

France ? Bordeaux Administrative Court of Appeal, 27 September 2016, 16BX00997

Country of Decision:

France

Country of Applicant:

Congo (DRC)

Date of Decision:

27-09-2016

Citation:

16BX00997

Court Name:

Bordeaux Administrative Court of Appeal, 3rd Chamber

Keywords:

Detention

Dublin Transfer

Effective access to procedures

Effective remedy (right to)

Individual assessment

Inhuman or degrading treatment or punishment

Personal interview

Request to take back

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 3](#) [4]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 4](#) [6]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 4](#) [8]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 13](#) [9]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#)

Headnote:

The applicant had sufficiently established that if returned to Hungary under the Dublin Regulation he would not benefit from an examination of his asylum application in line with procedural guarantees as required by the right to asylum. Such a transfer decision thus violated Article 4 of the Charter.

Facts:

The case stems from the decision taken by the Haute-Vienne prefecture to transfer the applicant to Hungary under the Dublin Regulation and to place him in administrative detention. The prefecture's decision was subsequently confirmed by the Administrative Tribunal of Toulouse which the applicant now appeals before the Administrative Court of Appeal.

The applicant submits, *inter alia*, that the decision taken to transfer him to Hungary was based on generalities without specific legislative reference as to Hungary's responsibility or to the applicant's individual circumstances. Nor was any mention had to why the applicant could not benefit from the discretionary clauses leading to the argument that a detailed examination of his case had not been undertaken.

Additionally the procedural rights within the Dublin Regulation had not been respected, notably information on the procedure in a language the applicant understood. Moreover, the prefect had not taken into account credible reports from various actors on the deficiencies in the Hungarian asylum procedure. The decision further breaches Article 13 of the ECHR since an appeal against such a decision does not have automatic suspensive effect.

As to the decision on detention there had been a manifest error of assessment given that there was no risk of absconding and that less coercive measures were available to the prefect.

Conversely the prefect held that the applicant had been notified of the procedures applicable to him during his personal interview, that Article 26(2) of the DR III does not require the acceptance of the Member State to be notified to the applicant, that there were no reasons as to why Article 17 should apply in the applicant's case and that any allegation on the part of the applicant of a breach of Article 13 is unfounded since a request for the suspensive effect of a decision can be made. Lastly no evidence had been advanced by the applicant to show that Hungary, a State party to the 1951 Convention and the ECHR, does not fulfil its obligations in the reception and protection of asylum seekers.

Decision & Reasoning:

With reference to Article 13(1) and 3(2) of the Dublin Regulation III the Court highlights that the presumption of Member States adherence to Article 4 of the Charter is rebutted where there are systematic deficiencies in the asylum procedure and in reception conditions demonstrating a risk of inhumane treatment if the applicant were to be transferred to a particular Member State.

Notwithstanding that Hungary is a Member State of the European Union the Court notes the infringement procedures launched on 10 December 2015 against Hungary by the European Commission. The focus of said procedures has been on the incompatibility of the Hungarian asylum procedures with the Asylum Procedures Directive. Most notably the impossibility of

presenting new facts and circumstances in an appeal, the lack of suspensive effect of an appeal and of interpretation and translation and new domestic legislation on judicial control which is likely to breach the right to an effective remedy before an impartial tribunal. Moreover, the Court highlighted that following on from reports by the Commissioner for Human Rights of the Council of Europe the Commission had also noted the practice of placing asylum applicants in a restrictive detention regime without an effective access to a remedy.

The Court, therefore, highlights that the applicant had sufficiently established that if returned to Hungary he would not benefit from an examination of his asylum application in line with procedural guarantees as required by the right to asylum. This would constitute a breach of Article 4 of the Charter. The decision of the prefect and Administrative Tribunal were thus unlawful. In light of the above conclusion the Court found that the decision to place the applicant in administrative detention was also unlawful.

Outcome:

The decision of the prefecture and Judgment 10600008 of 6 January 2016 by the Toulouse Administrative Tribunal are overturned.

The prefect is ordered to provide the applicant with permission to stay for the duration of the applicant's asylum proceedings in France.

Observations/Comments:

Similar conclusions have been reached in a series of jurisprudence from the Administrative Tribunal of Versailles in which the Tribunal has referenced domestic legislative amendments in the Hungarian asylum procedure, infringement procedures launched by the Commission and two pending cases before the European Court of Human Rights on the potential breach of Article 3 if the applicants were transferred to Hungary from Austria (A.A v Austria and S.O v Austria) (Administrative Tribunal Nantes No. 1603238 4 May 2016; No. 1602342 1 April 2016; No. 1602127 24 March 2016 (attached); No. 1601967 18 March 2016).

Attachment(s):

[CAA Bordeaux 27092016 Dublin vers Hongrie impossible 27.09.pdf](#)[11]



[TA 24 03 2016 Hongrie Dublin annulation.pdf](#)[12]

Other sources cited:

[Commission opens infringement procedure against Hungary concerning its asylum law](#) [13], 10 December 2015.

Commissioner for Human Rights of the Council of Europe, [Third Party Intervention](#) [14], 13 January 2016

National / Other Legislative Provisions:

[France - Administrative Justice Code Art - L.761-1](#) [15]

[France - Cesda \(Code of Entry and Stay of Foreigners and Asylum Law\) Art L.531-1](#) [16]

[France - Cesda \(Code of Entry and Stay of Foreigners and Asylum Law\) Art L.531-2](#) [17]

[France - Cesda \(Code of Entry and Stay of Foreigners and Asylum Law\) Art L. 741-1](#) [18]

Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [2] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [3] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [4] https://www.asylumlawdatabase.eu/node/195#toc_12
- [5] <https://www.asylumlawdatabase.eu/node/453>
- [6] https://www.asylumlawdatabase.eu/node/453#toc_29
- [7] <https://www.asylumlawdatabase.eu/node/4037>
- [8] https://www.asylumlawdatabase.eu/node/4037#toc_92
- [9] https://www.asylumlawdatabase.eu/node/4037#toc_165
- [10] https://www.asylumlawdatabase.eu/node/4037#toc_279
- [11] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CAA%20Bordeaux%2027092016%20Dublin>
- [12] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/TA%2024%2003%202016%20Hongrie%20D>
- [13] http://europa.eu/rapid/press-release_IP-15-6228_en.htm
- [14] http://www.coe.int/en/web/commissioner/-/risk-of-human-rights-violations-for-asylum-seekers-returned-to-hungary?redirect=http://www.coe.int/en/web/commissioner/home?p_p_id=101_INSTANCE_iFWYWFoeqh
- [15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8429>
- [16] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8424>
- [17] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8425>
- [18] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-cesda-code-entry-and-stay-foreigners-and-asylum-law-art-l-741>