

**France, Mutual Trust, Administrative Court of Lyon, judgement of 3/04/2017, no. 1702564**

Member State

 France

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Topic

Mutual Trust, Asylum (Dublin regulation)

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Deciding Court Original Language

Tribunal Administratif de Lyon

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Deciding Court English translation

Administrative Court of Lyon

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Registration N

1702564/2017

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Date Decision

3 April 2017

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National Follow Up Of (when relevant)

Not a direct follow up

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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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## ECtHR Jurisprudence

- Article 3 ECHR
  - ECtHR, judgement of 23 March 2016, *F.G. v Sweden*, app. No. 43611/11
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## Subject Matter

Appeal brought before the Administrative Court of Lyon by an asylum seeker of Afghan nationality, against the decision issued by the French authorities ordering his transfer to Norway, 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 indirect *non refoulement*, since Norway had already rejected his application for international protection and ordered his return to Afghanistan.

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## Legal issue(s)

Violation of the principle of indirect *non refoulement*.

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## Request for expedited/PPU procedures

No

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## Interim Relief

No

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## National Law Sources

- Article 53-1 of the French Constitution
  - French Code of entry and stay of third country nationals and of the right to asylum;
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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 Norway, as the competent Member State according to the Dublin III Regulation. Indeed, he had already lodged an application for international protection in Norway, where the competent authorities had rejected it and a return decision had been adopted. Therefore, if the applicant had transferred to Norway, he would have been returned to Afghanistan.

The applicant brought an appeal before the Administrative Court of Lyon, for the annulment of the decision of the French authorities, arguing its contrast with Articles 1, 4 and 19 of the Charter and 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 Member States to process an application for asylum even if in principle they are not competent according to the criteria set out in the Dublin III Regulation (the discretionary clause).

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

At the outset of its reasoning, the Administrative Court of Lyon recalled the wording of Article 53-1 the French Constitution, enshrining the right to asylum, and of Article 17 of the Dublin III Regulation, since both provisions provides for the possibility for national authorities to make use of their discretionary powers in order to recognise the right to asylum to applicants.

Then the Administrative Court recalled Article 3 of the ECHR, and the relevant case law of the ECtHR. It observed that such a provision imposes an absolute obligation on contracting State not to return an asylum seeker where doing so would expose him to a serious and genuine risk of torture, inhuman or degrading treatment or punishment. Such an obligation applies also where the asylum seeker would be exposed to such a risk due to the consequences incurred in the State where he is deported (the prohibition of indirect *refoulement*).

The French court then directly examined the circumstances of the case, notably the situation in the country of origin (Afghanistan) of the applicant, and concluded that the French administrative authorities did not correctly applied Article 3 of the ECHR and the discretionary clause provided for by Article 17 of the Dublin III Regulation.

The Administrative Court therefore annulled the national decision ordering the transfer of the applicant.

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### Relation of the case to the EU Charter

The EU CFR was invoked by the applicant (Articles 1, 4, 19), whereas the Court did not mention it in the judgment.

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### Relation between the EU Charter and ECHR

Article 3 ECHR and the case law of the ECtHR were referred to by the French court as the legal sources for the absolute nature of the prohibition of indirect *refoulement*.

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#### Use of Judicial Interaction technique(s)

The national court applied several sources of protection: the French Constitution, EU law (the Dublin III Regulation) and the ECHR, without making any difference concerning their hierarchy within the legal sources.

No preliminary reference nor disapplication of national law involved.

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

The Administrative Court of Lyon merely recalls in its reasoning the wording of the relevant provisions of the French Constitution and of the Dublin III Regulation.

By contrast, the national court focuses more on the ECtHR case law in its reasoning.

No constitutional review involved.

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

The Administrative Court of Lyon limited itself to recall the different legal sources and to assess directly whether the asylum seeker could risk a serious breach of Article 3 ECHR if returned to Afghanistan.

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#### Impact on Legislation / Policy

No impact on national legislation

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#### Notes on the national implementation of the preliminary ruling by the referring court

Not applicable

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#### Connected national caselaw / templates

Administrative Court of Toulouse, judgement of 27 November 2017, No. 1705421

Administrative Court of Appeal of Lyon (Second Chamber), 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

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(Link to) full text

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/TA%20Lyon%20-%20Reject%20of%20Dublin%20transfer%20to%20Norway%20-%203%20April%202017.pdf>

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