

Austria ? Constitutional Court, Decision dated 23 September 2016, E 1200/2016-12

Country of Decision:

Austria

Country of Applicant:

Iran

Date of Decision:

23-09-2016

Citation:

VfGH, E 1200/2016-12

Court Name:

Constitutional Court

Keywords:

Dependant (Dependent person)

Dublin Transfer

Request to take back

Return

Vulnerable person

Relevant Legislative Provisions:

European Union Law

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 8](#) [3]

Headnote:

A general circular letter send by Italian authorities is not a sufficient individual guarantee regarding a Dublin Transfer of a man suffering from various serious diseases.

Facts:

The applicant is a 58-year-old man from Iran. He had travelled to Italy with a visa for the Schengen area before moving on to Austria, where he applied for international protection in October 2015. In December 2015 the Italian authorities accepted the request to take back the applicant under the Dublin regulation.

The applicant suffers from Parkinson's disease, depression and arterial hypertension. Additional to that, he received a stent for his coronary vessels. Because of his state of health, the Austrian authorities asked their Italian counterparts for an individual guarantee confirming the supervision of the applicant before the return and enclosed a list of medicine, the applicant needed.

In their answer, the Italian authorities did not give an individual guarantee, but only attached a general circular letter of the Italian Interior Minister which included a list of accommodations that were known to treat vulnerable persons consistent with human rights. The Austrian asylum authorities (Bundesamt für Fremdenwesen und Asyl) thereupon rejected the application for international protection, declaring Italy as the competent country to review the asylum application and ordering the return of the applicant to Italy.

The Austrian Federal Administrative Court dismissed the complaint of the applicant against this decision, stating that he would not have to fear a human rights violation when returned to Italy. The court justified its decision by finding that there is no real risk of a violation of Art. 3 ECHR for asylum seekers in Italy. Dublin returnees have access to the Italian asylum system, legal protection, accommodation and utility services. The Italian asylum systems does not contain any systemic deficiencies. Additionally, the Court stated that the applicant is not a vulnerable person because he is a 'young man travelling alone without suffering from any serious diseases'. The guarantee given by the Italian authorities was considered to be sufficient. In its reasoning, the Federal Administrative Court referred to the Tarakhel decision of the ECtHR which finds that the general situation of asylum seekers in Italy is sufficient. Lastly, the Court states that also Art. 8 ECHR is not breached, despite the fact that the applicant entered Austria with his life partner who was granted asylum there.

Decision & Reasoning:

The complaint at the Constitutional Court was successful.

The Austrian Constitution prohibits a differentiation of foreigners for non-objective reasons. This requires an equal treatment of foreigners. Unequal treatment of foreigners is only permitted when it is justified by a reasonable cause and proportionate.

This subjective right of equal treatment is breached, when a legal decision is arbitrary. Especially the following reasons are considered as arbitrary: misjudgment of the legal situation, refraining from any investigative activities in a decisive point, ignoring arguments of the parties, recklessly differing from the facts documented in the files or ignoring the specific facts of the case.

The Constitutional Court found that the Federal Administrative Court made such mistakes in the case at hand. Its assumption that the applicant is a young man travelling alone without suffering from any serious diseases poses a striking contradiction to what is documented in the files. The applicant is 58 years old, accompanied by his life partner and suffering from Parkinson's disease inter alia. Furthermore, the circular letter sent by the Italian authorities does not constitute a sufficient individual guarantee, because it does not in any way take the concrete facts into account.

Outcome:

Appeal granted; annulment of the prior decision

Observations/Comments:

This case summary was written by Lisa-Marie Lühns, PhD-student at Cologne University.

Attachment(s):



[23 Sept 2016 - Tarakhel circular letter not enough_16E01200_00.pdf](#)[4]

Other sources cited:

Domestic Case Law

Austria ? VfSlg. 13.836/1994

Austria ? VfSlg. 14.393/1995

Austria - VfSlg. 14.650/1996

Austria ? VfSlg. 15.451/1999

Austria ? VfSlg. 15743/2000

Austria ? VfSlg. 16.080/2001

Austria ? VfSlg. 16.214/2001

Austria ? VfSlg. 16.297/2001

Austria ? VfSlg. 16.314/2001

Austria ? VfSlg. 16.354/2001

Austria ? VfSlg. 16.383/2001

Austria ? VfSlg. 17.026/2003

Austria ? VfSlg. 18.614/2008

Austria ? VfGH 30.6.2016, E 449-450/2016

National / Other Legislative Provisions:

[Austria ? Art. 144 B-VG](#) [5]

[Austria ? Art. I Abs. 1 Bundesverfassungsgesetz zur Durchführung des Internationalen Übereinkommens über die Beseitigung aller Formen rassistischer Diskriminierung](#) [6]

[BGBl. 390/1973](#) [7]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] https://www.asylumlawdatabase.eu/node/195#toc_12

[3] https://www.asylumlawdatabase.eu/node/195#toc_46

[4] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/23%20Sept%202016%20-%20Tarakhel%20circular%20letter%20not%20enough_16E01200_00.pdf

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-art-144-b-vg>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-art-i-abs-1-bundesverfassungsgesetz-zur-durchf%C3%BChrung-des>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/bgbl-3901973>