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CJEU - Case C-429/15, Evelyn Danqua v Minister for Justice and Equality Ireland and the Attorney General

Country of Applicant:

Ghana

Date of Decision:

20-10-2016

Citation:

Case C-429/15

Court Name:

Court of Justice of the European Union (CJEU), Third Chamber

Keywords:

[Effective access to procedures](#) [1]

[Procedural guarantees](#) [2]

[Subsequent application](#) [3]

[Subsidiary Protection](#) [4]

Relevant Legislative Provisions:

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [5] > [Art 3](#) [6]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [8] > Art 2 (a)

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [8] > [Art 2 \(e\)](#) [8]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [8] > [Art 2 \(f\)](#) [8]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 18](#) [9]

Headnote:

Based on the principle of effectiveness, the CJEU ruled that a limit of 15 days to apply for subsidiary protection following a notification of the decision not to grant refugee status is particularly short and cannot be justified by the need to ensure an effective return procedure.

The limited period endangers applicants' ability to submit an application for subsidiary protection.

Facts:

A Ghanaian national who had her application for international protection and request to remain rejected in Ireland subsequently received a rejection to her application for subsidiary protection for not having lodged her application within a 15 working days period following the notification of the negative result of her asylum claim. Based on the principle of equivalence, the Irish Court of Appeal referred a question to the CJEU on whether this principle would preclude states from establishing a period of 15 working days to submit an application. The following questions were referred to the CJEU:

(1) Can an application for asylum, which is governed by domestic legislation which reflects a Member State's obligations under [Directive 2004/83], be regarded as an appropriate comparator in respect of an application for subsidiary protection for the purposes of the principle of equivalence?

(2) If the answer to the first question is in the affirmative, is it relevant for this purpose that the time limit imposed in respect of applications for subsidiary protection serves the important interest of ensuring that applications for international protection are dealt [with] within a reasonable time??

Decision & Reasoning:

The Court first notes that at the relevant time of the main proceedings Ireland did not have a single procedure whereby an asylum claim is examined both with regards to asylum and subsidiary protection. Therefore, in line with the principles of equivalence and effectiveness Ireland must ensure that the requirements for submitting a request for subsidiary protection are not less favourable than those governing similar domestic situations and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order.

With regards to the principle of equivalence the CJEU finds the preliminary reference by the Court of Appeal irrelevant since both asylum procedures in Ireland are based on EU law. Instead, the heart of the referral is actually whether the person applying for subsidiary protection is in a position to actually avail themselves of the right to submit an application and receive the rights conferred to them in the Qualification Directive (i.e. the principle of effectiveness). Invoking its previous jurisprudence on effectiveness the Court states that the provision at issue must be analysed by its role in the procedure, viewed as a whole, taking into account the profile of the individual, the complexities of the procedure and the number of persons affected as well as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the procedure.

The Court noted that the application for subsidiary protection is particularly important since it enables applicants to safeguard and avail themselves of their most basic rights by the grant of such protection. The Court finds that in view of the difficult human and material situation that applicants face in such a procedure the time limit in Ireland compromises the applicant's possibility to apply for subsidiary protection, and as a consequence receive protection where applicable. Moreover, the Court rejected the argument that ensuring a quick procedure or ensuring an effective return procedure could justify such a short period.

Outcome:

The principle of effectiveness must be interpreted as precluding a national procedural rule, such as that at issue in the main proceedings, which requires an application for subsidiary protection status to be made within a period of 15 working days of notification, by the competent authority, that an applicant whose asylum application has been rejected may make an application for subsidiary protection.

Observations/Comments:

The Court follows the reasoning of the Advocate General ('AG') Bot who also proposed to examine the national procedural rule from the perspective of the principle of effectiveness. The AG in his Opinion proposed that the principle of effectiveness must be interpreted as precluding a national procedural rule which requires that an application for subsidiary protection status be made within a period of 15 working days of notification of the rejection of an application for refugee status. It is for the competent national court to determine whether the period within which the application for subsidiary protection status was made is reasonable, taking into account all the human and material circumstances surrounding the examination of the application for international protection. To that end, that court must examine whether the person concerned was put in a position that made it possible for her to exercise her rights effectively, taking into consideration, inter alia, the conditions under which she was assisted in completing her applications and the conditions under which she was given notification of the rejection of her application for refugee status.

Case Law Cited:

CJEU - C-417/13, ÖBB Personenverkehr

CJEU - C-152/03, Ritter-Coulais

CJEU - C-233/15, Oniors Bio

CJEU - C-505/14, Klausner Holz Niedersachsen

C-2/08, Fallimento Olimpiclub

CJEU - C-604/12, H. N. v Minister for Justice, Equality and Law Reform and Others (UP)

CJEU - C-63/08 Pontin

Attachment(s):



[CJEU C_429_15 Danqua.docx](#)[10]

Authentic Language:

English

Country of preliminary reference:

Ireland

Links:

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

- [2] 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%3A80
- [4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A81
- [5] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [6] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%203%20APD>
- [7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>
- [9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2018%20QD>
- [10] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CJEU%20C_429_15%20Danqua.docx