

France ? Council of State, 16 March 2018, N° 418019

Country of Decision:

France

Country of Applicant:

Afghanistan

Date of Decision:

16-03-2018

Citation:

(France) Council of State, 418019, 16 March 2018

Court Name:

Council of State Relief judge

Keywords:

Delay

Dublin Transfer

First country of asylum

Request to take back

Relevant Legislative Provisions:European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [1] > [Article 29](#) [2]

Headnote:

The Council of State grants the appeal lodged by the Minister of the Interior, who asked for the annulment of the order issued by the administrative tribunal's relief judge. The latter had suspended not only the execution of the decision refusing to register M. A's asylum application, but also the execution regarding his transfer, by ruling *ultra petita*. After qualifying M. A's non-attendance to the repeated notifications sent for the purpose of his transfer as being intentional and systematic, the Council of State concludes in this case that no violation was found against M. A's fundamental liberty of the right to asylum.

Facts:

M.A? claimed asylum in France, after which a request to take back was presented to Norwegian

authorities, the Eurodac system revealing that his fingerprints had been first taken there.

Following acceptance of this request on 10 April 2017, a decision to transfer was issued on 30 June 2017 by the Prefect of the Pyrénées-Atlantiques. Due to a second non-attendance at the airport for the purpose of his transfer, the Prefect declared on 18 September 2017 that M. A? absconded. Subsequently, the delay to proceed to the transfer was extended to 18 months, after which France would become responsible for M. A??s asylum application under Article 29 of the Dublin Regulation (EU) No 604/2013. Hence, when M. A? filed a new asylum application to be registered on 16 February 2018, the Prefect refused to process it.

M. A? appealed, asking the relief judge of the administrative tribunal of Pau to suspend the execution of the decision rejecting the registration of his asylum application.

Not only granting this request but also suspending the decision on M. A??s transfer by order of 30 January 2018, the Ministry of the Interior lodged an appeal before the Council of State to annul the relief judge?s order.

Decision & Reasoning:

The Ministry of the Interior argues that the order is irregular as the relief judge ruled beyond what was requested by suspending not only the execution of the decision refusing to register the asylum claim mentioned, but also the execution of the decision to transfer M. A?. Consequently, he argues that the judge made an error in his appreciation of urgency, owing to the fact that M. A? did not request the annulment of the decision regarding his transfer. Moreover, the latter did not raise any fear regarding the asylum procedure in Norway.

The Council of State grants this request by noting that M. A? did not request the execution of this decision to be suspended.

Regarding M. A??s request for his asylum application to be registered, the Minister of the Interior argues he seized the tribunal at a very late stage, and that his behaviour was the only consequence of the expiry of his asylum seeker?s certificate. He also argues the order contains not only an error of law but also an error of appreciation. Indeed, no serious nor illegal harm has been caused to the applicant in view of his refusal to voluntarily execute the decision of his transfer.

The Council of State first recalls that the relief judge intervenes when prescribed by urgency under Article L. 521-2 of the code of administrative justice. Besides, the right to asylum having as a corollary the right to claim refugee status constitutes a fundamental liberty. The exercise of this right in the light of Article L. 742-3 of the Code of Entry and Stay of Foreigners and the Right to Asylum (CESEDA) involves the possibility of the examination of the asylum application to be transferred to another Member State, under Article 29 of the Dublin Regulation (EU) No 604/2013. Hence, in view of the aforementioned facts, the Council of State notes that M. A? intentionally and systematically impeded his effective transfer before lodging a new asylum application at the end of the delay provided.

Hence, the Council of State decides in this case that the Prefect did not infringe M. A??s fundamental liberty of the right to asylum by declaring he absconded and refusing to register his new application.

Outcome:

Appeal granted.

The Council of State also recalls that under Article L. 761-1 of the code of administrative justice, no sum of money can be awarded to the unsuccessful party to the case.

Observations/Comments:

This case summary was written by Celia Minh Boyon, LLM student at Queen Mary University, London.

Attachment(s):



[Conseil d'État Juge des référés 16 03 2018 418019 Inédit au recueil Lebon Dublin.docx](#)[3]

National / Other Legislative Provisions:

[France - Code of administrative justice \(Articles L. 521-2](#) [4]

[L. 761-1\)](#) [5]

[France - Code of Entry and Stay of Foreigners and the Right to Asylum \(Article L. 742-3\)](#) [6]

Links:

[1] <https://www.asylumlawdatabase.eu/node/4037>

[2] https://www.asylumlawdatabase.eu/node/4037#toc_314

[3]

https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Conseil_d_%C3%89tat_Juge_des_r%C3%A

[4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-code-administrative-justice-articles-l-521-2>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/l-761-1>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-code-entry-and-stay-foreigners-and-right-asylum-article-l-742>