

Case C-72/22 PPU

Valstybės sienos apsaugos tarnyba

(Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas)

Judgment of the Court (First Chamber), 30 June 2022

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Asylum and immigration policy – Directive 2011/95/EU – Article 4 – Common procedures for granting and withdrawing international protection – Directive 2013/32/EU – Articles 6 and 7 – Standards for the reception of applicants for international protection – Article 18 of the Charter of Fundamental Rights of the European Union – Directive 2013/33/EU – Article 8 – Detention of the applicant – Ground for detention – Protection of national security or public order – Detention of the applicant for having entered the territory of the European Union unlawfully)

1. *Questions referred for a preliminary ruling – Urgent preliminary ruling procedure – Conditions – Person deprived of liberty – Concept – Third-country national placed in an accommodation centre with movement restricted to the perimeter of that place – Included – Outcome of the dispute liable to have an effect on that deprivation of liberty – Application of the urgent preliminary ruling procedure (Statute of the Court of Justice, Art. 23a; Rules of Procedure of the Court of Justice, Art. 107; European Parliament and Council Directives 2008/115, 2013/32 and 2013/33)*

(see paragraphs 36-38, 41-45)
2. *Border controls, asylum and immigration – Asylum policy – Standards for the reception of applicants for international protection – Directive 2013/33 – Concept of detention – Coercive measure depriving the applicant of his or her freedom of movement and isolating that person from the rest of the population by requiring him or her to remain within a limited and closed area (European Parliament and Council Directive 2013/33, Art. 2(h))*

(see paragraph 39)
3. *Border controls, asylum and immigration – Asylum policy – Procedures for granting and withdrawing international protection – Directive 2013/32 – Procedure for examining an application for international protection – Access to that procedure – Declaration by a Member State of a state of war or a state of emergency, or a declaration of an emergency due to a mass influx of foreigners – National legislation which de facto denies illegally staying third-country nationals the opportunity of having access to that procedure in the territory of that Member State – Not permissible (Art. 72 TFEU; Charter of Fundamental Rights of the European Union, Art. 18; European Parliament and Council Directive 2013/32, Arts 6, 7(1) and 43)*

(see paragraphs 58, 61-64, 70-72, 74, 75, operative part 1)
4. *Border controls, asylum and immigration – Asylum policy – Standards for the reception of applicants for international protection – Directive 2013/33 – Detention – Grounds – Declaration by a Member State of a state of war or a state of emergency, or a declaration of an emergency due to a mass influx of foreigners – National legislation which, in such cases, provides for the possibility of detaining an applicant for asylum on the sole ground that his or her stay in the territory of that Member State is unlawful – Not permissible (Charter of Fundamental Rights of the European Union, Art. 6; European Parliament and Council Directives 2013/32, Arts 8 and 9, and 2013/33, recitals 15 and 20, Art. 8(2) and (3) and Art. 9)*

(see paragraphs 80-84, 86-91, 93, operative part 2)

Résumé

EU law precludes Lithuanian legislation under which, in the event of a mass influx of foreigners, an applicant for asylum may be detained on the sole ground that he or she is staying illegally

However, it is in principle for the Member State to which an illegally staying applicant for asylum applies for international protection to demonstrate that, due to specific circumstances, the applicant constitutes a threat to national security or public order justifying detention

On 2 July 2021, the Republic of Lithuania declared an emergency throughout its territory. That declaration was followed, on 10 November 2021, by a declaration of a state of emergency in part of the territory due to a mass influx of migrants from, inter alia, Belarus.

On 17 November 2021, M.A., a third-country national, was arrested in Poland, together with a group of persons from Lithuania, on the ground that he had neither the travel documents nor the necessary visa to stay in Lithuania and in the European Union. M.A. was therefore handed over to the Lithuanian authorities, which detained him pending the adoption of a decision as to his legal status. In the days following that handover, he immediately made an application for international protection, which he made again in writing in January 2022. That written application was, however, rejected as inadmissible on the ground that it had not been submitted in accordance with the requirements of the Lithuanian legislation on the submission of applications for international protection in an emergency caused by the mass influx of foreigners.⁽¹⁾ Pursuant to that legislation, a foreigner who has entered Lithuania unlawfully is unable to make an application for international protection in that Member State. That same legislation also provides that, in such an emergency, a foreigner may be detained solely on account of having entered Lithuanian territory unlawfully.

In those circumstances, the referring court, which is hearing an appeal brought by M.A. against the decision ordering his detention, seeks to ascertain whether the Procedures ⁽²⁾ and Reception ⁽³⁾ Directives preclude such legislation.

The Court, ruling under the urgent preliminary ruling procedure, holds that the Procedures Directive ⁽⁴⁾ precludes legislation of a Member State under which, in the event of a declaration of a state of war or a state of emergency or in the event of a declaration of an emergency due to a mass influx of foreigners, illegally staying third-country nationals are, de facto, denied the opportunity of having access to the procedure for examining an application for international protection in the territory of that Member State. Furthermore, the Court holds that the Reception Directive ⁽⁵⁾ precludes legislation of a Member State under which, in the event of such a declaration, an applicant for asylum may be detained on the sole ground that he or she is staying in the territory of that Member State illegally.

Findings of the Court

In the first place, as regards access to the procedure for examining an application for international protection, the Court states, first of all, that all third-country nationals and stateless persons have the right to make such an application on the territory of a Member State, including at its borders or in transit zones, even if they are staying in that territory illegally. That right is intended to ensure, first, effective access to the procedure for granting international protection and, secondly, the effectiveness of the right to asylum, as guaranteed by Article 18 of the Charter of Fundamental Rights of the European Union. Consequently, the application of national legislation such as the Lithuanian legislation at issue – which provides that a third-country national who is staying illegally is, for that sole reason, to be denied, after entering Lithuanian territory, the opportunity to submit an application for international protection in that territory – prevents that person from effectively enjoying the right to asylum.

Next, the Court declares that relying generally on breaches of public order or internal security which may be caused by the mass influx of third-country nationals does not justify such legislation under Article 72 TFEU. ⁽⁶⁾

Lastly, the Procedures Directive (7) allows Member States to establish special procedures, applicable at their borders, for assessing the admissibility of applications for international protection in situations where the applicant's conduct tends to indicate that his or her application is manifestly unfounded or abusive. Those procedures enable Member States to exercise, at the external borders of the European Union, their responsibilities with regard to the maintenance of law and order and the safeguarding of internal security, without any need for a derogation under Article 72 TFEU.

In the second place, as regards the issue of detaining a third-country national for the sole reason that he or she entered the territory of a Member State unlawfully, the Court points out, first of all, that, under the Reception Directive, (8) an applicant for international protection may be detained only when, after an individual assessment of each case, it proves necessary and other less coercive alternative measures cannot be applied effectively. Next, that directive (9) sets out an exhaustive list of the various grounds capable of justifying detention. The fact that an applicant for international protection is staying in the territory of a Member State illegally is not one of those grounds. Consequently, a third-country national cannot be detained on that basis alone.

Lastly, as to whether such a circumstance may justify the detention of an applicant for asylum on the grounds of protecting national security or public order, (10) in the exceptional context represented by the mass influx of foreigners in question, the Court points out that the threat to national security or public order can justify the detention of an applicant only if the applicant's individual conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the Member State concerned. In that regard, the fact that an applicant for international protection is staying illegally cannot in itself be regarded as demonstrating the existence of such a threat. In principle, therefore, such an applicant cannot constitute a threat to the national security or public order of that Member State on the sole ground that he or she is staying in a Member State illegally. That finding is without prejudice to the possibility that an illegally staying applicant for international protection may be regarded as such a threat due to specific circumstances which demonstrate that applicant's dangerousness, in addition to the fact that the applicant's stay is illegal.

1 Chapter X2 of the Lietuvos Respublikos įstatymas 'Dėl užsieniečių teisinės padėties' (Law of the Republic of Lithuania on the legal status of foreigners) concerns the application of that law in the event of a declaration of a state of war or a state of emergency or where an emergency is declared due to a mass influx of foreigners. In that chapter, paragraph 1 of Article 140¹² specifies the places where an application for international protection may be made.

2 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; 'the Procedures Directive').

3 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 (recast) (OJ 2013 L 180, p. 96; 'the Reception Directive').

4 See, more specifically, Article 6 of the Procedures Directive, concerning access to the procedure for granting international protection, and Article 7(1), which requires Member States to ensure that each adult with legal capacity has the right to make an application for international protection on his or her own behalf.

5 See Article 8(2) and (3) of the Reception Directive, concerning the detention of an applicant for asylum.

[6](#) As set out in that provision, ‘this Title [relating to the area of freedom, security and justice] shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security’.

[7](#) See, inter alia, Article 43 of the Procedures Directive.

[8](#) See Article 8(2) of the Reception Directive.

[9](#) See Article 8(3) of the Reception Directive.

[10](#) See Article 8(3)(e) of the Reception Directive.