

France, Mutual Trust, Administrative Court of Toulouse, judgement of 27/11/2017, no. 1705421

Member State

 France

Topic

Mutual Trust, Asylum (Dublin III Regulation)

Deciding Court Original Language

Tribunal Administratif de Toulouse

Deciding Court English translation

Administrative Court of Toulouse

Registration N

1705421/2017

Date Decision

27 November 2017

National Follow Up Of (when relevant)

Not a direct follow up

EU legal sources and CJEU jurisprudence

- Regulation (EU) no 604/2013 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 (Dublin III Regulation)
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Subject Matter

Appeal brought before the Administrative Court of Toulouse by an asylum seeker, of Afghan nationality, against the decision issued by the French authorities ordering his transfer to Sweden, as the competent Member State under the Dublin III Regulation. The applicant argued that the transfer would expose him to a serious risk of a breach of the principle of *non refoulement*, since Sweden had already rejected his application for international protection.

Legal issue(s)

Violation of the principle of indirect *non refoulement*.

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

- Article 53-1 of the French Constitution
 - Code of entry and stay of third country nationals and of the right to asylum (Article 742-3);
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Facts of the case

The applicant, an Afghan national, lodged an application for international protection in France. The national authorities issued a decision ordering his transfer to Sweden, the competent Member State according to the Dublin III Regulation. Indeed, in Sweden, the applicant had lodged a first application for international protection, which had already been rejected by the competent authorities.

The applicant brought an appeal before the Administrative Court of Toulouse, for the annulment of

the decision of the French authorities, since such a decision was in contrast with Article 3 of the ECHR. The applicant also claimed that the national authorities did not correctly apply Article 17 of the Dublin III Regulation, which provides for the possibility for a Member State to process an application for asylum even if in principle it is not the competent Member State according to the criteria set out in the Dublin III Regulation.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

At the outset of its reasoning, the Administrative Court of Toulouse recalled the wording of Article 53-1 the French Constitution, enshrining the right to asylum, of Article 17 of the Dublin III Regulation, and of Article L. 742-3 of the Code of entry and stay of third country nationals and of the right to asylum.

Then the Administrative Court directly examined the circumstances of the case, concerning the situation in the country of origin (Afghanistan) of the applicant. The Administrative Court also held that due to the rejection of his application in Sweden, which had become definitive without any other possibility to appeal it, the applicant risked being returned in Afghanistan, since it emerged from the documentation the tendency of Sweden to return such persons to their country of origin.

The Administrative Court concluded that the French administrative authorities neither correctly assessed the consequences on the applicant of the transfer to Sweden nor correctly applied the discretionary clause provided for by Article 17 of the Dublin III Regulation.

The Administrative Court therefore annulled the national decision.

Relation of the case to the EU Charter

Neither the applicant nor the Administrative Court referred to the Charter.

Relation between the EU Charter and ECHR

In the appeal brought before the French Court, the applicant referred to article 3 ECHR. Although the Administrative Court of Toulouse in its reasoning applied the case law of the ECtHR concerning the prohibition of indirect *refoulement*, it did not mention any judgement on the matter.

Use of Judicial Interaction technique(s)

The national court applied several sources of protection: the French Constitution, EU law (the

Dublin III Regulation) and national law (Code of entry and stay of third country nationals and of the right to asylum), without making any difference concerning their legal status and hierarchy.

No preliminary reference nor disapplication of national law involved.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The Administrative Court of Toulouse merely recalls in its reasoning the wording of the relevant provisions, both national and of EU law.

No constitutional review involved.

Strategic use of judicial interaction technique (purpose aimed by the national court)

The Administrative Court of Toulouse limited itself to recall the different sources and to assess directly whether the asylum seeker could risk torture, and inhuman or degrading treatment or punishment if returned to Afghanistan.

Impact on national case law from the same Member State or other Member States

In the judgement at issue, it seems that the existence of a final decision rejecting an application for international protection issued by the competent Member State is sufficient to suspend the Dublin transfer. Indeed, the national court only mentions the possibility of a return decision being taken by Sweden.

These findings seem in contrast with the recent judgement of the Administrative Court of Appeal of Lyon (Administrative Court of Appeal of Lyon (Fifth Chamber), judgement of 29/09/2020, no. 20LY01579). Indeed, that judgement clarifies that it is necessary a final decision rejecting the application for international protection and a return decision, which can no longer be appealed, issued by the competent Member State under the Dublin III Regulation, to prevent a Dublin transfer.

Connected national caselaw / templates

Administrative Court of Lyon, judgement of 3/04/2017, no. 1702564

Administrative Court of Appeal of Lyon (Second Chamber), judgement of 3/04/2018, no. 17LY02181 – 17LY02184

Administrative Court of Appeal of Lyon (Fifth Chamber), judgement of 29/09/2020, no. 20LY01579

Administrative Court of Appeal of Nantes (Fourth Chamber), judgement of 8/06/2018, no.

17NT03167 – 17NT03174

(Link to) full text

https://www.gisti.org/IMG/pdf/jur_ta-toulouse_2017-11-27.pdf
