



Accelerated proceedings and the right to effective remedy

Fact of the case:

Adam C., citizen of Armenia, submitted to the asylum authorities of Luxembourg an application for international protection. He stated that he had left Armenia because he found himself in a bad financial situation. He informed that he borrowed money from people connected to the organised crime, and when he could not pay off the debt he had taken, he decided to go abroad because he was afraid of these people.

The application was rejected. Adam C. was informed in the decision that his application was considered under an accelerated procedure since it was manifestly unfounded. The administrative authority stated that the reasons Adam C. left his country of origin are of economic nature and in any way cannot be treated as reasons giving grounds for the status of international protection.

Adam C. was instructed that he had the right to appeal to the Administrative Court against the decision within 15 days.

Adam C. appealed to the Administrative Court. He requested an annulment of the decision in so far as the administrative authority decided to rule on his application for international protection under the accelerated procedure. Moreover, he argued that during the course of the proceedings he was not aware that his application was considered under accelerated procedure. He argued, that if he knew it from the beginning, he would give the first instance authority additional information about his case, which he did not manage to do before the decision was made.

In addition, Adam C. stated, that he should not only be informed in the initial decision that his application would be considered under the accelerated procedure, but he should also be able to challenge that initial decision separately, at the initial stage of the proceedings. Failure to provide him with such a possibility deprived him of an effective remedy against a decision having a significant impact on his rights and obligations. He argued that if he could to challenge a decision regarding the procedure adopted at the initial stage of the proceedings, he could have caused his proceedings to be governed by ordinary proceedings, during which he would have more time to collect evidence.

For this reason, in his view, the possibility of challenging the decision on the application of the procedure, only in the appeal against the decision on the merits of the application, deprived him of the right to an effective remedy.

Adam C. was also seeking the annulment of the decision, in so far as it refused to grant him international protection. He argued that there are serious reasons to believe that he might be persecuted in his country of origin and be subjected to violence or even death.

Arguments to be considered

According to the Article 46 (1) (a) of the Procedures directive Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against a decision taken on application for international protection. Does it contain a closed list of types of decisions which might be challenged before a court or a tribunal?

Legal Framework

Relevant European Law

Directive 2013/32/EU (recast Procedures directive)

(18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

(20) In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive.

(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.

Article 31 Examination procedure

1. Member States shall process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II. (...)

8. Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

(a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU

Article 46 The right to an effective remedy

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

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

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

Relevant National Law

Act on asylum seekers

Article 20:

1. The administrative authorities may rule on the merits of the application for international protection under an accelerated procedure in the following circumstances:

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

(...)

(2) The administrative authorities shall make its 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 administrative authorities 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 appeal shall be expressly set out in the decision.

(3) 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 Administrative Court. The action must be brought within 15 days of notification. The Administrative Court shall give judgment within two months of the making of the application. (...)

Question

Should Adam C. be able to challenge, on initial state of the proceedings, a decision to consider his application under an accelerated procedure?