Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

22 November 2012*

(Reference for a preliminary ruling — Common European Asylum System — Directive 2004/83/EC — Minimum standards for qualification for refugee status or subsidiary protection status — Article 4(1), second sentence — Cooperation of the Member State with the applicant to assess the relevant elements of his application — Scope — Lawfulness of the national procedure for processing an application for subsidiary protection following rejection of an application for refugee status — Observance of fundamental rights — Right to be heard)

In Case C-277/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 1 June 2011, received at the Court on 6 June 2011, in the proceedings

M. M.

v

Minister for Justice, Equality and Law Reform,

Ireland,

Attorney General,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, M. Ilešič, J.-J. Kasel (Rapporteur) and M. Berger, Judges,

Advocate General: Y. Bot,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 28 March 2012,

after considering the observations submitted on behalf of:

— M.M., by P. O'Shea and I. Whelan, Barristers-at-Law, instructed by B. Burns, Solicitor,

— Ireland, by D. O'Hagan, acting as Agent, and by D. Conlan Smyth, Barrister-at-Law,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

* Language of the case: English.

— the German Government, by N. Graf Vitzthum, acting as Agent,

— the Hungarian Government, by Z. Fehér Miklós, K. Szíjjártó and Z. Tóth, acting as Agents,

— the Netherlands Government, by C. Wissels and M. Noort, acting as Agents,

— the Polish Government, by M. Szpunar, acting as Agent,

— the Swedish Government, by K. Petkovska, acting as Agent,

— the European Commission, by M. Condou-Durande and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 April 2012,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 4(1) of 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 (OJ 2004 L 304, p. 12).

2 The reference has been made in proceedings between (i) Mr M. and (ii) the Minister for Justice, Equality and Law Reform (the 'Minister'), Ireland and the Attorney General concerning the lawfulness of the procedure followed in processing an application for subsidiary protection which Mr M. had lodged following rejection of his application for refugee status.

Legal context

European Union law

The Charter of Fundamental Rights of the European Union

3 Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), which is entitled 'Right to good administration', provides in paragraphs 1 and 2:

'1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.'

4 Article 47 of the Charter concerns the right of all persons to an effective remedy before an independent and impartial tribunal previously established by law. Article 47 states that everyone is to have the possibility of being advised, defended and represented. In accordance with Article 48(2) of the Charter, respect for the rights of the defence of anyone who has been charged is to be guaranteed.

5 Under Article 51(1) of the Charter, the provisions thereof are addressed to the Member States when they are implementing European Union ('EU') law.

The Common European Asylum System

6 The European Council meeting in Strasbourg on 8 and 9 December 1989 fixed as an objective the harmonisation of the asylum policies of the Member States.

7 The European Council meeting in Tampere on 15 and 16 October 1999 envisaged, inter alia, the establishment of a Common European Asylum System, based on the full and inclusive application of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (*United Nations Treaty Series*, Vol 189, p. 150, No 2545 (1954)) ('the Geneva Convention'), which entered into force on 22 April 1954. The Convention was supplemented by the Protocol relating to the Status of Refugees, adopted in New York on 31 January 1967 ('the 1967 Protocol'), which entered into force on 4 October 1967.

8 All the Member States are contracting parties to the Geneva Convention and the 1967 Protocol. The European Union is not a contracting party to the Geneva Convention or to the 1967 Protocol, but Article 78(1) TFEU and Article 18 of the Charter provide that the right to asylum is to be guaranteed, inter alia, with due respect for the Geneva Convention and the 1967 Protocol.

9 The Amsterdam Treaty, concluded on 2 October 1997, introduced Article 63 into the EC Treaty, which conferred competence on the Council of the European Union, acting after consulting the European Parliament, to adopt the measures recommended by the European Council in Tampere.

10 Directive 2004/83 was adopted on that legal basis, as was Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

11 Since the entry into force of the Treaty of Lisbon, it is Article 78 TFEU which has provided for the establishment of a Common European Asylum System.

12 Directives 2004/83 and 2005/85 both refer, in recital 1 in the preambles thereto, to the fact that a common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Community. Both directives also refer, in recital 2, to the conclusions of the Tampere European Council.

13 Directives 2004/83 and 2005/85 state, in recitals 10 and 8 respectively, that they respect the fundamental rights and observe the principles recognised in particular by the Charter.

Directive 2004/83

14 According to Article 1 of Directive 2004/83, the purpose of the directive is to lay down minimum standards for, on the one hand, the qualification of third country nationals or stateless persons for international protection and, on the other, the content of the protection granted.

15 Under Article 2 of Directive 2004/83:

‘(a) “international protection” means the refugee and subsidiary protection status as defined in (d) and (f);

…

(c) “refugee” means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country …;

(d) “refugee status” means the recognition by a Member State of a third country national or a stateless person as a refugee;

(e) “person eligible for subsidiary protection” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 …, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(f) “subsidiary protection status” means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;

(g) “application for international protection” means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status …

…’

16 Article 4 of Directive 2004/83, entitled ‘Assessment of facts and circumstances’, is contained in Chapter II of the directive, which for its part is entitled ‘Assessment of applications for international protection’, and is worded as follows:

‘1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in paragraph 1 consist of the applicant’s statements and all documentation at the applicant’s disposal regarding the applicant’s age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.'

Directive 2005/85

17 Directive 2005/85 establishes minimum standards on procedures in Member States for granting and withdrawing refugee status. It also sets out the rights of applicants for asylum.

18 Pursuant to Article 3(1) thereof, Directive 2005/85 is to apply to all applications for asylum made in the territory of the Member States.

19 Article 3(3) of Directive 2005/83 provides:

'Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83 …, they shall apply this Directive throughout their procedure.'

20 Chapter II of Directive 2005/85, which is entitled 'Basic principles and guarantees', lays down minimum rules for the procedures to be followed and the guarantees afforded to applicants for asylum. Chapter II comprises Articles 6 to 22.

21 Article 8 determines the requirements for the examination of applications.

22 Article 9 sets out the requirements for a decision by the authority responsible for determining asylum applications.

23 Article 10 lists the guarantees for applicants for asylum.

24 Article 12 provides that the applicant for asylum is entitled to a personal interview before a decision is taken and Article 13 sets out the requirements relating to that interview.

25 Under Article 14, a written report must be made of each personal interview and the applicant for asylum must have timely access to that report.

26 Chapter III of Directive 2005/85 lays down the rules governing procedures at first instance.

27 Chapter V of Directive 2005/85, which is entitled 'Appeals procedures', comprises a single article, Article 39, paragraph 1 of which provides that applicants for asylum are to have the right to an effective remedy before a court or tribunal, against, inter alia, a decision taken on their application for asylum.

National legislation

28 In Ireland a distinction is to be drawn, for the purpose of granting international protection, between two types of application, namely:

— in the first place, an application for asylum and, if there is a negative decision on that application,

— in the second place, an application for subsidiary protection.

29 In Ireland, each of those applications is dealt with in a distinct procedure with one procedure following the other.

30 It is apparent from the order for reference that the national provisions governing the processing of asylum applications are to be found in the main in the Refugee Act 1996, in the version in force at the material time ('the 1996 Act').

31 So far as asylum applications are concerned, the procedure involves a number of stages:

— the person concerned makes an application to the Office of the Refugee Applications Commissioner ('ORAC');

— the applicant must complete a questionnaire;

— an ORAC official has a personal interview with the applicant;

— ORAC prepares a report for the Minister, which includes a recommendation as to whether the applicant should or should not be granted refugee status;

— when that report contains a negative recommendation on that point, it may be appealed to the Refugee Appeals Tribunal, which, as a general rule, determines the appeal before a single judge and delivers a judgment which either affirms or rejects ORAC's recommendation;

— the Minister takes a decision as follows:

  — when ORAC's recommendation or the Refugee Appeals Tribunal decision is positive, the Minister is obliged to grant refugee status;

  — when the proposal is negative, he may follow it but he nevertheless has a discretion to grant refugee status;

— where the Minister has rejected the asylum application, the notice of his intention to deport the applicant must contain a notice informing the applicant that he is entitled to apply for subsidiary protection within a 15-day period.

32 Annulment of a decision refusing to grant refugee status may be sought in judicial review proceedings.

33 The procedure governing applications for subsidiary protection is contained in the European Communities (Eligibility for Protection) Regulations 2006, which were made by the Minister on 9 October 2006 and whose purpose is, among other things, to transpose Directive 2004/83 ('the 2006 Regulations').

34 An application for subsidiary protection is made by the person concerned in the form set out in a Schedule to the 2006 Regulations.

35 There is no provision in the 2006 Regulations for the applicant for subsidiary protection to be heard in the course of examination of his application.

36 Nor do the 2006 Regulations contain any procedural rule which may be regarded as implementing the requirement set out in the second sentence of Article 4(1) of Directive 2004/83.

37 The Minister determines the application for subsidiary protection by reasoned decision, either granting the application or rejecting it.

38 Annulment of a decision rejecting the application may be sought in judicial review proceedings.

The dispute in the main proceedings and the question referred for a preliminary ruling

39 Mr M. is a Rwandan national of Tutsi ethnicity who applied for asylum in Ireland on 1 May 2008.

40 In support of that application, Mr M. submits that, if he were to return to his country of origin, he would run the risk of being prosecuted before a military court for having openly criticised the manner in which investigations into the 1994 genocide were carried out. He maintains that he has been severely affected by that genocide in that his parents, three of his brothers and one of his sisters were killed.

41 With regard to his personal situation, he states that, after being awarded his law degree at the National University of Rwanda in 2003, he sought employment in the civil service of the Republic of Rwanda but that he alone of his graduating class was refused a position, despite his qualifications. Instead of being accepted for that employment, he was, he maintains, coerced into taking a junior post in the military prosecutor's office, since subjecting him in that way to the rigours of military law was a means of silencing him and preventing him from divulging information concerning the genocide

which might have proved uncomfortable for the authorities. He also maintains that he was strongly advised not to protest and that a military officer was killed because he had started to ask awkward questions about the conduct of investigations into the genocide.

42 In June 2006, Mr M. was admitted to study for a degree of LLM at the law faculty of an Irish university. To that end, he was awarded a student visa in September 2006 and, after graduating in November 2007, he carried out research work in the host Member State relating to war crimes and genocide.

43 A short time after the expiry of his visa, Mr M. applied for asylum in Ireland. That application was rejected on the ground that his claims relating to his persecution in Rwanda were found not to be credible. ORAC's negative recommendation is dated 30 August 2008 and it was affirmed by the Refugee Appeals Tribunal on 28 October 2008. The Minister's decision refusing to grant his asylum application was notified to Mr M. in December 2008.

44 Mr M. then submitted an application for subsidiary protection on 31 December 2008, completing a questionnaire prescribed for that purpose by the Irish regulations.

45 That application was rejected by a decision of the Minister of 24 September 2010. In his decision, the Minister relied to a large extent on his earlier decision of 2008 rejecting Mr M.'s asylum application for his conclusion that Mr M. had not established that there were sufficient grounds to demonstrate that he was at risk of serious harm in his country of origin, since there were serious doubts as to the credibility of his claims.

46 On 6 January 2011 Mr M. brought proceedings before the High Court seeking annulment of the Minister's decision of 24 September 2010. In those proceedings he disputes the legality of the rejection of his application for subsidiary protection, on the ground that the procedure for examining that application does not comply with EU law.

47 In that vein, he submits that not only has Ireland not fully transposed Directive 2004/83, in particular Article 4(1), second sentence, Article 4(2) and the start of Article 4(3) thereof, but, in addition, the Minister has in this instance failed to comply with certain rules of EU law in the examination of Mr M.'s application for subsidiary protection.

48 It is submitted that the fundamental requirement for fairness when administrative procedures are carried out entails more particularly observance of the rights of the defence.

49 Thus, Mr M. argues, it is settled case-law that, in all proceedings which are liable to culminate in an act adversely affecting a person, the right to be heard requires, as a general principle of EU law and even in the absence of specific legislation in that respect, that the person concerned be placed in a position in which he can effectively make known his views as regards the information on which the authorities intend to base their decision. That principle is now affirmed by the Charter.

50 Mr M. submits that, read in the light of those principles, the cooperation requirement laid down in the second sentence of Article 4(1) of Directive 2004/83 means that the Minister is obliged to supply the applicant for asylum with the results of his assessment before a decision is finally made so as to enable the applicant to address those matters which suggest a negative result by putting forward all documents which are then available or any argument capable of challenging the position of the competent national authority and to enable him to draw the authority's attention to any relevant matters of which due account has not, in the applicant's view, been taken.

51 Mr M. submits that, in the present case, it is undisputed that he was at no time heard in the course of the examination of his application for subsidiary protection. Furthermore, at no point in the whole period of examination of that application was he informed of the matters which the Minister regarded

as relevant to the decision to refuse him subsidiary protection or of the date on which that decision would be taken. Moreover, in giving grounds for his decision, the Minister to a very great extent referred merely to reasons previously relied on in rejecting Mr M.'s asylum application. Furthermore, Mr M. submits that in the appeal proceedings that he had brought against the decision rejecting his asylum application he was denied an oral hearing on the ground that he had not made that application as soon as reasonably practicable after his arrival in Ireland and that he had not been able to provide any convincing reason for his failure to do so.

52 The competent Irish authorities have contended that, in the case – as here – of an application for subsidiary protection status, the application is not considered in isolation but involves a 'considerable degree of interaction between the applicant and the authorities', given that such an application is necessarily assessed following the examination – and rejection – of an asylum application in the course of which the applicant has in fact been heard and has replied to a detailed questionnaire. However, once the application is made, the procedure is 'inquisitorial and not adversarial'. Thus, the requirement for cooperation in the second sentence of Article 4(1) of Directive 2004/83 relates merely to the assessment of the relevant material presented in support of the application but does not concern the decision-making process. Moreover, in very many cases, the case presented in support of the application for subsidiary protection will be at the least substantially the same as, if not exactly identical to, that already presented in the asylum application and, in any event, if there is any new information, it will be assessed.

53 As to the merits, the authorities contend that the refusal to grant Mr M. international protection is justified by the lack of credibility of his claims, which is borne out by the fact that both his applications were made a considerable time after the date on which he arrived in Ireland.

54 The High Court doubts whether the arguments put forward by Mr M. can be accepted. Thus, it states that it has already held on a number of occasions that, in view of the wording and structure of Directive 2004/83 as well as its context, the procedure for examining an application for subsidiary protection which has been followed in circumstances such as those of the case before it is not invalidated in view of the requirement in Article 4(1), second sentence, of that directive.

55 However, the High Court states that it appears from a decision given in 2007 by the Raad van State (Council of State) (Netherlands) that, in the Kingdom of the Netherlands, when the competent authority intends to reject an asylum application, the applicant is informed of that beforehand, is notified of the reasons for the rejection and has an opportunity to make known his views in writing within a prescribed period.

56 In those circumstances, the High Court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'In a case where an applicant seeks subsidiary protection status 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?'

The question referred for a preliminary ruling

57 For the purpose of replying to the question raised by the referring court, it must be noted at the outset that Article 4(1) of Directive 2004/83 applies to an application such as that at issue in the main proceedings which seeks subsidiary protection status.

58 Indeed, according to both its wording and the title of the Chapter of which it forms part, Article 4(1) of Directive 2004/83 concerns applications for international protection.

59 As is clear from Article 2(a) and (g) of Directive 2004/83, 'international protection' means refugee status and subsidiary protection status and 'application for international protection' means a request for either refugee status or subsidiary protection status.

60 However, with regard to the scope that should be accorded to the requirement to cooperate with an applicant which Article 4(1), second sentence, of Directive 2004/83 imposes on the Member State concerned, the Court cannot accept the proposition, put forward by Mr M., that that rule requires the national authority responsible for examining an application for subsidiary protection to supply the applicant, before adoption of a negative decision on that application and where an application for asylum made by the same person has previously been refused, with the elements on which it intends to base its decision and to seek the applicant's observations in that regard.

61 A requirement of that kind in no way results from the wording of the provision in question. If the EU legislature had intended to impose on Member States obligations such as those advocated by Mr M., it would certainly have done so expressly.

62 Moreover, a duty of cooperation that is understood in that way is not in keeping with the system established by the EU legislature for the purpose of processing applications for international protection.

63 As is clear from its title, Article 4 of Directive 2004/83 relates to the 'assessment of facts and circumstances'.

64 In actual fact, that 'assessment' takes place in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are met.

65 Under Article 4(1) of Directive 2004/83, although 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.

66 This requirement that the Member State cooperate therefore means, in practical terms, that if, for any reason whatsoever, the elements provided by an applicant for international protection are not complete, up to date or relevant, it is necessary for the Member State concerned to cooperate actively with the applicant, at that stage of the procedure, so that all the elements needed to substantiate the application may be assembled. A Member State may also be better placed than an applicant to gain access to certain types of documents.

67 Moreover, the interpretation set out in the previous paragraph finds support in Article 8(2)(b) of Directive 2005/85, pursuant to which Member States are to ensure that precise and up-to-date information is obtained on the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited.

68 It is thus clear that Article 4(1) of Directive 2004/83 relates only to the first stage mentioned in paragraph 64 of this judgment, concerning the determination of the facts and circumstances *qua* evidence which may substantiate the asylum application.

69 By contrast, it is apparent that the argument put forward by Mr M. concerns the second stage, also mentioned at paragraph 64 above, which relates to the appraisal of the conclusions to be drawn from the evidence provided in support of the application, when it is determined whether that evidence does in fact meet the conditions required for the international protection requested to be granted.

70 Such an examination of the merits of an asylum application is solely the responsibility of the competent national authority; accordingly, at that stage in the procedure, a requirement that the authority cooperate with the applicant – as laid down in the second sentence of Article 4(1) of Directive 2004/83 – is of no relevance.

71 It should be added that a duty of cooperation with the scope advocated by Mr M. would not as a matter of logic fit into the scheme of Directive 2004/83.

72 Indeed, in the light of its content and purpose, Directive 2004/83 has the sole purpose of laying down, on the one hand, the criteria common to all the Member States as regards the substantive conditions which nationals of third countries must meet in order to qualify for international protection and, on the other, the substance of that protection.

73 Directive 2004/83 in no way seeks, however, to prescribe the procedural rules applicable to the examination of an application for international protection or, therefore, to determine the procedural safeguards which must, in that respect, be afforded to an applicant for asylum.

74 Accordingly, the conclusion on this point must be 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 Directive 2004/83, 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.

75 That said, it can be seen from the observations which the parties to the main proceedings have submitted to the Court that this case raises more generally the question of the right of a foreign national to be heard in the course of examination of his second application (which seeks subsidiary protection) when that application is made following rejection of an initial application (which sought refugee status) – as is the situation in the case before the referring court, in which the initial application was dealt with in a separate procedure during which the applicant was able properly to make known his views.

76 In order to provide the referring court with a useful answer, it is thus important to determine whether, in relation to a situation such as that in the main proceedings – a feature of which is that there are two separate procedures, one after the other, for examining asylum applications and subsidiary protection applications respectively – it is unlawful under EU law not to hold a further hearing of the applicant in the course of examination of the second application and prior to rejection of that application on the ground that, as both the High Court and Ireland have contended, he has already been heard during the procedure relating to his first application (for refugee status).

77 It should be noted at the outset that Directive 2005/85 establishes minimum standards for procedures for examining applications and sets out the rights of applicants for asylum.

78 In that regard, Directive 2005/85 provides, inter alia, that applications for asylum are to be neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible (Article 8(1)), that applications are examined and decisions are taken individually, objectively and impartially (Article 8(2)(a)), that, where an application is rejected, the reasons in fact and in law

are stated in the decision (Article 9(2), first subparagraph) and that, before a decision is taken by the responsible authority, the applicant for asylum is to be given the opportunity of a personal interview on his application under conditions which allow him to present the grounds for the application in a comprehensive manner (Articles 12 and 13(3)).

79 However, Directive 2005/85 does not apply to applications for subsidiary protection except where a Member State establishes a single procedure in which an application is examined in the light of both forms of international protection, namely asylum and subsidiary protection. In such a situation, the rules set out in that directive must be applied throughout the procedure, thus also when the competent national authority examines an application for subsidiary protection.

80 That is not, however, the situation in Ireland, which has chosen to establish two separate procedures for examining asylum applications and subsidiary protection applications respectively, it being possible to make the second application only after the first has been rejected. In those circumstances, Irish law requires observance of the safeguards and rules set out in Directive 2005/85 solely in relation to the examination of applications for refugee status. With regard more particularly to the right of the applicant to be heard before a decision is adopted, the High Court has stated in its order for reference that, according to national case-law, it is not necessary to observe that procedural requirement when dealing with an application for subsidiary protection made following rejection of an asylum application, given that the applicant will already have been heard in the examination of his asylum application and given that the two procedures are closely linked.

81 In that regard, it must be recalled that observance of the rights of the defence is a fundamental principle of EU law (see, inter alia, Case C-7/98 *Krombach* [2000] ECR I-1935, paragraph 42, and Case C-349/07 *Sopropé* [2008] ECR I-10369, paragraph 36).

82 In the present case, with regard more particularly to the right to be heard in all proceedings, which is inherent in that fundamental principle (see, to that effect, inter alia, Case 322/81 *Nederlandsche Banden-Industrie-Michelin* v *Commission* [1983] ECR 3461, paragraph 7, and Case 374/87 *Orkem* v *Commission* [1989] ECR 3283, paragraph 32), that right is now affirmed not only in Articles 47 and 48 of the Charter, which ensure respect of both the rights of the defence and the right to fair legal process in all judicial proceedings, but also in Article 41 thereof, which guarantees the right to good administration.

83 Article 41(2) of the Charter provides that the right to good administration includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy, and the obligation of the administration to give reasons for its decisions.

84 It must be stated that, as follows from its very wording, that provision is of general application.

85 Thus the Court has always affirmed the importance of the right to be heard and its very broad scope in the EU legal order, considering that that right must apply in all proceedings which are liable to culminate in a measure adversely affecting a person (see, inter alia, Case 17/74 *Transocean Marine Paint Association* v *Commission* [1974] ECR 1063, paragraph 15; *Krombach*, paragraph 42; and *Sopropé*, paragraph 36).

86 In accordance with the Court's case-law, observance of that right is required even where the applicable legislation does not expressly provide for such a procedural requirement (see *Sopropé*, paragraph 38).

87 The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (see, inter alia, Case C-287/02 *Spain* v *Commission* [2005] ECR I-5093,

paragraph 37 and case-law cited; *Sopropé*, paragraph 37; Case C-141/08 P *Foshan Shunde Yongjian Housewares & Hardware* v *Council* [2009] ECR I-9147, paragraph 83; and Case C-27/09 P *France* v *People's Mojahedin Organization of Iran* [2011] ECR I-13427, paragraphs 64 and 65).

88 That right also requires the authorities to pay due attention to the observations thus submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision (see Case C-269/90 *Technische Universität München* [1991] ECR I-5469, paragraph 14, and *Sopropé*, paragraph 50); the obligation to state reasons for a decision which are sufficiently specific and concrete to allow the person to understand why his application is being rejected is thus a corollary of the principle of respect for the rights of the defence.

89 It follows from the foregoing reasoning that the right, thus understood, of the applicant for asylum to be heard must apply fully to the procedure in which the competent national authority examines an application for international protection pursuant to rules adopted in the framework of the Common European Asylum System.

90 In that regard, the Court cannot accept the view put forward by the referring court and Ireland that, where – as in Ireland – an application for subsidiary protection is dealt with in a separate procedure, necessarily after the rejection of an asylum application upon conclusion of an examination in which the applicant has been heard, it is not necessary for the applicant to be heard again for the purpose of considering his application for subsidiary protection because the formality of a hearing in a sense replicates the hearing which he has already had in a largely similar context.

91 Rather, when a Member State has chosen to establish two separate procedures, one following upon the other, for examining asylum applications and applications for subsidiary protection, it is important that the applicant's right to be heard, in view of its fundamental nature, be fully guaranteed in each of those two procedures.

92 Furthermore, that interpretation is all the more justified in a situation such as that of the case in the main proceedings since, according to the information provided by the referring court itself, the competent national authority, when stating the grounds for its decision to reject the application for subsidiary protection, referred to a large extent to the reasons it had already relied on in support of its rejection of the asylum application, although, under Directive 2004/83, the conditions which must be fulfilled for the grant of refugee status and for the awarding of subsidiary protection status are different, as is the nature of the rights attaching to each of them.

93 It should be added that, according to the Court's settled case-law, the 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 the other general principles of EU law (see Joined Cases C-411/10 and C-493/10 *N.S. and Others* [2011] ECR I-13905, paragraph 77).

94 It is in the light of that guidance as to the interpretation of EU law that it will be for the referring court to determine whether the procedure followed in the examination of Mr M.'s application for subsidiary protection was compatible with the requirements of EU law and, should it find that Mr M.'s right to be heard was infringed, to draw all the necessary inferences therefrom.

95 In the light of all the foregoing considerations, the answer to the question referred is 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 Directive 2004/83, 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, in each of those procedures, of the applicant's fundamental rights 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.

Costs

96 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

The requirement that the Member State concerned cooperate with an applicant for asylum, as stated in the second sentence of Article 4(1) of 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, 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, in each of those procedures, of the applicant's fundamental rights 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.

[Signatures]