JUDGMENT OF THE COURT (Second Chamber)

28 July 2011 (*)

(Directive 2005/85/EC – Minimum standards on procedures in Member States for granting and withdrawing refugee status – 'Decision taken on [the] application for asylum' within the meaning of Article 39 of Directive 2005/85 – Application by a third country national for refugee status – Failure to provide reasons justifying the grant of international protection – Application rejected under an accelerated procedure – No remedy against the decision to deal with the application under an accelerated procedure – Right to effective judicial review)

In Case C-69/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunal Administratif (Luxembourg), made by decision of 3 February 2010, received at the Court on 5 February 2010, in the proceedings

Brahim Samba Diouf

v

Ministre du Travail, de l'Emploi et de l'Immigration,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, A. Rosas (Rapporteur), U. Lõhmus and A. Ó Caoimh, Judges,

Advocate General: P. Cruz Villalón,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 19 January 2011,

after considering the observations submitted on behalf of:

– Mr Samba Diouf, by O. Lang and G. Gros, avocats,

– the Luxembourg Government, by C. Schiltz, acting as Agent,

– the German Government, by J. Möller and N. Graf Vitzthum, acting as Agents,

– the Greek Government, by M. Michelogiannaki, acting as Agent,

– the Netherlands Government, by C. Wissels, acting as Agent,

– the European Commission, by M. Condou-Durande, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 1 March 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of 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 (OJ 2005 L 326, p. 13).

2 The reference was made in proceedings between Mr Samba Diouf, a Mauritanian national without a legal right of residence, and the Luxembourg Ministre du Travail, de l'Emploi et de l'Immigration (Minister for Labour, Employment and Immigration), concerning the rejection, under an accelerated procedure, of Mr Samba Diouf's application for refugee status in the absence of any reasons justifying the grant of international protection.

Legal context

European Union legislation

The Charter of Fundamental Rights of the European Union

3 Article 47 of the Charter of Fundamental Rights of the European Union, entitled 'Right to an effective remedy and to a fair trial', provides:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

....'

Directive 2005/85

4 Recital 11 in the preamble to Directive 2005/85 states:

'It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The organisation of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.'

5 The first sentence of recital 13 to that directive is worded as follows:

'In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention [of 28 July 1951 relating to the status of refugees ('the Geneva Convention')], every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to cooperate and properly

communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure.'

6 Recital 27 to Directive 2005/85 states:

'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.'

7 Article 23 of Directive 2005/85, entitled 'Examination procedure', provides:

'1. Member States shall process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:

(a) be informed of the delay; or

(b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time-frame.

3. Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs.

4. Member States may also provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated if:

...

(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under [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)]; or

(c) the application for asylum is considered to be unfounded:

(i) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31, or

(ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1); or

(d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision …

...'

8 Article 28 of Directive 2005/85, entitled 'Unfounded applications', is worded as follows:

'1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.

2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.'

9 Article 39 of Directive 2005/85, entitled 'The right to an effective remedy', is worded as follows:

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

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

(i) to consider an application inadmissible pursuant to Article 25(2),

(ii) taken at the border or in the transit zones of a Member State as described in Article 35(1),

(iii) not to conduct an examination pursuant to Article 36;

(b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20;

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

(d) a decision refusing entry within the framework of the procedures provided for under Article 35(2);

(e) a decision to withdraw refugee status pursuant to Article 38.

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; and

(c) the grounds for challenging a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).

4. Member States may lay down time-limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

5. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC, the applicant may be considered as having an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.

6. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.'

National legislation

10 The relevant legislation is the Law of 5 May 2006 on the right of asylum and complementary forms of protection (loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection; *Mémorial* A 2006, p. 1402), as amended by the law of 29 August 2008 (*Mémorial* A 2008, p. 2024, 'the Law of 5 May 2006').

11 Article 19 of the Law of 5 May 2006 provides:

'The Minister shall rule on the merits of the application for international protection by a reasoned decision which shall be communicated to the applicant in writing. Where the application is rejected, information on the right of action shall be expressly set out in the decision. The Minister shall ensure that the procedure is concluded as soon as possible, without prejudice to an adequate and complete examination. Where a decision cannot be taken within a six-month period, the applicant concerned shall receive, upon request, information relating to the period within which a decision is liable to be taken on his application. That information shall not oblige the Minister to take a decision upon the applicant's case within the period stated. A decision by the Minister rejecting the application shall constitute an order to leave the territory.

(2) Internal administrative appeals shall not interrupt the periods prescribed by this Article within which legal actions may be brought.

(3) A decision rejecting an application for international protection may be challenged by an action for reversal before the Tribunal Administratif (Administrative Court). An order to leave the territory may be challenged by an action for annulment before the Tribunal Administratif. The two actions must form the subject of a single originating application, being inadmissible if they are brought separately. The action must be brought within one month of notification. The time-limit for bringing an action and an action brought within the time-limit shall have suspensory effect. ...

(4) A decision of the Tribunal Administratif may be challenged by an appeal before the Cour Administrative (Higher Administrative Court). The appeal must be lodged within one month of notification by the registrar. The time-limit for lodging an appeal and an appeal lodged within the time-limit shall have suspensory effect. ....'

12 Article 20 of the Law of 5 May 2006 provides:

'(1) The Minister may rule on the merits of the application for international protection under an accelerated procedure in the following circumstances:

...

(b) the applicant clearly does not qualify for the status conferred by international protection;

...

(d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity or nationality that could have had a negative impact on the decision;

...

(2) The Minister shall make his decision no later than two months from the day on which it is apparent that the applicant falls within one of the categories provided for in paragraph 1 above. The Minister shall give his ruling in the form of a reasoned decision which shall be communicated to the applicant in writing. Where the application is rejected, information on the right of action shall be expressly set out in the decision. A decision by the Minister rejecting the application shall constitute an order to leave the territory in accordance with the provisions of the Amended Law of 28 March 1972 ... .

(3) Internal administrative appeals shall not interrupt the periods prescribed by this Article within which legal actions may be brought.

(4) A decision rejecting an application for international protection which is taken under an accelerated procedure may be challenged by an action for reversal before the Tribunal Administratif. An order to leave the territory may be challenged by an action for annulment before the Tribunal Administratif. The two actions must form the subject of a single originating application, being inadmissible if they are brought separately. The action must be brought within 15 days of notification. The Tribunal Administratif shall give judgment within two months of the making of the application. … The time-limit for bringing an action and an

action brought within the time-limit shall have suspensory effect. The decisions of the Tribunal Administratif shall not be open to appeal.

(5) A decision by the Minister to rule on the merits of the application for international protection under an accelerated procedure shall not be open to any appeal.'

13 The Law of 5 May 2006 was amended by the law of 19 May 2011 (*Mémorial* A 2011, p. 1618). Paragraph 5 of Article 20 of the first of those laws was repealed and paragraph 4 thereof was amended as follows:

'A decision by the Minister to rule on the merits of the application for international protection under an accelerated procedure may be challenged by an action for annulment before the Tribunal Administratif. A decision rejecting an application for international protection which is taken under an accelerated procedure may be challenged by an action for reversal before the Tribunal Administratif. An order to leave the territory may be challenged by an action for annulment before the Tribunal Administratif. The three actions must form the subject of a single originating application, being inadmissible if they are brought separately. The action must be brought within 15 days of notification. The Tribunal Administratif shall give judgment within two months of the making of the application. … The time-limit for bringing an action and an action brought within the time-limit shall have suspensory effect. The decisions of the Tribunal Administratif shall not be open to appeal'.

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

14 On 19 August 2009, Mr Samba Diouf, a Mauritanian national, submitted to the competent department of the Luxembourg Ministry of Foreign Affairs and Immigration an application for international protection. On 22 September 2009, he was heard with regard to his situation and the reasons underlying the application.

15 Mr Samba Diouf stated that he had left Mauritania in order to flee from slavery and that he wished to settle in Europe in order to live in better conditions and start a family. He also expressed the fear that his former employer, from whom he had stolen EUR 3000 in order to get to Europe, would have him hunted down and killed.

16 The application for international protection submitted by Mr Samba Diouf was examined under an accelerated procedure and was rejected as unfounded by a decision of 18 November 2009 of the Luxembourg Minister for Labour, Employment and Immigration, sent to the applicant by registered mail on 20 November 2009.

17 By that decision, in the first place, Mr Samba Diouf was informed of the fact that a ruling on the merits of his application for international protection had been given under an accelerated procedure since he fell within two of the cases provided for in Article 20(1) of the Law of 5 May 2006, given that he clearly did not qualify for the status conferred by international protection (Article 20(1)(b)) and that he had misled the authorities by presenting false information or documents (Article 20(1)(d)).

18 In the second place, by that decision, the Minister for Labour, Employment and Immigration rejected Mr Samba Diouf's application for international protection in the

decision on the substance. In the third place, the Minister ordered Mr Samba Diouf to leave Luxembourg.

19 The reasons given for rejecting Mr Samba Diouf's application were, first, the fact that he had produced a forged passport, which had misled the authorities, and second, that the reasons that he had put forward were economic in nature and did not satisfy any of the substantive criteria giving grounds for international protection.

20 More specifically, it was held that the fear of reprisals from Mr Samba Diouf's former employer could not be regarded as fear of persecution for the purposes of the Geneva Convention, in the absence of any political, ethnic or religious background. It was also held that the fear of reprisals, which remained hypothetical, was not established. The other considerations mentioned by Mr Samba Diouf, namely that his coming to Europe was also motivated by the desire to marry and start a family and by the fact that working conditions were too hard in Mauritania, were regarded as clearly outside the scope of the Geneva Convention. Moreover, it was also stated that the new Mauritanian Government had passed a law against slavery, which had entered into force in February 2008 and under which slavery is punishable with a fine and a 10-year term of imprisonment.

21 Finally, it was also held that there were no sound and proven reasons which would give grounds for believing that Mr Samba Diouf ran a real risk of suffering the serious harm defined in Article 37 of the Law of 5 May 2006 and justifying the grant of subsidiary protection.

22 Mr Samba Diouf brought an action against the decision of the Minister for Labour, Employment and Immigration of 18 November 2009 before the Tribunal Administratif, seeking (i) annulment of that decision in so far as the Minister had thereby decided to rule on the merits of Mr Samba Diouf's application for international protection under the accelerated procedure, (ii) reversal or annulment of that decision, in so far as it refused to grant him international protection and (iii) annulment of the decision in so far as Mr Samba Diouf was thereby ordered to leave Luxembourg.

23 In its consideration of the admissibility of the action seeking annulment of the decision of the Minister for Labour, Employment and Immigration to rule on the merits of Mr Samba Diouf's application under an accelerated procedure, the Tribunal Administratif concluded that the application of Article 20(5) of the Law of 5 May 2006, which provides that such a decision is not open to any appeal, gave rise to questions concerning the interpretation of Article 39 of Directive 2005/85, with respect to the application of the general principle of the right to an effective remedy.

24 The Tribunal Administratif points out, in that regard, that the decision to rule on the merits of an application for asylum under an accelerated procedure is not without consequences for the applicant for asylum. First, according to that court, the effect of the decision to use the accelerated procedure – which, unlike the substantive decisions relating to refusal to grant international protection and to removal from the territory, is not amenable to appeal under Luxembourg law – is to reduce the time-limit for bringing an action from 1 month to 15 days. Second, the judicial remedies which usually entail two levels of jurisdiction are not available to the applicant when that procedure is used, legal proceedings being limited, according to the referring court, to a single level of jurisdiction.

25 The Tribunal Administratif also expresses a view on the line of argument put forward before it by the representative of the Luxembourg Government, according to which the lawfulness of the decision to rule on the merits of the application for international protection under an accelerated procedure is reviewed – through an indirect action – by the Tribunal Administratif in the course of its examination of an action for reversal brought against the final decision rejecting the application. That argument is based on a judgment of the Cour Administrative of 16 January 2007 (No 22095 C).

26 The Tribunal Administratif maintains that it cannot follow the abovementioned judgment of the Cour Administrative on that point, since a review of the decision to rule on the merits of an application for asylum under an accelerated procedure 'through the remedy available against the final decision', as suggested by the Cour Administrative, appears to it to be contrary to the intention of the legislature to exempt, by means of Article 20(5) of the Law of 5 May 2006, that decision from any judicial review.

27 It was in those circumstances that the Tribunal Administratif decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is Article 39 of Directive 2005/85/EC to be interpreted as precluding national rules such as those established in the Grand Duchy of Luxembourg by Article 20(5) of the … Law [of 5 May 2006], pursuant to which an applicant for asylum does not have a right to appeal to a court against the administrative authority's decision to rule on the merits of the application for international protection under the accelerated procedure?

2. If the answer [to the first question] is in the negative, is the general principle of an effective remedy under Community law, prompted by Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, to be interpreted as precluding national rules such as those established in the Grand Duchy of Luxembourg by Article 20(5) of the … Law [of 5 May 2006], pursuant to which an applicant for asylum does not have a right to appeal to a court against the administrative authority's decision to rule on the merits of the application for international protection under the accelerated procedure?'

Consideration of the questions referred

28 By these questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 39(1)(a) of Directive 2005/85, by virtue of which applicants must have the right to an effective remedy against decisions 'taken on their application for asylum', and, more generally, the general principle of the right to an effective remedy, must be interpreted as meaning that they preclude rules such as those at issue in the main proceedings, as a result of which no separate judicial remedy exists as against the decision of the competent national authority to examine an application for asylum under an accelerated procedure.

Preliminary observations

29 For the purpose of analysing this question, it is necessary, as a preliminary matter, to note that the procedures put in place by Directive 2005/85 are minimum standards and that the Member States have, in a number of respects, a margin of assessment with regard to the implementation of those provisions in the light of the particular features of national law.

30 Thus, the organisation of the processing of applications for asylum is, as stated in recital 11 to Directive 2005/85, left to the discretion of Member States, which may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards provided for by the directive, without prejudice, in the words of Article 23(2) of the directive, to an adequate and complete examination. Attention is also drawn, in recital 11, to the fact that it is in the interests of both Member States and applicants for asylum to decide as soon as possible on applications for asylum.

31 Article 23 of Directive 2005/85 gives Member States, inter alia, the option to use an accelerated procedure in the cases provided for in paragraphs 3 and 4, that is to say, where the application is likely to be well founded or where the applicant has special needs or on the basis of 16 specific grounds justifying the use of such a procedures. Those grounds include, in particular, (i) applications in respect of which all the indications are that the application is unfounded, since clear and obvious factors give the authorities grounds for believing that the applicant will not be entitled to international protection, and (ii) fraudulent applications or applications made in bad faith.

32 In that regard, points (b) and (d) of Article 23(4) of Directive 2005/85 mention, inter alia, situations in which the applicant either clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83 or else has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision.

33 Directive 2005/85 does not contain a definition of the concept of accelerated procedure. However, Article 23(4) of the directive makes the accelerated processing of certain applications for asylum subject to compliance with the basic principles and guarantees referred to in Chapter II thereof. That Chapter contains a series of provisions seeking to ensure that there is effective access to asylum procedures by requiring Member States to afford applicants for asylum sufficient guarantees for them to be able to pursue their cases throughout all stages of the procedure.

34 As stated in recital 8 in its preamble, Directive 2005/85 respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Specifically, decisions taken on an application for asylum and on the withdrawal of refugee status are, according to recital 27 to the directive, subject to an effective remedy before a court or tribunal within the meaning of Article 267 TFEU.

35 The fundamental principle of the right to an effective remedy forms the subject-matter of Article 39 of Directive 2005/85. Article 39 requires Member States to ensure that applicants for asylum have the right to an effective remedy before a court or tribunal against the decisions listed in paragraph 1 of the article.

36 Under Article 39(1)(a) of Directive 2005/85, Member States must ensure that applicants for asylum have the right to an effective remedy against a decision taken on their application for asylum, including a decision to consider an application inadmissible, a decision taken at the border or in the transit zones and a decision not to conduct an examination of the application, owing to the fact that the competent authority has established that the applicant for asylum is seeking to enter, or has entered, illegally into its territory from a safe third country.

The concept of a decision taken on an application for asylum, within the meaning of Article 39(1)(a) of Directive 2005/85

37 The referring court asks, in the first place, whether Article 39(1)(a) of Directive 2005/85 must be interpreted as encompassing a decision of the competent authority to examine an application for international protection under an accelerated procedure.

38 The applicant in the main proceedings submits that the deliberately imprecise wording of Article 39(1)(a) of Directive 2005/85 supports the conclusion that any decision relating to the application for asylum is covered by that provision and that Member States must provide for a right of action against the decision of a national authority to examine an application under an accelerated procedure.

39 The Governments that have submitted observations and the Commission maintain, on the contrary, that only final decisions resulting in the refusal or withdrawal of refugee status are covered by that provision. In their submission, the subject of the effective remedy required by Article 39(1)(a) of Directive 2005/85 can be nothing other than the final decision on the application for protection and not the decision by which the national authority decides to examine the application under an accelerated procedure, which is a decision preparatory to the final decision or a decision as to how the procedure should be organised.

40 It is therefore appropriate to ascertain whether a decision to examine an application for asylum under an accelerated procedure constitutes a decision 'taken on [the] application for asylum', against which the applicant has the right to an effective remedy before a court or tribunal, pursuant to Article 39(1)(a) of Directive 2005/85.

41 In that regard, it is clear from the wording of Article 39(1)(a) of Directive 2005/85 and, in particular, from the non-exhaustive list of decisions contained therein, that the concept of a 'decision taken on [the] application for asylum' covers a series of decisions which, because they entail rejection of an application for asylum or are taken at the border, amount to a final decision rejecting the application on the substance. The same is true of the other decisions which, under Article 39(1)(b) to (e) of Directive 2005/85, are expressly made subject to the right to an effective judicial remedy.

42 Accordingly, the decisions against which an applicant for asylum must have a remedy under Article 39(1) of Directive 2005/85 are those which entail rejection of the application for asylum for substantive reasons or, as the case may be, for formal or procedural reasons which preclude any decision on the substance.

43 It follows that decisions that are preparatory to the decision on the substance or decisions pertaining to the organisation of the procedure are not covered by that provision.

44 Moreover, as the Advocate General has stated in points 53 and 54 of his Opinion, if the wording of Article 39 of Directive 2005/85 were interpreted as meaning that 'a decision taken on [the] application' referred to any decision given in relation to an application for asylum and as also referring to decisions in preparation for the final decision on the application for asylum, or decisions pertaining to the organisation of the procedure, that would not be consistent with the interest in the expediency of procedures relating to applications for asylum. That interest in a procedure in that domain being, in accordance with Article 23(2) of Directive 2005/85, concluded as soon as possible, without prejudice to an adequate and

complete examination, is, as is clear from recital 11 to the directive, common to both Member States and applicants for asylum.

45 Consequently, Article 39(1) of Directive 2005/85 must be interpreted as not requiring national law to provide for a specific or separate remedy against a decision to examine an application for asylum under an accelerated procedure. That provision does not therefore preclude, in principle, national rules such as those set out in Article 20(5) of the Law of 5 May 2006.

The compatibility of rules such as those at issue in the main proceedings with the right to an effective judicial remedy

46 Article 39(2) of Directive 2005/85 leaves it to Member States to decide on the time-limits and other necessary rules for implementing the right to an effective remedy, provided for in Article 39(1). As is recalled in recital 27 to the directive, 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.

47 Since, in the case before the referring court, the grounds relied on by the competent authority in order to use an accelerated procedure are the same as, or broadly tally with, those which led to the substantive decision refusing refugee status, the referring court asks, in the second place, whether the fact that an applicant for asylum is not entitled to appeal against the decision of the competent administrative authority to examine his application under an accelerated procedure infringes the right to an effective remedy inasmuch as that applicant for asylum is not in a position to challenge the substantive decision refusing him refugee status.

48 The question referred thus concerns the right of an applicant for asylum to an effective remedy before a court or tribunal in accordance with Article 39 of Directive 2005/85 and, in the context of European Union ('EU') law, with the principle of effective judicial protection.

49 That principle is a general principle of EU law to which expression is now given by Article 47 of the Charter of Fundamental Rights of the European Union (see Case C-279/09 *DEB* [2010] ECR I-0000, paragraphs 30 and 31, and the order in Case C-457/09 *Chartry* [2011] ECR I-0000, paragraph 25).

50 It is therefore appropriate to determine whether the system put in place by the national rules at issue in the main proceedings observes the principle of effective judicial protection and, in particular, whether the fact that there is no appeal against the decision to examine the application for asylum under an accelerated procedure denies the applicant for asylum his right to an effective remedy.

51 The Law of 5 May 2006 provides, in Article 20(4), for the right to bring (i) an action for reversal before the Tribunal Administratif against a decision rejecting the application for international protection taken by the Minister for Labour, Employment and Immigration in an accelerated procedure, and (ii) an action for annulment against an order to leave the territory.

52 According to the applicant in the main proceedings, Article 20(5) of the Law of 5 May 2006, which provides that the decision of the Minister to rule on the merits of the application for international protection under an accelerated procedure may not be challenged, precludes

any judicial review of the said decision, whether by way of a separate action or in the context of the action on the merits against the final decision relating to the grant of international protection. It is claimed that the fact that it is impossible to bring an action prevents the applicant from having access to an effective remedy against the final decision on the substance of his application for asylum, since his action on the substance would have no chance of succeeding in those circumstances.

53 The Governments that have submitted observations and the Commission maintain that the right to an effective judicial remedy does not preclude rules such as those at issue in the main proceedings, drawing attention to the fact that, in the examination of the final decision, it must be possible for the legal basis of any preparatory decision to be the subject of judicial review. The Luxembourg Government maintains, in that regard, that an effective legal remedy exists by virtue of the action that may be brought against the final decision, as the Cour Administrative acknowledged in its judgment of 16 January 2007 (No 22095C), and as is confirmed by the hitherto settled case-law of the Tribunal Administratif.

54 It is appropriate, in that regard, to recall that, in Case C-13/01 *Safalero* [2003] ECR I-8679, paragraphs 54 to 56, the Court held that the principle of effective judicial protection of the rights which the EU legal order confers on individuals is to be construed as not precluding national legislation under which an individual cannot bring court proceedings to challenge a decision taken by the public authorities, where there is available to that individual a legal remedy which ensures respect for the rights conferred on him by EU law and which enables him to obtain a judicial decision finding the provision in question to be incompatible with EU law.

55 The decision relating to the procedure to be applied for the examination of the application for asylum, viewed separately and independently from the final decision which grants or rejects the application, is a measure preparatory to the final decision on the application.

56 Accordingly, the absence of a remedy at that stage of the procedure does not constitute an infringement of the right to an effective remedy, provided, however, that the legality of the final decision adopted in an accelerated procedure – and, in particular, the reasons which led the competent authority to reject the application for asylum as unfounded – may be the subject of a thorough review by the national court, within the framework of an action against the decision rejecting the application.

57 As regards judicial review within the framework of a substantive action against the decision rejecting the application for international protection, the effectiveness of that action would not be guaranteed if – because of the impossibility of bringing an appeal under Article 20(5) of the Law of 5 May 2006 – the reasons which led the Minister for Labour, Employment and Immigration to examine the merits of the application under an accelerated procedure could not be the subject of judicial review. In a situation such as that at issue in the main proceedings, the reasons relied on by that Minister in order to use the accelerated procedure are in fact the same as those which led to that application being rejected. Such a situation would render review of the legality of the decision impossible, as regards both the facts and the law (see, by analogy, Case C-506/04 *Wilson* [2006] ECR I-8613, paragraphs 60 to 62).

58 What is important, therefore, is that the reasons justifying the use of an accelerated procedure may be effectively challenged at a later stage before the national court and reviewed by it within the framework of the action that may be brought against the final decision closing the procedure relating to the application for asylum. It would not be compatible with EU law if national rules such as those deriving from Article 20(5) of the Law of 5 May 2006 were to be construed as precluding all judicial review of the reasons which led the competent administrative authority to examine the application for asylum under an accelerated procedure.

59 In that regard, it should be noted that it is not for the Court, in the context of a reference for a preliminary ruling, to give a ruling on the interpretation of provisions of national law or to decide whether the interpretation given by the national court of those provisions is correct. Indeed, only the national courts are competent to decide upon the interpretation of domestic law (see, to that effect, Joined Cases C-378/07 to 380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 48).

60 However, in that context, attention should also be drawn to the requirement that national law be interpreted in conformity with EU law, which permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (see, inter alia, Case C-268/06 *Impac*t [2008] ECR I-2483, paragraph 99). The principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieving an outcome consistent with the objective pursued by it (see *Impact*, paragraph 101 and the case-law cited).

61 The objective of Directive 2005/85 is to establish a common system of safeguards serving to ensure that the Geneva Convention and the fundamental rights are fully complied with. The right to an effective remedy is a fundamental principle of EU law. In order for that right to be exercised effectively, the national court must be able to review the merits of the reasons which led the competent administrative authority to hold the application for international protection to be unfounded or made in bad faith, there being no irrebuttable presumption as to the legality of those reasons. It is also within the framework of that remedy that the national court hearing the case must establish whether the decision to examine an application for asylum under an accelerated procedure was taken in compliance with the procedures and basic guarantees laid down in Chapter II of Directive 2005/85, as provided for in Article 23(4) of the directive.

62 With regard to the time limits for bringing proceedings and the possibility of two levels of jurisdiction, the referring court points to the differences between the accelerated procedure and the ordinary procedure for dealing with an application for asylum. In particular, it draws attention to the fact that the action against the final decision must be brought within a period of 15 days from notification of that decision, as opposed to within 1 month in the case of the ordinary procedure, and that the decisions of the Tribunal Administratif taken in relation to an accelerated procedure are not open to appeal.

63 The Governments that have submitted observations and the Commission maintain that a single court action satisfies the minimum required by the principle that effective judicial protection should be guaranteed and submit that a 15-day time-limit, in this instance, does not

amount to an infringement of that principle, either from the point of view of the case-law of the European Court of Human Rights or that of the Court of Justice.

64 It should be determined whether EU law precludes national rules such as those at issue in the main proceedings in so far as the selection of an accelerated procedure instead of the ordinary procedure entails differences the effect of which is, in essence, that a less favourable treatment is reserved for the applicant for asylum as regards the right to an effective remedy, since the applicant has only 15 days within which to bring an action and does not have the benefit of two levels of jurisdiction.

65 In that regard, it must be stated at the outset that the differences that exist, in the national rules, between the accelerated procedure and the ordinary procedure, the effect of which is that thetime-limit for bringing an action is shortened and that there is only one level of jurisdiction, are connected with the nature of the procedure put in place. The provisions at issue in the main proceedings are intended to ensure that unfounded or inadmissible applications for asylum are processed more quickly, in order that applications submitted by persons who have good grounds for benefiting from refugee status may be processed more efficiently.

66 As regards the fact that the time-limit for bringing an action is 15 days in the case of an accelerated procedure, whilst it is 1 month in the case of a decision adopted under the ordinary procedure, the important point, as the Advocate General has stated in point 63 of his Opinion, is that the period prescribed must be sufficient in practical terms to enable the applicant to prepare and bring an effective action.

67 With regard to abbreviated procedures, a 15-day time limit for bringing an action does not seem, generally, to be insufficient in practical terms to prepare and bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved.

68 It is, however, for the national court to determine – should that time-limit prove, in a given situation, to be insufficient in view of the circumstances – whether that element is such as to justify, on its own, upholding the action brought indirectly against the decision to examine the application for asylum under an accelerated procedure, so that, in upholding the action, the national court would order that the application be examined under the ordinary procedure.

69 As regards the fact that the applicant for asylum has the benefit of two levels of jurisdiction only in relation to a decision adopted under the ordinary procedure, Directive 2005/85 does not require there to be two levels of jurisdiction. All that matters is that there should be a remedy before a judicial body, as is guaranteed by Article 39 of Directive 2005/85. The principle of effective judicial protection affords an individual a right of access to a court or tribunal but not to a number of levels of jurisdiction.

70 The answer to the questions referred is therefore that, on a proper construction, Article 39 of Directive 2005/85 and the principle of effective judicial protection do not preclude national rules such as those at issue in the main proceedings, under which no separate action may be brought against the decision of the competent national authority to deal with an application for asylum under an accelerated procedure, provided that the reasons which led that authority to examine the merits of the application under such a procedure can in fact be

subject to judicial review in the action which may be brought against the final decision rejecting the application – a matter which falls to be determined by the referring court.

Costs

71 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 (Second Chamber) hereby rules:

On a proper construction, 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, and the principle of effective judicial protection, do not preclude national rules such as those at issue in the main proceedings, under which no separate action may be brought against the decision of the competent national authority to deal with an application for asylum under an accelerated procedure, provided that the reasons which led that authority to examine the merits of the application under such a procedure can in fact be subject to judicial review in the action which may be brought against the final decision rejecting the application – a matter which falls to be determined by the referring court.

[Signatures]

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* Language of the case: French.