

**France, Mutual Trust, Administrative Court of Appeal of Nantes (Fourth Chamber),
judgement of 8/06/2018, no. 17NT03167 – 17NT03174**

Member State

 France

Topic

Mutual Trust, Asylum (Dublin III Regulation)

Deciding Court Original Language

Cour Administrative d'Appel de Nantes

Deciding Court English translation

Administrative Court of Appeal of Nantes

Registration N

17NT03167 – 17NT03174

Date Decision

8 June 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)
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Subject Matter

Appeal brought before the Administrative Court of Appeal of Nantes by an asylum seeker of Afghan nationality, against the decision issued by the French authorities ordering his transfer to Belgium, 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 Belgium 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.
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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 Belgium, the competent Member State according to the Dublin III Regulation. The applicant appealed the decision before the Administrative Court of Nantes, which rejected his application. The applicant then lodged an appeal against that judgement before the Administrative Court of Appeal of Nantes.

According to the applicant, the judgement issued by the Administrative Court of Nantes did not correctly apply the relevant provisions of the Dublin III Regulation. He argued that Belgium had already rejected his application for international protection. Therefore, if he had transferred to that

Member State, he would have faced a risk of indirect *refoulement*, on account of these country's tendency to return such persons to their countries of origin. Finally, the applicant claimed that national authorities should have applied 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.

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

At the outset of its reasoning, the Administrative Court of Appeal of Nantes recalled the wording of Article 17 of the Dublin III Regulation and the relevant provision of the French Code of entry and stay of third country nationals and of the right to asylum (Article 742-1).

Then the Administrative Court of Appeal directly examined the circumstances of the case, concerning the situation in the country of origin of the applicant (Afghanistan), holding that such a situation fell within the scope of the "subsidiary protection". The Administrative Court of Appeal also held that the applicant risked to be returned in Afghanistan, due to the rejection of his application in Belgium, which had become definitive without any other possibility to appeal such a decision, and the adoption of a return decision. In particular, the Court of Appeal highlighted that the French administrative authorities could have easily obtained this information from the Belgian administrative authorities through the duty of cooperation provided for by Article 34 of the Dublin III Regulation.

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 annulled the judgement issued by the Administrative Court of Nantes and the decision of the French administrative authorities.

Relation of the case to the EU Charter

Neither the applicant nor the Court of Appeal referred to the Charter.

Relation between the EU Charter and ECHR

In the appeal brought before the French Court of Appeal, the applicant referred to Article 3 ECHR. However, the Administrative Court of Appeal, although in its reasoning applied the case law of the ECtHR concerning the prohibition of indirect *refoulement*, did not mention any 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 status in the hierarchy of sources.

No preliminary reference nor disapplication of national law involved.

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

Not applicable

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 Nantes merely recalls the wording of the relevant provisions of both national and EU law.

To assess the situation in the country of origin, the Court of Appeal took into account 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 Nantes limits itself to recall the different legal sources and to assess directly whether the asylum seeker could risk being subject to torture or inhuman or degrading treatment or punishment if returned to Afghanistan.

Connected national caselaw / templates

France, 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 (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

(Link to) full text

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CAA%20Nantes%20-%208%20juin%202018%20-%2017NT03167-74%20-%20Dubin%20Belgique%20ricochet%20afghanistan%20%281%29.pdf>

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

1. Judgment of the Administrative Court of Nantes , no. 1707750, of 4/09/2017
 2. Judgement of the Administrative Court of Appeal of Nantes, no. 17NT03167 – 17NT03174, of 8/06/2018
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