

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

Member State

 France

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Topic

Mutual Trust, Asylum (Dublin III Regulation)

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Deciding Court Original Language

Cour Administrative d'Appel de Lyon

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Deciding Court English translation

Administrative Court of Appeal of Lyon

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Registration N

20LY01579

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Date Decision

29 September 2020

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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

- Article 4 of the Charter of Fundamental Rights of EU (CFR)
- 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)

## ECtHR Jurisprudence

- Article 3 ECHR
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## Subject Matter

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

- 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 Austria, the competent Member State according to the Dublin III Regulation. The applicant appealed the decision before the Administrative Court of Dijon, which rejected his application. The applicant then brought an appeal against that judgement before the Administrative Court of Appeal of Lyon, claiming the violation of Article 4 EU CFR, Article 3 ECHR, and Article 17 of the Dublin III Regulation. The latter provision

provides for the possibility for a Member State to process an application for asylum even if it is not the competent Member State according to the criteria set out in the Dublin III Regulation.

The applicant argued that the Austrian authorities had already rejected his application and issued a return decision. Considering the tendency of Austrian authorities to return asylum seekers to Afghanistan, if he had been returned to Austria, he would have faced a risk of indirect *refoulement*

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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 Appeal of Lyon examined the pleas raised by the applicant. Concerning the alleged violation of Article 4 CFR, Article 3 ECHR and Article 17 of the Dublin III Regulation, the Administrative Court of Appeal held that the applicant had failed to prove the final nature of the decisions taken by the Austrian authorities as regards the rejection of his application for international protection and the return decision.

Having rejected the other pleas as well, the Administrative Court of Appeal of Lyon dismissed the appeal brought by the asylum seeker and confirmed the decision issued by the Administrative Court of Dijon.

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#### Relation of the case to the EU Charter

Both the applicant and the Administrative Court of Appeal mentioned Article 4 CFR.

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#### Relation between the EU Charter and ECHR

Both the applicant and the Administrative Court of Appeal mentioned Article 3 ECHR.

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

The national court applied several sources of protection: EU law (the Dublin III Regulation), national law (Code of entry and stay of third country nationals and of the right to asylum), and the ECHR, without making any difference concerning their legal status and hierarchy.

The applicant requested the Administrative Court of Appeal to raise a question for preliminary ruling to the ECJ concerning the interpretation of Article 5 of the Dublin III Regulation. However, the Administrative Court of Appeal did not take into consideration such a request.

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#### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

Not applicable

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

with European supranational courts)

In its reasoning, the Administrative Court of Appeal of Lyon merely recalls the wording of the relevant provisions of national and EU law.

No constitutional review involved.

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

The Administrative Court of Appeal of Lyon limited itself to recall the different sources of protection in order to provide a legal basis for its reasoning.

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

Not applicable

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

The 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 and that the burden of proof lies with the applicant.

Therefore, while the national administrative authorities have an obligation to cooperate in order to find the relevant information concerning the nature of the decision adopted in the competent Member State (see Administrative Court of Appeal of Nantes, Fourth Chamber, judgement of 8/06/2018, no. 17NT03167 – 17NT03174), such an obligation does not seem to emerge as regards the judicial authorities.

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#### Connected national caselaw / templates

Administrative Court of Lyon, judgement of 3 April 2017, no. 1702564

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

Administrative Court of Appeal of Nantes (Fourth Chamber), judgement of 8 June 2018, no. 17NT03167 – 17NT03174

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

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(Link to) full text

<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000042409466?init=true&page=1&query=r%C3%A8gles>

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Judgment of the Administrative Court of Dijon , no. 2000530, of 6/03/2020
  2. Judgement of the Administrative Court of Appeal of Lyon, no. 20LY01579, of 29/09/2020
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