

Sweden - Migration Court of Appeal, 10 December 2010, UM 7706-10

Country of Decision:

Sweden

Country of Applicant:

Afghanistan

Date of Decision:

10-12-2010

Citation:

UM 7706-10

Court Name:

Migration Court of Appeal

Keywords:

Responsibility for examining application

Dublin Transfer

Humanitarian considerations

Non-refoulement

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 II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [3] > [Article 3](#) [4]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 18](#) [6]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [3] > [Article 5](#) [7]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [3] > [Article 6](#) [8]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [3] > [Article 7](#) [9]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [3] > [Article 8](#) [10]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [3] > [Article 9](#) [11]

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Headnote:

A transfer to Greece within the framework of the Dublin Regulation was stopped due to the conditions for asylum seekers in the country.

Facts:

The applicants (a mother and two children) applied for asylum in Sweden in Jan/Feb 2010. The family was found to have entered Greece illegally. The Migration Board decided to transfer the applicants to Greece according to the Dublin regulation (Dublin II) in May 2010. Greece did not protest. The decision was appealed to the Malmö Migration Court which on 31 August 2010 reversed the decision and remitted it to the Migration Board for the asylum applications to be examined. The Migration Court based its decision on the unacceptable conditions for asylum seekers in Greece and stated that Sweden should assume responsibility according to Art 3.2 of the Dublin II Regulation. The Migration Board appealed the decision to the Migration Court of Appeal in order to clarify applicable law. The Migration Court of Appeal stopped the execution of the transfer until its judgment had been delivered.

Decision & Reasoning:

The judgment begins with an account of the conditions for asylum seekers in Greece, including references to investigations by the Migration Board, international reports and pending cases in the ECJ and the ECtHR. The Migration Court of Appeal then stated, referring to its previous case law, that although it is important that the Dublin II Regulation is implemented, there are no formal obstacles against Sweden assuming responsibility for the examination of a particular application for asylum. What matters is if there are reasons presented in the individual case for Sweden not to apply the Dublin II Regulation.

In its discussion of whether these conditions apply to this particular case, the Court referred to international law on *non-refoulement* as well as its own previous case law on Dublin II and Greece (MIG 2008:42). At the time of the decision in the aforementioned case, the Migration Court of Appeal did not find a transfer of an asylum seeker to Greece according to the Dublin regulation to be a violation of Art 3 of the ECHR.

At this point, however, the Court found that the conditions for asylum seekers in Greece had become unacceptable and that there was a real risk of their asylum applications not being examined according to the principles of rule of law. The Court therefore concluded that a transfer of asylum seekers to Greece at this time would constitute a violation both of Swedish law and of Art 3 of the ECHR. The Court concluded that even though the situation in Greece was mainly a

question for the EU instead of national courts, and though there were cases pending on the matter in both the ECJ and the ECtHR, it would not be reasonable to put the examination of individual applications for asylum on hold until the matter had been settled in higher instances. Drawing on Art 3.2 of the Dublin regulation, the Court stated that Sweden should assume responsibility for these particular applications for asylum.

Outcome:

Appeal denied.

Other sources cited:

UN Office of the High Commissioner for Human Rights, UN Special Rapporteur on Torture presents preliminary findings on his Mission to Greece, 20 October 2010

M.S.S. v. Belgium and Greece (Grand Chamber judgment pending at the time of decision)

National / Other Legislative Provisions:

[ICCPR](#) [17]

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[UNCAT](#) [19]

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[Sweden - Utlänningslagen \(Aliens Act\) \(2005:716\) - Chapter 1 Section 9](#) [22]

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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/19>

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[24] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1939>