

France - Court of Cassation, Decision No. 1130 FS-P+B+R+I, 27 September 2017

Country of Decision:

France

Country of Applicant:

Sri Lanka

Date of Decision:

27-09-2017

Citation:

No. 1130 FS-P+B+R+I

Court Name:

Court of Cassation, 1st Civil Chamber

Keywords:

Detention

Dublin Transfer

Relevant Legislative Provisions:

European Union Law > Treaty on the Functioning of the European Union 2010/C 83/01 > Article 267 § 1 (b)

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [1] > [Article 2](#) [2]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [1] > [Article 28](#) [3]European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [4] > [Article 28](#) [5]

Headnote:

An applicant may not be detained with a view to carrying out a transfer under the Dublin Regulation, in the absence of objective criteria for assessing the existence of a significant risk of absconding, defined in a binding legal provision of general application.

Facts:

The applicant was detained in the administrative detention centre (CRA) of Mesnil-Amelot, pending his transfer to Italy under the Dublin Regulation under an order of the Prefecture dated 13 February 2017. Detention was ordered on the ground that he had not presented appropriate guarantees to prevent the risk of absconding from the removal procedure. To prolong the detention, an order of the President of the Court of Appeal of Paris dated 17 February 2017 stated that the applicant's detention fulfils the necessary legal conditions, insofar as he had not provided proof of accommodation or resources.

The cassation appeal (*pourvoi en cassation*) contests the order of the President of the Court of Appeal of Paris.

Decision & Reasoning:

The Court of Cassation recalled that the power conferred on EU Member States to detain an individual for the purpose of securing a Dublin transfer where there is a significant risk of absconding entails the existence of reasons, grounded on objective criteria defined by law, to believe that the asylum seeker will abscond from the transfer procedure. The Court of Justice of the European Union (CJEU) ruled in Case C-528/15 *Al Chodor* that Member States must set such objective criteria in binding legal provisions of general application, and that the absence of such provisions precludes the applicability of this power under Article 28(2) of the Dublin Regulation; consistent administrative practice of the aliens police would not suffice to that end.

The Court concluded that, by upholding the applicant's detention in the absence of a provision of general application setting out the objective criteria for assessing a risk of absconding of a person subject to a transfer procedure, the President of the Court of Appeal of Paris violated Article 28(2) of the Dublin Regulation.

Outcome:

Court of Appeal order quashed (cassation).

Subsequent Proceedings :

On 7 February 2018, the French Court of Cassation reaffirmed in [case 149 FS-P+B](#) [6] that the detention of asylum applicants under the Dublin III Regulation is unlawful. The case concerned an Algerian national who had been detained following the submission of a take charge request sent to different Member States. First, the Court of Cassation reiterated that under French law, and in conformity with the Council of State's opinion in [case no. 408919](#) [7], an asylum applicant cannot be detained before a transfer decision is adopted and notified. Secondly, it relied upon the CJEU's decision [in C-528/15 Al Chodor](#) [8] to reaffirm that detention must be considered unlawful in the absence of objective criteria to define a "risk of absconding" established in a binding provision of general application. Therefore, as long as the current legislative provisions are not modified, a detention order or a decision to extend the timeframe for carrying out a Dublin transfer based on a risk of absconding must be considered unlawful.

It is worth noting that both before and after the present judgment, there have been many decisions given by Administrative Tribunals and "Tribunal Grande Instance" in France annulling detention decisions given to asylum applicants in France who had applied for asylum elsewhere on grounds that these decisions were taken on the basis of provisions laid out in the Schengen Code and not the Dublin Regulation (TGI Nimes, 17/00827, 9 February 2017; TGI Metz, 18/00335, TA Lyon, 1700464, 24 January 2017; 13 February 2018). The same is true for transfer decisions where the French authorities base the transfer decision on a readmission under Schengen rather than a

Dublin transfer decision (Administrative Tribunal Marseille, 1800361, 22 January 2018).

Observations/Comments:

French legislation currently does not provide for a definition of the 'risk of absconding' on the basis of objective criteria. However, a [Ministry of Interior instruction](#) [9] of 19 July 2016 to Prefectures 'the authorities responsible for the application of the Dublin Regulation' refers to the notion of 'risk of absconding' in the context of Dublin transfer procedures and allows for the possibility to place persons concerned in administrative detention. The instruction sets out two criteria as indicative of such a risk: (a) the individual has left the place where he or she is required to reside; (b) the individual has not appeared following several summons (*convocations*) to an interview or has not respected reporting obligations in the context of assigned residence in a specific place (*assignation à résidence*).

Attachment(s):



[France - CC E 17-15.160.pdf](#)[10]

National / Other Legislative Provisions:

[France - Cesda \(Code of Entry and Stay of Foreigners and Asylum Law L 511-1](#) [11]

Links:

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

[2] https://www.asylumlawdatabase.eu/node/4037#toc_59

[3] https://www.asylumlawdatabase.eu/node/4037#toc_303

[4] <https://www.asylumlawdatabase.eu/node/4039>

[5] https://www.asylumlawdatabase.eu/node/4039#toc_295

[6] http://bo-npa.fr/sites/default/files/article-files/cass_17-14_866_0.pdf

[7] http://bo-npa.fr/sites/default/files/article-files/ce_19_07_2017_n_408919.pdf

[8] <http://www.asylumlawdatabase.eu/en/content/cjeu-case-c-52815-police-%C4%8Drkrajsk%C3%A9-%C5%99editelstv%C3%AD-police-%C3%BAsteck%C3%A9ho-kraje-odbor-cizineck%C3%A9>

[9] <http://www.lacimade.org/wp-content/uploads/2017/01/instruction-Dublin-19-juillet-2016.pdf>

[10] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/France%20-%20CC%20E%2017-15.160.pdf>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-cesda-code-entry-and-stay-foreigners-and-asylum-law-l-511-1>