

JUDGMENT OF THE COURT (Seventh Chamber)

7 April 2011 (*)

(Failure of a Member State to fulfil obligations – Directive 2005/85/EC – Right of asylum – Procedure for granting and withdrawing refugee status – Minimum standards – Failure to transpose provisions fully within the prescribed period)

In Case C-431/10,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 1 September 2010,

European Commission, represented by M. Condou Durande and A.-A. Gilly, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by D. O'Hagan, acting as Agent, with an address for service in Luxembourg,

defendant,

THE COURT (Seventh Chamber),

composed of D. Šváby, President of Chamber, E. Juhász (Rapporteur) and T. von Danwitz, Judges,

Advocate General: V. Trstenjak,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its application, the European Commission seeks a declaration from the Court that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with 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) or, in any event, by failing to notify measures for the transposition of those provisions into national law, Ireland has failed to fulfil its obligations under Article 43 of that directive.

Legal context

- 2 Article 43 of Directive 2005/85 reads as follows:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2007. Concerning Article 15, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2008. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.'

Pre-litigation procedure

- 3 Since the Commission had not been informed by Ireland of the provisions taken by that Member State to comply with Directive 2005/85 and did not have any other information available to it supporting the conclusion that Ireland had fulfilled its obligation to comply with that directive, the Commission, by letter of 29 January 2008 and in accordance with the procedure laid down in respect of failure to fulfil obligations, gave Ireland formal notice to submit its observations within two months of receipt of that letter.
- 4 In a letter of 31 March 2008, Ireland maintained that Irish law and the practice of the Irish authorities were substantially in compliance with Directive 2005/85. It notified the Commission of a series of measures transposing various provisions of that directive, and informed it that several measures required for the full transposition of that directive were being prepared.
- 5 Finding that Directive 2005/85 had not been fully transposed, the Commission delivered a reasoned opinion on 8 October 2009, in which it concluded that Ireland had failed to fulfil its obligations under that directive and called on that Member State to take the measures necessary to comply with that reasoned opinion within two months of its receipt.
- 6 Ireland replied to that reasoned opinion by letter of 3 December 2009, in which it stated that a Bill containing certain provisions in the field covered by Directive 2005/85 was awaiting adoption by the Irish Parliament. It added that a supplementary notification of the national measures transposing that directive was being prepared.
- 7 Having obtained no further information from Ireland regarding the progress on implementation of Directive 2005/85 from which it could conclude that the measures necessary for the transposition of the directive had been adopted, the Commission brought the present action.

The action

- 8 Ireland maintains that some of the provisions of Directive 2005/85 have already been transposed into Irish law and that those which have not yet been transposed will soon be transposed by two sets of national regulations. It states that the drafts of those regulations have been sent to the Commission.
- 9 Ireland asks the Court to suspend the present proceedings for failure to fulfil obligations for a period of three months from the date on which its defence is lodged, for it considers that the Commission, having examined the national draft regulations, may discontinue its action.
- 10 First, it is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation obtaining in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, inter alia, Case C-23/05 *Commission v Luxembourg* [2005] ECR I-9535, paragraph 9, and judgment of 17 December 2009 in Case C-120/09 *Commission v Belgium*, paragraph 19).
- 11 Thus, as regards the legislation in force in Ireland at the end of that period, it must be stated, first, that the arguments put forward by Ireland before the Court are not such as to establish that that legislation could constitute a correct and complete transposition of Directive 2005/85 and, second, that that Member State expressly acknowledges that that transposition was not completed within the prescribed period.
- 12 It follows therefore that at the date of the expiry of the period laid down in the reasoned opinion Ireland had not adopted all the measures necessary to transpose that directive fully.
- 13 In those circumstances, the action for failure to fulfil obligations brought by the Commission must be considered to be well founded.
- 14 The finding of a failure to fulfil obligations of itself precludes granting Ireland's application to suspend the proceedings pending possible withdrawal of the action by the Commission (Case C-366/00 *Commission v Luxembourg* [2002] ECR I-1749, paragraph 12, and judgment of 24 February 2005 in Case C-383/04 *Commission v Luxembourg*, paragraph 7).
- 15 Consequently, it must be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2005/85, Ireland has failed to fulfil its obligations under Article 43 of that directive.

Costs

- 16 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ireland has been unsuccessful, Ireland must be ordered to pay the costs.

On those grounds, the Court (Seventh Chamber) hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/85/EC of 1**

December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Ireland has failed to fulfil its obligations under Article 43 of that directive;

2. Orders Ireland to pay the costs.

[Signatures]