

European Union, CJEU, Abdoulaye Amadou Tall, judgement of 17 December 2015

Deciding bodies and decisions

CJEU, judgement of 17 December 2015, Case C-239/14, Abdoulaye Amadou Tall, EU:C:2015:824

Area of law

Effective Judicial Protection - Asylum

Subject matter

Asylum Law - Non-suspensive effect of an appeal against a decision of the competent national authority not to further examine a subsequent application for asylum.

CJEU was asked to clarify whether the non suspensive effect of the appeal seeking the annulment and suspension against a decision not to further examine a subsequent application for asylum is compatible with the right to an effective remedy, as enshrined in Article 39 of Directive 2005/85/EC and Article 47 of the EU Charter. The European Court also decided whether, similarly, the fact that, pending the above mentioned appeal, the applicant does not have the right of residence in the Member State concerned, nor material assistance, is compatible with the right to an effective remedy pursuant to EU law.

Summary Facts Of The Case

On 12 November 2013, the Belgian Asylum and Immigration Board rejected the application for asylum submitted by Mr. Tall, a Senegalese national.

On 10 January 2014, the Council of State rejected the appeal filled by Mr. Tall against the decision of the Belgian Asylum and Immigration Board due to its inadmissibility.

On 16 January 2014, Mr. Tall submitted a second application for asylum, grounding it on new evidence. However, by a decision of 23 January 2014, the Commissariat General for Refugees and Stateless Persons (Council of Aliens Law Litigation) refused to examine this second application.

Following the rejection of its second request for asylum, Mr. Tall was denied social assistance by the *Centre Public d'Action Sociale de Huy* (CPAS) with effects from 10 January 2014. Furthermore, on 10 February 2014 he was served with an order to leave the Country.

On 19 February 2014, Mr. Tall appealed against the decision of the Commissariat General refusing to take into consideration its second application for asylum. Contextually, on 27 February 2014, it also brought proceedings before the Labour Court of Liège against the CPAS's decision to withdraw his social assistance.

The Labour Court found Mr. Tall's claim admissible and well founded insofar it concerns the period running from 10 January to 17 February 2014, given that, pursuant to Belgian legislation, the decision to withdraw social assistance could enter into force only at the expiry of the period for voluntary departure set by the order to leave the Country (that is, in the specific case, 18 February 2014). As regards the period following this date, the Labour Court found, instead, that Belgium national law (applicable at the time) did not provide for an appeal with suspensive effects against the decision rejecting the second application for asylum of the applicant, thus preventing its deprivation of the right of residence and the right to social assistance.

Due to its doubts concerning the compatibility of such legislation with EU law and, more specifically, with the right to an effective remedy, the Labour Court of Liège decided to stay the proceedings and raise a question for preliminary reference before the CJEU, asking in essence:

"[whether national legislation that does not confer suspensive effects upon an appeal against the decision refusing a subsequent application for asylum is] compatible with the requirements of Article 47 of the Charter and Article 39 of Directive 2005/85 which lay down the right to an effective remedy".

At the outset, the CJEU examined the issue of the admissibility of the question referred to it. The CPAS, the Belgian Government and the European Commission had indeed argued that the entry into force – after the Court's receipt of the preliminary question at stake – of "the Law of 10 April 2014", amending previous legislation on asylum procedures, has had the effect of conferring suspensive rights upon the appeal filed by Mr. Tall, thus making the Court's ruling on the issue unnecessary for solving the dispute in the domestic proceedings.

The Court, however, rejected this argument on the ground that the referring court - that, under the procedure ex Article 267 TFEU, is entrusted with the task to determine whether a preliminary ruling is indeed necessary – confirmed that the dispute involving Mr. Tall was still ongoing at the domestic level, regardless of the entry into force of the Law of 10 April 2014.

The Court supported its conclusion based on two additional considerations. First, it underlined that the presumption that the questions referred to it for a preliminary ruling are relevant may be rebutted only in exceptional cases, such as, for instance, when the actual acts of the case are not related to the interpretation of EU law, when the problem referred is merely hypothetical or when the Court does not have access to the factual or legal material necessary to issue a preliminary ruling. Second, the Court further stressed not to be competent to interpret domestic provisions. According to the Court, this meant that it could not determine whether the transitional provisions related to the new law of 10 April 2014 provided for its retroactive application.

As far as the substance of the question referred to it is concerned, the CJEU observed, preliminarily, that Article 39 of Directive 2005/85 requires Member States to ensure that asylum applicants have the right to an effective remedy before a tribunal or court against a decision not to further examine a subsequent application (i.e., a second application) submitted by them. However, as noted by the Court, the text of the Directive does not prevent *a fortiori* Member States from providing an appeal without suspensive effects against such decision.

The Court further stressed that any interpretation of Directive 2005/85 must take into account the fundamental rights enshrined in the Charter. As a result, the specifics of the remedy provided for in Article 39 of the Directive must be determined in light of Article 47 (principle of effective judicial protection) and Article 19(2) of the Charter (prohibition to remove someone to a country where there is a serious risk that he or she would be subjected to inhuman or degrading treatment).

Based on Article 52(3) of the Charter, the CJEU recalled the ECtHR's combined reading of Articles 3 and 13 of the ECHR (corresponding, respectively, to Article 19(2) and Article 47 of the Charter), pursuant to which: "*when State decides to return a foreign national to a country where there are substantial grounds for believing that 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 that foreign national*" (para. 54). The Court also recalled its own previous case law in which it had similarly concluded that: "*an appeal must necessarily have suspensive effects when it is brought against a return decision whose enforcement may expose the third-country national concerned to a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment*" (Case C-562/13, *Abdida*, quoted at para. 58).

The Court, however, excluded that the above findings could apply in the case at stake, due to the fact that the proceedings did not concern a return decision that was likely to expose the applicant to the serious risk of being subjected to a degrading or inhuman treatment.

In light of the foregoing, the Court concluded that: “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, read in the light of Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not confer suspensive effect on an appeal brought against a decision, such as the one at issue in the main proceedings, not to further examine a subsequent application for asylum”.

Relation to the scope of the Charter

Article 47(1) EU Charter - Right to an effective remedy and to a fair trial – Right of access to a court

Other fundamental rights involved in the case:

- Protection in the event of removal, expulsion or extradition (Article 19 EU Charter)

The case falls within the scope of the Charter because it concerns a matter dealt with by Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326/13).

The relevance of the Charter in the case at stake is explicitly acknowledged by the CJEU. According to the Court, in fact, the characteristics of the remedy provided by in Directive 2005/85 must be determined in a manner that is consistent with Article 47 of the Charter (para. 51). The interpretation of the Directive in conformity with the Charter is then functional to establish the compatibility with EU law (notably, the Directive interpreted in light of the Charter) of the applicable national provisions.

Relation between the Charter and ECHR

Article 47(1) CFR enshrines a “corresponding right” (to Article 13 of the ECHR) within the meaning of Article 52(3) CFR, which lays down the general rules concerning the interpretation of Charter provisions that protect fundamental rights already guaranteed by the ECHR. Charter “corresponding rights” must be granted at least the same scope and meaning of their homologues under the ECHR, taking into account also the case law of the ECtHR.

However, the protection offered by Article 47(1) CFR is broader than that of Article 13 ECHR, insofar as the former guarantees the right to an effective remedy before a court (Article 13 ECHR refers, instead, to a remedy before a “national authority”).

Sources - EU and national law

National Law

- Article 4 of the Law of 12 January 2007 on the reception of applicants for asylum and certain other categories of foreign nationals (*Moniteur belge* of 7 May 2007, p. 24027), in the version applicable to the events in the main proceedings.
- Article 57(2) of the Organic Law of 8 July 1976 on public social welfare centres, in the version applicable to the events in the main proceedings.
- Articles 39 and 57 of the Law of 15 December 1980 on the entry, residence, establishment and removal of foreign nationals (*Moniteur belge* of 31 December 1980, p. 14584) ('the Law of 15 December 1980'), in the version in force at the time of the events in the main proceedings. Belgian applicable legislation was subsequently amended (see *Loi du 10 avril 2014 portant des dispositions diverses concernant la procédure devant le Conseil du Contentieux des étrangers et devant le Conseil d'État*, which entered into force on 31 May 2014).

EU Law

- 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; corrigendum OJ 2006 L 236, p. 36)
- 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 (OJ 2008 L 348, p. 98), entitled 'Return decision'.

Sources - CJEU Case Law

On the right to an effective remedy and non suspensive effects of the appeal

- C-562/13, *Abdida*, EU:C:2014:2453
 - C-60/10, *Samba Diouf*, EU:C:2011:524
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