

France - Administrative Court of Nantes, 22 June 2015, No. 1505089

Country of Decision:

France

Country of Applicant:

Niger

Date of Decision:

22-06-2015

Citation:

No. 1505089

Court Name:

Administrative Court of Nantes

Keywords:

Assessment of facts and circumstances

Dublin Transfer

Individual assessment

Personal circumstances of applicant

Procedural guarantees

Responsibility for examining application

Relevant Legislative Provisions:Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]

Council of Europe Instruments

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [2] > [Article 3](#) [3]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [2] > [Article 4](#) [4]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [2] > [Article 5](#) [5]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [2] > [Article 17](#) [6]

Headnote:

The Administrative Court judged that a full and rigorous examination of the consequences of transferring the applicant back to Italy is required, given the delicate and evolving situation in the country. As this was not done the prefecture's decision to refuse to examine the asylum application and send her back to Italy was annulled. The case was remitted to the prefecture for re-examination.

Facts:

On the 15 June the applicant applied for a temporary residence permit in France, in order to introduce a request for asylum. On the 16 June 2015, the prefecture of Loire-Atlantique refused to grant the temporary residence and took the decision to send the applicant back to Italy, the Member State responsible for her application. In addition, the applicant received an obligatory residence assignment at the prefecture's department for forty-five days.

On 17 June 2015, the applicant introduced a request to the Administrative Court asking, amongst others, for the annulment of these decisions.

In particular, in response to the refusal, the applicant argued against its legality, first because it had not been established that it had been signed by the competent authority. Secondly, the applicant alleged that the prefecture had not considered all the elements of the case, as the decision was not sufficiently motivated, in fact and in law.

In addition, the applicant raised concerns about procedural deficiencies. Notably, she had not received information on her rights before being fingerprinted, required by the Eurodac regulation (art. 18) nor had any information relating to article 4 of the Dublin III Regulation been furnished. In addition the applicant advanced that the transfer decision to Italy was taken without holding a personal interview required under article 5 (1) of the Dublin III regulation.

Moreover, the applicant pointed out that the prefecture had not investigated the situation in Italy, to verify if derogations would have been required, in compliance with art. 3 and 17 of Dublin III as well as with regards to article 3 European Convention of Human Rights (ECHR).

Furthermore, according to the applicant, the decision to assign residence was taken without due regard to French asylum legislation (Code of the Entry and Stay of Foreigners and Asylum Law), as there was no risk of absconding, necessary to assign residence.

On 19 June 2015 the prefecture of the Loire-Atlantique rejected the applicant's allegations.

Decision & Reasoning:

First, the Administrative Court clarifies that it is not competent to rule on the conclusions concerning the refuse and issuance of a temporary residence permit; or on the asylum application. These elements are, therefore, not discussed in the decision.

However, with regards to the question of transfer, the Administrative Court specifies that art 3 (2) of the Dublin Regulation obliges a Member State to avoid transfers of asylum applicants to the designated responsible country, if there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions?

On this basis, the Court notes that, given the delicate and evolving situation in Italy, regarding

migrants? reception, every transfer decision under the Dublin Regulation, should be cautiously taken, after a full and rigorous examination of the consequences for the applicant upon transfer.

In this case, the Court concludes that the prefecture had not carried out a full and rigorous examination, as it limited justifications to general and stereotyped motivations, notably that the applicant had not declared being at risk of inhuman and degrading treatment if returned to Italy; and the absence of circumstances preventing the applicant to reach Italy, such as the fact that she has no family or relatives in France and in Europe.

Therefore, the Court concludes that the decision to transfer the applicant to Italy should be annulled, and, consequently, so should the ?residence assignation?. Finally, it obliges the prefect of Loire-Atlantique to re-examine the situation of the applicant and take a new decision, within one month.

Outcome:

Appeal granted, annulment of the decision.

Observations/Comments:

The judge considers that he is not competent to examine the other allegations brought forward by the applicant, and rejected by the prefecture, against the decision of refusing to grant her a temporary residence, thereby essentially preventing the applicant from applying for asylum.

Indeed, the applicant raised many concerns about procedural deficiencies related to the asylum system in France, which were unfortunately not covered in the Court?s judgment. For instance, according to the applicant, the decision of refusal of a temporary residence permit and return to Italy was taken without informing the applicant before being fingerprinted of her rights and without holding the interview required by article 5 (1) of the Dublin III regulation. Furthermore, the decision of ?residence assignation? was taken without due regard to French asylum legislation which requires a risk of absconding for said assignation to be applied.

Overall this case raises serious questions concerning the procedural guarantees associated with registering an asylum application with the prefecture in France.

Attachment(s):

[France - Tribunal Administratif 1505089.pdf](#)[7]

National / Other Legislative Provisions:

[France - Ceseda \(Code of the Entry and Stay of Foreigners and Asylum Law\) - Art L.512-1-1](#) [8]

[France - Ceseda \(Code of Entry and Stay of Foreigners and Asylum Law\) L 561-2](#) [9]

[France - Ceseda \(Code of Entry and Stay of Foreigners and Asylum Law\) L 511-1 II](#) [10]

[France - Code de justice administrative \(Code of Administrative Justice\) - Art L.761-1](#) [11]

[Commission Regulation \(EC\) No 2625/2000 of 11 December 2000 \(EURODAC\) - Art 18\(1\)](#) [12]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

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

[3] https://www.asylumlawdatabase.eu/node/4037#toc_85

- [4] https://www.asylumlawdatabase.eu/node/4037#toc_92
- [5] https://www.asylumlawdatabase.eu/node/4037#toc_104
- [6] https://www.asylumlawdatabase.eu/node/4037#toc_185
- [7] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/France%20-%20Tribunal%20Administratif%201505089.pdf>
- [8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7612>
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- [11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7137>
- [12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7142>