Dublin? Transfer?

Findings of the Court of Justice of the European Union

In reference to the **applicability of the Charter** – the answer would be yes, Article 4.

In the context of two other questions, the Court held that the referring Court was asking, whether Art. 19(2) must be interpreted as obliging States to provide that an applicant is to have a right, in an appeal under Art. 19(1), to request a review of the determination of the Member State responsible, on the grounds that the criteria laid down in Chapter III of that regulation had been misapplied. The Court recalled of Art. 288 TFEU, which states that regulations operate to confer rights on individuals which the national courts have a duty to protect. The Court held it was necessary to ascertain to what extent the provisions in Chapter III of the regulation actually confer on applicant's rights which the national courts have a duty to protect. It noted that the regulation provides for a single appeal and that the regulation must be read in light of its general scheme, objectives and context and in particular its evolution in connection with the system of which it forms part. It referred to the principle of mutual confidence in the CEAS and the reason why the Regulation was established in order to avoid blockages in the system, increase legal certainty and avoid forum shopping as well as the principle objective of all these measures to speed up the handling of claims in the interests both of asylum seekers and the participating Member States.

The Court went on to take into account the organisational rules in the Dublin Regulation and its implementing regulation 1560/2003 as well as the purpose of the humanitarian and discretionary provisions to 'maintain the prerogatives of the Member States in the exercise of the right to grant asylum' and confirming that they are optional provisions which grant a wide discretionary power to Member States. It also referred to Art. 23 which enables Member States to establish administrative arrangements on a bilateral basis as well as Art. 14(1) of Regulation 1560/2003 (and its equivalent provision Art. 37 in the Dublin Regulation recast No. 604/2013) on the conciliation procedure between Member States, which however does not foresee that the applicant will be heard.

The Court noted that one of the principal objectives of Regulation No 343/2003 (recitals 3 and 4 of the preamble) is the establishment of a clear and workable method for determining rapidly the Member State responsible for the processing of an asylum application so as to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum applications. According to the Court, in the present case, the decision at issue is the decision of the Member State in which Ms Abdullahi's asylum claim was lodged not to examine the claim and to transfer her to another Member State. That second Member State agreed to take charge of Ms. Abdullahi on the basis of the criterion laid down in Art. 10 (1) of Regulation No. 343/2003, namely as the Member State of Ms Abdullanhi's first entry into EU territory. In such a situation, in which the Member State agrees to take charge of the applicant for

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asylum, *the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception of applicants for asylum in that latter Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter*. However, as is apparent from the documents placed before the Court, the Court concluded that there is nothing to suggest that that is the position in the dispute before the referring Court.

Therefore, the Court concluded that Art. 19(2) of Regulation No 343/2003 must be interpreted as meaning that, **in circumstances where a Member State has agreed to take charge of an applicant for asylum on the basis of the criterion laid down in Article 10(1) of that regulation – namely, as the Member State of the first entry of the applicant for asylum into the European Union – the only way in which the applicant for asylum can call into question the choice of that criterion is by pleading systemic deficiencies in the asylum procedure and in the conditions for the reception in that Member State, which provide substantial grounds for believing that the asylum applicant would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Art. 4 of the Charter**.

Since the other two questions were on the basis that the applicant was held to have been well founded in requesting a review of the determination of the Member State responsible for her asylum application, the Court held that there was no need to answer them.

Follow-Up Question

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

For a critical assessment of the case you can check the following article:

- Please check article The Dublin system and the Right to an Effective Remedy– The case of C-394/12 Abdullahi commenting the right to effective remedy (within the meaning of the Article 47 of the Charter) accessible at http://www.asylumlawdatabase.eu/en/journal/dublin-system-and-right-effective-remedy%E2%80%93-case-c-39412-abdullahi

See: *Shamso Abdullahi v Bundesasylamt,* CJEU - C-394/12, Judgment of 10.12.2013.