

Slovenia, Supreme Court, Case no Up 291/2016, Judgement of 10 March 2017

Deciding bodies and decisions

- Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije), Up 291/2016, 10 March 2017, ECLI:SI:VSRS:2017:I.UP.291.2016

Area of law

Asylum and Immigration

A couple, one of them being in a very bad health, and their newborn child lodged an asylum application in Slovenia. Ministry of the Interior and Supreme Court took the view that according to Article 12 of the Dublin III Regulation criteria Croatia was responsible for the examination of their application because there was no sign of systemic flaws in the Croatian asylum system. However, in the constitutional appeal the Constitutional Court interpreted Article 17 of the Regulation as requiring examination of applicants' personal situation in relation to the principle of non-refoulement, which was not done by previous courts. The case was referred back to the Supreme Court which thought that this was a question of interpretation of EU law and asked the CJEU whether the reliance upon the sovereignty clause (Article 17 of Dublin III) could be mandatory for the purpose of ensuring the family an effective protection against risks of inhuman and degrading treatment. The Supreme Court had to decide whether Dublin transfers were only prohibited in case of the existence of systematic deficiencies in the responsible state (Article 4 of the Charter), or whether a transfer also had to be precluded when such a risk was faced due to the specific and individual situation of a particular asylum seeker.

Subject matter

A couple, C. K. a national of the Syrian Arab Republic, and H. F., a national of the Arab Republic of Egypt, entered the territory of the European Union by means of a visa validly issued by the Republic of Croatia. They crossed the Slovenian border equipped with false Greek identification. At that time, C.K was pregnant. When their baby was born all three applied for asylum in Republic of Slovenia. Ministry of the Interior refused to examine the applications for asylum and ordered the transfer of the family to the Republic of Croatia. While the Administrative court annulled the decision, the Supreme Court confirmed the transfer decision. The appellants then lodged a constitutional appeal stating that further movement of C.K would adversely affect her state of health. Constitutional Court set aside the judgement of the Supreme court and the case was referred back to that court. In new proceedings, the Supreme Court decided to stay the proceedings and referred questions regarding the interpretation of the Dublin III Regulation to the CJEU for a preliminary ruling. After having received the preliminary ruling, the Supreme Court upheld the order of transfer of the family to the Republic of Croatia.

Summary Facts Of The Case

C. K., a national of the Syrian Arab Republic, and H. F., a national of the Arab Republic of Egypt, entered the territory of the European Union by means of a visa validly issued by the Republic of Croatia. After a short stay in that Member State, they crossed the Slovenian border equipped with false Greek identification. At that time, C.K was pregnant. When the baby was born all three applied for asylum in Republic of Slovenia and proposed application of Article 17 of the Dublin Regulation. Ministry of the Interior, however, refused to examine the applications for asylum and ordered the transfer of the family to the Republic of Croatia based on the Dublin III Regulation (Article 12). They applied to the Administrative Court which annulled that decision and referred the case back for re-examination by instructing the competent authorities to obtain an assurance from the Republic of Croatia that C. K., H. F. and their child would have access to adequate medical care in Croatia. After such assurance was given by Croatia, the Ministry of Interior again examined their applications for asylum and ordered the transfer of the family to the Republic of Croatia. Appellants brought the case before the Administrative Court requesting the suspension of a decision on their transfer due to health problems of C.K suffering psychiatric difficulties since giving birth. The court annulled the decision on transfer and decided to suspend the enforcement of that decision until a final judicial decision had been adopted. The Ministry of Interior brought an appeal against the judgement before the Supreme Court which confirmed the transfer decision. The appellants then lodged a constitutional complaint stating that further movement of C.K would adversely affect her state of health. Constitutional Court interpreted Article 17 of the Regulation as requiring examination of applicants' personal situation in relation to the principle of non-refoulement and decided that by not taking into account applicants' personal situation when making a decision on transfer, the right to the equal protection in law was breached to the applicant. The judgement of the Supreme Court was set aside and the case was referred back to that court. In new proceedings, the Supreme Court decided to stay the proceedings and referred questions regarding the interpretation of the Dublin III Regulation to the CJEU for a preliminary ruling. After having received the preliminary ruling, the Supreme Court upheld the appeal by the defendant and changed the judgement of the Administrative Court in a way that action brought by appellants was dismissed for being unfounded. With this decision, the order of transfer of the family to the Republic of Croatia by the Ministry of Interior was upheld.

The Supreme Court acknowledged that decision on the transfer of applicants was made on the basis of Article 12 Dublin III Regulation according to which Croatia was responsible for the examination of their application, since it issued a valid visa to the applicants. Article 3 of that regulation provides that transfer of an asylum seeker can take place only in conditions which preclude that transfer from resulting in a real risk of the person concerned suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter. In relation to that, applicants failed to prove that there exist systemic flaws in the Croatian asylum system threatening such treatment. On the contrary, it is apparent from the statements of Croatia, that it has a reception centre designed specifically for vulnerable persons.

When interpreting Article 4 of the Charter the court referred to corresponding Article 3 of ECHR and interpretation of these two articles by CJEU in preliminary ruling. It stated that CJEU concluded that it follows from the case-law of the ECHR 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. Where there exists objective evidence, such as medical certificates concerning his person, capable of showing the particular seriousness of his state of health and the significant and irreversible consequences to which his transfer might lead, the authorities of the Member State concerned, cannot ignore that evidence. They are, on the contrary, under an obligation to assess the risk that such consequences could occur when they decide to transfer the person concerned or, in the case of a court, the legality of a decision to transfer, since the execution of that decision may lead to inhuman or degrading treatment of that person. In the present case, however, no evidence existed that C.K.'s health situation would be particularly serious and could have such significant and irreversible consequences.

In relation to Article 17(1) of the Regulation the court also referred to the interpretation made by CJEU and concluded that discretionary clause is a right of a state on the basis of its sovereignty and not its duty. If it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting Member State may choose to conduct its own examination of his application by making use of the 'discretionary clause' laid down in Article 17(1). However, that provision, read in the light of Article 4 of the Charter, cannot be interpreted, in a situation such as that at issue in the main proceedings, as meaning that it implies an obligation on that Member State to make use of it in that way.

Supreme Court therefore upheld the appeal by the defendant and changed the judgement of the Administrative Court in a way that action brought by appellants was dismissed as unfounded. With that decision, the order of transfer of the family to the Republic of Croatia by the Ministry of Interior was upheld.

Relation to the scope of the Charter

- Article 4 - Prohibition of torture and inhuman or degrading treatment or punishment
- Article 19 - Protection in the event of removal, expulsion or extradition
- Article 52 - Scope and interpretation of rights and principles

Decision on the transfer of applicants was made on the basis of Dublin III Regulation, which has to be implemented in accordance with the charter provisions. The court expressly referred to Article 4 of the Charter and interpreted its application in the case in line with the reasoning provided for the CJEU preliminary ruling.

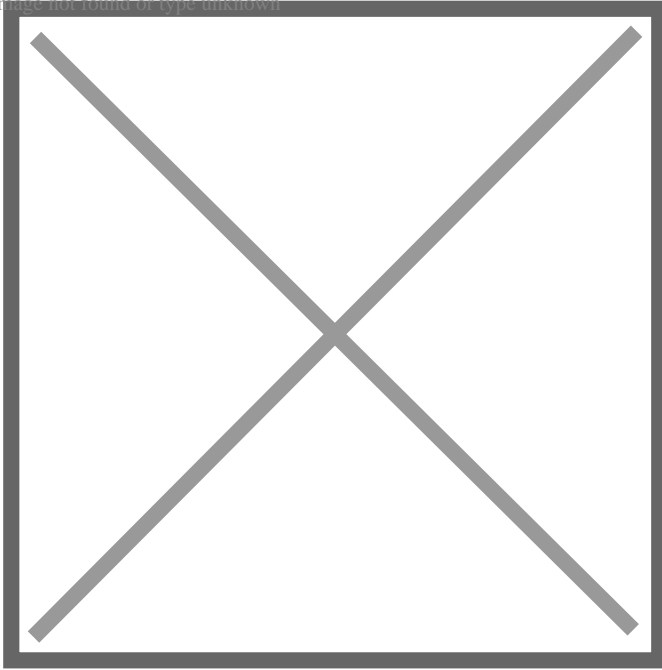
Relation between the Charter and ECHR

- Article 3 ECHR - Prohibition of torture

When discussing relation between Article 4 of the Charter and Article 3 ECHR the Supreme Court relied on Article 52(3) of the Charter, explaining that in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, 'the meaning and scope of those rights shall be the same as those laid down by the said convention'.

Diagram

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Decision of the Supreme Court of the Republic of Slovenia is based on a preliminary ruling of CJEU of 16 February 2017, C-578/16 PPU, C. K. and Others v Republika Slovenija. Preliminary ruling was requested by the Supreme Court by decision of 28 October 2016.

Impact on Jurisprudence

- CJEU Follow up decision:

Decision of the Supreme Court is consistent with the CJEU preliminary ruling; it followed the reasoning and interpretation of EU law as provided by CJEU. Prior decision of the Constitutional Court of the Republic of Slovenia on the issue was based on a different reasoning than CJEU ruling, therefore the Supreme Court in its revised procedure acted in accordance with basic principles of the Constitution of the Republic of Slovenia (Article 3(a)) and took into account ruling of the CJEU and not ruling of the Constitutional Court.

When discussing relation between Article 4 of the Charter and Article 3 ECHR the Supreme Court relied on Article 52(3) of the Charter, explaining that in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, 'the meaning and scope of those rights shall be the same as those laid down by the said convention'.

The Supreme Court relied solely on the case law provided in the preliminary ruling of the CJEU.

Sources - EU and national law

National Law:

- Constitution of the Republic of Slovenia, Article 18 (Prohibition of Torture)

EU Law:

- Dublin III Regulation (Regulation (EU) No 604/2013 Of The European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person), Article 3, 3(2), 11, 12, 12(2), 17, 17(1)
 - Charter of Fundamental Rights of the European Union, Article 4, 19, 52
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Sources - CJEU Case Law

- Case follow up of CJEU, C-578/16 PPU, C. K. and Others v Republika Slovenija, 16 February 2017
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