

Restriction of liberty in asylum proceedings II

Facts of the case

Mrs Laila is a third-country national. She applied for international protection in one of the Member States. During the asylum procedure it turned out that she has a valid visa issued by another Member State. The asylum authorities of this Member State requested authorities of a Member State, which issued a visa to take charge of Mrs Laila. The Member State authorities that issued a visa to Mrs Laila accepted the request to take charge. Under Dublin III Regulation Mrs Laila was given a decision to transfer her to the Member State, which issued her visa. This Member State became responsible for examining her application for international protection. She did not appeal the decision.

Mrs Laila absconded her transfer to the responsible Member State. In consequence she was placed in the detention centre due to the significant risk of absconding for 60 days. Since the transfer was not organized within those 60 days her detention was further prolonged to 6 months.

Mrs Laila appealed the decision to prolong her detention claiming that such a long deprivation of liberty was not necessary to organize her transfer.

Arguments to be considered

EU law provides strict limitations when it comes to the deprivation of liberty. Dublin III Regulation allows detaining an asylum seeker in order to secure his transfer to another Member State when an asylum seeker poses a significant risk of absconding.

Dublin III Regulation does not always specify the maximum period of such deprivation of liberty. The question to be considered is how long an asylum seeker waiting for a transfer to another Member State can be detained.



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Legal Framework

Relevant European Law

Dublin III Regulation

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

Article 28. Detention.

- 1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.*
- 2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.*
- 3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.*

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21 (Submitting a take charge request), 23 (Submitting a take back request when a new application has been lodged in the requesting Member State), 24 (Submitting a take back request when no new

application has been lodged in the requesting Member State) and 29 (Modalities and time limits) shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9 (Guarantees for detained applicants), 10 (Conditions of detention) and 11 (Detention of vulnerable persons and of applicants with special reception needs) of Directive 2013/33/EU shall apply.

Article 29. Modalities and time limits (...)

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds. (...)

National Law

Dublin III Regulation is directly applicable. National law of a Member State does not modify nor restrict the Dublin III Regulation.

Questions

1. Is the Charter of Fundamental Rights applicable in the case?
2. Is placing Mrs Laila in the detention centre for a period above 60 days violates her rights?