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Country of Decision:

France

Country of Applicant:

Russia (Chechnya)

Date of Decision:

11-01-2010

Citation:

No 335277

Court Name:

Council of State (Urgent applications ? juge des référés)

Keywords:

Burden of proof
Dublin Transfer
Humanitarian considerations
Inhuman or degrading treatment or punishment
Procedural guarantees
Reception conditions
Responsibility for examining application

Relevant Legislative Provisions:

International Law
International Law > [1951 Refugee Convention](#) [1]
International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [2]
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3]
Council of Europe Instruments
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 3](#) [4]

Headnote:

Art 3 and Art 15 Dublin Regulation are only applicable if there exist compelling reasons to believe the receiving country is incapable of welcoming asylum applicants in appropriate conditions or if the applicants can prove that they personally risk being subjected to ill treatment or not benefitting fully from an effective right to asylum. In this case, the applicants had not demonstrated they were personally victims of ill treatment in Poland. Poland was considered to offer sufficient guarantees against deportation and for an effective and impartial asylum procedure.

Facts:

The applicants, a Chechen family of two parents and two children, applied for asylum at the Hérault prefecture on 22 September 2009. On 6 October, the Prefect denied them the provisional authorisation to stay in France on the grounds that they had already applied for asylum in Poland on 24 December 2007, in Sweden on 16 December 2008 and in Denmark on 16 March 2009. In accordance with the Dublin Regulation, the Prefect asked Poland to take responsibility for the applicants' asylum procedures. Poland agreed to the request in a decision dated 27 November 2009 and the Prefect initiated a removal procedure against the applicants on 17 December 2009.

The applicants appealed to the Montpellier Administrative Tribunal. They asked the Tribunal to suspend the removal procedure and requested that the Prefect re-examine their application for a temporary residence permit. The arguments cited were:

1. the contested decision is a serious and manifestly illegal infringement of their right to asylum;
2. the applicants were victims of degrading treatment in Poland and consequently will not be safe there;
3. the contested decision provides for a return of the applicants to their country of origin, Russia, where they will be exposed to persecution due to their Chechen origins;
4. the contested decision does not mention the delays for transfer or the modalities of transfer to Poland and, therefore, ignores Art 20 Dublin Regulation;
5. the decision was notified to the applicants in French and therefore not in a language which they understand. This violates Art 3 of the same Regulation;
6. the applicants did not attempt to evade the authorities in the different countries where they had made their asylum applications (Poland, Sweden and Denmark). In any case, Denmark is the responsible country for examining their asylum application.

The Administrative Tribunal rejected their appeal. The applicants appealed to the Council of State, which is the highest administrative court in France.

Decision & Reasoning:

The Council of State had to determine:

- Whether the decision to transfer the applicants to Poland was lawful and whether the applicants' right to information was respected during the procedure;
- Whether the decision to transfer the applicants to Poland mentioned the delays and modalities of the transfer to Poland, in accordance with the provisions of Art 20 Dublin Regulation.
- Whether the applicants' transfer to Poland was putting them in danger (the applicants alleged they were subjected to ill-treatment during their stay in Poland) and denied them their right to asylum (the applicants claimed that, if transferred to Poland, they may be deported to Russia even before their asylum claim could be examined in a fair and impartial manner).

On the first point, the Council of State concluded that the claimants were well informed throughout the entire procedure. The Council of State affirmed that the notification of a Dublin transfer decision was made in Russian. The right to information of the claimants was more than respected, as they were assigned a Russian interpreter during the hearing and they had been given time to present their submissions. Their right to information and the right to a fair hearing were therefore respected. On the second point, the Council of State noted that the obligation to indicate delays regarding the implementation of the transfer had been respected. Finally, on the third point, the Council of State recalled that Poland is a member of the EU, party to the Geneva Convention and has ratified the European Convention on Human Rights. Poland, therefore, had to be presumed able to welcome asylum applicants in good conditions. The Council of State found that the decision to transfer the applicants did not constitute a grave and manifestly illegal infringement of their right to asylum because Poland offers sufficient guarantees against deportation and for an effective and impartial examination of their asylum applications. The decision to transfer the applicants therefore did not constitute a violation of the principle of non-refoulement.

The Council of State concluded that the applicants could not refer to Art 3(2) or Art 15 of the Dublin Regulation because they did not demonstrate they were personally victims of ill treatment in Poland. According to the Council of State, Art 3 and Art 15 apply only if there are compelling reasons to believe the receiving country is incapable of welcoming asylum applicants in appropriate conditions or if the applicants can prove that they personally risk being subjected to ill treatment or to not benefit fully from an effective right to asylum.

Outcome:

The appeal was rejected.

Observations/Comments:

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[5]

[6]

**Attachment(s):**

[Original judgement.pdf](#) [7]

National / Other Legislative Provisions:

[France - Constitution 1958 - Art 53-1](#) [8]

[France - Ceseda \(Code of the Entry and Stay of Foreigners and Asylum Law\) - Art L.741-1](#) [9]

[France - Ceseda \(Code of the Entry and Stay of Foreigners and Asylum Law\) - Art L.741-4](#) [10]

[France - Code de justice administrative \(Code of Administrative Justice\) - Art L.521-2](#) [11]
[France - Code de justice administrative \(Code of Administrative Justice\) - Art L.522-3](#) [12]
[France - Code de justice administrative \(Code of Administrative Justice\) - Art L.523-1](#) [13]
[France - Code de justice administrative \(Code of Administrative Justice\) - Art L.761-1](#) [14]

Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>
- [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] <http://www.europa.eu/>
- [6] <http://www.forumrefugies.org/>
- [7] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgement_17.pdf
- [8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7132>
- [9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7133>
- [10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/749>
- [11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7134>
- [12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7135>
- [13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7136>
- [14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7137>