



Transfer under Dublin III regulation – appeal procedures

Findings of the Court of Justice of the European Union

This exercise is based on the CJEU judgment in case C-201/16, Shiri.

Response to question 1

Article 47 of the Charter is applicable in this case.

Response to question 2

Findings of the Court of Justice of the European Union

39 The take charge and take back procedures established by the Dublin III Regulation must, in particular, be carried out in compliance with a series of mandatory time limits, which include the six-month time limit referred to in Article 29(1) and (2) of that regulation. Whilst those provisions are intended to provide a framework for those procedures, they also contribute, in the same way as the criteria set out in Chapter III of the regulation, to determining the Member State responsible. As is clear from paragraphs 30 to 34 of the present judgment, the expiry of that six-month period without the transfer of the applicant from the requesting Member State to the Member State responsible having been carried out results in the automatic transfer of responsibility from the second Member State to the first (...).

40 Accordingly, in order to ensure that the contested transfer decision has been adopted following a proper application of those procedures, the court or tribunal dealing with an action challenging a transfer decision must be able to examine the claims made by an applicant for international protection that that decision was adopted in breach of the provisions set out in Article 29(2) of the Dublin III Regulation in so far as the requesting Member State is said to have already become the Member State responsible on the day when that decision was adopted, on account of the prior expiry of the six-month period as defined in Article 29(1) and (2) of the regulation (...).

41 (...), the periods set out in Article 29 of the Dublin III Regulation are intended to provide a framework not only for the adoption but also for the implementation of the transfer decision.

42 It follows that those periods may expire after the transfer decision has been adopted. It should, moreover, be noted that, in the main proceedings, the person concerned contends that the six-month period as defined in Article 29(1) and (2) of the Dublin III Regulation expired on a date after that on which a transfer decision was adopted.



Co-funded by the Justice Programme
of the European Union



Ludwig Boltzmann Institute
Human Rights



CENTRE FOR
EUROPEAN
CONSTITUTIONAL
LAW



INPRIS



National Research Council of Italy

ISGI
Institute for International Legal Studies



JUSTIZ
REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF JUSTICE



REPUBLIKA HRVATSKA
Pučki pravobranitelj

43 The competent authorities of the requesting Member State cannot, in such a situation, carry out the transfer of the person concerned to another Member State and are, on the contrary, required to take, on their own initiative, the measures necessary to acknowledge the responsibility of the first Member State and to initiate without delay the examination of the application for international protection lodged by that person.

44 Nonetheless, in the light, first, of the objective, referred to in recital 19 of the Dublin III Regulation, of guaranteeing, in accordance with Article 47 of the Charter of Fundamental Rights, effective protection of the persons concerned and, secondly, of the objective, noted in paragraph 31 of the present judgment, of determining rapidly the Member State responsible for processing an application for international protection, in the interests both of applicants for such protection and of the proper general functioning of the system established by that regulation, the applicant must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of the regulation that occurred after the transfer decision was adopted.

45 In the present instance, the right which Austrian legislation accords to an applicant for international protection to plead circumstances subsequent to the adoption of the decision to transfer him, in an action brought against that decision, meets that obligation to provide for an effective and rapid remedy.

In the operative part of the judgement the Court stated that

Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted. The right which national legislation such as that at issue in the main proceedings accords to such an applicant to plead circumstances subsequent to the adoption of that decision, in an action brought against it, meets that obligation to provide for an effective and rapid remedy.

It can therefore be assumed that Aziz K. may plead circumstances subsequent to the adoption of the second transfer decision of 3 September 2017, in an action brought against it to the Administrative Court. Therefore the Court should annul decision ordering his transfer to Bulgaria as six-month period for a transfer, as defined in Article 29(1) and (2) of the Dublin III Regulation, had expired and Austria become responsible for examining his application for international protection.

Follow-Up Question

In your national context, how do you deal with such situations?

Guidance for facilitators

- The facilitator distributes pages with case description (fact, law, questions).
- The participants should read the background info and discuss the questions.
- After the participants have discussed the questions above, the facilitator should present the findings of the CJEU + the follow-up question and subsequently distribute the pages with case solution (findings of the CJEU).
- The participants should discuss the findings and the follow-up question.
- The results of the working group will subsequently be presented in the plenum.

Note: Before starting, the participants should appoint one note taker and one person to present the results of their working group to the plenum.