

## Spain - High National Court, 9 May 2013, No. 1935/2013

**Country of Decision:**

Spain

**Country of Applicant:**

Pakistan

**Date of Decision:**

09-05-2013

**Citation:**

1935/2013

**Court Name:**

High National Court, Chamber for Contentious Administrative Proceedings, Madrid, Section 2, (Rapporteur: Francisco José Navarro Sanchis)

**Keywords:**

Dublin Transfer

Inadmissible application

Request that charge be taken

Responsibility for examining application

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**Relevant Legislative Provisions:**European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [1] > [Article 19](#) [2]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [1] > [Article 20](#) [3]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [1] > [Article 27](#) [4]

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**Headnote:**

It is an administrative appeal brought before the High National Court against the Ministry of the Interior's decision to deny an examination of the application for international protection by a claimant of Pakistani nationality, on the basis that Germany is responsible for the examination in accord with EU Regulation 343/2003 of 18<sup>th</sup> February (Dublin Regulation).

The High National Court had not yet evaluated the basis of the application for international protection because, before doing so, an obstacle to the proceedings arose: this concerned the determination of the country responsible for examining the application and, in particular, the breach of the legal time period for the transfer of this responsibility (a maximum period of 6 months for the transfer).

**Facts:**

The claimant, a Pakistani national, requested asylum in Spain on 25<sup>th</sup> April, 2012.

At the admissibility stage of the application, elements were uncovered that indicated that Germany, not Spain, was the country responsible for examining the application because the claimant previously submitted an application for international protection in that country.

On 1st June, 2012, the request was referred to Germany to ask whether they would take charge of the application. On 5<sup>th</sup> June, 2012, Germany replied via a letter of acceptance that they would assume State responsibility for the application.

On 13<sup>th</sup> November, 2012, the claimant brought an appeal before the High National Court challenging the State's decision. The State representative responded to the claim by asking for a dismissal.

The High National court set the date of 30<sup>th</sup> April, 2013, for the ruling.

As of this date, the Applicant had not been transferred to Germany.

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**Decision & Reasoning:**

Before evaluating the Appellant's written claims or the State Representative's response, the High National Court observed that the applicant had not been moved to the country deemed to have responsibility.

The matter of responsibility had been resolved but had not been acted upon. Neither the preliminary decision to deny the examination of the application nor the State Representative's response to the application showed that the Applicant had been moved to Germany.

The Court recalled that as soon as Germany accepted responsibility, Article 20.1(d) of the EC Regulation 343/2003 of 18<sup>th</sup> February came into operation, giving the maximum time period to move the Applicant as 6 months from the date of acceptance by the requested State. Germany accepted on 5<sup>th</sup> June, 2012.

Alongside the main issue, the Chamber emphasised that in the State Representative's aforementioned response to the application, although no mention was made of the transfer, they did discuss the inadmissibility of both the asylum application and the authorisation of permanent residence on humanitarian grounds. The Court availed itself of the opportunity to issue a reminder that these types of pleas affect the substance of the examination of the application and not the matter that was argued in the challenged decision, namely: the State's responsibility (this time) to examine the basis of the asylum application.

Regardless, it determined that the maximum period of 6 months to make the transfer had been exceeded due to the State's failure to act. The High National Court warned that the State had not kept a record for the Chamber or "displayed the minimum amount of care" in relation to the requirement to carry out the transfer, as a consequence of which the Court had no knowledge of the situation when the appeal was brought on 13<sup>th</sup> November, 2012.

Therefore, in accordance with the Dublin Regulation, the responsibility becomes that of the State where the application for international protection was submitted; namely, Spain. Consequently, at this stage no other matters relating to the merits of granting international protection (substance) will be examined.

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**Outcome:**

The appeal was upheld and the denial of the examination of the application for international protection was declared invalid. The Chamber ordered the annulment of the procedure so that a decision on the substance of the application could be made.

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**Observations/Comments:**

This is an important decision because it exposes a repeated practice in Spain: the State finds solid grounds for establishing another Member State's responsibility for examining an application for international protection (under the Dublin Regulation criteria), however, it does not carry out the necessary actions to effect this transfer and exceeds the maximum period of 6 months as required by Regulation 343/2003, which leaves Spain as the country responsible for examining the application.

**Attachment(s):**

[Original Judgment - Spain - 1935.2013.pdf](#) [5]

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**National / Other Legislative Provisions:**

[Spain - Ley orgánica 4/2000 de extranjería \(Organic Law 4/2000 on Foreign Persons\) - Art 64\(5\)](#) [6]

[Spain - Royal Decree 203/1995 - Art 25\(1\)](#) [7]

[Spain - Royal Decree 2393/2004 Art 158\(4\)](#) [8]

[Spain - Ley 37/2011 de medidas de agilización procesal \(Act 37/2011 on measures of procedural facilitation\)](#) [9]

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**Links:**

[1] <https://www.asylumlawdatabase.eu/node/19>

[2] [https://www.asylumlawdatabase.eu/node/19#toc\\_172](https://www.asylumlawdatabase.eu/node/19#toc_172)

[3] [https://www.asylumlawdatabase.eu/node/19#toc\\_181](https://www.asylumlawdatabase.eu/node/19#toc_181)

[4] [https://www.asylumlawdatabase.eu/node/19#toc\\_252](https://www.asylumlawdatabase.eu/node/19#toc_252)

[5] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20Judgment%20-%20Spain%20-%201935.2013\\_0.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20Judgment%20-%20Spain%20-%201935.2013_0.pdf)

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7500>

[7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7501>

[8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7502>

[9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7503>