

France ? Lyon Administrative Tribunal, 3 April 2017, No. 1702564

Country of Decision:

France

Country of Applicant:

Afghanistan

Date of Decision:

03-04-2017

Citation:

Lyon Administrative Tribunal, 3 April 2017, Applicant v Rhône Prefecture, No. 1702564

Court Name:

Lyon Administrative Tribunal (?Tribunal administratif de Lyon?)

Keywords:

Assessment of facts and circumstances

Country of origin information

Effective access to procedures

Indiscriminate violence

Internal armed conflict

Responsibility for examining application

Well-founded fear

Relevant Legislative Provisions:Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [3]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [4] > [Article 1](#) [5]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [4] > [Article 4](#) [6]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [4] > [Article 19](#) [7]European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [8]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#)

Headnote:

Article 3 of the ECHR imposes an absolute obligation on contracting States not to deport an asylum seeker where doing so would expose him or her to a genuine and serious risk of violence. Under the discretionary clause in Article 17(1) of the Dublin III Regulation, this remains the case where the application does not fall within the immediate responsibilities of that State.

Facts:

The Applicant entered France on 26 July 2016 and lodged an application for asylum with the Rhône Prefecture on 29 September 2016. Using EURODAC, the Prefecture found that his fingerprints had been taken in Norway on 8 and 11 October 2015. Norway had agreed to process his application on 15 November 2016. On 31 March 2017, the Prefecture ruled that he should be returned to the Norwegian authorities and issued a compulsory residence order.

The Applicant appealed against these two decisions and sought an injunction against the Rhône Prefecture.

Decision & Reasoning:

The Court held that the French authorities were responsible for processing the Applicant's claim. Firstly, the Court held that France was entitled to offer asylum to all foreigners facing persecution for actions in pursuit of freedom, or seeking protection on other grounds. This remains the case where an application:

- Is not within its immediate obligations under the Dublin III Regulation (Article 17, Regulation 604/2013);
- Is not within its immediate competence as established in agreements concluded with other States (Article 53-1, French Constitution); or
- Falls under the competence of another State (Article L. 742-1, Code of Entry and Residence of Foreigners and of the Right of Asylum ('CESEDA?)).

The Court held that Article 3 of the European Convention on Human Rights (?ECHR?) imposes an obligation on contracting States not to deport an applicant, where doing so would expose him or her to a genuine and serious risk of violence. If appropriate, the Court should evaluate whether there is a situation of generalised violence existing in the country, as under these circumstances, deportation would necessarily entail a violation of Article 3. The European Court of Human Rights (ECtHR) has made clear that the situation of generalised violence needs to be sufficiently serious, such that deportation alone would expose an applicant to a genuine risk; however, where there is a general and well-known risk, Article 3 requires that the authorities evaluate the situation as a matter of duty, as illustrated by decision No. 43611/11 of the Grand Chamber (23 March 2016).

Applying this reasoning to the Applicant's circumstances, the Court concluded that:

- Deportation would expose the Applicant to a genuine and serious risk of violence. The province of Nangarhar is currently among the most dangerous in Afghanistan, with internal armed

conflict creating an acute situation of generalised violence. A native from Nangarhar would today be demonstrably exposed to a serious, direct and individual threat to life and limb upon returning to Afghanistan. This was confirmed by the National Court of Asylum Law (?CNDA?) in its decision no. 16036988 of February 2017. Accordingly, it is sufficient for the purposes of Article 3 that the Applicant is able to prove that he comes from Nangarhar. The Applicant's application and the precise and detailed statements made in court together leave no doubt that this is the case.

The Prefecture had committed a legal error and a manifest error of assessment by not granting the Applicant the benefit of the discretionary clause in Article 17 of the Dublin III Regulation. This was because the Applicant had lodged his claim in France before the Rhône Prefecture ruled that he should be sent back to Norway. Moreover, in so doing, the Prefecture had breached Article 3 of the ECHR.

Outcome:

Appeal granted. The two decisions of 31 March 2017 were reversed and the Rhône Prefecture was held to be responsible for processing the Applicant's claim within eight days of the decision.

Subsequent Proceedings :

Following this judgment two further judgments were given by the Administrative Tribunal in Lyon (1705209 28 July 2017) and Toulouse (27 November 2017) which related to an Iraqi and Afghan national who had had their asylum applications rejected in Finland and Sweden respectively before they had moved onto France. In each of the cases the Administrative Tribunal noted that they had exhausted their domestic remedies in Finland and Sweden and if returned to the countries under Dublin they would be immediately removed to their country of origins. In the judgment by the Lyon Administrative Tribunal, the Tribunal referred to C-465/07 Meki and Noor Elgafaji given by the CJEU alongside domestic decisions of the CNDA (16026242-16029137 11 May 2017) and held that the violence in Baghdad reaches the threshold of Article 15c) of the Qualification Directive. Since the applicant would have to travel through Baghdad in order to arrive to a district he had previously lived in the Tribunal held that the Rhone Prefect had committed a legal error in refusing to apply Article 17(1) of the Dublin III Regulation. Moreover, the Prefect had misapplied Article 3 ECHR since a Dublin transfer to Finland, a country where it is difficult for Iraqi nationals to receive status and has undertaken a policy to send to the border asylum seekers who have been rejected, notably Iraqis, would ultimately lead to the applicant being sent back to Iraq. The Tribunal cancelled the transfer decision and required the Prefect to send the applicant an application form for asylum within eight days of the judgment.

As for the judgment of the Toulouse Administrative Tribunal, the Tribunal held that the applicant, an Afghan national from Logar belonging to the Hazra minority and a Shiite, would be at risk to his security and life if returned to Logar since there is an internal armed conflict in the province. Given that the applicant's application had been rejected in Sweden, that there was no further recourse to appeal the decision and that Sweden sends back Afghans on a significant scale the Tribunal cancelled the transfer decision and obliged the Haute-Garonne prefect to allow the applicant to apply for asylum before OFPRA. The State has since appealed the decision to the Bordeaux Administrative Appeal Court. The Bordeaux Court of Appeal, [by a decision of 27 April 2018](#) [11], validated the return of the person concerned to Sweden, considering that he provided no evidence of the risks incurred or that the Swedish authorities "will *not assess ex officio the real risks of ill-treatment that would arise for the person concerned simply because of his eventual return to Afghanistan* ".

Observations/Comments:

This case summary was written by Georgia Kandunias, GDL student at BPP University.

Attachment(s):



[TA Lyon - Reject of Dublin transfer to Norway - 3 April 2017.pdf](#)[12]

Other sources cited:

Nangarhar Province Map ? United Nations, OCHA

Update on Afghan Asylum Law ? National Court of Asylum

Report on Security in Afghanistan (November 2016) ? EASO

National / Other Legislative Provisions:

[France - ? Code of Entry and Residence of Foreigners and of the Right of Asylum \('CESEDA'\) ? Articles L. 742-7 & L. 511-1](#) [13]

[France - Code of Relations Between the Public and the Administration \(?CRPA?\)](#) [14]

[France - Code of Administrative Justice \(?CJA?\) ? Article L. 761-1](#) [15]

[France - Law 91-647 of 10 July 1991](#) [16]

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/19>

[4] <https://www.asylumlawdatabase.eu/node/453>

[5] https://www.asylumlawdatabase.eu/node/453#toc_14

[6] https://www.asylumlawdatabase.eu/node/453#toc_29

[7] https://www.asylumlawdatabase.eu/node/453#toc_88

[8] <https://www.asylumlawdatabase.eu/node/4038>

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

[10] https://www.asylumlawdatabase.eu/node/4037#toc_185

[11] http://www.gisti.org/IMG/pdf/jur_caa-bordeaux_2018-04-27.pdf

[12] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/TA%20Lyon%20-%20Reject%20of%20Dublin%20transfer%20to%20Norway%20-%203%20April%202017.pdf>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-%E2%80%A2-code-entry-and-residence-foreigners-and-right-asylum-cesed-0>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-code-relations-between-public-and-administration-%E2%80%98crpa%E2%80%99>

[15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-code-administrative-justice-%E2%80%98cja%E2%80%99-%E2%80%93-article-l-761-1>

[16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-law-91-647-10-july-1991>