

## France - Administrative Tribunal of Nantes, 24 September 2018, M., n°1808677.

**Country of Decision:**

France

**Country of Applicant:**

Somalia

**Date of Decision:**

24-09-2018

**Citation:**

M v. Prefecture of Mayenne (2018) TA n.1808677

**Court Name:**

Administrative Tribunal of Nantes

**Keywords:**

Dublin Transfer

Indirect refoulement

Obligation to give reasons

Personal circumstances of applicant

Procedural guarantees

Responsibility for examining application

Subsidiary Protection

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**Relevant Legislative Provisions:**

International Law

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

Council of Europe Instruments

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [3]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [2] > [Article 3](#) [4]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [3] > [Article 4](#) [5]European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [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 5](#) [9]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 17](#) [10]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 18](#) [11]

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### **Headnote:**

The Dublin Regulation does not prevent France from being competent to examine the applicant's asylum application, given the existence of orders from the German authorities imposing an obligation to return to Somalia, where risk of inhuman treatment cannot be excluded.

Any decision must be reasoned and translated into a language understandable to the applicant.

### **Facts:**

M., a Somali national, entered France illegally in February 2018. He had previously made an asylum application in Germany, which had been rejected in November 2016. An order to leave the territory was issued, along with a deportation provision in case of non-compliance.

Following his new asylum application in France, the French authorities submitted a take back request to the German authorities under Regulation 604/2013. This request has been accepted since the Prefect of Mayenne decided by two orders to transfer M. to Germany and to place him under house arrest for 45 days as part of the transfer.

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### **Decision & Reasoning:**

M. was not informed in the language he is fluent in, of the interview procedures or the decisions taken against him by the Prefect of Mayenne. Under both EU Regulation 604/2013 and the Code on the Entry and Residence of Foreigners, even if a Member State is responsible for examining the asylum application of a third-country national or stateless person, it cannot be ruled out that the State in which he or she has submitted a new application may proceed to its examination. However, the Court points out that, without it being a subjective right that can be exercised before the authorities, it is a discretionary power that depends on the State in which the new asylum application was lodged.

Based on the various reports of British and American's administrations and NGOs on the current internal situation in Somalia, the Tribunal notes that armed conflict between different official and unofficial forces is still ongoing in the central and southern part of the country, including in the capital, Mogadishu, where M. is from. On this information, it appears that the indiscriminate violence due to armed conflicts in Somalia should be a reason why M. can't be returned in his country; and could be a ground to obtain subsidiary protection.

In view of the order to leave the German territory or face deportation to Somalia and the current situation there, the Court considers that the Prefect of Mayenne has committed a manifest error of assessment. The latter should have assessed the applicant's situation if returned to Somalia, in

the light of this information and the possibility resulting from Article 17 of EU Regulation 604/2013 to examine the asylum application on French territory. The Court states that in this case, if according to the Dublin regulation, the first European country in which the applicant already claimed for international protection was Germany, it doesn't prevent the French authorities to examine the claim. The French's administrations could have examined his case based on the personal situation of the applicant who is already submitted to a risk of deportation from Germany to unsafe countries. The Court considers the decision of transfer to the German authorities therefore ungrounded also because not mentioning the "indirect refoulement".

In addition, the two decrees were not notified to the applicant in a language known to him, depriving him of a full understanding of the procedures involved and of the ability to submit an effective remedy. The decrees may be considered unfounded and insufficiently reasoned according to the Court.

The Court annulled the transfer decisions and ordered the Prefect of Mayenne to issue a certificate of asylum application to M., which is equivalent to a temporary residence permit on French territory during the examination of his asylum application by the OFPRA organism.

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**Outcome:**

Annulment of the prefectoral decrees concerning the transfer to Germany and house arrest.

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**Observations/Comments:**

This summary was written by Solenn Vilboux, postgraduate student at Turin University.

**Attachment(s):**

 [TA Nantes - Dublin transfer.pdf](#)[12]

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**Other sources cited:**

Report of the British Home Office on the situation in Somalia, [July 2016](#) [13]

US State Department Report on Terrorism, June 2<sup>nd</sup> 2016

Amnesty International, [Report 2017-2018 on Somalia](#) [14]

**National / Other Legislative Provisions:**

[Code of Administrative Justice \(L-761-1\)](#) [15]

[France ? Law 91-647 of 10 July 1991 on Legal Aid](#) [16]

[Code on the entry and residence of foreigners \(art. 111 -8\)](#) [17]

[art. 551-2.1](#) [18]

[art. 741-1](#) [19]

[art. 742-1\)](#) [20]

[Law 2018-187 of 20 March 2018](#) [21]

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**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

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

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

[4] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

- [5] [https://www.asylumlawdatabase.eu/node/453#toc\\_29](https://www.asylumlawdatabase.eu/node/453#toc_29)
- [6] <https://www.asylumlawdatabase.eu/node/4038>
- [7] <https://www.asylumlawdatabase.eu/node/4037>
- [8] [https://www.asylumlawdatabase.eu/node/4037#toc\\_92](https://www.asylumlawdatabase.eu/node/4037#toc_92)
- [9] [https://www.asylumlawdatabase.eu/node/4037#toc\\_104](https://www.asylumlawdatabase.eu/node/4037#toc_104)
- [10] [https://www.asylumlawdatabase.eu/node/4037#toc\\_185](https://www.asylumlawdatabase.eu/node/4037#toc_185)
- [11] [https://www.asylumlawdatabase.eu/node/4037#toc\\_196](https://www.asylumlawdatabase.eu/node/4037#toc_196)
- [12] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/TA%20Nantes%20-%20Dublin%20transfer.pdf>
- [13] <https://www.refworld.org/publisher,UKHO,,SOM,578e1e0e4,0.html>
- [14] <https://www.amnesty.org/en/countries/africa/somalia/report-somalia/>
- [15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/code-administrative-justice-l-761-1>
- [16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-%E2%80%93-law-91-647-10-july-1991-legal-aid>
- [17] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/code-entry-and-residence-foreigners-art-111-8>
- [18] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/art-551-21>
- [19] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/art-741-1>
- [20] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/art-742-1>
- [21] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/law-2018-187-20-march-2018>