Reports of Cases

OPINION OF ADVOCATE GENERAL
CRUZ VILLALÓN
delivered on 3 September 2015 [1]

Case C-239/14

Abdoulaye Amadou Tall
v
Centre public d'action sociale de Huy (CPAS de Huy)

(Request for a preliminary ruling from the Tribunal du travail de Liège (division Huy) (Belgium))

(Area of freedom, security and justice — Borders, asylum and immigration — Immigration policy — Multiple applications for asylum — Article 39 of Directive 2005/85/EC — Article 47 of the Charter of Fundamental Rights of the European Union — Successive asylum applications — Refusal — Right to an effective remedy — Appeal not having suspensory effect)

1. In the context of an appeal against a refusal to consider a multiple application for asylum, a request for a preliminary ruling has been made to the Court of Justice on the interpretation to be given to Article 39 of Directive 2005/85/EC, [2] a matter on which the judgment of the Grand Chamber in *Abdida* [3] ruled in terms which would have provided guidelines for the answer to be given to the referring court. However, the national legislation at issue in the main proceedings has been the subject of a reform which, with retroactive effect, treats appeals against refusals of subsequent asylum applications in the same way as an appeal against a refusal of the first application. In my opinion, this means that the present request for a preliminary ruling has definitively become devoid of purpose and that, accordingly, a substantive reply is not appropriate.

I – **Legislative framework**

A – *EU law*

1. Directive 2005/85

2. In accordance with recital 15 of Directive 2005/85, 'where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should have a choice of procedure involving exceptions to the guarantees normally enjoyed by the applicant.'

1 — Original language: Spanish.

2 — Council Directive of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

3 — Judgment of 18 December 2014 in *Abdida*, C-562/13, EU:C:2014:2453.

3. Recital 27 of that directive states that ‘it reflects a basic principle of Community law that the decisions taken on an application for asylum and on the withdrawal of refugee status are subject to an effective remedy before a court or tribunal within the meaning of Article 234 of the Treaty. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole’.

4. Article 32 of Directive 2005/85 provides as follows:

‘1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State may examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:

(a) after his/her previous application has been withdrawn or abandoned by virtue of Articles 19 or 20;

(b) after a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.

3. A subsequent application for asylum shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) of this Article on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3 of this Article, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee by virtue of Directive 2004/83/EC, the application shall be further examined in conformity with Chapter II.

5. Member States may, in accordance with national legislation, further examine a subsequent application where there are other reasons why a procedure has to be re-opened.

6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article 39.

…’

5. Article 34(2) of Directive 2005/85 provides that ‘Member States may lay down in national law rules on the preliminary examination pursuant to Article 32’, stipulating that ‘the conditions shall not render impossible the access of applicants for asylum to a new procedure or result in the effective annulment or severe curtailment of such access’.

6. Article 39 of the directive states:

‘1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:

…

(iii) [a decision] not to conduct an examination pursuant to Article 36;

(c) a decision not to further examine the subsequent application pursuant to Articles 32 and 34;

…

2. Member States shall provide for time limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:

(a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;

(b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an *ex officio* remedy …’

2. Directive 2013/32/EU[4]

7. Article 41 of Directive 2013/32 provides as follows:

‘1. Member States may make an exception from the right to remain in the territory where a person:

(a) has lodged a first subsequent application, which is not further examined pursuant to Article 40(5), merely in order to delay or frustrate the enforcement of a decision which would result in his or her imminent removal from that Member State; or

(b) makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to Article 40(5) or after a final decision to reject that application as unfounded.

Member States may make such an exception only where the determining authority considers that a return decision will not lead to direct or indirect *refoulement* in violation of that Member State’s international and [European] Union obligations.

2. In cases referred to in paragraph 1, Member States may also:

…

(c) derogate from Article 46(8).’

4 — Directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ 2013 L 180, p. 60).

8. Article 46 of Directive 2013/32 reads as follows:

‘1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status,

(ii) considering an application to be inadmissible pursuant to Article 33(2),

(iii) taken at the border or in the transit zones of a Member State as described in Article 43(1),

(iv) not to conduct an examination pursuant to Article 39;

(b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 27 and 28;

(c) a decision to withdraw international protection pursuant to Article 45.

…

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.

…

5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.

6. In the case of a decision:

(a) considering an application to be manifestly unfounded in accordance with Article 32(2) of unfounded after examination in accordance with Article 31(8) …

(b) considering an application to be inadmissible pursuant to Article 33(2)(a), (b) or (d);

(c) rejecting the reopening of the applicant’s case after it has been discontinued according to Article 28; or

(d) not to examine or not to examine fully the application pursuant to Article 39,

a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting *ex officio*, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.

…

8. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7.

…'

B – *National law*

9. Article 6(l) of the Law of 12 January 2007 on the reception of asylum seekers ('the Law on reception') provides that 'without prejudice to Articles 4, 4/1 and 35/2 of this Law, the benefit of material assistance applies to every asylum seeker from the time when his request for asylum is introduced and has effect throughout the procedure. If a negative decision is reached at the conclusion of the asylum procedure, the material assistance shall end on the day when the time for the execution of the order to leave the territory notified to the asylum seeker has expired ...'

10. In accordance with Article 4 of the Law on reception, 'the agency may decide that an asylum seeker who submits a second asylum application is not entitled to benefit from Article 6(1) of this Law while his or her application is being examined, where the file has not been sent by the Office for Foreign Nationals to the Commissariat-General for Refugees and Stateless Persons … and there is a decision giving individual reasons …'

11. Article 57(2) of the Organic Law of 8 July 1976 on public social welfare centres ('the Law on PSWC') provides that 'social assistance granted to a foreign national who was in fact a beneficiary at the time when an order to leave Belgium was notified to him will be stopped, with the exception of urgent medical assistance, on the day when the foreign national in fact leaves the territory and, at the latest, on the day when the deadline given in the order to leave the territory expires ...'

12. Under Article 39/1 of the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and expulsion of foreign nationals ('the 1980 Law'), in the version applicable to the facts at issue, in conjunction with Articles 39/2(1), third subparagraph, 39/76, 39/82(4), second subparagraph and 57/6/2 of that Law, only appeals seeking annulment and suspension for extreme urgency can be brought against a refusal to consider a multiple application for asylum.

13. Under the Law of 10 April 2014 on miscellaneous provisions relating to proceedings before the Asylum and Immigration Board and the Council of State ('the 2014 Law'), an appeal against a refusal to grant a subsequent asylum application has had suspensory effect and the court hearing the appeal has had unlimited jurisdiction since the entry into force of that Law, which took place on 31 May 2014. In accordance with the transitional provisions of the 2014 Law, the new legal rules also apply to appeals lodged before the entry into force of the 2014 Law in which no final decision has been given.

II – **Facts**

14. Mr Abdoulaye Amadou Tall, a Senegalese national, submitted an asylum application in Belgium which was refused by decision of 12 November 2013. Mr Tall lodged an appeal against that refusal with the Council of State which was declared inadmissible by judgment of 10 January 2014.

15. Mr Tall submitted a second asylum application on 16 January 2014 which the Commissariat-General for Refugees and Stateless Persons refused to consider by decision of 23 January 2014, and, on 10 February 2014, Mr Tall was served with an order to leave Belgian national territory.

16. Mr Tall had been in receipt of social assistance from the Centre Public d'Action Sociale de Huy ('CPAS de Huy') since 17 March 2011. As a result of the refusal to consider his second asylum application, the CPAS de Huy decided to withdraw that assistance from him with effect from 10 January 2014.

17. Mr Tall lodged two appeals. The first appeal, lodged on 19 February 2014, was against the refusal to consider his second asylum application. The second appeal, lodged on 27 February 2014, was against the decision of the CPAS de Huy, and in it Mr Tall complained that the treatment of an appeal against a refusal to consider an asylum application differed according to whether it was the first application or a subsequent application, and he claimed that, in the latter case, there was no effective remedy available.

18. The appeal against the decision of the CPAS de Huy was upheld by the Tribunal du travail de Liège (division Huy) (Labour Court, Liege (Huy Section)) on an unspecified date, on the grounds that the withdrawal of social assistance could be ordered only after expiry of the period for voluntary departure granted with the order to leave national territory. Accordingly, the CPAS de Huy was ordered to pay social assistance to Mr Tall corresponding to the period from 10 January 2014 to 17 February 2014.

19. As regards the payment of social assistance after 18 February 2014, the Tribunal du travail considers that Mr Tall is limited to bringing an appeal seeking annulment and to the possibility of applying for extremely urgent suspension, remedies which are insufficient to guarantee the right to an effective remedy because, while such legal proceedings are ongoing, appellants have neither the right to remain nor to material assistance.

III – **The question referred for a preliminary ruling**

20. In that context, the Tribunal du travail has referred the following question for a preliminary ruling:

'According to Article 39/1 of the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and expulsion of foreign nationals read in conjunction with Articles 39/2(l), 3rd subparagraph, Article 39/76, Article 39/82(4), 2nd subparagraph (d) and 57/6/2 of the same law, only appeals seeking annulment and suspension due to extreme urgency may be brought against a decision refusing to consider a multiple asylum claim. Given that in such an appeal the court does not have full jurisdiction to determine issues of fact and law, the appeal does not have suspensory effect and that the applicant does not have the right of residence nor to material assistance while it is under consideration, are such appeals compatible with the requirements of Article 47 of the Charter of Fundamental Rights of the European Union and 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 … which lay down the right to an effective remedy?'

21. The referring court considers that, in accordance with the national legislation applicable to the case, with effect from 18 February 2014 Mr Tall could not benefit from the material assistance to which he was entitled as an asylum seeker prior to that date. That consequence is one of the effects of appeals against the refusal of a second asylum application, which differ in that respect from appeals against the refusal of a first asylum application, meaning that individuals who appeal against the refusal of subsequent asylum applications may be subjected to discriminatory treatment compared with individuals who appeal against the refusal of a first application and may also suffer infringement of their right to an effective remedy, since they are deprived of their right to remain and the material assistance needed to bring the appeal in question.

IV – **The procedure before the Court of Justice**

22. Mr Tall, the CPAS de Huy, the Agence Fédérale pour l'Accueil des Demandeurs d'Asile ('Fedasil'), the Belgian and Hungarian Governments and the Commission have participated in the proceedings. With the exception of the Hungarian Government and the CPAS de Huy, all those participants appeared at the hearing, held on 6 May 2015, at which they were invited by the Court to state their views on the possible effects of the judgment in *Abdida* [5] on the answer to the question from the referring court.

V – **Submissions**

23. Mr Tall maintains that the appeal available under Belgian law against refusals of subsequent asylum applications does not provide the guarantees of effectiveness required by Article 47 of the Charter and Article 39 of Directive 2005/85, namely: suspensory effect, unlimited jurisdiction of the court hearing the appeal and practical accessibility.

24. The Belgian Constitutional Court gave a ruling to that effect in judgment No 1/2014 of 16 January 2014, which led the legislature to adopt the 2014 Law pursuant to which, since 31 May 2014, appeals against subsequent asylum applications have had suspensory effect and the court hearing the appeal has had unlimited jurisdiction.

25. In relation to the effect on the present case of the judgment in *Abdida*, Mr Tall answers the question in the affirmative, arguing that, in accordance with that judgment, the legislation prior to the 2014 Law and the 2014 Law itself are incompatible with EU law.

26. The CPAS de Huy claims that the 2014 Law has rendered the question referred for a preliminary ruling devoid of purpose, since, under its transitional provisions, the new rules are also applicable to appeals which, like Mr Tall's, were lodged before the entry into force of that Law and in which no final decision has been given.

27. Fedasil and the Belgian Government agree with the view of the CPAS de Huy, and the latter maintains that, in accordance with the case-law of the Court of Justice, the request for a preliminary ruling should be declared inadmissible. In addition, the Belgian Government states that, on 4 July 2014, Mr Tall was invited to lodge a fresh appeal which would be dealt with under the 2014 Law and was informed that, in any event, if he did not lodge another appeal, the appeal still pending would be dealt with pursuant to the 2014 Law.

5 — Judgment in *Abdida*, C-562/13, EU:C:2014:2453.

28. The Belgian Government submits that the judgment in *Abdida* cannot have any effect since that case was not concerned with Directive 2005/85 but rather the so-called 'Return Directive',[6] whereas Mr Tall was and is an asylum seeker.

29. For its part, the Hungarian Government maintains that the national legislation at issue is not incompatible with EU law. The Hungarian Government submits that the features of the appeal concerned do not deprive Mr Tall of an effective remedy, and it must be borne in mind, as the Court held in *Samba Diouf*,[7] that the procedures put in place by Directive 2005/85 are minimum standards and the Member States have a margin of assessment with regard to the implementation of those provisions in the light of the particular features of national law.

30. The Hungarian Government further submits that Directive 2013/32 contains more precise provisions relating to the right to an effective remedy with regard to subsequent asylum applications and lays down rules which, in its view, confirm the special nature of subsequent applications, as opposed to initial applications, as far as the appeals system is concerned.

31. In the alternative, the Commission refers to the substantive issue, stating that, in its opinion, paragraph 61 of the judgment in *Samba Diouf*[8] is fully applicable in the case of a preliminary examination of a subsequent application and the decision not to consider that application for the reasons set out in Article 32(3) and (4) of Directive 2005/85. According to the Commission, for the appeal procedure to be effective, the national court must be able to review the lawfulness — in law and in fact — of the decision by examining the merits of the reasons which led the competent authority to consider the application to be unfounded or abusive.

32. In addition, the Commission, while accepting the differences between the situations of Mr Abdida and Mr Tall, submits that the principles applied by the Court in adjudicating on the former case may be applied for the purpose of adjudicating on the present case.

33. As far as the suspensory effect of the appeal is concerned, the Commission argues that Article 39(3)(a) and (b) of Directive 2005/85 leaves to the Member States responsibility for laying down rules in accordance with their international obligations, and it is for the Member States to decide whether or not an appeal against refusal of a subsequent application will have automatic suspensory effect. According to the Commission, the non-automatic nature of the suspensory effect is justified by the fact that the applicant has already benefitted from a complete initial examination of his first asylum application in the context of a normal procedure and has had at his disposal all the remedies against refusal of that application, while subsequent applications deal only with the submission of relevant evidence or information which it was not possible to provide at the time of the first application.

34. Nevertheless, the latitude granted to Member States must be interpreted in the light of Article 47 of the Charter and the principles laid down in the case-law. In that regard, the Commission observes that the European Court of Human Rights has pointed out that, to be effective, a remedy against an expulsion decision in the event of a risk of infringement of Article 3 of the European Convention on Human Rights (ECHR) must, in principle, have suspensory effect, although the Commission accepts that, in certain circumstances, the suspensory effect is not automatic — that is, imposed by law — but rather determined by the court with jurisdiction. The Commission submits that that case-law is integrated into Article 46 of Directive 2013/32 and it therefore proposes that Article 39 of Directive 2005/85 be interpreted in conformity with that provision, leading to the conclusion that the Member States may provide that an appeal against refusal to consider a subsequent asylum application does

6 — Directive 2008/115/CE 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).

7 — Judgment in *Samba Diouf*, C-69/10, EU:C:2011:524.

8 — Judgment in *Samba Diouf*, C-69/10, EU:C:2011:524.

not have suspensory effect provided that this does not result in a risk of expulsion, a matter which it must be possible for a court to assess at the request of the person concerned or of its own motion, and the person concerned must be allowed to remain on the territory pending the outcome of the proceedings.

VI – **Assessment**

35. The CPAS de Huy, Fedasil, the Belgian Government and the Commission submit that the reform of the national legislation which took place after the request for a preliminary ruling was made means that the question referred has become devoid of purpose. In their submission, the entry into force of the 2014 Law has resulted in the question referred becoming devoid of purpose since, as a result of the reform of that Law, an appeal lodged against a refusal to consider a subsequent asylum application now has suspensory effect, which means that material assistance is retained while the appeal is being considered. Moreover, in accordance with the transitional provisions of the 2014 Law, the new rules are applicable to appeals pending at the time of entry into force of that Law. In fact, according to the Belgian Government's submissions, Mr Tall was offered the opportunity to submit a fresh appeal after the entry into force of the 2014 Law and was told that, if he did not do so, the appeal which he had lodged before the entry into force of the Law, and in which a decision was still pending, would, in any event, be dealt with under the new system.

36. The referring court was asked by the Court of Justice at the relevant time to state its views on the effects of the new legislation on the main proceedings. On 19 January 2015, the Tribunal du travail responded that the proceedings remained ongoing in relation to the period from 18 February 2014 to 31 May 2014 and that it retained its request for a preliminary ruling. [9]

37. It is settled case-law of the Court of Justice that, in accordance with the wording and the scheme of Article 267 TFEU, 'a national court or tribunal is not empowered to bring a matter before the Court by way of a reference for a preliminary ruling unless a case is pending before it, in which it is called upon to give a decision which is capable of taking account of the preliminary ruling'. [10]

38. It is true that 'in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court'. [11]

39. Nevertheless, it is equally true that in the present case it is very difficult not to agree with the assessment of the CPAS de Huy, Fedasil, the Belgian Government and the Commission to the effect that the question submitted by the referring court has become hypothetical, for Mr Tall is now entitled to an appeal which has the features he claimed that the appeal he lodged before the entry into force of the 2014 Law should have had; that is, an appeal with suspensory effect, in which the court hearing the appeal has unlimited jurisdiction and the effectiveness of the appeal is helped by the possibility of access to material assistance while the appeal is being considered.

9 — The reply from the referring court was worded as follows:
'The proceedings are still pending before the Tribunal du travail de Liège, Huy Section, as regards the period from 18 February 2014 to 31 May 2014, the date of entry into force of the Law of 10 April 2014. At the hearing on 5 November 2014, it was decided to return the case to the list of pending cases, while awaiting the ruling of the Court of Justice of the European Union.'

10 — Judgment in *Di Donna*, C-492/11, EU:C:2013:428, paragraph 26, referring to the judgment in *García Blanco*, C-225/02, EU:C:2005:34, paragraph 27 and the case-law cited.

11 — Judgment in *Di Donna*, C-492/11, EU:C:2013:428, paragraph 24.

40. In accordance with the amendments effected by the 2014 Law, an appeal brought against a refusal of a subsequent asylum application is now, since the entry into force of that Law on 31 May 2014, heard by a court with unlimited jurisdiction in the matter, has suspensory effect, and applicants are guaranteed material assistance while the proceedings are ongoing. That new system is not applicable solely to applications lodged after 31 May 2014 but also, under the transitional provisions of the 2014 Law, to appeal proceedings which were underway on that date under the previous legislation.

41. Accordingly, the question referred by the Tribunal du travail, which asks whether the legal rules applicable prior to the 2014 Law are compatible with EU law, has become completely irrelevant in so far as those rules can no longer be applied to the main proceedings. The appeal brought by Mr Tall, in which judgment is pending in the main proceedings, must, as required by the 2014 Law, be dealt with as an appeal in which the court hearing the case has unlimited jurisdiction and which has suspensory effect, while Mr Tall is entitled, as applicable, to the appropriate material assistance while the proceedings are ongoing.

42. Admittedly, despite this, the Tribunal du travail insists that the question is relevant. However, it does not give any reasons for this and merely states that the proceedings are still pending 'as regards the period from 18 February 2014 to 31 May 2014, the date of entry into force of the Law of 10 April 2014' and that the decision has been taken to '[await] the ruling of the Court of Justice of the European Union'.

43. In an effort to ascertain the reasons which may be behind the decision of the referring court, regard could perhaps be had to the fact that Mr Tall was deprived at the relevant time of material assistance corresponding to the period from 18 February 2014 to 31 May 2014, that is, during a period of time preceding the entry into force of the 2014 Law, while the retroactive effect of the 2014 Law may not extend to the point of also providing for access to that assistance for those who lodged an appeal in accordance with the legal rules in force until 31 May 2014.

44. In other words, while there is no doubt that the appeal brought by Mr Tall is being dealt with since the entry into force of the 2014 Law and under the new legislation — which includes the right to material assistance after 31 May 2014 — it is not so clear that, under the new Law, Mr Tall is entitled also to claim the assistance which he stopped receiving under the previous legislation. If that were the case, the question concerning the compatibility of the legislation preceding the 2014 Law with EU law would be relevant, since, if it were found not be compatible, it is possible that Mr Tall would then be entitled to the assistance which he was refused during the period at issue, in accordance with that legislation.

45. However, it is sufficiently clear from the participants' arguments at the hearing that the 2014 Law has retroactive effect for all purposes; in other words, it also applies to the issue of material assistance so that, with effect from the entry into force of the 2014 Law, Mr Tall is not only entitled to bring an appeal in which the court hearing the case has unlimited jurisdiction and which has suspensory effect, but also to the assistance which, as applicable, may have been due to him for the period from 18 February 2014 to 31 May 2014.

46. That is apparent from the information provided by Fedasil at the hearing and confirmed by the Belgian Government. It is clear from the debate on the matter between the participants that, ultimately, the problem is not whether the retroactive effect of the 2014 Law also extends to material assistance — in which connection, it has not been argued that it does not — but rather the calculation of the amount of the assistance unpaid during the period at issue, to which Mr Tall would now be entitled under the new legislation. The problem, ultimately, centres on determination of the component of the material assistance which, by its very nature, could not, at the relevant time, be recovered *in natura* but only by equivalence, which therefore requires a calculation in which account is taken of Mr Tall's specific circumstances, a matter which it is for the referring court to examine and adjudicate on.

47. Mr Tall is the only participant who does not agree with that approach, claiming at the hearing, first, that the suspensory effect of the appeal introduced by the 2014 Law is not retroactive and, second, that Article 4 of the Law on reception, pursuant to which the authorities may withdraw all assistance from anyone submitting a second asylum application, continues to apply. However, everything suggests that the new body of rules has resulted in the removal, in all respects, of the differences which previously existed between those submitting a first asylum application and those submitting a subsequent asylum application, as regards both the suspensory nature of the appeal and the right to receive assistance.

48. That conclusion, reached on the basis of the information provided by the participants at the hearing and the debate at that time, is, furthermore, confirmed by the judgment of the Belgian Constitutional Court of 7 May 2015, in which it held that the difference in treatment between the two types of asylum seeker was abolished by the 2014 Law.[12]

49. Finally, if, as everything suggests, the retroactive effect of the 2014 Law also applies to the assistance unpaid during the period at issue, it is clear, to my mind, that the question referred by the Tribunal du travail has become devoid of purpose, since that question refers to national legislation which, for the reasons set out, has ceased to be applicable, in all respects, to the situation of Mr Tall, who, since 31 May 2014, has had at his disposal a remedy whose features match those which, according to the view of the Tribunal du travail, are required by Directive 2005/85 and Article 47 of the Charter of Fundamental Rights of the European Union.

50. Moreover, it is clear that the purpose of the question referred cannot be expanded so that it also encompasses the 2014 Law. Mr Tall appears to claim as much, having criticised that Law at length at the hearing and stated that the new legal rules are also incompatible with EU law. That approach is, quite clearly, totally unacceptable, for the question must be confined strictly to the terms in which it was framed by the Tribunal du travail, which has in no way cast doubt on the 2014 Law.

51. Accordingly, I propose that the Court should declare that the present request for a preliminary ruling has become devoid of purpose and that a substantive reply is not appropriate.

VII – **Conclusion**

52. In the light of the considerations set out, I propose that the Court declare that the present request for a preliminary ruling is inadmissible on the ground that it has become devoid of purpose.

12 — Judgment No 56/2015 of 7 May 2015, B.7. At the hearing, Mr Tall reported that the Belgian Constitutional Court would deliver that judgment the following day.