
CJEU - C-277/11 M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General

Country of Applicant:

Rwanda

Date of Decision:

22-11-2012

Citation:

C-277/11

Court Name:

First Chamber of the CJEU

Keywords:[Delay](#) [1][Assessment of facts and circumstances](#) [2][Burden of proof](#) [3][Effective access to procedures](#) [4][Effective remedy \(right to\)](#) [5][Credibility assessment](#) [6][Obligation/Duty to cooperate](#) [7][Procedural guarantees](#) [8][Standard of proof](#) [9][Subsidiary Protection](#) [10]

Relevant Legislative Provisions:

International Law

International Law > [1951 Refugee Convention](#) [11]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [12] > Recital 8European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [12] > [Art 3](#) [13] > Art 3.1European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [12] > [Art 3](#) [13] > [Art 3.3](#) [14]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [12] > [Art 8](#) [15]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#)

[12] > [Art 9](#) [16]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [12] > [Art 10](#) [17]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [12] > [Art 12](#) [18]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [12] > [Art 14](#) [19]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [20] > Recital 10

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [20] > [Art 2](#) [21]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [20] > [Art 4](#) [22]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [20] > [Art 9](#) [23]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [20] > [Art 10](#) [24]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [20] > [Art 15](#) [25]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [26] > [Article 18](#) [27]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [26] > [Article 41](#) [28]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [26] > [Article 47](#) [29]

Headnote:

This case deals with whether an applicant, in a system where refugee status determination and subsidiary protection are examined separately, can require the administrative authorities in that State to supply them with the results of the assessment made in advance of a decision when it is proposed that such an application should be refused. The CJEU held that the obligation to cooperation under Article 4(1) of the Qualification Directive cannot be interpreted in that way but in such a separate system the fundamental rights of the Applicant must be respected and in particular the principle of the right to be heard.

Facts:

Mr. M applied for asylum in May 2008 after the expiry of his visa. His asylum application was rejected and a subsequent application for subsidiary protection this was also rejected. Mr. M disputed the legality of the subsidiary protection decision before the High Court by holding that it did not comply with EU law, in particular with regard to the right to defence due to the fact that there is no oral hearing at that stage of the process in Ireland. The High Court decided to stay the proceedings and referred the following question to CJEU:

In a case where an applicant seeks subsidiary protection following a refusal to grant refugee status and it is proposed that such an application should be refused, does the requirement to cooperate with an applicant imposed on a Member State in Article 4(1) of Directive 2004/83 require the administrative authorities of the Member State in question to supply such applicant with the results of such an assessment before a decision is finally made so as to enable him or her to address

those aspects of the proposed decision which suggest a negative result?

Decision & Reasoning:

The Court rejected the Applicant's proposition that the EU legislature intended to interpret Article 4(1) in a way which required authorities to supply in advance the elements on which it intends to base its decision and to seek the Applicant's observations in that regard. The Court held that the duty of cooperation was not to be understood in that way. The assessment takes place in two separate stages: 1) establishment of factual circumstances which may constitute evidence; 2) legal appraisal of that evidence under the substantive conditions laid down by Articles 9, 10 and 15 of the Directive. The Court stated that although under Article 4(1) it is generally for the Applicant to submit all elements needed to substantiate the application, the fact remains that it is the duty of the Member State to cooperate with the Applicant at the stage of determining the relevant elements of that application. Para 66 clearly shows that, in practical terms, if the elements provided by the Applicant are not complete then it is necessary for the Member State concerned to cooperate actively with the Applicant so that all elements needed may be assembled. As regards the appraisal of the conclusions to be drawn from the gathered evidence, the Court held that this is solely the responsibility of the competent national authority. The Court clearly stated that the scope of the Qualification Directive does not include procedural rules applicable to the examination of an application for international protection. Therefore, the Applicant's proposition was rejected.

The Court did, however, acknowledge that a more general question arises in this case as to the right of a foreign national to be heard in the course of the examination of his subsidiary protection application. It said that it is for the national Court to determine in circumstances such as these whether it is unlawful under EU law not to hold a further hearing in the course of the subsidiary protection proceedings. The Court noted that the right to defence and to be heard are fundamental principles of EU law (Para 81-83). In acknowledging this it referenced not only Article 47 and Article 48 of the Charter of Fundamental Rights but in particular Article 41(2) of the Charter which includes the right to good administration. According to the Court's case-law, observance of the right to be heard is required even where the applicable legislation does not expressly provide for such a procedural requirement. It expounded upon the right, stating that it includes providing an opportunity for the Applicant to make known his/her views effectively during an administrative procedure and it also requires the authorities to pay due attention to the observations thus submitted by the person concerned, including 'examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision' (Para 88). When a Member State has chosen to establish two separate procedures, one following the other as in Ireland, it is important that the Applicant's right to be heard, in view of its fundamental nature, be fully guaranteed in each of these two procedures. Importantly, the Court declared that Member States must not only interpret their national law in a manner consistent with EU law but also make sure they do not rely on an interpretation which would be in conflict with the fundamental rights protected by the EU legal order or with other general principles of EU law (Para 93).

Outcome:

The CJEU Court ruled that the requirement that the Member State concerned cooperate with an applicant for asylum, as stated in the second sentence of Article 4(1) of the Qualification Directive, cannot be interpreted as meaning that, where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that second application as well, the authority is on that basis obliged 'before adopting its decision' to inform the applicant that it proposes to reject his application and notify him of the

arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard. However in the case of a system such as that established by the national legislation at issue in the main proceedings, a feature of which is that there are two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance of the Applicant's fundamental rights in each of these procedures and, more particularly, of the right to be heard in the sense that the Applicant must be able to make known his views before the adoption of any decision that does not grant the protection requested. In such a system, the fact that the Applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection.

Subsequent Proceedings :

The High Court decision in the case of M.M. was issued in January 2013 and the Court indicated that the CJEU ruling had significant consequences for the administration of subsidiary protection applications in Ireland. The case is available here: <http://www.bailii.org/ie/cases/IEHC/2013/H9.html> [30]. The Irish authorities appealed the decision to the Supreme Court which is still pending as of the beginning of August 2013. In the meantime the Irish authorities have suspended issuing subsidiary protection applications as they are revising their procedures in light of this ruling. For further information see www.inis.gov.ie. [31]

Observations/Comments:

Relevant links referring to this case:

<http://www.ihr.org/enquiriesandlegal/courtofjusticee.html> [32]

<http://infoportal.fra.europa.eu/InfoPortal/caselawFrontEndAccess.do?id=671> [33]

This decision is important in highlighting the shared duty of Member States and applicants in assembling the relevant elements for an application. The Court acknowledges that sometimes a Member State may be better placed than an applicant to gain access to certain types of documents etc. (Para 66).

The Advocate General Bot's opinion is also useful in showing the scope of the right to be heard by virtue of EU law.

This was the first time the Court addressed this principle of EU law in relation to asylum proceedings and it is also applicable in other asylum procedures including, for example, subsequent applications under the Asylum Procedures Directive. In relation to credibility assessments, in general in Europe it is advisable to read the UNHCR report on this topic: Beyond Proof: Credibility assessments in EU asylum systems <http://www.refworld.org/pdfid/519b1fb54.pdf> [34].

Case Law Cited:

CJEU - C-269/90 Technische Universität München v Hauptzollamt München-Mitte

CJEU - C-27/09 French Republic v People's Mojahedin Organization of Iran

CJEU - C-141/08 Foshan Shunde Yongjian Housewares & Hardware Co. Ltd v Council of the European Union

CJEU - C-287/02 Kingdom of Spain v Commission of the European Communities

CJEU - C-17/74 Transocean Marine Paint Association v Commission of the European Communities

CJEU - C-374/87 Orkem v Commission of the European Communities

CJEU - C-322/81 NV Nederlandsche Banden Industrie Michelin v Commission of the European Communities

CJEU C-349/07 Sopropé - Organizações de Calçado Lda v Fazenda Pública

CJEU - C-7/98 Dieter Krombach v André Bamberski

CJEU - C-411/10 and C-493/10 N.S. v Secretary of State for the Home Department and ME (UP)

Ireland - Ahmed v. Minister for Justice, Equality and Law Reform, (Unreported), High Court, Birmingham J. 24 March 2011

Attachment(s):



[Original judgment - C-277.11.odt](#)[35]

Authentic Language:

English

Country of preliminary reference:

Ireland

National / Other Legislative Provisions:

TFEU - Art 267

TFEU - Art 78(1)

Ireland - Refugee Act 1996

Ireland - European Communities (Eligibility for Protection) Regulations 2006 (SI No.518 of 2006)

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A26

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A10

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A18

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A11

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

[6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A24

[7] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A52

[8] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A59

[9] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A76

[10] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A81

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

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

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

[14] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 3 APD>

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

- [16] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%209>
- [17] [http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 10](http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2010)
- [18] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2012>
- [19] [http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 14](http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2014)
- [20] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [21] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>
- [22] [http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD)
- [23] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%209%20QD>
- [24] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2010%20QD>
- [25] [http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 15 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2015%20QD)
- [26] <https://www.asylumlawdatabase.eu/node/453>
- [27] https://www.asylumlawdatabase.eu/node/453#toc_85
- [28] https://www.asylumlawdatabase.eu/node/453#toc_171
- [29] https://www.asylumlawdatabase.eu/node/453#toc_198
- [30] <http://www.bailii.org/ie/cases/IEHC/2013/H9.html>
- [31] [http://www.inis.gov.%20ie](http://www.inis.gov.ie)
- [32] <http://www.ihrc.ie/enquiriesandlegal/courtofjusticee.html>
- [33] <http://infoportal.fra.europa.eu/InfoPortal/caselawFrontEndAccess.do?id=671>
- [34] <http://www.refworld.org/pdfid/519b1fb54.pdf>
- [35] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgment%20-%20C-277.11.odt>