



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 75/20
Luxembourg, 25 June 2020

Judgment in Case C-36/20 PPU
Ministerio Fiscal

Judicial authorities adjudicating on the detention of a third-country national without a legal right of residence can receive an application for international protection and must inform the person concerned of the specific procedures for lodging such an application

A person who has expressed an intention to apply for international protection before authorities which are competent to receive that application cannot be held in detention on the ground that there is not sufficient accommodation available in humanitarian reception centres

In its judgment in Ministerio Fiscal (Authority likely to receive an application for international protection) (C-36/20 PPU), delivered on 25 June 2020 under the urgent preliminary ruling procedure (PPU), **the Court held that examining magistrates called upon to adjudicate on the detention of a third-country national without a legal right of residence fall within the concept of ‘other authorities’**, within the meaning of the second subparagraph of Article 6(1) of Directive 2013/32¹ (‘the Asylum Procedures Directive’), **which are likely to receive applications for international protection, even though they are not competent, under national law, to register such applications. On that basis, examining magistrates are required to inform the applicant as to the specific procedures for lodging such an application. The Court also ruled that the fact that it is not possible to find accommodation in a humanitarian reception centre cannot justify holding an applicant for international protection in detention.**

On 12 December 2019, a vessel carrying 45 men from third countries, including VL, a Malian national, was intercepted by the Spanish Marine Rescue service off the coast of Gran Canaria (Spain), where the third-country nationals were taken. The following day, an administrative authority ordered their removal and made a request for detention before the Juzgado de Instrucción nº 3 de San Bartolomé de Tirajana (Court of Preliminary Investigation No 3 of San Bartolomé de Tirajana, Spain). Once that court had informed him of his rights, VL stated his intention to apply for international protection. On account of the lack of available accommodation in a humanitarian reception centre, that court ordered that VL be detained in a detention centre for foreign nationals, where his application for international protection was to be processed. VL then appealed against the detention decision before that court, on the ground that it was incompatible with the Asylum Procedures Directive and Directive 2013/33² (‘the Reception Conditions Directive’). In those appeal proceedings, the court made a reference to the Court of Justice for a preliminary ruling, inter alia, on whether it fell within the concept of ‘other authorities’, within the meaning of the second subparagraph of Article 6(1) of the Asylum Procedures Directive, and, accordingly, whether it is likely to receive applications for international protection. It also asked the Court to rule on the lawfulness of holding VL in detention.

In the first place, the Court stated that the literal interpretation of the term ‘other authorities which are likely to receive such applications [for international protection]’, within the meaning of that provision, and in particular the choice of the adjective ‘other’, testifies to the fact that **the EU legislature intended to adopt a broad definition of those authorities which, without being**

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).

² Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96).

competent to register applications for international protection, may nevertheless receive such applications. That phrase can, therefore, encompass both administrative and judicial authorities. That finding is supported by a contextual interpretation of that provision. **One of the objectives of the Asylum Procedures Directive is to guarantee effective access, namely access that is as straightforward as possible, to the procedure for granting international protection. To prohibit a judicial authority from receiving applications for international protection would be to hinder the achievement of that objective,** in particular with regard to very rapid procedures in which the applicant's hearing before a court or tribunal may be the first opportunity to exercise the right to make such an application. Consequently, the Court held that examining magistrates called upon to adjudicate on the detention of a third-country national without a legal right of residence with a view to his or her refoulement are among the 'other authorities' referred to in that provision, which are likely to receive applications for international protection.

In the second place, the Court examined the obligations incumbent on examining magistrates as 'other authorities'. It found that it follows from the second and third subparagraphs of Article 6(1) of the Asylum Procedures Directive, first, that **examining magistrates are required to inform applicants for international protection of the specific procedures for lodging such an application. Accordingly, examining magistrates are acting in accordance with the requirements of that directive where, on their own initiative, they inform third-country nationals of their right to apply for international protection.** Second, where a third-country national has expressed his or her intention to make such an application, the examining magistrate must send the file to the competent authority for the purposes of registering that application, in order that that third-country national may benefit from the material reception conditions and health care provided for in Article 17 of the Reception Conditions Directive.

In the third place, the Court examined the compatibility of VL's detention with the Asylum Procedures and Reception Conditions Directives. It noted, first, that it follows from those directives that **it is appropriate to adopt a broad definition of the term 'applicant for international protection', with the effect that a third-country national acquires that status from the point when he or she 'makes' such an application.** The Court also pointed out that **the act of making an application for international protection does not entail any administrative formalities. Accordingly, the fact that a third-country national has expressed his or her intention to apply for international protection before 'other authorities', such as an examining magistrate, is sufficient to confer the status of applicant for international protection on that person.**

Consequently, the Court noted that, as from the date on which VL made his application for international protection, the conditions for his detention were governed by Article 26(1) of the Asylum Procedures Directive and Article 8(1) of the Reception Conditions Directive. It follows from a combined reading of those provisions that Member States cannot hold a person in detention on the sole ground that he or she is an applicant for international protection, and that the grounds for and conditions of detention, together with the guarantees given to applicants held in detention, must comply with the Reception Conditions Directive. Inasmuch as the first subparagraph of Article 8(3) of that directive lists exhaustively the various grounds which may justify recourse to detention and the fact that it is not possible to find a place in a humanitarian reception centre for an applicant for international protection does not correspond to any of the six grounds for detention referred to in that provision, **VL's detention was, in the present case, contrary to the requirements of the Reception Conditions Directive.**

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.

Unofficial document for media use, not binding on the General Court.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit 📞 (+352) 4303 3355