

## **Austria - Constitutional Court, 6 March 2008, B2400/07 - B2418/07**

**Country of Decision:**

Austria

**Country of Applicant:**

Russia (Chechnya)

**Date of Decision:**

06-03-2008

**Citation:**

6 March 2008

**Court Name:**

Constitutional Court

**Keywords:**

Inhuman or degrading treatment or punishment

Dublin Transfer

Procedural guarantees

Family unity (right to)

Health (right to)

Reception conditions

Vulnerable person

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**Relevant Legislative Provisions:**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]European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [4]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [5] > [Article 3](#) [6]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [5] > [Article 3](#) [6] > [2.](#) [7]

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**Headnote:**

A decision to expel an applicant with post-traumatic stress disorder to Poland did not violate Art 3 ECHR. The Member States guarantee, in accordance with Art 15 of the Reception Conditions Directive, to provide asylum applicants with the necessary medical treatment. Only in very exceptional cases does an expulsion violate Art 3 ECHR, even less frequently in cases of expulsions under the Dublin II regulation.

**Facts:**

The applicant came to Austria with his wife and child (born 2007) and applied for asylum in the end of 2007. The applicant was diagnosed with post-traumatic stress disorder. The Federal Asylum Office rejected the application and issued an expulsion order to Poland on the basis that Poland was considered to be responsible for his asylum procedure. The applicant appealed against this decision and the Asylum Board (Unabhängiger Bundesasylsenat) agreed with the inadmissibility decision. The applicant therefore appealed to the Constitutional Court, claiming a possible violation of Art 3 ECHR.

**Decision & Reasoning:**

The Constitutional Court rejected the appeal.

The Court argued it is in accordance with human rights to expel the applicant to Poland because access to medical treatment is guaranteed. Nobody has the right to stay in a country just for the reason to be treated medically ? even in cases of a serious disease or if a person is suicidal. It does not matter that the treatment in this country is more expensive or difficult to access, as long as medical treatment is available in any region of this state. Only in very exceptional cases does an expulsion violate Art 3 ECHR, even less frequently in cases of expulsions under the Dublin II regulation. The Member States guarantee, in accordance with Art 15 of the Reception Conditions Directive, to provide asylum applicants with the necessary medical treatment. A posttraumatic stress disorder can be treated in Poland and will not cause a real risk of dying under inhumane circumstances. The Asylum Board's decision, therefore, did not violate the applicant's constitutional rights. There is also no violation of Art 8 ECHR because the applicant was expelled to Poland together with his wife and child.

**Outcome:**

The appeal was rejected and the Asylum Board's decision became legally binding.

**Observations/Comments:**

Although the Constitutional Court held post-traumatic stress disorder is not an exceptional medical condition that prevents an expulsion, subsequent jurisprudence of the Asylum Court points out that it is still essential

1. to make the necessary medical examinations to find out if there is a certain medical condition, and if so, which one; and
2. to present reasonable arguments in each case ? based on the outcomes of the examinations and the reception conditions in the respective member state ? why this is not a violation of Art 3 ECHR.

In cases where the Federal Asylum Office does not follow these steps, the Asylum Court tends to return the case and order these procedural steps and the reasoning to be carried out. This is still current practice in Austria and must be part of every procedure, even in relation to inadmissibility decisions.

The distinction between an appeal to the Constitutional Court and an appeal to the Administrative Court is that the Constitutional Court is only responsible for decisions about violations of rights guaranteed by the Constitution, while the Administrative Court is responsible for violations of any other law. It is technically possible to appeal to the Constitutional Court and to have the appeal assigned to the Administrative Court in case of a rejection by the Constitutional Court. Before the changes to the asylum law in July 2008, this was also possible in asylum procedures. Through the change of the law, however, direct appeals to the Administrative Court in case of an unfavourable decision by the Asylum Court, and applications to assign the appeal to the Administrative Court in case of a rejection by the Constitutional Court, have become impossible. In any other kind of administrative procedure appeals to the Administrative Court and the Constitutional Court have to be made according to the requirements explained above. If the procedural steps were not taken or the decision is not based on the information provided during the procedure, it can be cancelled and returned to Federal Asylum Office.

In relation to the Constitutional Court's right to assess the violation of constitutional rights, Austrian constitutional law includes the constitution (B-VG), ECHR and other constitutional laws, including other human rights (e.g. Constitutional Right of Personal Freedom). The Constitutional Court in Austria is only allowed to assess the points of law based on the information given during the procedure before the lower authorities and there is a prohibition against introducing new facts or circumstances.

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#### Attachment(s):



[Original judgement.pdf](#)[10]



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#### National / Other Legislative Provisions:

[Austria - Asylgesetz \(Asylum Act\) 2005 - § 5](#) [12]

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#### 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](https://www.asylumlawdatabase.eu/node/195#toc_12)

[3] [https://www.asylumlawdatabase.eu/node/195#toc\\_46](https://www.asylumlawdatabase.eu/node/195#toc_46)

[4] <https://www.asylumlawdatabase.eu/node/353>

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[7] [https://www.asylumlawdatabase.eu/node/19#toc\\_67](https://www.asylumlawdatabase.eu/node/19#toc_67)

[8] <http://www.europa.eu/>

[9] <http://www.forumrefugies.org/>

[10] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgement\\_11.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgement_11.pdf)

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[12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4532>