



Transfer under Dublin III regulation

Fact of the case:

Ahmed S., a citizen of Syria, made in Slovenia an application for international protection. During the proceedings, it turned out that Ahmed S. had previously applied for international protection in Bulgaria.

Slovenian authorities sent a request to Bulgarian ones to take Agmed S. back. Bulgaria accepted its responsibility in regard to the applicant.

As the Bulgaria was responsible for examining the application for international protection lodged by Ahmed S., Slovenian authorities issued a decision refusing to examine his application and ordering his transfer to Bulgaria. The reasoning of the decision 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.

Ahmed S. appealed against this decision to the Administrative Court. He argued that in Bulgaria he was detained, beaten and robbed by members of the local militia patrolling border areas and seeking foreigners who crossed border irregularly. He also stated that it happened with the total passivity of the Bulgarian police officers who witnessed these events.

Ahmed S. stressed that although he managed to file an application for international protection in Bulgaria, for about three months he had a problem with access to health care, no psychological assistance was provided to him and he was accommodated in bad conditions. In addition, he stated that as a result of the violence experienced in Syria, he suffers from serious mental disorders (post-traumatic stress disorder, severe depression). Therefore, he believes that transferring him to Bulgaria will expose him to inhuman and degrading treatment.

Arguments to be considered

The right not to be subjected to torture and inhuman or degrading treatment or punishment is one of the few rights recognised as absolute and non-derogable. This means that no limitations or exceptions on the exercise of this rights are permitted

Legal Framework

Relevant European Law

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



Co-funded by the Justice Programme
of the European Union



Ludwig Boltzmann Institute
Human Rights



CENTRE FOR
EUROPEAN
CONSTITUTIONAL
LAW



INPRIS



ISGI
Institute for International Legal Studies



REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF JUSTICE



REPUBLIKA HRVATSKA
Pučki pravobranitelji

(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 3 Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.

Relevant National Law

Law on asylum seekers

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? In which context?
2. Is it sufficient for the Slovenian authorities to decide on the transfer of an applicant to another Member State based solely on the assumption that there are no substantial grounds for believing

JUDGING THE CHARTER

TRAINING MATERIALS

that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State?