

CJEU - C-578/16 PPU, C.K. and others

Country of Applicant:

Egypt

Syria

Date of Decision:

16-02-2017

Citation:

Case C-578/16 PPU

Court Name:

Court of Justice of the European Union (Fifth Chamber)

Keywords:[Accommodation centre](#) [1][Dublin Transfer](#) [2][Individual assessment](#) [3][Medical Reports/Medico-legal Reports](#) [4][Request that charge be taken](#) [5][Health \(right to\)](#) [6][Reception conditions](#) [7][Vulnerable person](#) [8]

Relevant Legislative Provisions:

International Law

International Law > [1951 Refugee Convention](#) [9]International Law > [1951 Refugee Convention](#) [9] > [Art 33](#) [10]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11]

Council of Europe Instruments

European Union Law > Treaty on the Functioning of the European Union 2010/C 83/01 > Article 267 § 1 (b)

European Union Law > Treaty on the Functioning of the European Union 2010/C 83/01 > Article 267 § 2

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 3](#) [12]

European Union Law > Treaty on the Functioning of the European Union 2010/C 83/01 > Article 78

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [13] > [Article 1](#) [14]

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European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [17] > [Recital \(4\)](#) [18]

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European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [17] > [Recital \(32\)](#) [21]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [17] > [Recital \(34\)](#) [22]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [17] > [Article 3](#) [23]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [13] > [Article 51](#) [24]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [13] > [Article 52](#) [25]

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

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [17] > [Article 17](#) [27]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [28] > [Article 17](#) [29]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [28] > [Article 18](#) [30]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [28] > [Article 19](#) [31]

Headnote:

Even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible, a Dublin transfer can only be carried out in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment within the meaning of Article 4 CFR EU.

If there is a real and proven risk that the state of health of an applicant who suffers from a serious mental or physical illness would significantly and permanently deteriorate, that transfer would constitute a violation of Article 4 CFR EU.

It is for the courts and authorities of the requesting Member State to eliminate any serious doubts concerning the impact of the transfer on the health of the person concerned by taking all necessary precaution. If the taking of precautions is not sufficient, it is for the authorities of the Member State concerned to suspend the execution of the transfer for as long as the applicant's conditions render him unfit for transfer.

Member States may choose to conduct its own examination of that person's application by making use of the 'discretionary clause' laid down in Article 17(1) DRIII, but is not required to do so.

Facts:

On 16 August 2015, C.K. (a Syrian national) and H.F. (an Egyptian national) entered the territory of the EU by means of a visa validly issued by Croatia. After a short stay in that country, they crossed the Slovenian border and were admitted to the reception centre for asylum seekers in Ljubljana. Both C.K., who was pregnant at the time of entry into Slovenia, and H.F. submitted an asylum application in Slovenia. A take-charge request was sent and accepted by Croatia, on the understanding that the country was responsible for examining the asylum application pursuant to Article 12(2) DRIII.

On 2 March 2016, the Administrative Court of Slovenia annulled the transfer decision and referred the case back for re-examination by instructing the competent authorities to obtain an assurance from Croatia that the applicants, including their child, would have access to adequate medical care in that Member State. After receiving such assurances from the Croatian authorities, the Slovenian Ministry of Interior adopted a new transfer decision.

On a further appeal before the Administrative Court, the applicants claimed that the transfer would have negative consequences for the state of health of C.K. and her child. As attested by a specialist psychiatrist, C.K. suffered psychiatric difficulties since giving birth and had post-natal depression and periodic suicidal tendencies, mainly caused by uncertainty regarding her status. The Administrative Court annulled the transfer decision, which was further contested by the Ministry of Interior before the Supreme Court of Slovenia.

The Supreme Court of Slovenia upheld the transfer decision. It relied upon information indicating that the system for the reception of asylum seekers in Croatia was good, that there was an accommodation centre designed specifically for vulnerable persons, and that there were no substantial grounds for believing that there were systemic flaws in the asylum system and reception conditions in Croatia.

The applicants lodged a constitutional appeal before the Constitutional Court of Slovenia, which ruled, *inter alia*, that the existence of systemic flaws was not the only ground that could be invoked by the applicants to show that their transfer would expose them to a real risk of inhuman or degrading treatment. On the contrary, the competent authorities had the obligation to examine all circumstances of significance for observing the principle of non-refoulement, including the state of health of the person concerned and the impacts of the transfer itself. The Constitutional Court referred the case back to the Supreme Court for a new decision. In turn, the Supreme Court decided to stay the proceedings and to refer questions for a preliminary ruling by the CJEU. The questions can be summarised as follows:

- Is the application of the 'discretionary clause' under Article 17(1) DRIII governed solely by national law and the interpretation by Member States' constitutional courts or is it a matter of interpretation of EU law?

- Must Article 4 CFR EU be interpreted as meaning that, in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of

that article?

- If so, are Member States required to apply the 'discretionary clause' laid down in Article 17(1) DR III and itself examine the asylum application at issue?

Decision & Reasoning:

The CJEU accepted the request of the referring court that the request for preliminary ruling was dealt with under the urgent preliminary ruling procedure. It based its decision on the fact that the possibility that the appellants in the main proceedings may be transferred to Croatia before the end of an ordinary preliminary ruling procedure could not be ruled out.

With regard to the first question, the CJEU relied largely on its decision in [C-411/10 and C-493/10 N. S. and Others](#) [32] and concluded that the application of the 'discretionary clause' under Article 17(1) is not governed solely by national law and by the interpretation given to it by national constitutional courts, but is a question of interpretation of EU law, within the meaning of Article 267 TFEU.

As regards the remaining questions, the CJEU reiterated that the Dublin III Regulation must be interpreted and applied in a manner consistent with the fundamental rights guaranteed by the CFR EU, with Article 4 CFR EU being of particular importance. It also recalled that the DR III had been adopted with the intention not only to enhance the effectiveness of the Dublin system, but also to increase the protection granted to asylum seekers under that system. Therefore, a Dublin transfer can take place only in conditions which preclude that transfer from resulting in a real risk of the person concerned suffering inhuman or degrading treatment. From that outset, the CJEU rules, it is not possible to exclude that one's serious state of health may result in such a risk.

The CJEU turns to the jurisprudence of the European Court of Human Rights, namely the decision in [Paposhvili v. Belgium](#) [33], which must be taken into account when interpreting Article 4 CFR EU. It follows from *Paposhvili* that the suffering which flows from a naturally occurring illness, whether physical or mental, may be covered by Article 3 ECHR if it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible, provided that the resulting suffering attains the minimum level of severity required by that article.

Therefore, it cannot be ruled out that the transfer of an asylum seeker whose state of health is particularly serious may, in itself, result in a real risk of inhuman or degrading treatment within the meaning of Article 4 CFR EU, irrespective of the quality of the reception and the care available in the Member State responsible for examining the application. If an asylum seeker provides objective evidence, such as medical certificates, showing the particular seriousness of his state of health and the possible consequences to which the transfer might lead, the authorities of the requesting Member State cannot ignore that evidence and are under an obligation to assess the risk that such consequences could occur. It is, therefore, for national authorities of the requesting Member State to eliminate all serious doubts concerning the impact of the transfer on the state of health (psychical or psychological) of the person concerned.

However, relying on ECtHR jurisprudence ([Karim v. Sweden](#) [34], [Kochieva and Others v. Sweden](#) [35]), the CJEU affirmed that states are not obliged to refrain from proceeding with the removal or expulsion of a person, as long as the person is fit for travel and necessary appropriate measures, adapted to the person's state of health, are taken in that regard. Similarly, the fact that a person whose expulsion has been ordered has threatened to commit suicide does not require a State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to

prevent those threats from being realised ([Dragan and Others v. Germany](#) [36]).

Consequently, it follows that a Member State carrying out a Dublin transfer must be able to organise it in such a way that the asylum seeker concerned is accompanied, during transportation, by adequate medical staff with the necessary equipment, resources and medication, so as to prevent any worsening of his health or any act of violence by him towards himself or other persons. Member States must also be able to ensure that care is immediately received upon arrival. It is only where precautions cannot be taken or are not sufficient to ensure that the transfer will result in a real risk of a significant and permanent worsening of the applicant's state of health that the execution of the transfer shall be suspended.

In light of the above, the CJEU rejected the European Commission's argument that only the existence of systemic flaws in the Member State responsible is capable of affecting the obligation to transfer an asylum seeker to that Member State.

Finally, the CJEU concludes that Member States may choose, but are not obliged, to make use of the 'discretionary clause' (Article 17(1) DR III) in those cases.

Outcome:

On those grounds, the Court (Fifth Chamber) ruled:

1. Article 17(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU.

2. Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:

? even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Regulation No 604/2013 can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;

? in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;

? it is for the authorities of the Member State having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk of a significant and permanent worsening of his state of health, it is for the

authorities of the Member States concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer; and

? where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting Member State may choose to conduct its own examination of that person's application by making use of the 'discretionary clause' laid down in Article 17(1) of Regulation No 604/2013.

Article 17(1) of Regulation No 604/2013, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that Member State to apply that clause.

Observations/Comments:

The CJEU decision was not in line with the [Opinion](#) [37] of Advocate General Tanchev, who had, *inter alia*, advanced that the existence of 'systemic flaws' should be regarded as the only hypothesis in which a Dublin transfer should be considered impossible.

Relevant articles:

E. Neraudau, « Les obligations de l'État requérant avant transfert Dublin d'un demandeur d'asile gravement malade (absence de défaillances systémiques) : un écho à la jurisprudence de la Cour eur. D.H. », Newsletter EDEM, février 2017, available [here](#) [38].

C. Rizcallah, 'The Dublin system: the ECJ Squares the Circle Between Mutual Trust and Human Rights Protection?', EU Law Analysis blog, available [here](#) [39].

Case Law Cited:

CJEU - C-255/13 I

CJEU - C-404/15 and C-659/15 PPU, Aranyosi and Căldăraru

ECtHR Paposhvili v Belgium, Application no 41738/10

[CJEU - C-63/15, Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie](#) [40]

ECtHR - Kochieva and Others v. Sweden (dec.), no. 75203/12

ECtHR- Fazlul Karim v. Sweden, Application no. 24171/05

[CJEU - C-528/11, Zuheyr Frayeh Halaf v Darzhavna agentsia za bezhantsite pri Ministerskia savet](#) [41]

[CJEU - C-394/12, Shamso Abdullahi v Bundesasylamt](#) [42]

ECtHR - Dragan & others v Germany (2004) Application no. 33743/03)

CJEU - C-411/10 and C-493/10 N.S. v Secretary of State for the Home Department and ME (UP)

Attachment(s):



Authentic Language:

English

Country of preliminary reference:

Slovenia

National / Other Legislative Provisions:

Dublin Implementing Regulation - Article 8

Dublin Implementing Regulation - Article 9

Dublin Implementing Regulation - Annex VI

Dublin Implementing Regulation - Annex IX

Links:

- [1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2479
- [2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1213
- [3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A40
- [4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A47
- [5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1211
- [6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2491
- [7] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A753
- [8] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2495
- [9] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [10] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>
- [11] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [12] https://www.asylumlawdatabase.eu/node/195#toc_12
- [13] <https://www.asylumlawdatabase.eu/node/453>
- [14] https://www.asylumlawdatabase.eu/node/453#toc_14
- [15] https://www.asylumlawdatabase.eu/node/453#toc_29
- [16] https://www.asylumlawdatabase.eu/node/453#toc_88
- [17] <https://www.asylumlawdatabase.eu/node/4037>
- [18] https://www.asylumlawdatabase.eu/node/4037#toc_14
- [19] https://www.asylumlawdatabase.eu/node/4037#toc_15
- [20] https://www.asylumlawdatabase.eu/node/4037#toc_19
- [21] https://www.asylumlawdatabase.eu/node/4037#toc_42
- [22] https://www.asylumlawdatabase.eu/node/4037#toc_44
- [23] https://www.asylumlawdatabase.eu/node/4037#toc_85
- [24] https://www.asylumlawdatabase.eu/node/453#toc_217
- [25] https://www.asylumlawdatabase.eu/node/453#toc_221
- [26] https://www.asylumlawdatabase.eu/node/4037#toc_154
- [27] https://www.asylumlawdatabase.eu/node/4037#toc_185
- [28] <https://www.asylumlawdatabase.eu/node/353>
- [29] https://www.asylumlawdatabase.eu/node/353#toc_326
- [30] https://www.asylumlawdatabase.eu/node/353#toc_334
- [31] https://www.asylumlawdatabase.eu/node/353#toc_342
- [32] <http://www.asylumlawdatabase.eu/en/content/cjeu-c-411-10-and-c-493-10-joined-cases-ns-v-united-kingdom-and-me-v-ireland>
- [33] <http://www.asylumlawdatabase.eu/en/content/paposhvili-v-belgium-no-4173810-gc-articles-3->

and-8-13-december-2016

[34] <http://hudoc.echr.coe.int/eng?i=001-76778>

[35] <http://hudoc.echr.coe.int/eng?i=001-119824>

[36] <http://hudoc.echr.coe.int/eng?i=001-67182>

[37] <http://www.asylumlawdatabase.eu/en/content/cjeu-ag-opinion-case-c-57816-ppu-ck-and-others-v-supreme-court-republic-slovenia>

[38] <https://uclouvain.be/fr/instituts-recherche/juri/cedie/actualites/c-j-u-e-16-fevrier-2017-c-k-h-f-a-s-c-slovenie-c-578-16-ppu.html>

[39] <http://eulawanalysis.blogspot.be/2017/02/the-dublin-system-ecj-squares-circle.html>

[40] <https://www.asylumlawdatabase.eu/en/content/cjeu-c%E2%80%99916315-mehrdad-ghezelbash-v-staatssecretaris-van-veiligheid-en-justitie>

[41] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-52811-zuheyr-frayeh-halaf-v-darzhavna-agentsia-za-bezhantsite-pri-ministerskia-savet>

[42] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-39412-shamso-abdullahi-v-bundesasylamt>

[43] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CJEU%20-%20CK%20and%20others.pdf>