



[CJEU - Bilali v Bundesamt für Fremdenwesen und Asyl, C-720/17](#)

The case concerned the interpretation of Article 19 of the Directive (2011/95/EU, Qualification Directive). Specifically, the applicant had been granted subsidiary protection by the Austrian authorities on the mistaken basis that he was an Algerian national. The applicant was not responsible for the mistake, having rather declared throughout the proceedings that he was stateless. The CJEU held that under the Qualification Directive a State is under the obligation to revoke subsidiary protection if information emerges to prove that an individual never satisfied the requirements under the Directive.

Case name (in original language) : CJEU - Bilali v Bundesamt für Fremdenwesen und Asyl, C-720/17

Case status: Decided

Case number: C-720/17

Citation: CJEU - Bilali v Bundesamt für Fremdenwesen und Asyl, C-720/17

Date of decision: 23/05/2019

Court / UN Treaty Body: Court of Justice of the European Union

Language(s) the decision is available in: Estonian, Finnish, Greek, Latvian, Lithuanian, Maltese, Polish, Slovenian, Bulgarian, Croatian, Czech, Danish, Dutch, English, French, German, Hungarian, Italian, Portuguese, Romanian, Slovak, Spanish, Swedish

Applicant's country of residence: Austria

Legal instruments: 1954 Statelessness Convention, European Convention on Human Rights (ECHR), European Union law

Key aspects: Deportation and removal, Determination/confirmation of nationality, Establishing identity, Establishing identity, Procedural safeguards, Refugee status determination, Respect for private and family life, Statelessness and asylum

Relevant Legislative Provisions:

- 1954 Convention relating to the Status of Stateless Persons

- European Convention on Human Rights, Articles 3 and 8
- Charter of Fundamental Rights of the European Union, Article 7
- Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

Facts

The applicant, a stateless individual, applied for asylum in Austria and was rejected at first instance and at appeal, but was given subsidiary protection. The rejection was based on the difficulty in identification and the assumption by the authorities that the applicant was most likely an Algerian national. He appealed again and the refusal decision was initially annulled by the Asylum Court, but later reinstated by the Federal Asylum Office which also revoked his subsidiary protection. The authorities argued that the applicant could be eligible for both Moroccan and Mauritanian nationalities. The Federal Administrative Court annulled the subsequent repatriation order on the basis that deportation would constitute a breach of Article 3 of the European Convention on Human Rights. However, the Federal Administrative Court did not reinstate his subsidiary protection status, as it held that the applicant held dual nationality. During a subsequent appeal, the court stayed the proceedings and referred the case to the Court of Justice of the European Union (CJEU), in order to clarify the application of EU law to the revocation of subsidiary status. The question was, in full: *'Do the provisions of EU law, in particular Article 19(3) of Directive 2011/95 ..., preclude a national provision of a Member State concerning the possibility of revocation of subsidiary protection status pursuant to which subsidiary protection status may be revoked without a change in the factual circumstances themselves which are relevant for the purpose of granting that status, but rather only where the state of knowledge of the authority in this regard has undergone a change, and, in that context, without either a misrepresentation or an omission of facts on the part of the third country national or stateless person having been a determinant factor in the granting of the subsidiary protection status?'*

Legal arguments by the opposing party

The referring court highlighted that subsidiary protection had been granted to the applicant on the basis that he was an Algerian national. Following the decision, factual evidence emerged indicating that he was not from Algeria. Such delay was not attributable to the applicant, who had denied being an Algerian national. According to national law, subsidiary protection was to be revoked if the requirements were never met or no longer met. The referring court considered Mr Bilali situation to fall under the former set of circumstance. The referring Court argued that the provision applies equally regardless of whether the initial information was provided dishonestly or was the result of a mistake of the authority. The referring Court also argued that under Article 19(1) of the Qualification Directive it was still possible to revoke subsidiary status, as in the present case the circumstances under which it had been granted had never existed.

Decision & Reasoning

The CJEU noted firstly that the purpose of the Qualification Directive was to establish a uniform subsidiary protection system. Subsidiary protection status is to be granted under Article 2 of the Directive to third-country nationals or stateless persons who would face serious harm if returned to their place of habitual residence. Under Article 3 of the Directive, states are allowed to introduce more favourable criteria for the granting of subsidiary protection. The CJEU then turned to analyse Article 19 of the Directive, i.e., the provision establishing the circumstances in which subsidiary protection could be revoked. The CJEU noted that under Art.19(3)b, subsidiary protection could be revoked in such case in which the third-country national or stateless person made a misrepresentation to the host State's authorities. However, no segment of Article 19 makes provisions for such case as protection being granted as a result of a mistake made by the authorities. The CJEU, referring to the case *M'Bodj*, C-542/13, EU:C:2014:2452, paragraph 44, noted that it would not be in accordance to the purposes of the Directive to grant asylum or subsidiary status to individuals who do not meet the criteria. Therefore, the revocation of subsidiary status that had been mistakenly granted to an individual who never met the requirements would be consistent with Article 18 and the aims of the Directive. Additionally, Article 19(1) of the Qualification Directive provides that protection should be revoked if someone ceases to be eligible. The CJEU also established that there is a causal connection between a change in circumstance like the one outlined in Article 16 of the Directive and the revocation of subsidiary status. Such change of circumstance could also include a change in State's knowledge in relation to the

individual. However, such change should entail definitive awareness that the affected individual would not face serious harm if returned to the place of habitual residence.

The CJEU then considered the interpretation of the Directive in light of the Refugee Convention. Under recitals 8, 9 and 39 of the Qualification Directive, all recipients of international protection are to receive equivalent rights and benefits. Therefore, the requirements under Article 19 are to be read in light of the Refugee Convention. While no provision in the Convention relates to the loss of refugee status in case of mistake by the authorities, it would not be non-compliant to revoke such status should new knowledge prove that the affected individual never fulfilled the requirements.

Furthermore, the loss of subsidiary status under Article 19 does not relate to the separate question of whether the individual is to lose residence rights in the host country. In fact, the Directive does not preclude the Member State to grant another form of international protection or residence permit to individuals whose subsidiary status has been revoked. Additionally, an expulsion under Article 60 and 61 of the Directive would need to be in compliance with the right to private and family life, granted under both the Charter of Fundamental Rights and the ECHR.

Decision documents

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Outcome

The CJEU established that under the Directive, a Member State must revoke subsidiary status if new information uncovered shows that the affected individuals never satisfied the requirements for such protection.

Caselaw cited

- *Idi*, C-101/18, EU:C:2019:267
- [Alheto](#), C-585/16, EU:C:2018:584
- *Ahmedbekova*, C-652/16, EU:C:2018:801
- *M'Bodj*, C-542/13, EU:C:2014:2452
- *H. T.*, C-373/13, EU:C:2015:413
- *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105
- *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127

- Ahmed, C-369/17, EU:C:2018:713,
- B and D, C-57/09 and C-101/09, EU:C:2010:661