

CJEU - C-720/17 Bilali, 23 May 2019

Country of Applicant:

Algeria
Morocco

Date of Decision:

23-05-2019

Citation:

Court of Justice of the European Union - C-720/17 Bilali, 23 May 2019

Additional Citation:

ECLI:EU:C:2019:448

Court Name:

Court of Justice of the European Union ? Fifth Chamber

Keywords:

[Cessation of protection](#) [1]
[Circumstances ceased to exist](#) [2]
[Country of origin](#) [3]
[Protection](#) [4]
[Personal circumstances of applicant](#) [5]
[Revocation of protection status](#) [6]
[Relevant Facts](#) [7]
[Stateless person](#) [8]
[Subsidiary Protection](#) [9]
[Well-founded fear](#) [10]

Headnote:

Member States are required to revoke subsidiary protection on the basis of art. 19(1), if they find out that the conditions that led to the granting of status were never met, regardless of whether the incorrect assessment of facts leading to the status is imputable exclusively to the national authority itself

Facts:

In 2009, the applicant lodged a claim for international protection in Austria, claiming that he was

stateless. In 2010, the Federal Asylum Office granted subsidiary protection status to the applicant on the ground that, even if it was impossible to establish the applicant's nationality, he was probably an Algerian national and, in case of removal, he would have faced inhuman treatment within the meaning of art. 3 ECHR.

In 2012, the Federal Asylum Office revoked the status, holding that the requirements for subsidiary protection had never been met, as the applicant was not an Algerian national but was instead eligible for both the Moroccan and Mauritanian nationality. Consequently, a return decision to Morocco was issued.

The applicant appealed against the decision in front of the Federal Administrative Court (Bundesverwaltungsgericht). That court held that, even if the error was not imputable to the applicant, the subsidiary protection was lawfully revoked on the basis of Paragraph 9(1)(1) of the AsylG 2005, as the conditions for the granting of protection had never been met.

On appeal, the Supreme Administrative Court (Verwaltungsgerichtshof) noted that Article 19(3)(b) of Directive 2011/95 on the revocation of subsidiary protection status refers expressly to misrepresentation or omission of facts that is imputable to the applicant and not to new information obtained by the authorities. In this sense, the court considered that the wording of the provision could mean that the status may not be revoked if the beneficiary is not responsible of the facts misreading.

Nevertheless, the court found that the present case can be interpreted in the light of the combined reading of Articles 19(1) and 16 of the Directive. According to the latter Article, Member States may revoke the subsidiary protection status if the circumstances that led to the granting of protection have ceased to exist.

This wording may include circumstances that were known by the authorities when the decision was taken and the change in the authorities' knowledge would result in the ending of the status.

The court decided to stay the proceedings and to refer the following question to the CJEU for a preliminary ruling:

'Do the provisions of EU law, in particular Article 19(3) of Directive 2011/95, preclude a national provision of a Member State concerning the possibility of revocation of subsidiary protection status pursuant to which subsidiary protection status may be revoked without a change in the factual circumstances themselves which are relevant for the purpose of granting that status, but rather only where the state of knowledge of the authority in this regard has undergone a change, and, in that context, without either a misrepresentation or an omission of facts on the part of the third-country national or stateless person having been a determinant factor in the granting of the subsidiary protection status?'

Decision & Reasoning:

Firstly, the Court highlighted that within the framework of Article 19 of the Directive 2011/95 on revocation, end or refusal to renew subsidiary protection status, paragraph (3)(b) makes an express reference only to the misrepresentation or omission of decisive circumstances by the applicant, without any other provision obliging Member States to revoke the status granting when the misleading of the circumstances is not imputable to the applicant's conduct. Secondly, considering that one of the main objectives of the Directive 2011/95 is to guarantee the uniformity of subsidiary protection system between the Member States, it would be contrary to its purpose to grant status in cases where there is no connection with the scope of the international protection.

According to Article 18 of the Directive, Member States must grant status only when the applicant's personal situation meets the conditions established in Chapter II and V of the Directive. When the subsidiary protection was granted without meeting those requirements because of a misrepresentation of the facts, the connection between the personal situation and the scope of the international protection fails. Therefore, the application of Article 16, referred to by Article 19(01) of Directive 2011/95, is not limited to the actual variation of the factual circumstances in the applicant's country of origin but extends also to cases where the knowledge of the applicant's personal situation by the Member States had changed.

In particular, if the new information available to Member States translates into such a significant and definitive change that the status granted is no longer justified, Member States must revoke it. The fact that a person has never faced a risk of serious harm bears a decisive weight regardless of whether the incorrect assessment is imputable exclusively to the national authority itself.

The Court supported this interpretation recalling [its previous findings](#) [11] on the necessity to read the Directive in the light of the Geneva Convention under Article 78 (1) TFEU. Given the role conferred to UNHCR by that Convention, any documents issued by that document are of particular importance in matters of international protection. According to the [UNHCR Handbook on Procedures and Criteria for Determining Refugee Status](#) [12], the decision granting the refugee status must be annulled if the State finds out that the protection should have never been taken.

Lastly, as the Member State's misrepresentation is not imputable to the applicant, the revocation of the subsidiary protection based on Article 19(01) does not imply that the Member State must refuse long-term residence application in accordance with Article 4(1a) of the Directive 2003/109 or the recognition of 'other kind of protection' on the basis of its national law and in accordance with the wording of Article 2 (h) of Directive 2011/95. In the same way, the applicant's fundamental rights of private and family life under Article 7 of the Charter of Fundamental Rights of the EU and Article 8 of the European Convention on Human Rights must always be respected.

Outcome:

Article 19(1) 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, read in conjunction with Article 16 thereof, must be interpreted as meaning that a Member State must revoke subsidiary protection status if it granted that status when the conditions for granting it were not met, in reliance on facts which have subsequently been revealed to be incorrect, and notwithstanding the fact that the person concerned cannot be accused of having misled the Member State on that occasion.

Case Law Cited:

CJEU - C-57/09 and C-101/09 B and D, November 2010

CJEU - C-443/14 and C-444/14, Alo and Osso, 1 March 2016

CJEU - C-373/13 H. T., 24 June 2015

CJEU - C-542/13 M?Bodj, 18 December 2014

CJEU - C-652/16 Ahmedbekova, 4 October 2018

CJEU - C 528/11, Halaf, 30 May 2013

CJEU - C 391/16, C 77/17 and C 78/17 M and Others, 14 May 2019

[CJEU - C-369/17, Shajin Ahmed v Bevándorlási és Menekültügyi Hivatal](#) [11]

Attachment(s):



[CJEU - C-720_17 Bilali 23 May 2019.pdf](#)[13]

Authentic Language:

English

Country of preliminary reference:

Austria

National / Other Legislative Provisions:

Austria - Asylgesetz (Asylum Act) 2005 - § 8

Austria - Asylgesetz (Asylum Act) 2005 - § 9 Abs 1(1)

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1162

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A21

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A193

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A82

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A56

[6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A69

[7] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A66

[8] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A79

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

[10] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A89

[11] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-36917-shajin-ahmed-v-bev%C3%A1ndorl%C3%A1si-%C3%A9s-menek%C3%BClt%C3%BCgyi-hivatal>

[12] <https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>

[13] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CJEU%20-%20C-720_17%20Bilali%2023%20May%202019.pdf