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Human Dignity and a Dignified Standard of Living: The Judgment of the Court of Justice in the Case of Zubair Haqbin (C233/18)

Abstract: Directive 2013/33/EU (the Reception Conditions Directive) lays down the reception conditions that should be granted to asylum seekers and also their rights of documentation, to education and to access to the labour market and health care. In the judgment of the Court of Justice of 12 November 2019 in Case C233/18 concerning Zubair Haqbin, the Court of Justice holds that the withdrawal – even if only temporary – of the full set of material reception conditions or of material reception conditions relating to housing, food or clothing would be irreconcilable with the requirement to ensure a dignified standard of living for Mr Haqbin. After all, such a sanction deprives him from being allowed to meet his most basic needs.

Keywords: asylum, reception conditions, human dignity, unaccompanied minor, EU Charter on Fundamental Rights

Introduction

Directive 2013/33/EU (the Reception Conditions Directive) lays down the reception conditions that should be granted to asylum seekers and also their rights of documentation, to education and to access to the labour market and health care¹. In addition, the directive provides for conditions under which asylum seekers can be

¹ 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 (O.J. L 180/96, 2013) (Reception Conditions Directive). See also prof. mr. A.B. Terlouw en mr. dr. K.M. Zwaan,

detained. On the basis of the Reception Conditions Directive, asylum seekers have a right to “material reception conditions.” Material reception conditions are defined in the directive as the reception conditions that include “housing, food and clothing, and a daily expenses allowance”². These conditions must be available from the moment an asylum seeker has applied for international protection, and until a final decision on the application has been taken. Furthermore, the directive stipulates that Member States should provide an adequate standard of living for asylum seekers, which guarantees their subsistence and protects their physical and mental health³.

In this contribution, the case of Zubair Haqbin, an Afghan national, will be discussed⁴. Zubair Haqbin arrived in Belgium as an unaccompanied minor. After he lodged an application for international protection, he was hosted in a reception centre (in Broechem), where he was involved in a brawl. Hereafter, the director of the reception centre decided to exclude Mr Haqbin from material support in a reception centre for a period of 15 days. According to his own statements, Mr Haqbin spent the nights in a park in Brussels and in houses of friends and acquaintances.

A few days after the imposition of the measure of exclusion, the appointed guardian sought to suspend its application before the Antwerp Labour Court, but the case was dismissed due to lack of urgency. The guardian brought another challenge before the Brussels Labour Court seeking to cancel the measures imposed and asking for compensation for damages. The action was dismissed and an appeal with the Higher Labour Court of Brussels was lodged. That court decided to stay the proceedings and to submit a reference for a preliminary ruling on the exhaustive nature of cases that may incur reduction/withdrawal of reception conditions, the obligation of the authorities to guarantee a dignified standard of living and considerations applying in cases where minors are involved.

The Higher Labour Court of Brussels referred, in summary, the following three preliminary questions to the Court of Justice:

Firstly, does Article 20(4) of the Reception Conditions Directive allow for a Member State to reduce or withdraw from material reception conditions in cases of serious breaches of the rules relating to reception centres and serious acts of violence?

Secondly, which concrete steps should the competent national authorities take in order to guarantee applicants –which also includes an applicant who is temporarily

Menselijke waardigheid en een waardige levensstandaard; de uitspraak van het Hof van Justitie inzake Zubair Haqbin, NtER 2020, nr. 3/4, p. 51–56.

2 Article 2(g) Reception Conditions Directive.

3 Article 17(2) Reception Conditions Directive.

4 Judgment of CJEU of 12 November 2019, C233/18, ECLI:EU:C:2019:956, Zubair Haqbin v. Federaal Agentschap voor de opvang van asielzoekers, Belgium. See also: C.H. Slingenbergh, Hof van Justitie: overlastgevende asielzoekers mogen niet uit de opvang worden gezet, ook niet tijdelijk, on verblijfblog.nl; S. Progin-Theuerkauf and M.H. Zoetewij, Case C-233/18 Haqbin: The human dignity of asylum seekers as a red line, on europeanlawblog.eu (accessed 01.02.2021).

excluded from reception conditions in a reception centre –the right to a dignified standard of living, as is stipulated in Articles 20(5) and (6) of the Reception Conditions Directive?

Thirdly, should Articles 20(4), (5) and (6) of the Reception Conditions Directive, read in conjunction with Articles 14, 21, 22, 23 and 24 thereof and with Articles 1, 3, 4 and 24 of the Charter of Fundamental Rights of the European Union (Charter), be interpreted as meaning that a sanction of temporary (or definitive) exclusion from the right to material reception conditions is possible, in respect of an unaccompanied minor?

The Court of Justice takes all the three questions together and responds that the sanction as laid down in Article 20(4) of the directive may, in principle, relate to the material reception conditions. On the basis of Article 20(5) of the directive, such sanctions should be objective, impartial, reasoned and proportionate to the particular situation of the applicant and must, under all circumstances, ensure a dignified standard of living for the applicant. According to the Court of Justice, the exclusion of the full set of material reception conditions or of material reception conditions relating to housing, food or clothing, albeit temporarily, is incompatible with the requirement for Member States to ensure a dignified standard of living for the applicant. After all, such a sanction deprives him from being allowed to meet his most basic needs.

In the case of a sanction of the reduction of material reception conditions, like the withdrawal or reduction of the daily expenses allowance, the Court of Justice specifies that the competent national authorities should ensure, under all circumstances, that such sanctions, taking into account the specific situation of the applicant and all circumstances of the case, comply with the principle of proportionality and do not impair the dignity of the applicant in question.

If the applicant in question is an unaccompanied minor and therefore should be considered as a vulnerable person within the meaning of the Reception Conditions Directive, the national authorities should particularly have regard to the specific situation of the minor and of the principle of proportionality. When imposing sanctions, the national authorities should, according to Article 24 of the Charter, take particularly into account the best interests of the child.

1. Discussion of the Haqbin judgment

The Court of Justice has on two previous occasions decided on preliminary questions on the material reception conditions. The Cimade and GISTI case concerned questions relating to reception conditions of Dublin claimants⁵. The Saciri

5 Judgment of CJEU of 27 September 2012, C179/11, ECLI:EU:C:2012:594 (Cimade and GISTI).

case concerned a situation in which a benefit had been granted instead of actual reception conditions⁶. The Haqbin case, as discussed in this contribution, deals with Article 20 of the Reception Conditions Directive. This Article stipulates that Member States may, in some cases, reduce or withdraw from material reception conditions. On the basis of Article 20(4) of the directive, Member States may “determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.”

The Reception Conditions Directive not only regulates in which cases Member States may reduce or withdraw from reception conditions, but also gives a number of safeguards for asylum seekers. According to Article 20(5) of the Reception Conditions Directive, there are – in brief – three limitations on the possibility of Member States to restrict or withdraw from reception conditions:

- a) decisions for the reduction or withdrawal should be taken individually, objectively and impartially, and in a reasoned manner;
- b) decisions shall be based on the specific situation of the asylum seeker, particularly with regard to vulnerable persons and in accordance with the principle of proportionality;
- c) Member States should ensure that asylum seekers have, under all circumstances, access to health care and should ensure a dignified standard of living for all asylum seekers⁷.

The Court of Justice judges that the provisions concerning sanctions contained in Article 20(4) of the Reception Conditions Directive may – in principle – relate to the withdrawal of material reception conditions⁸. Nevertheless, the Court of Justice notes that it is determined in Article 20(5) of the directive that every sanction within the meaning of Article 20(4) must be taken objectively, impartially, must be reasoned and proportionate to the particular situation of the applicant and must, under all circumstances, ensure a dignified standard of living for the applicant⁹. The Court of Justice also points out that respect for human dignity requires that Mr Haqbin should not be placed in a state of extreme material poverty which would render him incapable of meeting his most basic needs such as living, eating, clothing and personal hygiene, which would harm his physical or mental health, or puts him in a state of degradation incompatible with human dignity¹⁰.

The Advocate General, Campos Sánchez-Bordona, acknowledges in his conclusion that the first two preliminary questions of the Belgian Labour Court

6 Judgment of CJEU of 27 February 2014, C79/13, ECLI:EU:C:2014:103 (Saciri).

7 Haqbin, points 33–36.

8 Haqbin, point 43.

9 Haqbin, point 45.

10 Haqbin, point 46. The Court of Justice refers to the Jawocase: Judgment of CJEU of 19 March 2019, C163/17, ECLI:EU:C:2019:218 (Jawo), point 92.

concern the treatment of every applicant, regardless of his or her age and situation, while the third question is specifically directed at minors. It is therefore remarkable that his research focuses exclusively on the specific situation of unaccompanied minors when the questions were actually asked more broadly.¹¹

The Court of Justice has taken a broader view of the questions and has, contrary to the Advocate General, expressly ruled that imposing a sanction which amounts to a violation of human dignity and a dignified standard of living for asylum seekers is not permitted. This also applies to adults.¹²

2. Human Dignity

In the *Haqbin* case, human dignity plays a very important role.¹³ The Court of Justice holds that:

With regard specifically to the requirement to ensure a dignified standard of living, it is apparent from recital 35 of Directive 2013/33 that the directive seeks to ensure full respect for human dignity and to promote the application, inter alia, of Article 1 of the Charter of Fundamental Rights and has to be implemented accordingly. In that regard, respect for human dignity within the meaning of that article requires the person concerned not finding himself or herself in a situation of extreme material poverty that does not allow that person to meet his or her most basic needs such as a place to live, food, clothing and personal hygiene, and that undermines his or her physical or mental health or puts that person in a state of degradation incompatible with human dignity (see, to that effect, judgment of 19 March 2019, *Jawo*, C163/17, EU:C:2019:218, paragraph 92 and the case-law cited)¹⁴.

Because I wanted to get a bird's eye view of the use of Article 1 (human dignity) of the EU Charter, for this contribution I have selected and examined 24 relevant Court of Justice cases¹⁵. 14 of these 24 cases concerned asylum cases. From this brief

11 ECLI:EU:C:2019:468, AG Opinion delivered on 6 June 2019, point 35.

12 See on human dignity, J. Habermas, "Das Konzept der Menschenwürde und die realistische Utopie der Menschenrechte" (in:) J. Habermas (ed.), *Zur Verfassung Europas. Ein Essay*. Berlin: edition suhrkamp, 2011, pp. 13–38.

13 Groenendijk and Minderhoud point out that Article 1 of the Charter should be viewed independently. See K. Groenendijk and P. Minderhoud, *Unierecht en uitgeprocedeerden, "A&MR" 2015*, p. 178.

14 *Haqbin*, point 46.

15 Judgments of the Court of Justice mentioning Article 1 Charter can be found in the database of the European Law Expertise Centre of the Ministry of Foreign Affairs, <https://ecer.minbuza.nl/ecer/eu-essential/charter-fundamental-rights> (last accessed 1 March 2021). Searching for Article 1 Charter gives 31 judgments mentioning Article 1. The database is in Dutch. Excluded from examination were civil (servants) law and social law judgments.

study it emerged that Article 1 Charter receives relatively little attention from the Court of Justice; when this provision is mentioned, it is often only in combination with other provisions of the Charter and without any further explanation.

In the *Selver Saciri et al* case, concerning the minimum standards on reception of asylum seekers, the Court of Justice holds that the general scheme and the purpose of the Reception Conditions Directive (Directive 2003/9/EC)¹⁶ and the observance of fundamental rights, specifically the requirements of Article 1 of the Charter, preclude the asylum seeker from being deprived of the protection of the minimum standards as laid down by this directive, even if only temporarily¹⁷.

In the case of *Cimade and GISTI*, concerning the minimum requirements on reception conditions of asylum seekers, the Court of Justice holds that the general scheme and the purpose of the Reception Conditions Directive (Directive 2003/9/EC) and the observance of fundamental rights, specifically the requirements of Article 1 of the Charter, preclude the asylum seeker from being deprived of the protection of the minimum standards laid down by that directive¹⁸. This also applies to the period between lodging an application for asylum and the actual transfer to the responsible Member State.

The Court of Justice pays particular attention to the interrelation between human dignity and the existence of adequate reception conditions. This has also been pointed out by the European Court of Human Rights (ECtHR) in the cases of *MSS/Belgium and Greece*, and of *Budina/Russia*, in which the ECtHR attaches “considerable importance” to the applicant’s status as an asylum seeker “and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection.” According to the ECtHR, “state responsibility can arise under Article 3 of the European Convention on Human Rights (ECHR) for “treatment” where an applicant, in circumstances wholly dependent on state support, found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity.”¹⁹ Also, when dealing with the complaint in the *Hunde* case, which was incidentally dismissed as manifestly unfounded, the ECtHR ruled that Article 3 of the ECHR obliges states to take action in situations of the most extreme poverty, even if it concerns irregular migrants²⁰. In *Haqbin*, the Court of Justice now also explicitly mentions Article 1 Charter in its ruling on

16 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (O.J.L 31/18). This directive is the predecessor of the current Reception Conditions Directive 2013/33/EU.

17 CJEU 27 February 2014, case C79/13, ECLI:EU:C:2014:103, JV 2014/143 (*Saciri*), point 35.

18 CJEU 27 September 2012, case C179/11, ECLI:EU:C:2012:594 (*Cimade and GISTI*).

19 Judgment of ECtHR of 21 January 2011, appl. no. 30696/09, ECLI:CE:ECHR:2011:0121 (*M.S.S./Belgium and Greece*); Judgment of ECtHR of 18 June 2009, appl.no. 45603/05 (*Budina/Russia*).

20 Judgment of ECtHR of 5 July 2016, appl. no. 17931/16, ECLI:CE:ECHR:2016:0705DEC001793116 (*Hunde/the Netherlands*).

the preliminary question.²¹ The fact that Article 1 EU Charter has an independent meaning to Article 3 ECHR is not only evident from the fact that Article 3 ECHR has its equivalent in Article 4 EU Charter and that Article 1 EU Charter therefore must offer something extra, but it is also evident from the explanatory notes to Article 1 EU Charter:

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. (...) In its judgment of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079, at grounds 70–77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law. It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

3. Reception of Minors

With regard to minor asylum seekers, the Court of Justice holds that Member States, when imposing a sanction, must in particular take “due account” of the specific situation of the asylum seeker and the principle of proportionality (this also follows from Articles 3 and 22 of the Convention on the Rights of the Child (UNCRC))²². In doing so, the Member States must be guided primarily by the best interests of the child, pursuant to Article 23(1) of the Reception Conditions Directive. This obligation already exists, of course, under Article 3 of the Convention on the Rights of the Child, which has been incorporated into Article 24 EU Charter. Recital 35 of the Reception Conditions Directive refers to the EU Charter as the framework for interpreting the Reception Conditions Directive. It states:

This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.

Here, not only reference to human dignity can be seen, but also an explicit referral to Article 24 Charter. According to Article 23(2) of the Reception Conditions

21 See also C. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, “The European Journal of International Law” 2008, vol. 19, no. 4, pp. 655–724.

22 Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989; See also European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European law relating to the rights of the child*, Belgium 2015.

Directive, the Member States must, when assessing these interests, take due account, in particular, of factors such as the minor's well-being and social development, with particular attention to the minor's background, as well as considerations relating to his or her safety and security²³. In addition, the Court of Justice stresses that the three guarantees as set out in Article 20(5) of the Reception Conditions Directive must always be met when imposing a sanction. In the case of an unaccompanied minor asylum seeker (a vulnerable person within the meaning of Article 21 of the Reception Conditions Directive), Member States must take the specific situation of the minor and the principle of proportionality into "due account"²⁴.

The Convention on the Rights of the Child also contains other relevant provisions under which a withdrawal of the right to reception conditions of (unaccompanied) minors cannot be used as a sanction. These provisions are not referred to in the Charter, but they are, of course, binding on all EU Member States, because they all are parties to the Convention on the Rights of the Child. Article 20(1) is such an example. Also of importance is Article 22(1):

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Article 26(1) recognized the right to benefit from social security. Furthermore, States Parties to the Convention on the Rights of the Child recognize, on the basis of Article 27(1), the "right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." Finally, Article 40(1) is important with regard to the rights of the child in penal law.

Apparently, Mr Haqbin's situation was not about a criminal offence, but where the more applies, the less should apply as well. If a minor has misbehaved without the act being a criminal offence, the sanction must not affect his dignity²⁵. It strikes us that the best interests of the child are usually weighed against the interests of the state, but in this case these interests seem to converge. It is also in the interest of the state to protect (unaccompanied) minors and not to send them out onto the streets, where they not only may fall victim to crime, but could also end up in crime. The

23 Haqbin, point 54.

24 Haqbin, point 53.

25 See also Asylum Information Database (AIDA), Withdrawal of reception conditions of asylum seekers. An appropriate, effective or legal sanction? July 2018.

Convention on the Rights of the Child contains a whole series of provisions which oblige States Parties to ensure that children are being protected against this. Denial of access to the necessary material provisions is therefore certainly not an adequate sanction when it comes to minors²⁶.

4. The consequences of the Haqbin judgment in the Netherlands

In the Netherlands, nuisance-causing asylum seekers are transferred to an Extra Guidance, Support and Supervision Location (Extra Begeleidings- en Toezichtlocatie, EBL)²⁷. This is not in conflict with the judgment of the Court of Justice in Haqbin, provided that in all cases the formal, substantive and minimum conditions of Article 20(5) of the Reception Conditions Directive are met.

In addition, the Central Agency for the Reception of Asylum Seekers (Centraal Orgaan Opvang Asielzoekers, COA) applies Internal Regulations on Abstention from Granting Asylum Seekers (Reglement Onthouding Verstrekkingen, ROV). The ROV provides a policy framework developed by the COA. The ROV has various (types of) options for imposing a measure, tailored to the negative impact of the incident/shown behaviour of the resident. The ROV contains 11 increasing measures, of which measure number 1 (withholding of pocket money for 1 week) is the lightest and measure number 11 (withholding of all Rva²⁸ benefits for an indefinite period of time) the heaviest. If there is an incident or behaviour with a “very high impact,” all the facilities are withdrawn and access to the reception location is denied for a number of weeks or, in the worst case, forever. Recently, the State Secretary announced that the COA would again consider the (temporary) denial of reception as an appropriate sanction²⁹. This sanction must, considering the Haqbin ruling, be abandoned³⁰. Although the Haqbin judgment suggests that there is a theoretical possibility that the withdrawal of material conditions may be permitted –namely, if it had been established objectively and impartially in the individual case and in a manner that

26 See also K. Mets, The fundamental rights of unaccompanied minors in EU asylum law: a dubious trade-off between control and protection, “ERA Forum” 2020.

27 See Parliamentary documents II 2018/19, 19637, no. 2510. All translations are my own, so non-official.

28 Rva is an abbreviation for the Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005 (Regulation on benefits in kind for asylum seekers and other categories of migrants 2005).

29 Parliamentary Documents II 2018/19, 19637, no. 2510. See also a letter of the State Secretary of Justice to the Parliament, 1 July 2020 (<https://www.rijksoverheid.nl/documenten/kamerstukken/2020/07/01/tk-arrest-eu-hof-van-justitie-in-de-zaak-haqbin>).

30 See also L. Slingenberg, Hof van Justitie: overlastgevende asielzoekers mogen niet uit de opvang worden gezet, ook niet tijdelijk, verblijfblog.nland the case note of Slingenberg, “Jurisprudentie Vreemdelingenrecht” 2019/197.

would not deprive the asylum seeker of his or her sustenance and human dignity – in practice, such a situation will not occur very often.

For example, the president of the District Court of Groningen ruled that withdrawal from reception due to misconduct is contrary to the Reception Conditions Directive. He therefore granted an interim measure³¹. Also the highest Dutch administrative Court, the Council of State ruled along the same lines³². The Council of State ruled that the Haqbin judgment showed that a Member State could not impose the proposed measure, irrespective of the seriousness of the misconduct of the migrant concerned. The State Secretary's assertion that the Haqbin judgment applies only to minors was dismissed by the court. The Council of State in interim measures proceedings deduced this from, among other things, paragraph 55, read in conjunction with paragraphs 47 to 52 of the judgment of the Court of Justice. These considerations of the Court of Justice show that the Reception Conditions Directive does not permit a sanction that consists of the withdrawal of material reception conditions relating to housing, food and clothing from any asylum seeker. The Court of Justice does, however, provide for alternative sanctions to be imposed in the event of misconduct by a resident of a reception centre.³³

Conclusions

The Haqbin judgment is relevant for at least three reasons. Firstly, because the Court of Justice makes it clear that, when imposing sanctions depriving asylum seekers of material reception conditions, the individual circumstances of the asylum seeker must be assessed (such as age, social development, health, background, security). Secondly, because, on the basis of the Reception Conditions Directive and the EU Charter, the Court of Justice holds that such sanctions must not have the effect of placing the asylum seeker in a situation below the minimum living standards guaranteed by the Reception Conditions Directive. In that regard, the right to respect for human dignity, as laid down in Article 1 EU Charter, is essential. Respect for human dignity requires that asylum seekers are not placed in a situation of extreme material poverty which would prevent them from meeting their most basic needs such as living, eating, clothing and personal hygiene, which would harm his or her physical or mental health, or puts him or her in a state of degradation incompatible

31 Judgment of District Court, president Rb. Den Haag (z.p. Groningen) 23 January 2020, ECLI:NL:RBDHA:2020:669.

32 Judgment of Council of State of 15 July 2020, ECLI:NL:RVS:2020:1622. See also Parliamentary documents II, 2019/20, 19 637, no. 2642. From 1 August 2020, reception centres have a so-called "time-out" facility.

33 See also P. Rodrigues, Protection of minors in European migration law, in: M.A.K. Klaassen, S. Rap, P. Rodrigues & T. Liefjaards, Safeguarding Children's Rights in Immigration Law, Mortsel Belgium: Intersentia Publishing NV 2020, p. 1–16.

with human dignity. The Haqbin, Jawo, Hamed and Omar rulings also showed that asylum seekers must be able to meet their basic needs in all circumstances. The obligations of the Member States in this regard apply throughout the whole asylum procedure³⁴. Thirdly, this obligation applies to minors and adults alike.

Last significance of the Haqbin judgment lies in the confirmation by the Court of Justice that, even in the case of imposing sanctions on minors who reside in reception centres, the best interests of the child should be the first consideration. In assessing these interests, the Court of Justice has held that Member States should take due account, in particular, of factors such as the minor's well-being and social development, with particular attention to the minor's background, as well as considerations relating to his or her safety and security. Here, the Court of Justice has referred explicitly to Article 24 of the EU Charter. If the case concerns an unaccompanied minor asylum seeker, Member States should take even greater account of the specific situation of the minor concerned and the principle of proportionality.

For the Netherlands, it means that the practice in which the reception can be determined on grounds of misconduct is no longer tenable if this sanction results in the minor asylum seeker ending on the streets without a bed, bath or bread.

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34 See, to that extent, Preamble 8 Reception Conditions Directive, where it is stated that this directive "should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants."

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