



Transfer under Dublin III regulation

Findings of the Court of Justice of the European Union

This exercise is based on the CJEU judgment C- 578/16 PPU, C. K., H. F., A. S. v Republika Slovenija.

Response to question 1

Article 4 of the Charter is applicable in this case.

Findings of the Court of Justice of the European Union: *“Taking account of the general and absolute nature of Article 4 of the Charter, those points of principle are also relevant in the context of the Dublin system.”* (para. 69).

Response to question 2

Findings of the Court of Justice of the European Union

Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:

- even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Regulation No 604/2013 can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;*
- in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;*
- it is for the authorities of the Member State having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person’s state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk*



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of a significant and permanent worsening of his state of health, it is for the authorities of the Member States concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer (...).

Therefore assumption 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 responsible Member State can not be the only factor affecting the obligation to transfer of asylum seeker under the Dublin III Regulation. Slovenian authorities should also take into account an impact of the transfer on the applicant's state of health and to not conduct transfer if it results in violation of Article 4 of the Charter.

Relevant paragraphs of the reasoning of the judgment:

“67 It must be recalled that the prohibition of inhuman or degrading treatment laid down in Article 4 of the Charter corresponds to that laid down in Article 3 of the ECHR and that, to that extent, its meaning and scope are, in accordance with Article 52(3) of the Charter, the same as those conferred on it by that convention.

68 It follows from the case-law of the European Court of Human Rights relating to Article 3 of the ECHR, which must be taken into account when interpreting Article 4 of the Charter (see, to that effect, judgment of 21 December 2011, N. S. and Others, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 87 to 91), that the suffering which flows from naturally occurring illness, whether physical or mental, may be covered by Article 3 of the ECHR if it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible, provided that the resulting suffering attains the minimum level of severity required by that article (see, to that effect, ECtHR, 13 December 2016, Paposhvili v. Belgium, § 174 and 175).

69 Taking account of the general and absolute nature of Article 4 of the Charter, those points of principle are also relevant in the context of the Dublin system.

70 In that regard, it must be stated, as regards the reception conditions and the care available in the Member State responsible, that the Member States bound by the ‘reception’ directive, including the Republic of Croatia, are required, including in the context of the procedure under the Dublin III Regulation, in accordance with Articles 17 to 19 of that directive, to provide asylum seekers with the necessary health care and medical assistance including, at least, emergency care and essential treatment of illnesses and of serious mental disorders. In those circumstances, and in accordance with the mutual confidence between Member States, there is a strong presumption that the medical treatments offered to asylum seekers in the Member States will be adequate (see, by analogy, judgment of 21 December 2011, N. S. and Others, C-411/10 and C-493/10, paragraphs 78, 80 and 100 to 105).

91 In that context, the Commission’s argument that it follows from Article 3(2) of the Dublin III Regulation that only the existence of systemic flaws in the Member State responsible is capable of affecting the obligation to transfer an asylum seeker to that Member State is unfounded.

92 Nothing in the wording of that provision suggests that the intention of the EU legislature had been to regulate any circumstance other than that of systemic flaws preventing any transfer of asylum seekers to a particular Member State. That provision cannot, therefore, be interpreted as excluding the possibility that considerations linked to real and proven risks of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, might, in exceptional situations such as those envisaged in the present judgment, have consequences for the transfer of a particular asylum seeker.

93 Moreover, such a reading of Article 3(2) of the Dublin III Regulation would be, first, irreconcilable with the general character of Article 4 of the Charter, which prohibits inhuman or degrading treatment in all its forms. Secondly, it would be manifestly incompatible with the absolute character of that prohibition if the Member States could disregard a real and proven risk of inhuman or degrading treatment affecting an asylum seeker under the pretext that it does not result from a systemic flaw in the Member State responsible”.

It is worth to add that in the previous judgments - interpreting the Dublin II Regulation - the CJEU stated, that only “the existence of systemic flaws” in the Member State responsible is capable of affecting the obligation to transfer an asylum seeker (Case C-394/12, *Shamso Abdullahi v Bundesasylamt*).

In this respect the CJEU stated in the same judgment:

*94 Likewise, the interpretation of Article 4 of the Charter in the present judgment is not invalidated by the judgment of 10 December 2013, *Abdullahi* (C-394/12, EU:C:2013:813, paragraph 60), in which the Court held, with regard to the Dublin II Regulation, in essence, that, in circumstances such as those of the case giving rise to that judgment, the only way in which an asylum seeker could call his transfer into question was by pleading systemic flaws in the Member State responsible. Apart from the fact that the Court has held, as recalled in paragraph 62 of the present judgment, that, with regard to the rights enjoyed by an asylum seeker, the Dublin III Regulation differs in essential respects from the Dublin II Regulation, it must be recalled that that judgment was delivered in a case involving a national who had not claimed, before the Court of Justice, any particular circumstances indicating that his transfer would, in itself, be contrary to Article 4 of the Charter. The Court thereby merely recalled its previous judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), concerning the impossibility of proceeding with any transfer of asylum seekers to a Member State experiencing systemic flaws in the asylum procedure or the conditions for their reception.*

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.