



## **Croatia is responsible for examining applications for international protection by persons who crossed its border en masse during the 2015-2016 migration crisis**

*Those persons must be regarded as having crossed the external border of Croatia irregularly within the meaning of the Dublin III Regulation*

In 2016 a Syrian national and the members of two Afghan families crossed the border between Croatia and Serbia, even though they were not in possession of an appropriate visa. The Croatian authorities organised transport for those persons to the Croatia-Slovenia border with the aim of assisting them in moving on to other Member States in order to make an application for international protection there.

The Syrian national subsequently made such an application in Slovenia, whereas the members of the Afghan families did so in Austria. However, both Slovenia and Austria took the view that, as the applicants had entered Croatia unlawfully, according to the Dublin III Regulation<sup>1</sup> it was for the authorities of that Member State to examine their applications for international protection.

The persons concerned challenged the respective decisions of the Slovenian and Austrian authorities before the courts, arguing that their entry into Croatia cannot be considered irregular and that, under the Dublin III Regulation it was for the Slovenian and Austrian authorities to examine their applications.

Against that background, the Vrhovno sodišče Republike Slovenije (Supreme Court, Slovenia) and the Verwaltungsgerichtshof Wien (Administrative Court, Vienna, Austria) have asked the Court of Justice whether the entry of the persons concerned is to be regarded as regular within the meaning of the Dublin III Regulation. The Austrian Court also seeks to ascertain whether the approach adopted by the Croatian authorities is tantamount to the issuing of a visa by that Member State.

By today's judgments, the Court notes, first of all, that the Dublin III Regulation provides that a visa is the 'authorisation or decision of a Member State required for transit or entry' in that Member State or in several Member States. As a consequence, first, **the term 'visa' refers to an act formally adopted by a national authority, not to mere tolerance, and, second, a visa is not to be confused with admission to the territory of a Member State, since a visa is required precisely for the purposes of enabling such admission.**

In those circumstances, the Court observes that **the admission of a national from a non-EU country to the territory of a Member State is not tantamount to the issuing of a visa, even if the admission is explained by exceptional circumstances characterised by a mass influx of displaced people into the EU.**

Moreover, the Court considers that **the crossing of a border in breach of the conditions imposed by the rules applicable in the Member State concerned must necessarily be considered 'irregular' within the meaning of the Dublin III Regulation.**

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<sup>1</sup> 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).

As regards the option available to the Member States under the Schengen Borders Code<sup>2</sup> to authorise non-EU nationals who do not fulfil the entry conditions to travel to their territory on humanitarian grounds, the Court points out that **such authorisation is valid only in respect of the territory of the Member State concerned, not the territory of the other Member States.**

Furthermore, if it were accepted that the entry of a non-EU national authorised by a Member State on humanitarian grounds by way of derogation from the entry conditions generally imposed on such nationals does not constitute an irregular crossing of the border, that would imply that that Member State is not responsible for examining the application for international protection lodged by that person in another Member State. **Such a conclusion would be incompatible with the Dublin III Regulation**, which allocates responsibility for examining the application for international protection made by such a person to the Member State whose territory that person first entered when entering the territory of the Member States. Thus, **a Member State which has decided on humanitarian grounds to authorise the entry on its territory of a non-EU national who does not have a visa and is not entitled to waiver of a visa cannot be absolved of that responsibility.**

In those circumstances, the Court finds that **the term ‘irregular crossing of a border’ also covers the situation in which a Member State admits into its territory non-EU nationals on humanitarian grounds, by way of derogation from the entry conditions generally imposed on non-EU nationals.**

In addition, referring to the mechanisms established by the Dublin III Regulation, to Directive 2001/55<sup>3</sup> and to Article 78(3) TFEU, the Court considers that the fact that the border crossing occurred upon the arrival of an unusually large number of non-EU nationals seeking international protection is not decisive.

The Court also observes that **the taking charge of such non-EU nationals may be facilitated by the use by other Member States, unilaterally or bilaterally in a spirit of solidarity, of the ‘sovereignty clause’, which enables them to decide to examine applications for international protection lodged with them, even if they are not required to carry out such an examination under the criteria laid down in the Dublin III Regulation.**

Finally, the Court recalls that **an applicant for international protection must not be transferred to the Member State responsible if, following the arrival of an unusually large number of non-EU nationals seeking international protection, there is a genuine risk that the person concerned may suffer inhuman or degrading treatment if transferred.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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<sup>2</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (OJ 2006 L 105, p. 1), as amended by Regulation (EU) No 601/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1).

<sup>3</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of interests between Member States in receiving such persons and bearing the consequences thereof (OJ 2001 L 212, p. 12).