Court of Justice of the European Union
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Press and Information

Judgment in Case C-670/16
Tsegezab Mengesteab v Bundesrepublik Deutschland

An asylum seeker may rely in legal proceedings on the fact that the Member State has become responsible for examining his application because of the expiry of the three-month period within which that Member State may request another Member State to take charge of him

That period starts to run before a 'formal' application for asylum is lodged, if a written document confirming the request for international protection has been received by the competent authority

On 14 September 2015, Mr Tsegezab Mengesteab, an Eritrean national, requested asylum in Munich (Germany) with the Government of Upper Bavaria, which issued to him, on the same day, a certificate of registration as an asylum seeker. On 14 January 2016 at the latest, the Bundesamt für Migration und Flüchtlinge (German Federal Office for Migration and Refugees), which is the authority responsible for carrying out the obligations arising from the Dublin III Regulation for determining the Member State responsible for examining an application for international protection,[1] received the original of that certificate, a copy of it or, at least, the main information which it contained. On 22 July 2016, Mr Mengesteab was heard by the Bundesamt and was able to lodge an official application for asylum.

A search in the Eurodac system however revealed that Mr Mengesteab's fingerprints had been taken in Italy. In general, such a hit constitutes evidence that the person concerned illegally crossed an external frontier of the EU, which may have the result that the Member Sate bordering the external frontier at issue (here, Italy) is responsible for examining the application for asylum. On 19 August 2016, the Bundesamt then requested, the Italian authorities to take charge of Mr Mengesteab, in accordance with the Dublin III Regulation. The Italian authorities have not replied to that request, which is equivalent to its acceptance.

By a decision of 10 November 2016, the Bundesamt therefore rejected Mr Mengesteab's application for asylum and ordered his transfer to Italy. Mr Mengesteab challenged that decision before the Verwaltungsgericht Minden (Administrative Court, Minden, Germany). He claims that, according to the Dublin III Regulation, responsibility for examining his application for asylum has been transferred to Germany. That regulation provides that the take charge request must be made at the latest three months from the date on which the application for international protection was lodged, and that, after expiry of that period, responsibility for examining the application lies with the Member State in which the application for international protection was lodged. According to Mr Mengesteab, the Bundesamt requested the Italian authorities to take charge of him only after the expiry of the three-month period. In that context, the Verwaltungsgericht asked the Court of Justice to interpret the Dublin III Regulation.

By today's judgment, the Court replies, first, that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of the three month period at issue, even if the requested Member State is willing to take charge of him.

[1] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

In that regard, the Court states that the EU legislature, in the Dublin III Regulation, did not merely introduce organisational rules governing relations between Member States for the purpose of determining the Member State responsible, but decided to involve asylum seekers in that process, by conferring on them, inter alia, the right to an effective remedy in respect of any transfer decision that may be taken against them.

Second, the Court states that a take charge request cannot legitimately be made more than three months after the application for international protection has been lodged. The two-month period which the Dublin III Regulation provides for such a request in the event of receipt of a Eurodac hit does not constitute a supplementary period, which is added to the three-month period, but a shorter period which is justified by the fact that such a hit constitutes evidence of illegal crossing of an external frontier of the EU and accordingly simplifies the process of determining the responsible Member State.

Third, as regards the substantive definition of the application for international protection (the lodging of which starts the three-month period), the Court holds as follows: an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a non-EU national has requested international protection, has reached the authority responsible for implementing its obligations arising from the Dublin III Regulation, or, as the case may be, if only the main information contained in that document (but not that document itself or its copy) has reached that authority.

In order to be able effectively to start the process of determining the responsible Member State, the competent authority needs to be informed, with certainty, of the fact that a non-EU national has requested international protection. Nonetheless, it is not necessary for the written document prepared for that purpose to have a precisely defined form or that it includes additional information relevant to the application of the criteria laid down by the Dublin III Regulation or, a fortiori, to the examination of the application for international protection. Nor is it necessary, at that stage of the procedure, for a personal interview to have been organised.

The effectiveness of certain important guarantees granted to applicants for international protection would be restricted if the receipt by the competent authority (here, the Bundesamt) of a written document, such as the certificate of registration at issue, was not sufficient to demonstrate that an application for international protection has been lodged. Furthermore, such a situation could affect the Dublin system, by calling into question the special status which it grants to the first Member State in which an application for asylum is lodged.

In addition, the transmission of the main information contained in such a document to the competent authority must be considered to be a transmission to that authority of the original or a copy of that document. Such transmission is therefore sufficient to establish that an application for international protection is deemed to have been lodged.

The present case was subject to the expedited procedure, which allowed the Court to deliver its judgment within a period of seven months.

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 EU 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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