



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 119/12

Luxembourg, 27 September 2012

Judgment in Case C-179/11

Cimade and GISTI v Ministre de L'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'immigration

The minimum conditions for the reception of asylum seekers must be granted by the Member State in receipt of an application for asylum even when it calls upon another Member State which it considers to be responsible for the examination of the application

That obligation applies, in general, from when the asylum application is lodged until the actual transfer of the asylum seeker to the Member State responsible

Directive 2003/9/EC¹ lays down inter alia the minimum standards concerning the material conditions for the reception of asylum seekers (in particular housing, food and clothing, provided in kind or as financial allowances). Those standards make it possible to guarantee them a dignified standard of living and comparable living conditions in all Member States. The directive applies to all third-country nationals or stateless persons who have submitted an application for asylum in accordance with the conditions of the regulation known as 'Dublin II'.² That regulation lays down the criteria which make it possible to determine the Member State responsible for examining the application for asylum, which is not necessarily the State in which that application was lodged.

If a Member State in receipt of an application for asylum (requesting State) considers that another Member State is responsible (requested State), it may request that second State to take charge of the asylum seeker.

On 26 January 2010, an application was made to the Conseil d'État (Council of State) (France) by two French associations, the Cimade and the GISTI, seeking annulment of the inter-ministerial circular of 3 November 2009 concerning the ATA (*allocation temporaire d'attente* – temporary tideover allowance). A subsistence benefit, that allowance is paid monthly to asylum seekers throughout the period of examination of their application. Those two associations maintain that the circular is contrary to the objectives of Directive 2003/9 because it excludes asylum seekers from enjoyment of the ATA where, pursuant to the Dublin II Regulation, France calls upon another Member State, which it considers responsible for the examination of the claim of the persons concerned.

The Conseil d'État decided to make a reference to the Court concerning the interpretation of the relevant provisions of European Union law.

The Court replies, first, that a Member State in receipt of an asylum claim **is obliged to grant the minimum conditions for the reception of asylum seekers even to an asylum seeker in respect of whom it decides to call upon another Member State, as the State responsible for the application, to take charge of him or take him back.**

The Court states that the obligation on the Member State in receipt of an asylum claim to grant those minimum reception conditions begins when the applicant 'applies for asylum', even if that

¹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States (OJ 2003 L 31, p. 18).

² Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1). Proposals to recast the directive and the regulation are currently under discussion (see COM (2008) 820 final and COM (2011) 320 final).

State is not the Member State responsible for the examination of the application for asylum pursuant to the criteria laid down by the Dublin II Regulation. Directive 2003/9 provides for only one category of asylum seekers, encompassing all third-country nationals and stateless persons who apply for asylum. Accordingly, those minimum reception conditions must be granted not only to asylum seekers present in the territory of the responsible Member State, but also to those who remain pending the determination of the responsible Member State, a procedure which can last for a number of months.

The Court also notes that the obligation on a Member State in receipt of an asylum claim to grant the minimum reception conditions applies only to those asylum seekers who are allowed to remain in the territory of the Member State concerned as asylum seekers.

In that regard, the Court considers that European Union law³ allows asylum seekers to remain not only in the territory of the State in which the application for asylum is being examined but also, until the actual transfer of the persons concerned, in the territory of the Member State in which that application was lodged.

The Court holds, second, **that the obligation to guarantee the minimum reception conditions for asylum seekers applies from the moment the application is lodged and throughout the procedure for determining the Member State responsible until the actual transfer of the applicant by the requesting State.**

The Court states in that regard that only the actual transfer of the asylum seeker by the requesting Member State brings to an end both the procedure before that State and its liability to bear the financial burden of the reception conditions. The Court notes that the minimum reception conditions can be reduced or withdrawn in situations, listed in the directive, where the asylum seeker does not comply with the reception rules laid down by the Member State concerned (for example, where the person concerned fails to appear for personal interviews at which his claim is to be examined).

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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³ Council Directive No 2005/85 of 1 December 2005 on minimum standards in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).