

Germany ? Higher Administrative Court Lüneburg, 18 September 2020, 10 LA 193/20

Country of Decision:

Germany

Country of Applicant:

Iraq

Date of Decision:

18-09-2020

Citation:

10 LA 193/20

Court Name:

Higher Administrative Court (Niedersächsisches) Oberverwaltungsgericht Lüneburg

Keywords:

Delay

Dublin Transfer

Right to remain pending a decision (Suspensive effect)

Relevant Legislative Provisions:European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [1] > [Article 21](#) [2]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [1] > [Article 25](#) [3]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [1] > [Article 27](#) [4]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [1] > [Article 28](#) [5]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [1] > [Article 29](#) [6]

Headnote:

As an extraneous consideration, the Coronavirus pandemic does not justify the suspension of the implementation of Dublin transfer decisions. The de facto suspension of Dublin transfers due to the Coronavirus pandemic does not interrupt the time limit for the implementation of

Dublin transfer decisions.

A change of the Member State responsible based on the expiration of the time limit for transfer does not depend on the accountability of the requesting Member State for the impossibility to carry out the transfer.

Facts:

The defendant in this case is the Federal Republic of Germany, represented by the Federal Office for Migration and Refugees. The plaintiff is an Iraqi national who arrived in Sweden in 2015. After a three-year stay and an unsuccessful asylum application in Sweden, he came to Germany in 2018. There he filed a second asylum application.

The Federal Office for Migration and Refugees rejected the asylum application in 2018 as inadmissible and ordered the plaintiff's transfer to Sweden, which had been responsible for processing the asylum application. Following a rejected application for interim measures, the applicant could not be located at the day of the transfer; the time limit for transfer was extended to 18 months. This time limit would have expired in 2020. In 2019, the plaintiff's legal representative informed the defendant of his current address.

Between April and June 2020, Dublin transfers were suspended according to Article 27 para. 4, due to the coronavirus pandemic. The plaintiff then applied for interim legal protection due to changed circumstances. By decision of 23 July 2020, the Administrative Court granted the requested interim protection and ordered the suspensive effect of the applicant's complaint against the decision of 2018 which rejected his asylum application for inadmissibility and ordered his transfer to Sweden.

By another decision of 31 July 2020, the Administrative Court repealed the decision of 2018 which rejected his asylum application for inadmissibility and ordered his transfer to Sweden. The Administrative Court stated that even the 18-month time limit for transfer had expired at the time of the court decision. The defendant appealed against this decision on 3 September 2020.

Decision & Reasoning:

In accordance with the requirements under § 78 Asylum Law (AsylG), an appeal against a decision of an Administrative Court is only admissible, if the case raises legal questions of fundamental significance. In the present case, the Higher Administrative Court held that the defendant has not sufficiently justified such fundamental significance and that it is not given, since the questions raised had already been sufficiently clarified in previous decisions or do not need to be clarified, as the legal text already provides answers.

The Court noted that the aim of the Dublin III Regulation is to determine the Member State responsible for an asylum procedure as quickly as possible in order to ensure effective access to the procedures for granting international protection.

Therefore, the Dublin III Regulation provides for clear time limits for determining responsibility for the examination of asylum applications regardless of the accountability of the requesting Member State for the non-compliance with these time-limits. This is supported by Art. 29 para. 2 of the Dublin III Regulation which orders a change of responsibility after 18 months if the person

concerned absconds.

Contrary to the defendant's view, the time limit under Art. 29 para. 1 of the Dublin III Regulation is not primarily based on the practical feasibility of the transfer, but rather on a maximum period of six months within which the transfer must take place. The start of the time limit depends on a clearly identifiable event (acceptance of the request of another Member State to take charge or to take back the person concerned or the final decision on an appeal or review if these have suspensive effect).

Furthermore, the defendant does not consider the fact that in the specific case of the plaintiff, the defendant had had a period of 6 months to carry out the transfer.

Moreover, the defendant does not sufficiently take into account the arguments of the Administrative Court. The Administrative Court has stated that according to the wording of Art. 27 para. 4 of the Dublin III Regulation the suspension decision must be based on considerations on the effectiveness of the appeal. The suspension decision may only be issued if it is guided by the idea of acceleration. A suspension decision based on the Coronavirus pandemic, as an extraneous consideration, is not lawful.

Lastly, a suspension of the implementation of transfer decisions "until further notice" and "subject to revocation" that respects the time limit of Art. 27 para. 4 of the Dublin III Regulation (until the final decision on appeal) is not per se unlawful. There is no legal obligation for exhausting the established time limit.

Outcome:

Appeal denied.

Observations/Comments:

This case summary was written by Alisa Hastedt, research assistant at University Cologne.

Attachment(s):



[Niedersächsisches OG 10 LA 193 20 extension of Dublin deadlines coronavirus.pdf\[7\]](#)

Other sources cited:

Domestic Case Law Cited

OVG Lüneburg, Beschluss vom 27.04.2015 ? 5 LA 201/14 ?

OVG Lüneburg, Beschluss vom 31.08.2017 ? 13 LA 188/15 ?

OVG Lüneburg, Beschluss vom 13.09.2018 ? 10 LA 349/18 ?

OVG Lüneburg, Beschluss vom 23.01.2018 ? 10 LA 21/18 ?

OVG Lüneburg, Beschluss vom 18.10.2019 ? 9 LA 103/18 ?

OVG Lüneburg, Beschluss vom 21.05.2019 ? 5 LA 236/17 ?

OVG Lüneburg, Beschluss vom 21.03.2019 ? 10 LA 46/18 ?
OVG Lüneburg, Beschluss vom 04.02.2020 ? 11 LA 479/18 ?
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Bayerischer VGH, Beschluss vom 30.01.2020 ? 10 ZB 19.2241 ?
BVerwG, Beschluss vom 30.01.2014 ? 5 B 44.13 ?
BVerwG, Beschluss vom 07.07.2015 ? 1 B 18.15 ?
BVerwG, Beschluss vom 17.02.2015 ? 1 BN 3.15 ?
BVerwG, Beschluss vom 01.03.2016 ? 5 BN 1.15 ?
BVerwG, Beschluss vom 08.08.2018 ? 1 B 25.18 ?
BVerwG, Urteil vom 08.01.2019 ? 1 C 16.18 ?
VG Düsseldorf, Beschluss vom 15.06.2020 ? 22 L 701/20.A ?
VG Osnabrück, Beschluss vom 12.05.2020 ? 5 B 95/20 ?
VG Minden Beschluss vom 06.07.2020 ? 12 L 485/20.A ?
BVerfG, Beschluss vom 06.06.2018 ? 2 BVR 350/18

National / Other Legislative Provisions:

[§ 78 Abs. 3 Nr. 1](#) [8]
[Abs. 4 S. 4](#) [9]
[§ 80](#) [10]
[§ 83b AsylG](#) [11]
[§ 60 Abs. 5](#) [12]
[7 S. 1 AufenthG](#) [13]
[§ 80 Abs. 4](#) [14]
[7 S. 2m](#) [15]
[§ 80b Abs. 1 S.](#) [16]
[§ 124 Abs. 2 Nr. 1](#) [17]
[§ 124a Abs. 4 S. 4](#) [18]
[§ 154 Abs. 2 VwGO](#) [19]

Links:

[1] <https://www.asylumlawdatabase.eu/node/4037>
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[7] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Niedersachsisches%20OG%2010%20LA%2019>
[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-78-abs-3-nr-1>
[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/abs-4-s-4>
[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-80>

- [11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-83b-asylg>
- [12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-60-abs-5>
- [13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/7-s-1-aufenthg>
- [14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-80-abs-4>
- [15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/7-s-2m>
- [16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-80b-abs-1-s>
- [17] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-124-abs-2-nr-1>
- [18] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-124a-abs-4-s-4>
- [19] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/%C2%A7-154-abs-2-vwgo>