



Restriction of liberty in asylum proceedings II

Findings of the Court of Justice of the European Union

This exercise is based on the Court of Justice ruling in the case C-60/16, Mohammad Khir Amyry v. Migrationsverket.

1. Is the Charter of Fundamental Rights applicable in the case?

In this case the Charter of Fundamental Rights is applicable, namely article 6 of the Charter.

In the case C-60/16 the Court of Justice held that authorities deciding on the detention of a third-country national has to take into account article 6 of the Charter since article 28 (2) of the Dublin III Regulation restricts the right to liberty and security.

2. Is placing Mrs Laila in the detention centre for a period above 60 days violates her rights?

In the case C-60/16 the Court of Justice held that:

39. The third subparagraph of Article 28(3) of the Dublin III Regulation must therefore be interpreted as meaning that the period no longer than six weeks within which the transfer of a detained person must be carried out, laid down by that provision, applies only in the situation where the person concerned is already detained when one of the two events covered by that provision takes place [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]. (...)

41. Failing any maximum duration of detention being set out in the Dublin III Regulation, such detention must nonetheless be compatible with, first of all, the principle laid down by the first subparagraph of Article 28(3) of that regulation that the detention be for as short a period as possible and not for longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer is carried out. (...)

43. Lastly, that authority must take account of Article 6 of the Charter of Fundamental Rights of the European Union, in so far as Article 28(2) of the Dublin



III Regulation provides for a limitation on the exercise of the fundamental rights to liberty and security (see, to that effect, judgements of 15 February 2016, N., C-601/15 PPU, EU:C:2016:84, paragraph 49, and of 15 March 2017, Al Chodor, C-528/15, EU:C:2017:213, paragraph 36).

44 In that context, it is therefore incumbent upon the competent authority, under the supervision of national courts, to carry out diligently the transfer procedure and not to extend the detention for a period of time beyond what is necessary for the purposes of that procedure, assessed by taking account of the specific requirements of that procedure in each specific case (see, by analogy, judgement of 16 July 2015, Lanigan, C-237/15 PPU, EU:C:2015:474, paragraphs 58 and 59).

45 Furthermore, the person concerned may not be detained for a period vastly in excess of six weeks during which the transfer could be reasonably carried out, in so far as it follows from the third subparagraph of Article 28(3) of the Dublin III Regulation that that period is, in principle, sufficient as regards, in particular, the simplified nature of the transfer procedure between the Member States established by that regulation so that the competent authorities proceed with the transfer (see, by analogy, judgement of 16 July 2015, Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 60).

46 Consequently, given that the fact that the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request is not such as to render the transfer of that applicant particularly difficult, detention of 3 or 12 months during which the transfer may be reasonably carried out exceeds the period of time which is reasonably necessary for the required administrative procedures with due diligence until the transfer is carried out to be satisfied.

The maximum 6 weeks period of detention concerns only third-country nationals transferred under the Dublin III Regulation when they are detained at the moment of the acceptance of the request by another Member State to take charge or to take them back or of the moment when the appeal or review no longer has a suspensive effect. Therefore this time limit does not cover the situation from the exercise. Mrs Laila was not detained at the moment of the acceptance of the request by another Member state to take charge. She also did not appeal the transfer decision.

However it does not mean that a third-country national detained after the issuance of the transfer decision can be detained indefinitely. Taking into account article 6 of the Charter the authority deciding on the detention has to examine whether the transfer proceeding is carried out with due diligence. Detention cannot be prolonged beyond the period necessary to carry out the transfer.

Detention for three or six months in order to carry out the transfer decision exceeds the period which is genuinely necessary to undertake all required actions with due diligence.