

## European Union, CJEU, Abdida, Judgement of 18 December 2014

### Deciding bodies and decisions

CJEU Case C-562/13, Abdida, judgment of 18 December 2014, ECLI:EU:C:2014:2453

CJEU C-239/14, Tall, 17 December 2015, ECLI:EU:C:2015:824

Belgium, Council of Alien Law Litigation, n. 155 216, 23 octobre 2015,

Belgium, Constitutional Court, n. 1/2014, 16 January 2014

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### Area of law

EU asylum law

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### Subject matter

Refusal of subsidiary protection on medical grounds - Interaction between asylum and return proceedings - Right to an appeal with suspensive effect on the enforcement of removal -

Safeguards pending appeal: right to social benefits and emergency medical assistance pending removal - Non-refoulement in medical cases

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### Summary Facts Of The Case

Mr Abdida was recognised a right of residence based on medical grounds and received social assistance. Subsequently, his application for leave to reside was rejected on the ground that his country of origin has adequate medical infrastructure, he was granted emergency medical care, but withdraw social assistance.

The Brussels Labor Court asked the CJEU whether the asylum related directives or the Charter require the Member State to provide for a 'remedy with suspensive effect in respect of the administrative decision refusing leave to remain and/or subsidiary protection, and ordering the person concerned to leave the territory of that State', and medical and social assistance pending the examination of the appeal against a refusal of a permit to stay for medical reasons.

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### Relation to the scope of the Charter

The CJEU reformulated the Belgian court questions as related to the application of the Return Directive and the EU Charter. The CJEU held that the challengeable act can be characterised as be classified as a 'return decision' within the meaning of Article 3(4) of Directive 2008/115. The CJEU continued that setting out the requirements that a remedy to an appeal against a return decision needs to fulfill under Article 13 Return Directive.

First of all, 'a third country national must be afforded an effective remedy to appeal against or seek review of a decision ordering his return.' (para. 43)

Secondly, there has to be an 'authority or body with power to adjudicate on such an appeal' which 'may temporarily suspend enforcement of the return decision that is being challenged, unless a temporary suspension is already applicable under national legislation.'

Although the CJEU interpreted that Article 13 of the Return Directive does not require that an

appeal against a return decision has automatic suspensive appeal, it also held that these provisions need to be interpreted 'in a manner that is consistent with Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection (see, to that effect, judgments in Unibet, C 432/05, EU:C:2007:163, paragraph 37, and Agrokonsulting, C 93/12, EU:C:2013:432, paragraph 59)' (para. 45) Additionally Article 13 of the Return Directive needs to be interpreted in a manner consistent also with Article 19(2) of the Charter. According to Article 52(3) CFR, the requirements set out under Article 19(2) CFR were interpreted by the CJEU in light of the jurisprudence developed by the ECtHR regarding prohibition of expulsion under Article 3 ECHR in medical cases (N. v. the United Kingdom [GC], no. 26565/05, § 42, ECHR 2008). The CJEU found that the ECtHR recognised an '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, [when] 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.' (para. 47)

These ECtHR derived requirements would translate under the EU legal order in an obligation of refusing enforcement of a return decision entailing the removal of a third country national suffering from a serious illness to a country in which appropriate treatment is not available' (Article 5 of Directive 2008/115).

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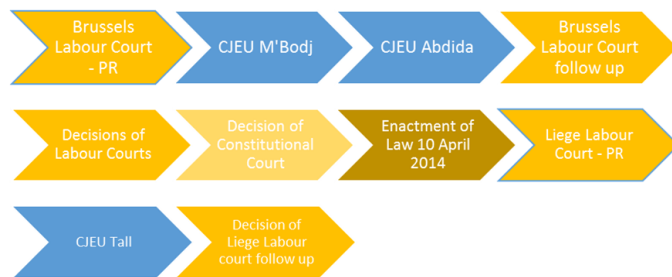
#### Relation between the Charter and ECHR

After interpreting the requirements under Article 19(2) CFR in light of requirements under Article 3 ECHR, the CJEU interpreted the requirements under Article 47 CFR in light of Article 13 ECHR and the jurisprudence of the ECtHR interpreting the effective remedies requirements in such cases (paras. 50-53).

'The European Court of Human Rights has held that, when a State decides to return a foreign national to a country where, there are substantial grounds for believing, he will be exposed to a real risk of ill-treatment contrary to Article 3 ECHR, the right to an effective remedy provided for in Article 13 ECHR requires that a remedy enabling suspension of enforcement of the measure authorising removal should, ipso jure, be available to the persons concerned (see, inter alia, European Court of Human Rights, judgments in Gebremedhin [Gaberamadhien] v. France, no. 25389/05, § 67, ECHR 2007-II, and Hirsi Jamaa and Others v. Italy [GC], no. 27765/09, § 200, ECHR 2012). 53 It follows from the foregoing that Articles 5 and 13 of Directive 2008/115, taken in conjunction with Articles 19(2) and 47 of the Charter, must be interpreted as precluding national legislation which does not make provision for a remedy with suspensive effect in respect of a return decision whose enforcement may expose the third country national concerned to a serious risk of grave and irreversible deterioration in his state of health.

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## Diagram



## Timeline of national and European decisions

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### Impact on Jurisprudence

Following the CJEU decision in *Abdida*, various cases emanating from Labor Tribunals held that seriously ill foreigners keep their right to social assistance pending the examination of their appeal. Additionally, the Belgian Council of Alien Law Litigation recognised that an automatic suspensive effect should also be available to appeals against order to leave the territory when the applicant's illness is that serious that a removal might amount to a *refoulement* prohibited by Article 3 ECHR (CALL, 156.951, November 2015). Suspensive effect, however, is not available against decisions refusing the right or authorization to stay in Belgium (CALL, 159.427, 28 December 2015). The automatic suspensive effect was initially recognised in the absence of national legislation, and directly on the basis of the CJEU *Abdida* preliminary ruling. The Constitutional Court with decision n. 1/2014, 16 January 2014, confirmed this judicial practice, but it also stressed the need for a legislative amendment introducing the guarantees under the right to an effective remedy.

After the adoption of 'Law of 10 April 2014', but before its entry into force of 21<sup>st</sup> of May 2014, another Belgian Labour Court addressed preliminary questions to the CJEU on the effectiveness of the remedy of the appeal in multiple asylum application proceedings, leading to the CJEU decision in *Tall* case.

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### Impact on Legislation / Policy

On 10 of April 2014, a legislative amendment was brought to the Aliens Law, whereby an automatic suspensive effect is recognised to the request for suspension, which need to be introduced within the 10 days of the notification of the order to leave the territory.

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### Sources - EU and national law

Article 47 EU Charter  
Article 19(2) EU Charter

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### Sources - ECHR

- Article 3 ECHR
- Article 13 ECHR

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### Sources - CJEU Case Law

- CJEU, C-542/13, *M'Bodj*, ECLI:EU:C:2014:2452
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