

Switzerland: Federal Administrative Court (BVG), 12.06.2019, BVGE 3078/2019

Country of Decision:

Switzerland

Country of Applicant:

Syria

Date of Decision:

12-06-2019

Citation:

BVGE 3078/2019

Court Name:

Federal Administrative Court (BVG)

Keywords:

Dublin Transfer

Inhuman or degrading treatment or punishment

Non-refoulement

Torture

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1]

International Law > UN Convention against Torture > Art. 3

International Law > UN Convention against Torture

International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3]

Council of Europe Instruments

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [4]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 3](#) [6]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [7]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5] > [Article 4](#) [8]

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

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

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

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [12] > [Article 3](#) [13]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [12] > [Article 5](#) [14]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [12] > [Article 7](#) [15]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [12] > [Article 8](#) [16]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [12] > [Article 15](#) [17]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [12] > [Article 17](#) [18]

Headnote:

The State Secretariat for Migration (SEM) must carry out an individualised examination to determine whether there are substantial grounds for believing that the asylum procedure of the Member State where the applicant shall be transferred to has systemic weaknesses that would entail a risk of inhuman treatment or chain deportation.

Facts:

The complainant is a Syrian national who travelled via the Balkan route to Italy and from there to Switzerland, where he applied for asylum.

According to the EURODAC database, the complainant had been registered in Croatia, but had not submitted an asylum application there.

The SEM requested the Croatian Dublin Unit to take charge of the complainant in accordance with Art. 13 para. 1 Dublin III Regulation. During the legal hearing on the responsibility of Croatia for conducting the asylum procedure, the complainant stated that he would not go back to Croatia due to his experiences in Croatia. He asserted that he had tried to enter Croatia 18 times and that each time he was taken back to the Bosnian-Herzegovinian border. The Croatian police tortured and humiliated him, they fingerprinted the applicant under duress and had also injured his leg. As evidence, he submitted a photograph of his injured leg. The complainant alleged that he was not in a fit state to return to Croatia and that he had also injured himself. To prove this, the complainant's representative submitted media reports and a short medical report. Later, the legal representative of the complainant informed the SEM that the latter had visited the hospital due to suicidal risks.

As the Croatian Dublin Unit agreed to the transfer of the complainant, the SEM ordered his transfer to Croatia. In its order, the SEM stated that Croatia is a signatory state to the European Convention of Human Rights (ECHR) and that it complies with all obligations under international law. Furthermore, the SEM argued that Croatia continues to have adequate medical care and that the transfer arrangements will take the complainant's state of health into account.

The complainant lodged an appeal against the transfer order and requested that the case be referred back to the lower court for re-evaluation.

Decision & Reasoning:

The Federal Administrative Court (BVG) annuls the decision and refers the matter back to the lower instance for re-evaluation.

The BVG had to examine, in light of Art. 3 para. 2 Dublin III Regulation, whether there were substantial grounds to believe that the asylum procedure and conditions for asylum applicants in Croatia had systemic weaknesses that would entail a risk of inhuman treatment within the meaning of Art. 4 of the European Charter of Fundamental Rights.

The BVG argues that there is a presumption that the states participating in the Common European Asylum System respect human rights. However, this presumption could be rebutted. If there is reason to believe that the person concerned will be subjected to inhuman treatment in the event of a transfer, he or she may not be transferred.

The BVG first sets out that there is an increasing number of reports from national and international organisations stating that the Croatian authorities are refusing asylum seekers access to an asylum application centre and are returning them to the Bosnian-Herzegovinian border. However, the BVG is refraining from examining whether there are serious and systemic deficiencies for asylum seekers in Croatia. The BVG argues that the SEM had not sufficiently addressed the individual situation of the complainant and the situation in Croatia.

The SEM should have investigated ex officio whether the complainant might be at risk of being subject to treatment prohibited by Art. 3 ECHR, so that there might have been compelling reasons for activating the discretionary clause under Art. 17 para. 1 Dublin III Regulation. On the basis of the complainant's submissions and the country situation, the SEM should have examined in the present case whether the transfer to Croatia could result in chain deportation and thus violate the principle of non-refoulement. The SEM also failed to sufficiently address the medical situation of the complainant and did not examine whether he could face medical hardship if transferred to Croatia.

Outcome:

The appeal is granted.

Observations/Comments:

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

Attachment(s):

 [E-3078_2019 - Croatia borders.pdf](#)[19]

Other sources cited:

Special Rapporteur of the Committee on Migration, Refugees and Displaced Persons, Tineke Strik ?Pushback policies and practice in Council of Europe member States?, Doc. 14909, 8 June 2019

Communication from the Parliamentary Assembly of the Council of Europe, Member States must halt 'pushback' policies and expulsion of migrants, 31 May 2019

Jean-Pierre Monnet, 'La Jurisprudence du Tribunal administratif fédéral en matière de transferts Dublin', in: Breitenmoser et al [Ed.], Schengen and Dublin in practice - Current issues, 2015

Organisation Are you Syrious, AYS Special: EU Border Violence ?Combi is like hell? 4. October 2018

National / Other Legislative Provisions:

[Switzerland - AsylG \(Asylum Act\) - Art. 6](#) [20]

[Switzerland - AsylG \(Asylum Act\) - Art. 31a\(1\)\(b\)](#) [21]

[Switzerland - AsylG \(Asylum Act\) - Art. 102](#) [22]

[Switzerland - AsylG \(Asylum Act\) - Art. 106\(1\)](#) [23]

[Switzerland - AsylG \(Asylum Act\) - Art. 105](#) [24]

[Switzerland - AsylG \(Asylum Act\) - Art. 109\(3\)](#) [25]

[Switzerland - AsylG \(Asylum Act\) - Art. 111a para. 1](#) [26]

[Switzerland - Asylum Ordinance 1 of 11 August 1999 \(AsylV 1\) - Art.29a para.3](#) [27]

[Switzerland - Federal Supreme Court Act \(BGG\)](#) [28]

[Art. 83 D no.1](#) [29]

[Switzerland - Federal Constitution \(BV\)](#) [30]

[Art. 29 para. 2](#) [31]

[Switzerland - Administrative Court Act \(VGG\) - Art. 31](#) [32]

[Switzerland - Administrative Court Act \(VGG\) - Art. 32](#) [33]

[Administrative Court Act \(VGG\) - Art. 33](#) [34]

[Administrative Court Act \(VGG\) - Art. 37](#) [35]

[Switzerland - Administrative Procedure Act \(VwVG\) - Art. 5](#) [36]

[Switzerland - Administrative Procedure Act \(VwVG\) - Art. 12](#) [37]

[Switzerland - Administrative Procedure Act \(VwVG\) - Art. 29](#) [38]

[Switzerland - Administrative Procedure Act \(VwVG\) - Art. 48 Abs.1](#) [39]

[Switzerland - Administrative Procedure Act \(VwVG\) - Art. 54 para. 1](#) [40]

[Switzerland - Administrative Procedure Act \(VwVG\) - Art. 61 para. 1](#) [41]

[Switzerland - Administrative Procedure Act \(VwVG\) - Art. 63 para. 1 and 2](#) [42]

[Switzerland - Administrative Procedure Act \(VwVG\) - Art. 64](#) [43]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>

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

[4] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

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

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

[7] <https://www.asylumlawdatabase.eu/node/19>

[8] https://www.asylumlawdatabase.eu/node/453#toc_29

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

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

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

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

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

[14] https://www.asylumlawdatabase.eu/node/4037#toc_104

- [15] https://www.asylumlawdatabase.eu/node/4037#toc_130
- [16] https://www.asylumlawdatabase.eu/node/4037#toc_135
- [17] https://www.asylumlawdatabase.eu/node/4037#toc_174
- [18] https://www.asylumlawdatabase.eu/node/4037#toc_185
- [19] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/E-3078_2019%20-%20Croatia%20borders.pdf
- [20] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-asylg-asylum-act-art-6>
- [21] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-asylg-asylum-act-art-31a1b>
- [22] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-asylg-asylum-act-art-102>
- [23] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-asylg-asylum-act-art-1061>
- [24] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-asylg-asylum-act-art-105>
- [25] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-asylg-asylum-act-art-1093>
- [26] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-asylg-asylum-act-art-111a-para-1>
- [27] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-asylum-ordinance-1-11-august-1999-asylv-1-art29a-para3>
- [28] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-federal-supreme-court-act-bgg>
- [29] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/art-83-d-no1>
- [30] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-federal-constitution-bv>
- [31] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/art-29-para-2>
- [32] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-court-act-vgg-art-31>
- [33] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-court-act-vgg-art-32>
- [34] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/administrative-court-act-vgg-art-33>
- [35] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/administrative-court-act-vgg-art-37>
- [36] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-procedure-act-vwvg-art-5>
- [37] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-procedure-act-vwvg-art-12>
- [38] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-procedure-act-vwvg-art-29>
- [39] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-procedure-act-vwvg-art-48-abs1>
- [40] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-procedure-act-vwvg-art-54-para-1>
- [41] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-procedure-act-vwvg-art-61-para-1>
- [42] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland-administrative-procedure-act-vwvg-art-63-para-1-and-2>
- [43] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/switzerland->

