



An applicant for international protection can rely, before a court or tribunal, on the expiry of the period laid down for his removal to another Member State

The effect of the expiry of the six-month period available to a Member State under the Dublin III Regulation for transferring an applicant for international protection to the Member State responsible, which has agreed to take him back, is that it itself becomes responsible for processing the application for protection, and the applicant may rely on this

Majid Shiri, an Iranian national, has brought a challenge before the Austrian courts in relation to the decision refusing his application for international protection in Austria and his removal to Bulgaria. Mr Shiri entered the EU in Bulgaria, where he also lodged an application for international protection. Bulgaria agreed to take Mr Shiri back. However, Mr Shiri submits that, pursuant to the Dublin III Regulation,¹ Austria is now responsible for examining his application because he was not transferred to Bulgaria within a period of six months² from the Bulgarian authorities' agreement to take him back.

The Verwaltungsgerichtshof (Higher Administrative Court, Austria) has asked the Court of Justice whether, under the Dublin III Regulation, the expiry of the six-month period in question is sufficient in itself to result in such a transfer of responsibility between Member States. If necessary, it also seeks to ascertain whether an applicant for international protection can rely on such a transfer of responsibility before a court or tribunal.

By today's judgment, the Court replies that, where the transfer does not take place within the six-month time limit, responsibility is transferred automatically to the Member State which requested that charge be taken of the person concerned (in this instance, Austria), without it being necessary for the Member State responsible (in this instance, Bulgaria) to refuse to take charge of, or take back, that person.

That solution is not only apparent from the wording of the Dublin III Regulation, but is also consistent with the objective of the rapid processing of applications for international protection. Such a solution ensures that, in the event of a delay in the take charge or take back procedure, the examination of the application for international protection will be carried out in the Member State where the applicant is, so as not to delay that examination further.

In addition, the Court holds that an applicant for international protection can rely on the expiry of the six-month period. That is true irrespective of whether that period expired before or after the transfer decision was adopted. The Member States are obliged to provide in this regard for an effective and rapid remedy.

The Court explains in this context that, where the six-month period has expired after the date on which a transfer decision was adopted, the competent authorities of the requesting Member State

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).

² Under the Dublin III Regulation, the transfer must be carried out at the latest within six months of acceptance by another Member State of the request to take charge of or take back the person concerned, or of the final decision on an appeal against, or review of, the transfer decision where there is a suspensive effect.

(in this instance, Austria) cannot carry out the transfer of the person concerned to another Member State. On the contrary, they are required to take, on their own initiative, the necessary measures to acknowledge the responsibility which is transferred to them and to initiate without delay the examination of the application for international protection lodged by the person concerned.

The Court also states that the right, provided for by Austrian legislation, to plead circumstances subsequent to the adoption of the transfer decision, in an action brought against that decision, amounts to an effective and rapid remedy enabling the expiry of the transfer period to be relied upon.

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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