

**Case C-656/23 [Karaman]<sup>i</sup>**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

7 November 2023

**Referring court:**

Rechtbank Noord-Holland (Netherlands)

**Date of the decision to refer:**

19 October 2023

**Applicant:**

B

**Defendant:**

Staatssecretaris van Justitie en Veiligheid

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**Subject matter of the main proceedings**

The request has been made in the context of a dispute concerning the question as to the effective date on which a residence permit is to be deemed to have been granted to a refugee seeking international protection in an asylum procedure.

**Subject matter and legal basis of the request**

This request for a preliminary ruling under Article 267 TFEU seeks an interpretation of Article 6 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ('the Procedures Directive') as well as Article 13 and recital 21 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection,

<sup>i</sup> This is a fictitious name that does not correspond to the real name of any party to the proceedings.

for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted ('the Qualification Directive').

### **Questions referred for a preliminary ruling**

The referring court requests the Court to give a preliminary ruling, as referred to in Article 267 TFEU, on the following questions:

- I. Is Article 6 of Directive 2013/32/EU (Procedures Directive) relevant for the purpose of answering the question as to the effective date on which a residence permit is to be deemed to have been granted?
- II. If so, must Article 6 of the Procedures Directive be interpreted as meaning that the effective date of the residence permit is determined by the date on which the application for international protection:
  - is made (first subparagraph of Article 6(1) of the Procedures Directive); or
  - is registered (first subparagraph of Article 6(1) and Article 6(5) of the Procedures Directive); or
  - is (formally) lodged (Article 6(2), (3) and (4) of the Procedures Directive)?
- III. If the effective date of the residence permit is not determined by the date on which the application is made, how can this be reconciled with Article 13 of the Qualification Directive, read in conjunction with recital 21 thereof, having regard to the declaratory nature of refugee status therein?

### **Provisions of European Union law relied on**

Directive 2013/32/EU (Procedures Directive), Article 2(b) and (c), Article 6(1) to (5), and Article 31(2) and (3);

Directive 2011/95/EU (Qualification Directive), recital 21, Article 13 and Article 24(1);

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification ('the Family Reunification Directive').

### **Provisions of national law relied on**

Algemene wet bestuursrecht (General Law on administrative law), Article 1:3(3), Article 4:1, Article 4:4 and Article 4:5(1)(a);

Vreemdelingenwet 2000 (Law on foreign nationals of 2000), Article 1, Article 28(1)(a), Article 29(1), Article 37(1)(a) and Article 44(2);

Vreemdelingenbesluit 2000 (Decree on foreign nationals of 2000), Article 3.107b, Article 3.108(1) and Article 3.108c(1).

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 B ('the applicant'), an asylum seeker who had entered Dutch territory, presented himself to the application centre of the Immigratie- en Naturalisatiedienst (Immigration and Naturalisation Service, Netherlands; 'the IND'), also referred to as the 'Ter Apel Application Centre', on 10 October 2021.
- 2 The applicant stated that he wished to lodge an application for asylum. His application was registered on the same day. From that moment, the asylum seeker enjoys lawful residence in the Netherlands, is provided with (reception) conditions and is no longer exposed to the risk of being deported to his or her country of origin ('risk of refoulement').
- 3 On 20 October 2021, the IND, which operates under the authority of the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands; 'the defendant'), provided B with a standard form M35-H, which he signed and submitted on the same date.
- 4 The application for international protection lodged by the applicant was granted by the State Secretary for Justice and Security by decision of 26 August 2022, pursuant to Article 29(1)(a) of the Decree on foreign nationals of 2000, with effect from the date on which the application was received, namely 20 October 2021.
- 5 The applicant lodged an appeal against that decision before the District Court, Noord-Holland (the Netherlands), the referring court, on the ground that, in his view, the effective date of the residence permit was wrongly set at 20 October 2021, which was the date on which the application was received, instead of 10 October 2021, which was the date on which he reported (presented himself) to the authorities.
- 6 The referring court decided to refer questions to the Court of Justice for a preliminary ruling in order to ascertain whether it follows from the Qualification Directive or the Procedures Directive how the Member States are to determine the effective date of an asylum residence permit to be granted.

### **The essential arguments of the parties in the main proceedings**

- 7 **The applicant** takes the view that the effective date of the residence permit granted to him should be 10 October 2021, because he expressed his wish to apply for international protection before the Dutch authorities on that date. He considers

that this constituted receipt of an application for asylum as referred to in Article 44(2) of the Law on foreign nationals.

- 8 According to the applicant, the fact that the defendant provided him with the opportunity to sign an M35-H form on 20 October 2021 does not mean that the date of the application is shifted from 10 October to 20 October 2021: he considers that the granting of a residence permit from the point at which procedural requirements set by the defendant for the lodgement of the application are met undermines the declaratory nature of refugee status – which, according to the judgments *A and S* (of 12 April 2018, C-550/16, EU:C:2018:248) and *XC* (of 1 August 2022, C-279/20, EU:C:2022:618), implies that a refugee has the right to be recognised as such as from the date of his or her application for refugee status, with the result that an application for asylum exists as soon as the asylum seeker has expressed his or her desire for asylum – and runs counter to Article 13 of the Qualification Directive.
- 9 The applicant submits that, by making the effective date of the residence permit dependent on the actions of the Netherlands authorities, the defendant also deprives the Procedures Directive of its effectiveness. According to the applicant, the defendant must take as the basis for the effective date of the residence permit the date on which the desire for asylum was expressed and the application for asylum was ‘made’ within the meaning of Article 6 of the Procedures Directive.
- 10 The applicant submits that, according to the Court, the ‘making’ of an application for asylum is informal and not bound by formalities. Such formalities are entailed only when the application is ‘lodged’ (judgments of 25 June 2020, *VL*, C-36/20 PPU, EU:C:2020:495, paragraph 93, 30 June 2022, *M.A.*, C-72/22 PPU, EU:C:2022:505, paragraph 57).
- 11 In the alternative, the applicant claims that his residence permit should take effect no later than three working days after he expressed his desire for asylum. This is because, according to the applicant, it follows from Article 6(1) of the Procedures Directive that an application for international protection is to be registered no later than three working days after it is ‘made’.
- 12 The applicant submits, furthermore, that a foreign national should not be subject to the workload or staffing levels of the competent authorities.
- 13 Lastly, according to the applicant, the practice at the Ter Apel Application Centre differs from that at the Aanmeldcentrum Schiphol (Schiphol Application Centre), where applications are ‘registered’ immediately after they are ‘made’. This gives rise to inequality.
- 14 The **defendant** takes the view that the Netherlands legislation concerning the effective date of an asylum permit is in line with EU law. An application is deemed to have been received within the meaning of Article 44 of the Law on foreign nationals only after it has been lodged in the prescribed manner.

- 15 According to the defendant, the applicant informally expressed his desire for asylum on 10 October 2021. This was registered on the same day. On 20 October 2021, by virtue of the signed application form, the formal requirements were met and the asylum procedure commenced.
- 16 The defendant states that this is in line with Article 24 of the Qualification Directive, according to which a residence permit is to be issued ‘as soon as possible’ after international protection has been granted. There is therefore a difference between refugee status, which is declaratory, and the residence permit, which is not. The judgments *A and S* and *XC* therefore do not apply here, because Article 24 of the Qualification Directive expressly regulates when a residence permit must be granted.
- 17 The defendant submits that, as is apparent from Article 6 of the Procedures Directive, Member States may make a distinction between the making of an application for asylum and the lodging of one and are authorised to prescribe the manner in which an application must be lodged.
- 18 According to the defendant, while the applicant rightly submits that some foreign nationals must wait longer to be given the opportunity to lodge an application than others, this is irrelevant because all foreign nationals in the Netherlands who are granted an asylum residence permit are treated more favourably than what is required under EU law as regards the calculation of the duration of lawful residence.

#### **Succinct presentation of the reasoning in the request for a preliminary ruling**

- 19 Under the national legislation, the applicant is entitled to an asylum residence permit from the date on which all legal requirements for lodging the application for such a permit are met, while it follows from Article 6 of the Procedures Directive that there is a difference between the ‘making’ of an application for international protection and the ‘registration’ and ‘lodging’ of such an application.
- 20 In the present case, the application for asylum was registered on the day on which it was made, but was not lodged until later. The referring court has brought the matter before the Court of Justice because it is not clear to it what meaning should be given to the terms ‘lodging’ and ‘making’ an application in relation to the effective date of an asylum residence permit. According to the referring court, the national legislation or the case-law of the Court does not provide an unequivocal answer to the question as to what is meant by the effective date of an asylum residence permit, with the result that it is not clear whether the Netherlands legislation complies with EU law.
- 21 It is not in dispute that refugee status is declaratory in nature. However, given the opposing views taken by the parties in that regard, the question arises as to whether that declaratory nature is relevant in the present case.