Court of Justice of the European Union
PRESS RELEASE No 155/21
Luxembourg, 9 September 2021

Press and Information

Judgment in Case C-18/20
Bundesamt für Fremdenwesen und Asyl

EU law precludes a subsequent application for international protection from being rejected as inadmissible on the sole ground that it is based on circumstances which already existed during the procedure relating to the first application

In addition, the reopening of the first procedure in order to examine the substance of the subsequent application cannot be subject to the condition that that application has been lodged within a certain time limit

An Iraqi national whose first application for international protection had been rejected in a final decision by the Bundesamt für Fremdenwesen und Asyl (Federal Office for Immigration and Asylum, Austria) lodged, several months later, a subsequent application for international protection before that same authority. While he had based his first application on the fact that he feared for his life should he return to Iraq on the ground that he had refused to fight for the Shiite militia (he himself is a member of the Shia Muslim community) and that Iraq was still at war, he now claimed that the real reason for his applications was related to his homosexuality, which, he claimed, is prohibited by his country and his religion. He explained that at the time of his first application he did not yet know that he would not be at risk in Austria by disclosing his homosexuality.

The Bundesamt für Fremdenwesen und Asyl rejected that subsequent application as inadmissible on the ground that it sought to challenge an earlier refusal decision that had become final.

According to Austrian law, any subsequent application that is based on elements or findings which already existed prior to the adoption of the final decision concluding the previous procedure can result only in the reopening of that procedure and only then if the applicant was not at fault in failing to rely on those elements or findings in the previous procedure.

Only new elements or findings which come to light after the adoption of the first definitive decision can justify the opening of a new procedure.

Taking the view that his subsequent application should have led to the opening of a new procedure, the applicant concerned brought an action before the Austrian courts.

It is against that background that the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) asked the Court of Justice to interpret the Directive on common procedures for granting and withdrawing international protection. [1]

By today's judgment, the Court states that the examination of the substance of a subsequent application for international protection that is based on elements or findings which already existed before a final decision was taken on the first procedure may, in principle, and subject to observance of the basic principles and guarantees provided for by that directive, **be carried out in the course of the reopening of the procedure relating to the first application.**

Such a reopening may, as is the case in Austria, be subject to the condition that (i) those new elements or findings significantly increase the likelihood that the applicant qualifies as a

[1] 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 (OJ 2013 L 180, p. 60).

beneficiary of international protection and (ii) **the applicant was, through no fault of his or her own, incapable of asserting them during the previous procedure.**

However, such a reopening must not be subject to the condition that, as provided for by Austrian law, [2] the subsequent application has been lodged within a certain time limit.

In the event that the provisions of Austrian law applicable to the reopening of the procedure do not guarantee compliance with the conditions for the admissibility of the subsequent application or do not adhere to the basic principles and guarantees provided for by the directive, the Court further adds that the subsequent application made by the applicant in question should, in the present case, be examined in the course of a new administrative procedure.

Since Austria did not transpose the optional provision in the Directive for such new procedures enabling Member States to provide that examination of the subsequent application can be conducted only if the applicant concerned was, through no fault of his or her own, incapable of asserting, during the previous procedure, the new elements or findings even though they already existed, the opening of a new procedure cannot be refused on the ground that such a fault can be attributed to the applicant.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgment is published on the CURIA website on the day of delivery.

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[2] Namely that the subsequent application has been lodged within a time limit of two weeks from, in essence, the moment when the applicant became aware of the grounds for reopening and, in any event, within three years of the adoption of the decision on the earlier application. (51)