

Netherlands - Court of The Hague, 16 October 2015, AWB 15/11534

Country of Decision:

Netherlands

Country of Applicant:

Ukraine

Date of Decision:

16-10-2015

Citation:

JV 2015/343

Additional Citation:

ECLI:NL:RBDHA:2015:11942

Court Name:

Court of The Hague (C.T.C. Wijsman, A.F.C.J. Mosheuvel, S. van Loksven)

Keywords:

Best interest of the child
Child Specific Considerations
Dublin Transfer
Material reception conditions
Reception conditions
Request to take back
Vulnerable person
Withdrawal of protection application

Relevant Legislative Provisions:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [3] > [Article 3](#) [4]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [3] > [Article 18](#) [5]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [6] > [Article 17](#) [7]

European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#)

[8] > [Article 21](#) [9]

European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [8] > [Article 22](#) [10]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [11] > [Article 28](#) [12]

Headnote:

There is a real risk that, due to overcrowded accommodation, Hungary can no longer receive returning Dublin claimants. Because of inadequate shelter, the claimant and her two minor children may be subjected to accommodation conditions which contravene Article 3 of the European Convention on Human Rights. Before the return of a vulnerable Dublin claimant occurs, Hungary must first be asked to provide guarantees of adequate shelter.

Facts:

A single mother with two minor children, all with Ukrainian nationality, applied for asylum in the Netherlands on 2 April 2015. On 1 March 2015 she had previously submitted an application for asylum in Hungary, after which she returned to Ukraine with the aid of the Hungarian authorities and withdrew her application. On 5 March 2015 she reported to authorities in Poland and subsequently travelled on to the Netherlands where she arrived on 30 March 2015. Her request for asylum in the Netherlands was denied on 11 June 2015 because, as per the Dublin Regulation, her request should have been considered in Hungary. This case concerns her appeal against this decision.

Decision & Reasoning:

Firstly, the claimant argued that she fears that Hungary will return her to Ukraine without considering the merits of her application for asylum. Because her earlier request was withdrawn and rejected, she will need to lodge a subsequent application and present new supporting facts and information that has occurred since she left Hungary. As a consequence, her original motives would not be considered. She also fears that an appeal against a subsequent application decision will not be suspended, with the effect that she will be detained in Hungary with her children and will be a victim of treatment in contravention of Article 3 of the ECHR.

The respondent, the state secretary of Security and Justice, countered by stating that the Hungarian authorities have indicated that a returning Dublin claimant, who withdrew an earlier request for asylum that was not yet judged on its merits, will need to submit a new request. This new request will subsequently be considered based on its merits.

The court agrees with the respondent and does not see any grounds for the argument that the new request for asylum will be seen as a subsequent asylum application without the right to shelter and for which new facts and information are required, and an appeal against a decision does not have a suspensory effect. The guarantees given by the Hungarian authorities are thereby in line with Article 18(1)(c) of Dublin Regulation (EU) No. 604/2013 (?Reg 604/2013?).

Secondly, the claimant argued that, due to new Hungarian legislation and the suspension of taking back Dublin claimants to Hungary, she would not have access to a Hungarian judge. Under the new legislation, which came into effect on 1 August 2015, Serbia has been designated as a safe third country and Hungary can reject and detain all asylum seekers who entered via the ?Balkan

route?.

Because Hungary has explicitly stated that it will not meet its obligations under Reg 604/2013, the court requested the respondent to comment on the consequences of the suspension of transfer with regards to the case of the claimant.

Based on an email from DubliNet Hungary dated 3 July 2015 to all member states, the court found that there is no longer grounds for suspending transfers of Dublin claimants and pointed out that another transfer to Hungary has already taken place.

The court finds that it cannot determine whether the claimant's request for asylum will be rejected due to the new legislation, because it has not been shown that the claimant travelled to Hungary via the Balkan route. Furthermore the appellant has not established that the new Hungarian legislation is contrary to European law and that a returning Dublin claimant would not have access to a Hungarian judge to complain of any shortcomings.

Finally, the appellant claimed that, as a single mother with minor children, she should be considered to be a vulnerable person and that the shelter facilities in Hungary are of such poor standard that they do not meet the *Tarakhel v Switzerland* guarantees. Due to the large number of asylum seekers the system is overwhelmed and a reception crisis has developed in Hungary for asylum seekers. The claimant also claimed that she was not able to go to her previous reception manager with complaints about the facilities.

The court finds that the claimant ought to turn to the authorities in Hungary concerning complaints about the facilities, unless there are structural shortcomings in the reception provided.

Further, the court finds that, as a single mother with minor children, the appellant ought to be considered a vulnerable person under Article 21 of Directive 2013/33/EU and as described in the judgment in the case *Tarakhel v Switzerland*, 4 November 2014 (no. 29217/12, JV 2014/384). If after being transferred, the appellant was to end up in similar conditions to those described in *Tarakhel*, this would contravene Article 3 of the ECHR. This situation is such that there are overcrowded reception facilities which are unhygienic and not suitable for children. The court has also taken the judgment of the ECtHR in *Tarakhel* into consideration, namely that special protection of asylum seekers is especially important when families with children are transferred. The court finds that, due to the large influx of asylum seekers, the Hungarian asylum system is no longer capable of coping with vulnerability and that there is a greater need for facilities than the current reception centres can offer. The reception conditions in Hungary can therefore be compared to those in Italy as ruled in *Tarakhel*.

Therefore the court finds that the Hungarian authorities need to be asked for guarantees to be sure that the claimant and her children will not be placed in overcrowded accommodation with unacceptable living conditions, exposing them to a treatment which contravenes Article 3 of the ECHR. Because the respondent has failed to request these guarantees, the transfer of the appellant and her children would lead to a substantial risk of a violation of Article 3 of the ECHR.

The appeal is hereby granted.

Outcome:

Appeal granted.

Subsequent Proceedings :

The Council of State has subsequently ruled upon Dublin transfers to Hungary finding in two separate cases that the Secretary of State had failed in his duty of care to investigate the risk of the transferee being exposed to circumstances in violation of Article 3 ECHR.

Observations/Comments:

This case is instructive in showing that special attention needs to be given when ordering the return of a Dublin claimant when it concerns a vulnerable person. The accommodation facilities in the original Member State may not be suitable for a vulnerable person.

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Attachment(s):



[Den Haag 16_10_2015 awb 15_11534.docx](#)[13]

Links:

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

[2] https://www.asylumlawdatabase.eu/node/195#toc_12

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

[4] https://www.asylumlawdatabase.eu/node/4037#toc_85

[5] https://www.asylumlawdatabase.eu/node/4037#toc_196

[6] <https://www.asylumlawdatabase.eu/node/353>

[7] https://www.asylumlawdatabase.eu/node/353#toc_326

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

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[11] <https://www.asylumlawdatabase.eu/node/3946>

[12] https://www.asylumlawdatabase.eu/node/3946#toc_321

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