



## FAQ ON COURT OF JUSTICE OF THE EUROPEAN UNION DECISION CASE C-97/24

### What are the facts of this case?

SA and RJ arrived in Ireland in February and March 2023 and sought international protection.

Despite Ireland's legal commitments to provide international protection applicants with "material reception conditions" which meet a person's basic needs while their applications for international protection are being considered, they were told that there was no IPAS (direct provision) accommodation available, and were instead provided with a one-off shopping voucher for 25 euro.

Being prohibited from accessing any form of employment and without access to emergency homeless accommodation, social welfare payments or the small allowance provided to those in direct provision, they found themselves destitute.

The Irish Refugee Council's client, SA, experienced 71 days street homelessness after fleeing Afghanistan and applying for international protection in Ireland while RJ was homeless for 64 days. SA described feeling cold, hungry, humiliated and afraid sleeping on the streets of Dublin in spring 2023 often wet and freezing conditions. As an international protection applicant, he did not have a right to access emergency local authority accommodation, or any social welfare payment during that time.

During that period of homelessness, having been unsuccessful in repeated written requests to IPAS, SA and RJ brought their actions to the High Court in an effort to secure a bed in shared IPAS accommodation.

The State acknowledged that there had been an infringement of EU law including in relation to the right to dignity.

The State argued, however, that it should not be held responsible for those breaches, and that no remedy should be available to the people whose rights were breached. It was argued that the arrival of a higher number of international protection applicants than foreseen, coupled with the arrival of Ukrainians, amounted to a situation of "force majeure" and meant that the State should not be held liable for its breach of individuals' fundamental human rights. The State argued that the breach of law was not "sufficiently serious" to give rise to damages.

The High Court, in December 2023, referred the question of whether "Force Majeure" could be a defence to an inviolable fundamental right to the Court of Justice of the EU (CJEU).

The Court heard from the parties, as well as from Italy and the Commission, in an oral hearing in February 2025.

In its judgment, the Court rejected this argument, recalling that the Member States are required, under the directive, to guarantee applicants for international protection material reception conditions which ensure an adequate standard of living, whether through housing, financial aid, vouchers, or a combination of the three. Those conditions must cover basic needs, including appropriate accommodation, and safeguard the physical and mental health of the persons concerned.

**Thus, a Member State which fails to provide an applicant who does not have sufficient means with those material conditions, even temporarily, is manifestly and gravely exceeding its discretion with regard to the application of the Reception Conditions directive. Such a failure is therefore capable of constituting a sufficiently serious infringement of EU law, triggering the liability of the Member State concerned.**

The European Court therefore ruled: EU law must be interpreted as meaning that a Member State which has not guaranteed, for a number of weeks, access by an applicant for international protection to their material reception conditions provided by Directive 2013/33 under may NOT avoid liability under EU law by reason of the temporary exhaustion of the housing capacity normally available in its territories for applicants for international protection owing to an influx of third country nationals seeking international or Temporary Protection, an influx which because of its significant nature was unforeseeable and avoidable.

### **What are the issues involved in the case?**

Although Ireland, voluntarily, committed under EU law to providing international protection applicants with material reception conditions to meet their basic needs while their international protection applications are being processed, the Applicant was not allocated a bed in IPAS (direct provision) accommodation or provided with a payment so that he could pay for a bed directly, or with a Daily Expense Allowance payment. Rather, he was told that there was no accommodation available, and provided with a one-off voucher of 25 euro. This response has been described by the High Court in a related case as “wholly inadequate”.

In the SA and RJ cases, the State accepted that the applicants’ rights under the Reception Conditions Regulations and Charter of Fundamental Rights had been breached. The State did not accept that a remedy followed that breach.

### **What is the relevant legislation?**

The law is the Reception Conditions Directive, particularly A.17 and A.18. Ireland voluntarily opted in to transpose this directive in 2018.

### *Article 17*

#### **General rules on material reception conditions and health care**

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.
2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health....

### **Article 18**

**9. In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:**

- (a), an assessment of the specific needs of the applicant is required, in accordance with Article 22;
- (b), **housing capacities normally available are temporarily exhausted.**

**Such different conditions shall in any event cover basic needs.**

The Reception Conditions Directive was transposed in Ireland in 2018 through the Reception Conditions Regulations. The Regulations provide : A recipient shall, subject to these Regulations, be entitled to receive the material reception conditions where he or she does not have sufficient means to have an adequate standard of living.

The EU Charter of Fundamental Rights provides: “Human dignity is inviolable. It must be respected and protected.”

#### **What have Irish courts already said on this issue?**

##### SY and Minister for Children [2023] IEHC 187

The High Court found that the failure to provide accommodation or, alternatively, financial allowances to access accommodation, which resulted in significant deprivation of rights, was a breach of the Reception Conditions Regulations (which implements the Reception Conditions Directive in Ireland), and of the Right to Dignity under Article 1 of the EU Charter of Fundamental Rights.

Mr Justice Meenan held: “*By reason of the failure of the Minister the applicant has been forced to live and sleep rough, beg for food and has been deprived of basic hygiene conditions. In addition, the applicant has been exposed to personal attack and danger and also subjected to humiliation*”.

#### SA and Minister for Children

The High Court issued a declaration that SA’s rights under the Reception Conditions Regulations and the EU Charter of Fundamental Rights had been breached. Mr Justice Ferriter referred the question of whether Force Majeure could act as a defence to a damages claim.

#### **Does the decision mean Irish people have less rights than people seeking protection?**

No. The right to respect for human dignity of Irish people is protected by the Constitution and by laws passed by the Oireachtas. The basic needs of Irish citizens who do not have the means to support themselves are provided for through social welfare payments under the Social Welfare Consolidation Act 2005, the Housing Acts 1966-2024 and the Health Acts 1970-2024.

For example, if an Irish person experiences homelessness, they will be eligible for emergency accommodation provided by housing authorities under the Housing Act 1988. They will also have access to social welfare payments under the Social Welfare Consolidation Act 2005 and health services under the Health Acts. If these laws are not complied with, remedies, including damages, are available from the courts.

As well as being excluded from the labour market on arrival, international protection applicants have only limited access to this social safety net. In the main, their rights to a dignified standard of living are protected by a different set of rules based on EU law, being the Reception Conditions Directive and Regulations.

#### **Can an Irish person seek a remedy for failure to provide social welfare, housing or health services?**

Cases alleging failure by statutory authorities to perform their obligations to Irish citizens under social welfare law, housing law and health law are heard by the courts every day. When cases succeed, as they frequently do, the authorities may be required to comply with the law by a court order. Sometimes, the violations are so serious that damages are awarded.

#### **What is happening to protection applicants who arrive currently?**

Despite a series of High Court judgments finding against the State, newly arriving single, male international protection applicants continue to face a situation of being refused IPAS accommodation until they have proved they are rough sleeping. Many of our service users reported that this leaves them vulnerable to violence and intimidation on the streets of Dublin. More recently, we have seen a further increase in international protection applicants being attacked, robbed or having their tents slashed.

As of 30 July there are 942 people seeking protection who are awaiting an offer of accommodation. More than 2,400 people have been refused reception conditions so far in 2025.

### **What are Francovich Damages?**

This is the system developed by the European Court of Justice to ensure State compliance with EU law, and through which individuals can hold States to account.

Francovich Damages arise when an individual suffers harm due to a State's failure to implement EU law.

The principle is subject to 3 conditions:

1. EU law must be intended to confer rights on the person.
2. Breach of the rule must be sufficiently serious.
3. There must be a direct causal link between the breach and the loss / damage sustained.

The EU expects Ireland to follow EU law and to provide for the basic needs of international protection applicants, if not directly through provision of accommodation, then through alternative means such as adequate payments.

### **Does this judgment automatically create a right to damages for homeless international protection applicants?**

The judgment does not alter the long-standing EU rules around liability for damages under EU law. Rather, it rejects Ireland's argument that there is a free-standing defence of Force Majeure in EU law. That is, the binding nature of law must be respected at all times, even when it is difficult to do so. People's basic needs must be met.

If the State meets its obligations, and provides international protection applicants either directly with accommodation and food, or with a payment which is adequate to access accommodation and other basic needs independently, in situations when the housing capacity normally available is temporarily exhausted, the State will have met its obligations, and no right to damages will arise.

Damages will only ever arise where the State fails in its duties towards individuals.

**Does the judgment necessitate the balancing of one group of rights against another?**

It does not, in the opinion of the Irish Refugee Council, involve balancing the rights of one vulnerable group against another, as Minister O'Callaghan suggested. It involves holding the State to account for breaches of the fundamental rights of human beings.

**Is Legal aid available for asylum-seekers to access claims for Damages?**

No. Legal aid is only available for the international protection determination process, and not currently for any related Judicial Review applications or other applications which would lead to damages.

**Who represented the applicants?**

SA was represented by the Irish Refugee Council Independent Law Centre, Colin Smith SC and Colm O'Dwyer SC.

RJ was represented by James Watters Solicitors, Patricia Brazil SC and Leonora Frawley BL.

UNHCR intervened as a Notice Party.

**Where are the applicants now?**

SA was recognised as a refugee, moved out of direct provision, and is now working and renting accommodation privately.

**What will the next steps be?**

The matter will be referred back to the High Court for the High Court Judge to make final determinations considering the judgment of the CJEU, which is a binding interpretation of EU law.