

Germany: Administrative Court Madgeburg (VG), 24. March 2020, 2 B 92/20 MD

Country of Decision:

Germany

Country of Applicant:

Turkey

Date of Decision:

24-03-2020

Citation:

2 B 92/20 MD

Court Name:

Administrative Court Madgeburg

Keywords:Dublin Transfer

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 - Charter of Fundamental Rights of the European Union](#) [2]

Headnote:

Germany is responsible for the asylum determination of an oppositional Turkish applicant under Art. 3 para. 2 subparas 2 and 3 Dublin III Regulation, because in this individual case the Bulgarian asylum procedure has systemic flaws that would entail a risk of inhuman or degrading treatment. A serious examination of the asylum application cannot be expected by the Bulgarian authorities and the authorities will likely return the applicant to Turkey. In such a case, there are reasonable grounds for believing that there would be a violation of Article 3 of the European Convention on Human Rights due to the complainant's own or family member's opposition activities.

Facts:

Germany is responsible for the asylum determination of an oppositional Turkish applicant under Art. 3 para. 2 subparas 2 and 3 Dublin III Regulation, because in this individual case the Bulgarian asylum procedure has systemic flaws that would entail a risk of inhuman or degrading treatment. A serious examination of the asylum application cannot be expected by the Bulgarian authorities and the authorities will likely return the applicant to Turkey. In such a case, there are reasonable grounds for believing that there would be a violation of Article 3 of the European Convention on Human Rights due to the complainant's own or family member's opposition activities.

Decision & Reasoning:

In the present case, the Court concludes that the complainant's interest in suspending enforcement of the deportation outweighs the public interest in enforcing it. The appeal of the complainant is therefore successful.

The Court finds that the applicant is likely to be treated in violation of Art. 3 of the European Charter of Human Rights and Art. 4 of the Charter of Fundamental Rights of the European Union in the event of a deportation to Bulgaria. In case of the complainant, the Court exceptionally assumes the existence of systematic flaws in the Bulgarian asylum procedure. The responsibility of the asylum application was therefore transferred to the Federal Republic of Germany according to Art. 3 para. 2 subparas 2 and 3 Dublin III Regulation.

The Court concludes that the systematic flaws in the Bulgarian asylum procedure result from the usual administrative practice of the Bulgarian authorities with regard to oppositional Turkish asylum applicants. In the event of a deportation to Bulgaria, the complainant cannot expect a serious examination of his asylum application. It appears to be the practice of the Bulgarian authorities to transfer Turkish applicants to Turkey without a detailed examination and any effective remedy. Furthermore, in case of a transfer to Turkey, the complainant is threatened with treatment in violation of Art. 3 of the European Convention on Human Rights. There are reasonable grounds to believe that the complainant would be tortured or subjected to inhuman or degrading treatment in Turkey due to his own or his family member's opposition activities.

As the complainant's chances of success in the main proceeding are likely, the appeal is granted, and the suspensive effect is ordered.

Outcome:

Appeal granted.

Subsequent Proceedings :

The decision regarding the interim procedure is final. The Court, however, has to decide upon the matter within the main proceeding.

Observations/Comments:

This summary was written by Theresa Richter, LL.M.-student at Queen Mary University (London).

Attachment(s):

 [Decision•2 • 9220 Magdeburg administrative court - German Court blocks return to Bulgaria.pdf](#)

[3]

Other sources cited:

Bulgarian Helsinki Committee, report dated 03.02.2020

AIDA contry report on Bulgaria

National / Other Legislative Provisions:

[Germany - Administrative Court Act \(VwGO\) - Art. 80.5](#) [4]

[Germany - Administrative Court Act \(VwGO\) - Art. 80.2](#) [5]

[Germany - Administrative Court Act \(VwGO\) - Art. 154.1](#) [6]

[Germany - Asylum Act - Art. 29 para 1 number 1 lit.a](#) [7]

[Germany - Asylum Act - Art.34a](#) [8]

[Germany - Asylum Act - Art. 75.1](#) [9]

[Germany - Asylum Act - Art. 80](#) [10]

[Germany - Asylum Act - Art. 83b](#) [11]

Links:

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

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

[3]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Decision%7F2%20%7F%209220%20Magde%20German%20Court%20blocks%20return%20to%20Bulgaria.pdf>

[4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-administrative-court-act-vwgo-art-805>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-administrative-court-act-vwgo-art-802>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-administrative-court-act-vwgo-art-1541>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylum-act-art-29-para-1-number-1-lita>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylum-act-art34a>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylum-act-art-751>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylum-act-art-80>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylum-act-art-83b>