



Reports of Cases

ORDER OF THE COURT (Third Chamber)

5 April 2017*

(Request for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national — Application for international protection made by a third-country national benefiting from the status conferred by subsidiary protection — Applicability of the take-back procedure)

In Case C-36/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Minden (Administrative Court, Minden, Germany), made by decision of 19 January 2017, received at the Court on 25 January 2017, in the proceedings

Daher Muse Ahmed

v

Bundesrepublik Deutschland,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan and D. Šváby, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 17(1) and Articles 20 to 33 of 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).

* Language of the case: German.

- 2 The request has been made in proceedings between Mr Daher Muse Ahmed and the Bundesrepublik Deutschland (Federal Republic of Germany), represented by the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany, ‘the Office’) concerning the latter’s decision to reject his application for asylum, declaring that there were no grounds preventing his deportation to Italy, informing him that he could be deported to that Member State if he did not leave Germany, and imposing a ban on his entry and residence of 30 months from the date of deportation.

Legal context

Regulation No 604/2013

- 3 Recitals 4 and 5 of Regulation No 604/2013 state:

‘(4) The Tampere conclusions ... stated that [the Common European Asylum System] should include, in the short term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.’

- 4 Article 1 of Regulation No 604/2013 provides:

‘This Regulation lays down 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 ...’

- 5 Article 2(b) and (c) of that regulation are worded as follows:

‘For the purposes of this Regulation:

...

(b) “application for international protection” means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)];

(c) “applicant” means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken.’

- 6 Article 18(1) of that regulation provides:

‘The Member State responsible under this Regulation shall be obliged to:

...

- (b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;
- (c) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;
- (d) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document.'

7 Article 20(1) of Regulation No 604/2013 provides:

'The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State.'

8 Article 23(1) to (3) of that regulation provides:

'1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) has lodged a new application for international protection considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit ...

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.'

9 Article 24(1), (2) and (4) of that regulation provides:

'1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d) is staying without a residence document and with which no new application for international protection has been lodged considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. By way of derogation from Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [OJ 2008 L 348, p. 98], where a Member State on whose territory a person is staying without a residence document decides to search the Eurodac system ... the request to take back a person as referred to in Article 18(1)(b) or (c) of this Regulation, or a person as referred to in its Article 18(1)(d) whose application for international protection has not been rejected by a final decision, shall be made as quickly as possible and in any event within two months of receipt of the Eurodac hit ...

...

4. Where a person as referred to in Article 18(1)(d) of this Regulation whose application for international protection has been rejected by a final decision in one Member State is on the territory of another Member State without a residence document, the latter Member State may either request the former Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC.

...'

10 Article 26(1) of that regulation states as follows:

'Where the requested Member State accepts ... to take back an applicant or other person as referred to in Article 18(1)(c) or (d), the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. ...'

Directive 2013/32/EU

11 Article 10(2) of 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), provides:

'When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.'

12 Article 33 of that directive, entitled 'Inadmissible applications', is worded as follows:

'1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013, Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

(a) another Member State has granted international protection;

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

13 On 7 December 2015, Mr Ahmed applied for asylum in Germany. He then lodged an application for international protection with the Office on 30 June 2016.

14 As a search on the 'Eurodac' system showed that Mr Ahmed had already applied for international protection in Italy on 17 October 2013, the Office requested the Italian authorities, on 25 August 2016, to take him back on the basis of Regulation No 604/2013.

15 By letter of 9 September 2016, the Italian authorities refused that request for a take-back on the grounds that Mr Ahmed benefits from subsidiary protection in Italy, so that his transfer there should take place in accordance with the readmission agreements in force.

- 16 By decision of 25 November 2016, the Office rejected Mr Ahmed's application for asylum on the ground that it was inadmissible, found there were no grounds preventing his deportation to Italy, informed him that he could be deported to that Member State if he did not leave Germany, and imposed a ban on his entry and residence for 30 months from the date of deportation.
- 17 Mr Ahmed challenged that decision before the referring court.
- 18 That court has doubts as to whether the provisions of Regulation No 604/2013 relating to the take-back procedure for a third-country national benefiting from subsidiary protection in another Member State are applicable.
- 19 However, if they are in fact applicable to a situation such as that at issue in the main proceedings, that court asks whether, in such a situation, an asylum seeker may rely on the expiry of the time limits for submitting a request for a take-back laid down in Article 23(2) of Regulation No 604/2013. It also asks about the detailed rules for calculating those time limits and the possible effects of delays to the making of a request for a take-back on the determination of the Member State responsible for the examination of the asylum application.
- 20 In those circumstances, the Verwaltungsgericht Minden (Administrative Court, Minden, Germany) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are Articles 20 to 33 of Regulation No 604/2013 applicable to asylum applicants to whom subsidiary protection has already been granted in a Member State?

If the answer to Question 1 is in the affirmative,

- (2) May an asylum applicant claim a transfer of responsibility to the requesting Member State by reason of the expiry of the period for making the take back request (Article 23(3) of Regulation No 604/2013)?
- (3) If Question 2 is to be answered in the affirmative: may an asylum applicant claim a transfer of responsibility even if the requested Member State is still willing to take charge of him?
- (4) If Question 3 is to be answered in the negative: can it be inferred from the express consent or the deemed consent (Article 25(2) of Regulation No 604/2013) of the requested Member State that the requested Member State is still willing to take charge of the asylum applicant?
- (5) Can the two-month period provided for in the second subparagraph of Article 23(2) of Regulation No 604/2013 end after the expiry of the three-month period provided for in the first subparagraph of Article 23(2), second subparagraph, of Regulation No 604/2013 if the requesting Member State allows more than one month to pass after the beginning of the three-month period before it makes a request to the Eurodac database?
- (6) Is an application for international protection deemed to have been lodged for the purposes of Article 20(2) of Regulation No 604/2013 when a certificate of registration as an asylum seeker is first issued, only when that certificate or the essential information contained therein is received by the Federal Office or only when a formal asylum application is recorded? In particular:
- (a) Is the certificate of registration as an asylum seeker a form or a report within the meaning of Article 20(2) of Regulation No 604/2013?
- (b) Is the competent authority within the meaning of Article 20(2) of Regulation No 604/2013 the authority responsible for receiving the form or for preparing the report or the authority responsible for the decision on the asylum application?

- (c) Has a report prepared by the authorities reached the competent authority even if that authority was informed of the main content of the form or the report, or must the original or a copy of the report be communicated to it for that purpose?
- (7) Can delays between the first request for asylum or the first issue of a certificate of registration as an asylum seeker and the submission of a take-back request lead to a transfer of responsibility to the requesting Member State by analogous application of the third subparagraph of Article 23(3) of Regulation No 604/2013 or require the requesting Member State to exercise its right to assume responsibility pursuant to the first subparagraph of Article 17(1) of Regulation No 604/2013?
- (8) If Question 7 is to be answered in the affirmative in respect of either alternative: from what time can there be considered to be an unreasonable delay in submitting a take-back request?
- (9) Does a take-back request in which the requesting Member State indicates only the date of entry into the requesting Member State and the date of submission of the formal asylum application, but not also the date of the first request for asylum or the date of first issue of a certificate of registration as an asylum seeker, comply with the time limit provided for in the first and second subparagraphs of Article 23(2) of Regulation No 604/2013, or is such a request “ineffective”?

Consideration of the questions referred

- 21 Pursuant to Article 99 of its Rules of Procedure, where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 22 That provision must be applied in the present case.
- 23 Given that the case is to be dealt with by the present order, adopted pursuant to Article 99 of the Rules of Procedure, there is no need to give a ruling on the request for an expedited procedure.

The first question

- 24 By its first question, the referring court asks essentially whether the provisions and principles of Regulation No 604/2013 governing, directly or indirectly, the time limits for making a request for a take-back are applicable in a situation, such as that at issue in the main proceedings, in which a third-country national has lodged an application for international protection in one Member State after being granted the benefit of subsidiary protection by another Member State.
- 25 In that connection, it must be stated that those rules, which are intended to govern the conduct of the take-back procedure laid down by that regulation by ensuring that a take-back request is made within a reasonable time, are not, by nature, applicable to situations in which such a procedure may, in principle, be properly brought in accordance with that regulation.
- 26 The scope of application of the take-back procedure is defined in Articles 23 and 24 of Regulation No 604/2013. While Article 24 of that regulation concerns cases in which no new application for international protection has been lodged in the requesting Member State, Article 23 thereof governs situations, such as that at issue in the main proceedings, in which such a request has been lodged in that Member State.
- 27 It follows from Article 23(1) of that regulation that, in such situations, the take-back procedure may cover only the transfer of a person referred to in Article 18(1)(b), (c) or (d) thereof.

- 28 Those three provisions refer, respectively, to an applicant whose application is being examined, a third-country national or stateless person who has withdrawn his request which was being examined, and a third-country national or stateless person whose application has been rejected.
- 29 Since the fact that a third-country national benefits from the status conferred by subsidiary protection granted by a Member State other than that which is determining the Member State responsible cannot be construed as meaning that an application lodged by that third-country national is being examined or has been withdrawn in another Member State, it must be determined whether such a person may be regarded as a third-country national whose application has been rejected.
- 30 In that connection, it must be observed that Article 18(1)(d) of Regulation No 604/2013 does not indicate whether the unsuccessful ‘application’ referred to is an application for international protection or asylum *strictu sensu*.
- 31 If that provision were to be interpreted as referring to the rejection of an asylum application, it could be applied to a third-country national benefiting from the status granted by subsidiary protection since, pursuant to Article 10(2) of Directive 2013/32, that status may be granted only after determining that the applicant does not satisfy the conditions for granting refugee status.
- 32 However, that interpretation of Article 18(1)(d) of Regulation No 604/2013 cannot be accepted.
- 33 That interpretation would amount to an acknowledgment that the EU legislature used the term ‘application’ in several different ways in that provision, since the reference in that provision, to the fact that the person concerned ‘made an application in another Member State’ necessarily refers, in the light of Article 1 and Article 20(1) thereof, to the lodging of an application for international protection.
- 34 Furthermore, it is apparent from the Court’s settled case-law that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 19 December 2013, *Koushkaki*, C-84/12, EU:C:2013:862, paragraph 34).
- 35 In that connection, it must be observed that Article 2(c) of Regulation No 604/2013 defines the term ‘applicant’ as referring to a third-country national or stateless person ‘who has made an application for international protection in respect of which a final decision has not yet been taken’.
- 36 Similarly, although that regulation does not directly define the term ‘applicant’, Article 2(b) thereof defines the concept of ‘application for international protection’. The provisions of that regulation also use, in a general manner, the terms ‘application’ and ‘application for international protection’ interchangeably, without making any reference to an application for asylum, unlike 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).
- 37 Furthermore, with a view to identifying the regime applicable to a person covered by Article 18(1)(d) of Regulation No 604/2013 where he has not lodged a new application for international protection, Article 24(2) and (4) thereof make express reference to whether or not the decision rejecting the ‘application for international protection’ lodged by that person is final.
- 38 Moreover, Article 33 of Directive 2013/32 clearly distinguishes the cases in which an application for international protection is not examined in accordance with Regulation No 604/2013 from those in which such an application may be rejected as inadmissible because ‘another Member State has granted international protection’.

- 39 The EU legislator therefore considered that the rejection of an application for international protection lodged by a third-country national, such as that at issue in the main proceedings, had to be made by a decision of inadmissibility under that directive, pursuant to Article 33 thereof, rather than by means of a decision to transfer and not to examine the application, pursuant to Article 26 of Regulation No 604/2013, which gives rise to certain consequences, in particular as regards the legal remedies available against the decision rejecting the application.
- 40 That finding is not such as to hinder the attainment of the objectives mentioned in recital 5 of that regulation which are, first, to guarantee effective access to the procedures for granting international protection and, second, not to compromise the objective of the rapid processing of applications for international protection, since a third-country national such as the person concerned in the main proceedings already benefits from international protection.
- 41 Therefore, it follows from Article 23(1) of Regulation No 604/2013, read together with Article 18(1)(d) thereof, that a Member State cannot reasonably request another Member State to take back a third-country national, such as the person concerned in the main proceedings under the procedures defined by that regulation, who has lodged an application for international protection in the first Member State after being granted the benefit of subsidiary protection by the second Member State.
- 42 Therefore, the answer to the first question is that the provisions and principles of Regulation No 604/2013 governing, directly or indirectly, the time limits for lodging an application for the purposes of a take-back are not applicable in a situation, such as that at issue in the main proceedings, in which a third-country national has lodged an application for international protection in one Member State after being granted the benefit of subsidiary protection by another Member State.

The second and third questions

- 43 In view of the answer given to the first question, there is no need to answer the second and third questions.

Costs

- 44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (Third Chamber) hereby rules:

The provisions and principles of 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 which govern, directly or indirectly, the time limits for lodging an application for a take-back are not applicable in a situation, such as that at issue in the main proceedings, in which a third-country national has lodged an application for international protection in one Member State after being granted the benefit of subsidiary protection by another Member State.

[Signatures]