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2.7 Jurisprudence of the Court of Justice of the EU (CJEU)

As the guardian of EU law, the CJEU ensures that "in the interpretation and application of the Treaties, the law is observed" (TEU, Article 19(1)). As part of its mission, the CJEU ensures the correct interpretation and application of primary and secondary European Union laws; reviews the legality of acts of EU institutions; and decides whether Member States have fulfilled their obligations under primary and secondary laws.

The CJEU also provides interpretations of EU law when requested by national judges. The Court, thus, constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of Member States, ensures the uniform application and interpretation of EU law.[165]

In 2019, the CJEU issued 12 judgments related to preliminary rulings on interpreting CEAS, compared to 16 cases in 2018. The decisions are described below.

Recast Asylum Procedures Directive

The applicability of the recast Asylum Procedures Directive in relation to existing international protection in Member States and the role of judicial institutions in reversing first instance decisions were under the Court's review.

Joined Cases C?540/17 and C?541/17 concerned two Syrian nationals who, after obtaining refugee status in Bulgaria, entered Germany during 2014 and made a new application for asylum. The applications were rejected as inadmissible. The case was referred to the CJEU by the Federal Administrative Court *(Bundesverwaltungsgericht)* in reference to the compatibility of the recast Asylum Procedures Directive, in particular when rejecting an application as inadmissible due to refugee status which had been granted in another Member State (in this case Bulgaria). The Court reaffirmed the general and absolute nature of the prohibition set out in the EU Charter, Section 4, which is closely linked to respect for human dignity and which prohibits, without any possibility of derogation, inhuman or degrading treatment at any stage of the asylum procedure. Consequently, the Court ruled that an application for international protection may not be rejected as inadmissible on the ground that the applicant has already been granted refugee status by another Member State where the foreseeable living conditions in this particular case would expose the beneficiary to a serious risk of inhuman or degrading treatment.

In Case C-556/17, the referring court did not comply with the judgment of 25 February 2017 on granting international protection unless a threat to public security was proven. Given the situation, Mr Torubarov had lived, in absence of a final decision on the application, in a situation of legal uncertainty without the benefit of any status of protection on Hungarian territory. In this case, the referring court considered that Hungarian law did not guarantee the right to an effective remedy enshrined in the recast Asylum Procedures Directive, Article 46(3) and the EU Charter, Article 47. It sought clarity from the CJEU on whether the provisions of EU law allow it to vary a decision through the disapplication of the national legislation that denies it that power. The Court ruled that the recast Asylum Procedures Directive, Article 46(3), read in conjunction with

the EU Charter, Article 47 and the recast Qualifications Directive, must be interpreted as meaning that, in circumstances where a first instance court or tribunal – after making a full and *ex nunc* examination of all the relevant elements of fact and law submitted by an applicant for international protection – had found that the applicant must be granted protection when the administrative or quasi-judicial body adopts a contrary decision without establishing new elements to justify a new assessment, that court or tribunal must vary that decision. The court decision can be taken even if it does not comply with its previous judgment and substitute its own decision for it, disapplying as necessary the national law that would prohibit it from proceeding in that way.[x]

In Joined Cases C?297/17, C?318/17, C?319/17 and C?438/17, the Court clarified issues in regard to the applicability of the recast Asylum Procedures Directive in relation to Dublin requests and the conditions provided to beneficiaries of international protection. The Court precluded the application of the directive in a situation where both the application for asylum and the take back request were lodged before the entry into force of the directive. In this case, the Asylum Procedures Directive, Article 33 must be interpreted to mean that a Member State can reject an asylum application as being inadmissible and is not obliged to have recourse, as the first resort, to the take charge or take back procedures under the Dublin III Regulation. Furthermore, the Court ruled that a Member State can reject an application for refugee status as inadmissible when an applicant has been previously granted subsidiary protection by another Member State and where the living conditions for the applicant as the beneficiary of subsidiary protection does not expose a substantial risk of suffering inhuman or degrading treatment. However, the fact that the beneficiary of subsidiary protection does not receive any subsistence allowance, or that the allowance is markedly less than in another Member State, can lead to the finding that the applicant could be in a situation of extreme material poverty and, thus, at risk.

Finally, the recast Asylum Procedures Directive, Article 33(2)(a) must be interpreted as not precluding a Member State from exercising the option to refuse refugee status, without examination, when another Member State has granted subsidiary protection to the applicant.

Recast Qualification Directive

Preliminary requests centred around revoking international protection and the validity of certain provisions of the directive. There were a six requests for preliminary rulings addressed to the CJEU by Member State courts in 2019.

For example, Case C?720/17, *Mr Mohammed Bilali v. the Federal Office for Immigration and Asylum in Austria (Bundesamt für Fremdenwesen und Asyl)*, involved the revocation of subsidiary protection status in the context of an error on the part of the administrative authorities with respect to the facts of the case. The Court ruled that the recast Qualification Directive, Article 19(1), read in conjunction with Article 16, must be interpreted as meaning that a Member State must revoke subsidiary protection status if it is later verified that the conditions for granting the status were not met, facts were subsequently found to be incorrect or the person is accused of having misled the authorities.

The revocation of international protection status based on Articles 14(4) to (6) in light of TFEU, TEU and the EU Charter was examined in Joined Cases C?391/16, C?77/17 and C?78/17. The Court ruled that the consideration of the recast Qualification Directive, Articles 14(4) to (6) had disclosed no factor to affect the validity of provisions in the TFEU, Article 78(1) and the EU Charter, Article 18. A third country national whose refugee status has been revoked when he/she has committed a crime will continue to be a refugee but will lose the formal refugee status with the result that he/she will no longer be entitled to all the rights and benefits that the directive reserves for persons with refugee status.

The Court also found that EU law (the recast Qualification Directive and the EU Charter) provides for a more extensive international protection than that guaranteed by the Geneva Convention (i.e. as regards respect for private and family life, freedom to choose an occupation and right to engage in work, social security, social

assistance and health protection). It is important to note that the CJEU declares itself competent to examine the validity of provisions in the recast Qualification Directive in light of EU primary law, and in the context of that examination, "to verify whether [Articles 14(4) to (6)] can be interpreted in a way which is in line with the level of protection guaranteed by the rules of the Geneva Convention".

Recast Reception Conditions Directive

The withdrawal of material reception conditions as a form of sanction was reviewed by the CJEU in the Haqbin Case (C-233/18) in light of the recast Reception Conditions Directive, Article 20(4). The Court ruled that such sanctions must be objective, impartial, motivated and proportionate to the particular situation of the applicant and must, under all circumstances, ensure a dignified standard of living. Consequently, Member States cannot provide for a sanction consisting of even a temporary withdrawal of material reception conditions related to housing, food or clothing if it deprives the applicant of basic needs (Articles 2(f) and (g)). It also underlined that, in the case of an unaccompanied minor, those sanctions must be determined by taking particular account of the best interests of the child (EU Charter, Article 24).

Family Reunification Directive

The assessment of broader family members (not immediate family) as dependents and procedural aspects of the family reunification procedure were brought before the CJEU.

Following the request made in proceedings between *TB v. the Hungarian Immigration and Asylum Office (Bevándorlási és Menekültügyi Hivatal)*, Case C?519/18, the Court interpreted the Family Reunification Directive, Article 10(2) concerning the refusal to grant a residence permit for purposes of family reunification to a beneficiary of international protection. The Court ruled that a Member State may authorise family reunification for a refugee's sibling within certain conditions. Specifically, if the sibling is unable to provide for his/her own needs due to his/her state of health, first, the inability is assessed based on the particular situation of the refugee and on a case-by-case basis, and second, it is assessed if the material support of the family member is provided by the refugee or if the refugee is the family member most able to provide the material support required.

Case C?706/18 concerned an Afghan national who submitted an application for a family reunification visa to the Belgian Embassy in Islamabad, Pakistan in order to join her alleged spouse, an Afghan national with refugee status in Belgium. The referring court asked whether the Family Reunification Directive must be interpreted as precluding national legislation under which, in the absence of a decision within six months of the date on which the application for family reunification is lodged, the competent national authorities must automatically issue a residence permit to the applicant, without necessarily having to establish that the applicant actually meets the requirements for residence in the host Member State in accordance with EU law. The CJEU highlighted that the competent national authority is required to establish the existence of the relevant family links between the sponsor and the third country national before authorising family reunification.

The CJEU also affirmed in Case C?635/17 its jurisdiction, on the basis of TFEU, Article 267, to interpret the Family Reunification Directive, Article 11(2), where a national court must rule on an application for family reunification lodged by a beneficiary of subsidiary protection if the provision is applicable under national law. The Court clarified that an application for family reunification by a sponsor with subsidiary protection for a minor of whom she is the aunt and allegedly the guardian, and who resides as a refugee and without family ties in a third country, cannot be rejected solely on the ground that the sponsor has not provided official documentary evidence of the death of the minor's biological parents and, consequently, that she has an actual family relationship with him. The Court noted that the explanation given by the sponsor to justify her inability to provide such evidence was deemed implausible by the competent authorities solely on the basis of the general information available about the country of origin, without taking into consideration the

specific circumstances of the sponsor and the minor and the particular difficulties they have encountered, according to their testimony, before and after fleeing their country of origin.

Dublin III Regulation

The CJEU interpreted key concepts and technical aspects of the Dublin system in light of the EU Charter and clarified preliminary issues due to the withdrawal of the United Kingdom from the EU (Brexit).

In Case C?163/17, the Court interpreted 'absconding' as meaning that an applicant deliberately evades the reach of the national authorities responsible for carrying out a transfer in order to prevent the transfer. It may be assumed that the transfer cannot be carried out because the applicant has left the accommodation knowing that he/she must inform the competent national authorities first. The applicant retains the possibility to demonstrate that there are valid reasons for the absence and it was not for the intention to evade the authorities.

Furthermore, the right to effective remedy against a transfer decision must be interpreted as meaning that the person may rely on the Dublin III Regulation, Article 29(2) to claim that, since he/she had not absconded, the six-month transfer time limit had expired. With regard to the extension of the transfer time limit to a maximum of 18 months, the requesting Member State must inform the Member State responsible before the expiry of the six-month transfer time limit that the person has absconded and specify a new transfer time limit.

The interrelation with the EU Charter's modalities and time limits and the Dublin III Regulation, Article 29 was reviewed. The Court found that, where the applicant is at risk of extreme material poverty, the threshold for "substantial risk of suffering inhuman or degrading treatment" has been reached.

In Joined Cases C?582/17 and C?583/17, the CJEU was requested to clarify the applicability of the right to an effective remedy against a transfer decision under the Dublin III Regulation. In particular, the Court ruled that the regulation should be interpreted to mean that a third country national who lodged an application for international protection in a first Member State, then left that Member State and subsequently lodged a new application for international protection in a second Member State, is not in principle entitled to rely on action (under Article 27(1)) in the second Member State against a decision to transfer on the criterion for determining responsibility (set out in Article 9). As an exception, the applicant may refer to Article 20(5) and provide the requesting Member State with information clearly establishing that it should be regarded as the Member State responsible for examining the application.

With regard to Brexit's impact on the Dublin system, the Court ruled in Case C?661/17 that the fact that a responsible Member State has notified its intention to withdraw from the EU in accordance with TEU, Article 50 does not oblige the determining Member State to examine an application for protection, under the discretionary clause set out in Article 17(1). Furthermore, the Court clarified that the Dublin III Regulation does not require the determination of the Member State responsible and the exercise of the discretionary clause set out in Article 17(1) to be undertaken by the same national authority. A Member State which is not responsible for examining an application for international protection is not required to take into account the best interests of the child and to examine the application.

Article 27(1) must be interpreted to mean that a remedy is not required against the decision not to use the option in Article 17(1), without prejudice that the decision may be challenged in an appeal against a transfer decision. Lastly, in the absence of evidence to the contrary, Article 20(3) establishes a presumption that it is in the best interests of the child to treat that child's situation as indissociable from that of his/her parents.

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[x] Following the CJEU ruling, the Hungarian Administrative and Labour Court amended the Immigration and Asylum Office decision and granted refugee status to Alekszij Torubarov. The Court decision was issued on the 26 September 2019 and is not yet published.

165 CJEU. (n.d.). General Presentation. Retrieved 20 May 2020, from https://curia.europa.eu/jcms/jcms/Jo2_6999/en/