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Judgment of the Court in Case C-136/24 P | Hamoudi v Frontex

Action for damages brought against Frontex in a case of pushback: The Court of Justice protects the right to an effective judicial review

The General Court should have adapted the burden of proof and examined the evidence in Frontex's possession in order to guarantee such a review

A Syrian national, Mr Hamoudi, claims to have been the victim of a pushback in the Aegean Sea after disembarking on the Greek island of Samos to seek asylum in April 2020. According to him, the Greek authorities forcibly returned him to sea while two operational activities of Frontex were ongoing and an aeroplane working for Frontex flew over the scene. He requested that the General Court order Frontex to compensate him for the non-material damage he allegedly suffered. The General Court dismissed his action due to a lack of conclusive proof of his presence at that pushback, without acting on his requests that Frontex be ordered to produce certain documents in its possession capable of supporting that action. On appeal, the Court of Justice sets aside that decision. It holds that the General Court infringed the appellant's right to effective judicial protection, by not correctly applying the rules governing the burden of proof and the taking of evidence in the context of an alleged pushback involving Frontex. In the light of the difficulty, if not the impossibility, for victims of such a pushback to collect conclusive proof of it, and the fact that such proof is likely to be possessed by Frontex, respect for the right to effective judicial protection requires an adaptation of that burden of proof. Accordingly, where an applicant who claims to be a victim of a pushback provides evidence that is sufficiently detailed, specific and consistent to constitute prima facie evidence, the General Court has an obligation to investigate the case in order to be able to assess the truth of that pushback and the presence of the applicant at it. In the present case, the General Court should therefore have adopted measures to obtain from Frontex all relevant information at that agency's disposal. The case is referred back to the General Court, which must issue a fresh ruling while respecting the right to effective judicial protection.

Mr Alaa Hamoudi, a Syrian national, stated that he was a victim, on 28 and 29 April 2020, of a pushback. He claimed to have been part of a group of 22 people who disembarked on the island of Samos, in Greece, on 28 April 2020, for the purpose of seeking asylum. Once they arrived, the local police nevertheless confiscated their phones and drove them to the beach, where they were forced to re-embark and were returned to sea. The following day, a boat from the Turkish coast guard took those people aboard and relocated them to Türkiye. According to Mr Hamoudi, during that pushback, a surveillance aeroplane operated by the European Border and Coast Guard Agency (Frontex), flew over the scene several times.

In the context of an action before the General Court of the European Union, Mr Hamoudi requested that Frontex be ordered to compensate him for the non-material damage which he claims to have suffered as a result of that pushback in which Frontex had been involved. Taking the view that the evidence produced by Mr Hamoudi did not demonstrate conclusively that he had been present at the pushback and, accordingly, that he had suffered damage as a result of it, the General Court¹ dismissed his action as manifestly lacking any foundation in law, without acting on the requests of Mr Hamoudi seeking an order for Frontex to produce certain documents in its possession capable of supporting that action. Mr Hamoudi then brought an appeal before the Court of Justice.

In its judgment today, the Court of Justice sets aside the order under appeal and refers the case back to the General Court.

The Court of Justice finds that the General Court infringed the Mr Hamoudi's right to effective judicial protection by not correctly applying the rules on the burden of proof and the taking of evidence in the context of an alleged pushback involving Frontex.

The Court recalls that **Frontex**, as a component of the European Border and Coast Guard, is legally responsible for activities which it oversees or coordinates. In addition, the Frontex Regulation ² **requires** that agency **to ensure**, during those activities, **respect for fundamental rights** and **the principle of non-refoulement**.

The Court notes that the **right to an effective remedy**, as guaranteed by **Article 47 of the Charter of Fundamental Rights**, **would be illusory if victims of a pushback** in a zone in which Frontex was conducting operations were required to demonstrate by way of **conclusive proof** that that pushback occurred and that they were present at it. At the time of the facts, those victims are in a highly vulnerable position which makes it very difficult for them to collect that evidence, or even makes it impossible for them to do so, which could grant Frontex de facto immunity and jeopardise the effective protection of the fundamental rights of those victims. In addition, Frontex is likely to possess information making it possible to prove the existence of pushbacks given its task of collecting operational data and its obligation to ensure respect for fundamental rights during its operations.

Consequently, the Court finds that the right to effective judicial protection requires an **adaptation of the burden of proof** such that a person who claims to be a victim of a pushback involving Frontex must produce **not conclusive proof but rather prima facie evidence** that that pushback occurred and that he or she was present at it. Furthermore, the Court finds that, in the present case, the witness statement of Mr Hamoudi and a press article chronicling the pushback operation of which he claims to have been a victim were sufficiently **detailed, specific and consistent** to constitute prima facie evidence.

The Court states that, **where such prima facie evidence is produced, the General Court is required to investigate the case in order to be able to assess the truth** of that pushback and of the applicant's presence at it. The General Court should therefore have adopted measures of organisation of procedure or measures of inquiry for the purpose of obtaining from Frontex all relevant information at that agency's disposal, as Mr Hamoudi had requested.

The Court of Justice therefore sets aside the order under appeal and refers the case back to the General Court so that it can issue a fresh ruling taking into account the requirements stemming from the right of potential victims of a pushback to effective judicial protection.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Order of 13 December 2023, *Hamoudi v Frontex*, [T-136/22](#) (see also Press Release [No 188/23](#)).

² [Regulation \(EU\) 2019/1896](#) of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.