

CJEU - C?670/16, Tsegezab Mengesteab v Bundesrepublik Deutschland

Country of Applicant:

Eritrea

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C?670/16, Tsegezab Mengesteab v Bundesrepublik Deutschland, 26 July 2017

Court Name:

Court of Justice of the European Union, Grand Chamber

Keywords:[Dublin Transfer](#) [1][Effective access to procedures](#) [2][Effective remedy \(right to\)](#) [3]**Relevant Legislative Provisions:**European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [4] > [Article 4](#) [5]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Recital \(4\)](#) [7]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Recital \(5\)](#) [8]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Recital \(9\)](#) [9]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Recital \(19\)](#) [10]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 3](#) [11]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 4](#) [12]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 6](#) [13]European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [14] > [Article 6](#) [15]European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#)

[16] > [Article 6](#) [17]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 13](#) [18]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 17](#) [19]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 18](#) [20]

European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [14] > [Article 14](#) [21]

European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [14] > [Article 17](#) [22]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 20](#) [23]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 21](#) [24]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 22](#) [25]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 27](#) [26]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [6] > [Article 28](#) [27]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [16] > [Article 31](#) [28]

Headnote:

Article 27(1) of the Dublin Regulation is to be interpreted as meaning that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant.

The two-month period for submitting a take charge request where there has been a Eurodac hit is not cumulative with the general three-month period for take charge requests.

An application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority.

Facts:

The main proceeding concerns Mr Mengesteab, an Eritrean national who arrived in Germany after entering the EU territory in Italy. On 14 September 2015 he requested asylum and received, on the same day, an initial certificate of registration as an asylum seeker. Mr Mengesteab was able to lodge a formal application on 22 July 2016. On 19 August 2016, the German authorities issued a 'take charge request' to Italy. Mr Mengesteab challenged that decision by arguing that Germany was responsible for examining his application as per Article 21(1) of the DR III since the take charge request had been made after the expiry of the three-month time limit set out in the Regulation. In his view, the time for making such request should run from the day of his request for asylum i.e. the 14 September 2015. On appeal to the Administrative Court of Minden, the Court

noted that German law distinguishes the first request for asylum with the lodging of a formal application. The latter is supposed to swiftly follow on from the former, however in 2015 there was a substantial delay in the formal lodging of applications by the German authorities. The Court, therefore, stayed proceedings and referred a preliminary question on the interpretation of Articles 17, 20 and 21 of the Dublin Regulation.

Following on from a request from the referring court the case was placed in the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice.

Decision & Reasoning:

Lastly, the Court considered what correlated lodging with the Article 27(1) international protection to appeal Article 20(2) should entail, namely Article 21(1) of the Geneva Convention held that by the right authority effected a request prepared by applicant or his or her representative (20(2) states where Member States fail to meet the procedure in frontier or take effective steps to ensure compliance with the EU legislation. Non-compliance with the procedure is not a ground for refusal of asylum under the Dublin Regulation. The Dublin Regulation (2013) and its general application is not with determining the responsibility for an asylum application. The second line of defence is to determine if the effective international protection afforded to the applicant by a third country can be considered to be sufficient. Further that in order to be able to complete a take charge procedure, the Member States must be able to request international protection as well as specified criteria in Article 21(1) specifies that a take charge request for the asylum applicant should be processed and that the application should have the date of lodging of the application as a starting point. With the request separated with its own period of responsibility for the Member States with the date of lodging of the application. The fact that the application is the Dublin Regulation that the EU expires that the effective measures of international protection are granted to applicants that the take charge procedure was properly applied. No litigation of Article 27(1) case between the Member States is not cumulative with the general three month period for take charge requests. This period should start from when the authorities receive the positive hit in the database. The reduced period is justified on the basis of the Regulation's general objectives and the fact that a Eurodac hit is strong proof of irregular border crossing which is likely to speed up the determination of the responsible Member State. Indeed, both the Dublin Regulation and the Procedures Directive interchange between the usage of lodging and making an application and whilst there are similarities between the both there are differentiations, primarily that a report reaching the competent authorities for the purposes of lodging is applicable where provided in national law under the Procedures Directive. Such an option in national law does not exist within the Dublin Regulation, however. Moreover and finally both instruments regulate two different procedures with their own time limits and own schemes.

Outcome:

Article 20(2) of Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing its criteria to have been sought if a written declaration by a Member State is possible further aiming at applying that of international protection has lodged in the Member State by a third country national responsible for persons demanding the obligation to take charge of them, and in the case as a result of the application for international protection and, only in the context of an admissibility decision, the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant.

Observations/Comments:

The judgment was quashed by Advocate General Mengesteab as meaning that a take charge request cannot validly be made more than three months after the application for international protection has been lodged, even in the Dublin III Regulation with the central role of the Eurodac and the time limits for applicants and Member States. She rejected the argument that the time limits of 2013/04/04, which are State relations, since the operation of those time limits has substantive implications for the applicants. Therefore, applicants should be able to challenge transfer decisions under the Dublin III Regulation. [Case C-556/15 George Kalinapplicable time limit](#) [29]

Second, she considered the two-month time limit (during which Member States have to submit a take charge request in cases where there has been a Eurodac hit) to start from when the authorities receive the positive hit in the database, and should not be cumulative with the general 3-month period for take charge requests.

 [C_670_16 Mengesteab.docx](#) [31]

AG Sharpston put forward that an application for international protection is lodged within the meaning of Article 20(2) DR III when a form or report reaches the competent national authorities responsible for such applications. In her view, an informal request does not constitute 'lodging' within the meaning of the Regulation. The AG also rejected the idea that a delay to submit a take charge request would result in an obligation of a Member State to exercise its discretion under Article 17(1) of the Dublin III Regulation.

National / Other Legislative Provisions:

- Germany - Asylgesetz para 5
- Germany - Asylgesetz para 14
- Germany - Asylgesetz para 23
- Germany - Asylgesetz para 63(1)(a)

Links:

- [1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1213
- [2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A11
- [3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30
- [4] <https://www.asylumlawdatabase.eu/node/19>
- [5] https://www.asylumlawdatabase.eu/node/19#toc_71
- [6] <https://www.asylumlawdatabase.eu/node/4037>
- [7] https://www.asylumlawdatabase.eu/node/4037#toc_14
- [8] https://www.asylumlawdatabase.eu/node/4037#toc_15
- [9] https://www.asylumlawdatabase.eu/node/4037#toc_19
- [10] https://www.asylumlawdatabase.eu/node/4037#toc_29
- [11] https://www.asylumlawdatabase.eu/node/4037#toc_85
- [12] https://www.asylumlawdatabase.eu/node/4037#toc_92
- [13] https://www.asylumlawdatabase.eu/node/4037#toc_114
- [14] <https://www.asylumlawdatabase.eu/node/4039>
- [15] https://www.asylumlawdatabase.eu/node/4039#toc_89

- [16] <https://www.asylumlawdatabase.eu/node/3946>
- [17] https://www.asylumlawdatabase.eu/node/3946#toc_117
- [18] https://www.asylumlawdatabase.eu/node/4037#toc_165
- [19] https://www.asylumlawdatabase.eu/node/4037#toc_185
- [20] https://www.asylumlawdatabase.eu/node/4037#toc_196
- [21] https://www.asylumlawdatabase.eu/node/4039#toc_168
- [22] https://www.asylumlawdatabase.eu/node/4039#toc_186
- [23] https://www.asylumlawdatabase.eu/node/4037#toc_217
- [24] https://www.asylumlawdatabase.eu/node/4037#toc_229
- [25] https://www.asylumlawdatabase.eu/node/4037#toc_238
- [26] https://www.asylumlawdatabase.eu/node/4037#toc_285
- [27] https://www.asylumlawdatabase.eu/node/4037#toc_303
- [28] https://www.asylumlawdatabase.eu/node/3946#toc_348
- [29] <https://www.asylumlawdatabase.eu/en/content/cjeu-case-c-15515-george-karim-v-migrationsverket>
- [30] <https://www.asylumlawdatabase.eu/en/content/cjeu-c%E2%80%91916315-mehrdad-ghezelbash-v-staatssecretaris-van-veiligheid-en-justitie>
- [31] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/C_670_16%20Mengesteab.docx