is set and is a condition of the admissibility of the application, it must be applied objectively, in order to ensure legal certainty and fair treatment for all.

71. That is why I do not share the Commission's view.

72. I consider, in fact, that that period of 15 working days is insufficient for ensuring the effectiveness of the rights conferred by Directive 2004/83 on persons seeking subsidiary protection.

73. It is true that the Court held, in its judgment of 8 May 2014 in *N.* (C-604/12, EU:C:2014:302), that, in the context of a system such as that at issue, characterised by two separate procedural stages, the requirement for genuine access to subsidiary protection status means that 'the application for subsidiary protection should be considered within a reasonable period of time'. [37]

74. Although the imposition of a time limit such as that at issue in the main proceedings clearly contributes to carrying through to completion the procedure for examining the application for international protection, the fact remains that that period is extremely short.

37 — Paragraphs 44 and 45 of that judgment.

75. First of all, it must be borne in mind that the expected decision is of vital importance to the person who is legitimately seeking international protection. That person finds herself in an exceedingly difficult human and material situation and we must not therefore lose sight of the fact that the procedure before the competent national authorities initiated by her must enable her to safeguard her most basic rights by the grant of international protection.

76. Next, account must be taken of the difficulties that the applicant may encounter, by reason of her language for example, not only in understanding the procedural rules, but also in ascertaining her rights and obligations. Although legal assistance may be available, the fact remains that, in the present case, the RLS refused to assist Ms Danqua with her application for subsidiary protection, preferring to submit in her name an application for humanitarian leave to remain.

77. Lastly, account must also be taken of the practical difficulties liable to delay the safe receipt of the notification. The situation of an applicant for international protection, who is simply a person seeking refuge, cannot be compared to that of any other citizen living in the host Member State. The applicant for international protection will not have a fixed address in that State and may move from place to place during the time in which his application for the right to asylum is being considered. In the present case, the examination of Ms Danqua's application for refugee status took 10 months. It appears from the information provided at the hearing that, at the present time, she lives in a hostel. It is therefore not inconceivable that, during that period, she may have changed address without informing the competent national authorities.

78. If the state of psychological distress that the applicant is likely to find himself in is added to the above, then the risk cannot be taken that that person, who is seeking international protection, will be prevented from making an application for subsidiary protection status on account of a time limit that is too short, even though that person may be entitled to it.

79. In the light of those considerations, which relate to the fundamental nature of the protection that must be granted to persons at risk of serious harm in their country of origin and to the difficult human and material situation faced by those persons in the host Member State, a period such as that laid down in Regulation 4(1) of the 2006 Regulations does not ensure, in my view, effective access to subsidiary protection status.

80. Does that mean that it is necessary for the Court to prescribe a period in the place of the national legislature?

81. I do not think so.

82. First, the establishment of the national procedural rule at issue in the main proceedings falls, as explained in points 39 to 41 of this Opinion, within the procedural autonomy of Ireland.

83. Second, it would not make sense to do so since the procedural rule set out in Regulation 4(1) of the 2006 Regulations is no longer in force. It will be recalled that, following the reform undertaken in 2015, Ireland abolished the bi-furcated system that had until then characterised the procedure for granting international protection in favour of a single procedure under which the competent authorities consider the application for asylum made by the person concerned in the light of the two forms of international protection. Consequently, a national procedural rule such as that at issue in the main proceedings, which prescribes the period within which an application for subsidiary protection status must be made following the rejection of an application for refugee status, is now redundant.

84. In those circumstances, as regards applications for international protection made under the old rules, I consider that it is for the competent national court to determine whether the period within which the application for subsidiary protection was made is reasonable.

85. In this connection, I consider that it must take account of all the human and material circumstances surrounding the examination of the application for international protection.

86. It must, in particular, examine whether the person concerned was put in a position that made it possible for her to exercise her rights effectively, taking into consideration, inter alia, the support she received in completing her applications, and, specifically, the legal assistance she may have received or that may have been denied to her.

87. The competent national court must also take account of the date on which the person concerned became aware of the notification informing her of the rejection of her application for refugee status and of the deportation order adopted by the Minister.

88. In the present case, I consider that Ms Danqua was manifestly not put in a position that made it possible for her to make her application for subsidiary protection status within the period prescribed by the national legislation at issue or therefore to exercise effectively the rights conferred on her by Directive 2004/83.

89. First, at the hearing, Ms Danqua's representative indicated that she was illiterate, and that she had never been informed of the detailed rules of the procedure, including the rules governing the extension of the period relating to the lodging of an application for subsidiary protection status.

90. Second, as stated in the order for reference, the RLS refused to assist Ms Danqua with that application, preferring to make in her name an application for humanitarian leave to remain. It was only after the rejection of that application and the adoption of a deportation against her that Ms Danqua secured the services of private solicitors, who made an application for subsidiary protection status.

91. Third, it must be acknowledged that the procedure with which Ms Danqua was faced, which is characterised by a multiplicity of procedural steps and various statuses, is liable to mislead those not familiar with the procedure. Although her application for 'refugee status' was rejected, the RLS — which refused to assist her with an application for subsidiary protection status — submitted in her name an 'application for humanitarian leave to remain'. It was only following the rejection of that application and following the 'deportation order' that Ms Danqua's new legal counsel made an 'application for subsidiary protection status'. As many different statuses as applicable procedural rules.

92. Fourth, whilst it is common ground that Ms Danqua indeed lodged her application for subsidiary protection status on 8 October 2013, that is to say, two years and eight months after notification of rejection of her application for asylum, account must nevertheless be taken of the fact that she made that application 10 working days after the rejection, on 23 September 2013, of her application for humanitarian leave to remain.

93. In view of those factors, I think that Ms Danqua's application ought to be given due consideration.

94. In the light of those considerations, I therefore propose that the Court rule 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 that the application for subsidiary protection status be made within a period of 15 working days of notification of the rejection of the application for refugee status.

95. It is for the competent national court to determine whether the period within which the application for subsidiary protection status was made is reasonable, taking into account all the human and material circumstances surrounding the examination of the application for international protection. To that end, that court must examine whether the person concerned was put in a position that made it possible for her to exercise her rights effectively, taking into consideration, inter alia, the conditions under which she was assisted in completing her applications and the conditions under which she was given notification of the rejection of her application for refugee status.

IV – Conclusion

96. In the light of the foregoing considerations, I propose that the Court reply to the Court of Appeal (Ireland) as follows:

The principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires that an application for subsidiary protection status be made within a period of 15 working days of notification of the rejection of an application for refugee status.

It is for the competent national court to determine whether the period within which the application for subsidiary protection status was made is reasonable, taking into account all the human and material circumstances surrounding the examination of the application for international protection. To that end, that court must examine whether the person concerned was put in a position that made it possible for her to exercise her rights effectively, taking into consideration, inter alia, the conditions under which she was assisted in completing her applications and the conditions under which she was given notification of the rejection of her application for refugee status.