

Germany ? Federal Administrative Court, 8 May 2017 ? 2 BvR 157/17

Country of Decision:

Germany

Country of Applicant:

Syria

Date of Decision:

08-05-2017

Court Name:

Federal Administrative Court

Keywords:

Assessment of facts and circumstances

Effective remedy (right to)

Integration measures

Material reception conditions

Responsibility for examining application

Headnote:

The right to have recourse to the courts as enshrined in the German constitution (Art. 19 ss. 4 GG) is to be assessed in a thorough and reliable manner if the right to physical integrity (Art. 2 ss. 2 GG and Art. 3 of the ECHR) is at stake. The courts only adhere to this obligation if they carefully assess the evidence brought to them by the applicant considering the specific context of a person who has been granted international protection in a third country.

Facts:

The applicant is a Syrian national who was granted international protection in Greece. He then fled to Germany where he again applied for asylum. His asylum claim was rejected and he was to be deported to Greece on the ground that Germany was not responsible for processing the asylum claim under § 29 Abs. 1 Nr. 2 AsylG. The applicant launched an appeal to the administrative courts and also sought a preliminary injunction postponing his deportation.

Decision & Reasoning:

1. The right to have one's claim heard by the courts does not only entail the mere possibility of launching an appeal but also requires the courts to exercise their control over the executive in an effective manner. If the right to physical integrity (Art. 2 ss. 2 GG, Art. 3 ECHR) is at stake, the obligation to carefully and reliably assess the facts of the case is a constitutional one. The ECtHR has ruled that a violation of Art. 3 ECHR can also occur if one Convention state deports a person to another Convention state not considering the conditions in this state are in violation of Art. 3 ECHR.

2. The administrative court in Minden had violated the applicant's rights in relying on a statement of the European Commission that Dublin transfers to Greece were to be carried out again as this related to asylum seekers who have not been granted international protection yet. The applicant had brought forward to the court that he would have access only to lower standards of social benefits than asylum seekers. Whilst the administrative court was right in finding that states only have an obligation under the Geneva Convention and the Qualification Directive to treat beneficiaries of international protection equally to their own citizens, Art. 34 of the Directive states that sufficient measures must be taken to ensure access to integration programmes to beneficiaries of international protection. Thus, if the applicant does not have access to any social benefits in the third country, this will amount to inhumane and degrading treatment. The principle of mutual recognition of standards between the EU member states was deeply impaired during the last years in the case of Greece and the conditions refugees and asylum seekers face there. Accordingly, the courts and authorities need to thoroughly assess the conditions prior to ordering deportation.

3. The applicant was thus violated in his right to have recourse to the courts and his right to physical integrity in the decision by the court to deport him contrary to § 60 ss. 5 AufenthG and Art. 3 which grant freedom from inhumane and degrading treatment.

Outcome:

Constitutional complaint granted.

Observations/Comments:

This case summary was written by Anna Börger, member of the Cologne refugee law clinic.

Attachment(s):

[Germany - 2 BvR 157_17 Germany Greece Returns.pdf](#)[1]

Links:

[1] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Germany%20-%20202%20BvR%20157_17%20Germany%20Greece%20Returns.pdf