

Accelerated proceedings and the right to effective remedy

Findings of the Court of Justice of the European Union

This exercise is based on the CJEU judgment C-69/10, Samba Diouf.

The CJEU held in the operative part of the judgment that *“right to effective remedy do not preclude national rules, 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.”*

In the reasoning of the judgment the CJEU stated that the question referred concerns the right of an applicant for asylum to an effective remedy before a court or tribunal in accordance with Procedures directive and, in the context of European Union (‘EU’) law, with the principle of effective judicial protection (para. 48). The CJEU held, *“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”* (para. 49).

Further the CJEU stated that:

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. (...)

61 (...) 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 (...).



Co-funded by the Justice Programme
of the European Union



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Therefore, it can be assumed that, the lack of possibility to appeal the decision on the application of accelerated proceedings (at the initial stage), when there is a possibility to appeal this decision (judicial review) in an appeal against the decision rejecting the application for international protection, does not constitute a violation of the right to an effective remedy within the meaning of Article 47 of the Charter.

Follow-Up Question

In your national context, how do you deal with such situations?

Guidance for facilitators

- The facilitator distributes pages with case description (fact, law, questions).
- The participants should read the background info and discuss the questions.
- After the participants have discussed the questions above, the facilitator should present the findings of the CJEU + the follow-up question and subsequently distribute the pages with case solution (findings of the CJEU).
- The participants should discuss the findings and the follow-up question.
- The results of the working group will subsequently be presented in the plenum.

Note: Before starting, the participants should appoint one note taker and one person to present the results of their working group to the plenum.