

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

Member State

 France

Topic

Mutual Trust, Asylum (Dublin III Regulation)

Deciding Court Original Language

Cour Administrative d'Appel de Lyon

Deciding Court English translation

Administrative Court of Appeal of Lyon

Registration N

17LY02181 – 17LY02184

Date Decision

3 April 2018

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)
-

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 Finland, 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 Finland had already rejected his application for international protection and issued a return decision to Afghanistan.

Legal issue(s)

Violation of the principle of indirect *non refoulement*.

Request for expedited/PPU procedures

No

Interim Relief

No

National Law Sources

- French Code of entry and stay of third country nationals and of the right to asylum.
-

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 Finland, the competent Member State according to the Dublin III Regulation. The applicant appealed such a decision before the Administrative Court of Lyon which annulled it. The administrative authorities then lodged an appeal against that judgement before the Administrative Court of Appeal of Lyon.

According to the national administrative authorities, the judgement issued by the Administrative Court of Lyon did not correctly apply the relevant provisions of the Dublin III Regulation. In particular, the administrative authorities argued that, although Finland had rejected the application

of the asylum seeker and issued a return decision, such a Member State remained competent under the criteria set out in the Dublin III Regulation, notably in Article 19. Moreover, Article 3 of the ECHR did not apply to a decision ordering the transfer of the asylum seeker to another Member State. Finally, 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 such a Regulation, did not automatically apply in a case where a Member State had rejected an application for international protection of an Afghans national. Afghan nationality did not automatically entitle to refugee status.

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 whether Finland could be considered as the competent Member State under the Dublin III Regulation. Recalling the wording of Article 18 of the Regulation, the Administrative Court of Appeal held that the fact that a Member State has adopted a negative decision and ordered the return of the applicant to his country of origin could not end the responsibilities of such State under the Dublin III Regulation.

Then the Administrative Court of Appeal directly examined the circumstances of the case, concerning the situation in the country of origin (Afghanistan) of the applicant. The Administrative Court of Appeal also held that due to the rejection of his application in Finland, which had become definitive without any other possibility to appeal such a decision, and the adoption of a return decision, the applicant risked being returned to Afghanistan. Therefore, the Administrative Court of Appeal concluded that the French administrative authorities should have applied Article 17 of the Dublin III Regulation and directly assessed the application for international protection of the Afghan national.

The Administrative Court of Appeal therefore rejected the appeal and confirmed the decision issued by the Administrative Court of Lyon.

Relation of the case to the EU Charter

The applicant referred to the EU CFR, notably its Articles 1, 4, and 19. By contrast, the Administrative Court of Appeal did not mention the EU CFR in its reasoning.

Relation between the EU Charter and ECHR

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

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), 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)

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

To assess the situation existent in the country of origin, the Court of Appeal considered several international sources, notably the annual report of the UNHCR concerning Afghanistan and the United Nations Security Council resolutions.

No constitutional review involved.

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

The Administrative Court of Appeal of Lyon limits itself to recall the different legal 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 Legislation / Policy

No impact on national legislation

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

Not applicable

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 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.asylumlawdatabase.eu/en/case-law/france-administrative-court-appeal-lyon-13-march-2018-nos-17ly02181-%E2%80%93-17ly02184>

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

1. Judgment of the Administrative Court of Lyon , no. 1703569, of 19/05/2017
 2. Judgement of the Administrative Court of Appeal of Lyon, no. 17LY02181 – 17LY02184, of 3/04/2018
-