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## Case C-604/12, H. N. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General

**Country of Applicant:**

Pakistan

**Date of Decision:**

08-05-2014

**Citation:**

C-604/12

**Court Name:**

CJEU, Fourth Chamber

**Keywords:**

[Protection](#) [1]

[Procedural guarantees](#) [2]

[Refugee Status](#) [3]

[Subsidiary Protection](#) [4]

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**Relevant Legislative Provisions:**

International Law

International Law > [1951 Refugee Convention](#) [5]

European Union Law > Treaty on the Functioning of the European Union 2010/C 83/01

European Union Law > Treaty on the Functioning of the European Union 2010/C 83/01 > Article 78

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1](#)

[December 2005](#) [6] > [Art 3](#) [7]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1](#)

[December 2005](#) [6] > [Art 4](#) [8]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] >

[Recital 5](#) [10]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] >

[Recital 6](#) [11]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] >

[Recital 24](#) [12]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 2](#) [13]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [9] > [Art 18](#)

**Headnote:**

The case concerns the interpretation of Directive 2004/83 and clarifies that the Irish legislation requiring seekers of international protection to follow two separate procedural stages: application for refugee status, and in case of refusal, application for subsidiary protection, is not contrary to EU law if the two applications can be introduced at the same time and if the application for subsidiary protection is considered within a reasonable period of time.

The right to good administration includes the right of any person to have his or her affairs handled impartially and within a reasonable period of time.

**Facts:**

Mr N., a Pakistani citizen living in Ireland, upon separation from his Irish ex-wife, sought to resist his deportation to Pakistan. He claims that he doesn't fear persecution on a protected ground, but alleges that he risks suffering serious harm if returned to Pakistan, in particular because of the indiscriminate violence occurring in the Swat Valley, where his family lives. Therefore, he decided to apply for subsidiary protection, but not refugee status.

Whereas most Member States adopt a single procedure for both forms of international protection, Ireland operates two distinct and separate procedures. An application for subsidiary protection may be made in Ireland only when the procedure for the grant of refugee status has been exhausted. Mr N. challenges this rule on the basis of incompatibility with the Qualification Directive and the principle of good administration (Article 41 of the Charter).

Question referred for a preliminary ruling

Does Council Directive 2004/83/EC, interpreted in the light of the principle of good administration in the law of the European Union and, in particular, as provided by Article 41 of the Charter of Fundamental Rights of the European Union, permit a Member State, to provide in its law that an application for subsidiary protection status can be considered only if the applicant has applied for and been refused refugee status in accordance with national law?

**Decision & Reasoning:**

The Court held that it is permissible to require refugee status determination to precede that of subsidiary protection, which is a complementary and additional to protection pursuant to the 1951 Refugee Convention [32]. However given that a person seeking international protection is not necessarily in a position to ascertain the kind of protection applicable to their application and that refugee status offers greater protection than that conferred by subsidiary protection, it is, in principle, for the competent authorities to determine the status that is most appropriate to the applicant's situation [34].

The CJEU also concluded that a two-stage procedure like that in Ireland 'risks extending the duration of the procedure and, accordingly, delaying the determination of the application for subsidiary protection' [44]. Therefore, 'genuine access to subsidiary protection status means that, first, it should be possible to submit the application for refugee status and the application for

subsidiary protection at the same time and, second, the application for subsidiary protection should be considered within a reasonable period of time, which is a matter to be determined by the national court? [45].

The CJEU notes that it is open to authorities to accelerate the refugee procedure where it is clear that the applicant will not qualify, so that the subsidiary protection procedure may begin in good time [47-48].

Finally, in Ireland, before commencing the examination of an application for subsidiary protection, the national authorities inform the applicant that they are considering making a deportation order. This, according to the CJEU, does not violate the objective impartiality requirement of Article 41 of the Charter, since such information is based only on the refusal of refugee status, not subsidiary protection [53-54].

Nevertheless, that right ensures, in the same way as the requirements imposed by the principle of effectiveness, that the entire procedure for considering an application for international protection does not exceed a reasonable period of time, which is a matter to be determined by the referring court [56].

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**Outcome:**

The Court ruled:

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, the principle of effectiveness and the right to good administration do not preclude a national procedural rule, such as that at issue in the main proceedings, under which an application for subsidiary protection may be considered only after an application for refugee status has been refused, provided that, first, it is possible to submit the application for refugee status and the application for subsidiary protection at the same time and, second, the national procedural rule does not give rise to a situation in which the application for subsidiary protection is considered only after an unreasonable length of time, which is a matter to be determined by the referring court.

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**Observations/Comments:**

The Advocate General Bot opinion on the case is available [here](#) [17]. He proposed the following response to the CJEU:

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 the light of, on the one hand, the rules and procedural safeguards laid down in Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, and, on the other, the principle of good administration, must be interpreted as not precluding a national procedural rule that makes the consideration of an application for subsidiary protection subject to the prior refusal of an application for refugee status.

Case comment:

Procedural rights and subsidiary protection, Steve Peers, May 2014

<http://eulawanalysis.blogspot.co.uk/2014/05/procedural-rights-and-subsid...> [18]

#### Case Law Cited:

CJEU - C-439/11 P Ziegler v Commission

Case C- 439/08 VEBIC

[CJEU - C-285/12, Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides](#) [19]

CJEU - C-277/11, MM (UP)

[CJEU - C-199/12, C-200/12 and C-201/12, Minister voor Immigratie en Asiel v X, Y and Z](#) [20]

[CJEU - C-364/11 Mostafa Abed El Karem El Kott, Chadi Amin A Radi, Hazem Kamel Ismail v Bevandorlasi es Allampolgarsagi Hivatal \(BAH\)](#) [21]

#### Attachment(s):

 [C-604\\_12 H.N.docx](#)[22]

#### Authentic Language:

English

#### Country of preliminary reference:

Ireland

#### National / Other Legislative Provisions:

Ireland - Immigration Act 1999

#### Links:

[1] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A82](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A82)

[2] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A59](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A59)

[3] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A192](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A192)

[4] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A81](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A81)

[5] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[6] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[7] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%203%20APD>

[8] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 4 APD>

[9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[10] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%202>

[11] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%206>

[12] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Rec%2024>

[13] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>

[14] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2018%20QD>

[15] <https://www.asylumlawdatabase.eu/node/453>

[16] [https://www.asylumlawdatabase.eu/node/453#toc\\_171](https://www.asylumlawdatabase.eu/node/453#toc_171)

[17]

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=144202&pageIndex=0&>

[18] <http://eulawanalysis.blogspot.co.uk/2014/05/procedural-rights-and-subsidiary.html>

[19] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-28512-aboubacar-diakit%C3%A9-v->

commissaire-g%C3%A9n%C3%A9ral-aux-r%C3%A9fugi%C3%A9s-et-aux-apatrides

[20] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-19912-c-20012-and-c-20112-minister-voor-immigratie-en-asiel-v-x-y-and-z>

[21] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-36411-mostafa-abed-el-karem-el-kott-chadi-amin-radi-hazem-kamel-ismail-v-bevandorlasi>

[22] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/C-604\\_12%20H.N.docx](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/C-604_12%20H.N.docx)