

Transfer under Dublin III regulation – appeal procedures

Fact of the case:

Aziz K., a citizen of Syria, on 7 March 2017 made an application for international protection in Austria. During the proceedings, it turned out that Aziz K. had previously applied for international protection in Bulgaria, on 19 February 2017.

Austrian authorities sent a request to Bulgarian authorities to take Aziz K. back. On 23 March 2017 the Bulgarian authorities agreed to that take back request.

On 2 July 2017 the Austrian authorities decided that the application for international protection lodged by Aziz K. is inadmissible and ordered his transfer to Bulgaria. The reasoning indicated, that there are no substantial grounds for believing, that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in Bulgaria.

Aziz K. lodged an appeal against that decision to the Administrative Court, he argued that the transfer would result with further deterioration of his state of health which is serious. The Administrative Court annulled the decision stating, that the administrative authorities should take into consideration Aziz K.'s state of health and assess whether his transfer to Bulgaria would lead to inhuman treatment.

After subsequent examination of the application on 3 September 2017 administrative authorities issued decision that the application for international protection lodged by Aziz K. was inadmissible and ordered his transfer to Bulgaria. In the decision was stated that transfer to Bulgaria will not amount to inhuman treatment as according to the authorities Aziz L. state of health is not serious.

On 25 September 2017, Aziz K. lodged an appeal against the decision of 3 September 2017 to the Administrative Court. In the appeal he argued that on 23 September 2017 Austria has become responsible for examining his application for international protection, because the six-month period for a transfer, as defined in Article 29(1) and (2) of the Dublin III Regulation, had expired on that date.

During the proceedings before the Court the administrative authorities argued that following the annulment of the decision of 2 July 2017 and the referral of the case back for a fresh decision, a new period of six months began to run from the time when it again became possible to transfer Aziz K.. Namely, from the seventh day following receipt of the appeal lodged by Aziz K. Therefore, according to the administrative authorities, Bulgaria was still responsible for examining the application for international protection.



Co-funded by the Justice Programme
of the European Union



Ludwig Boltzmann Institute
Human Rights



INPRIS



REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF JUSTICE



REPUBLIKA HRVATSKA
Pučki pravobranitelj

Legal Framework

Relevant European Law

Regulation (EU) No 604/2013 (recast Dublin III regulation).

(4) The Tampere conclusions also stated that the C[ommon] E[uropean] A[sylum] S[ystem] should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.

Article 27 Remedies

1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

(a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or

(b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or

(c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision

not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

Article 29 Modalities and time limits

1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3). (...)

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.

Relevant National Law

Article 15 (1)

If another Member State responsible for examining an application for international protection under Regulation 604/2013 agrees to take charge or take back the applicant, the asylum authority shall issue a decision refusing to examine his application for international protection and ordering his transfer to responsible Member State.

Questions

1. Is the Charter applicable in this case? Which Article?
2. Consider, whether Aziz K. may plead circumstances subsequent to the adoption of the second transfer decision, of 3 September 2017, issued by the administrative authorities, in an action brought against it to the court?