

CJEU - C-695/15, Shiraz Baig Mirza v Bevándorlási és Állampolgársági Hivatal

Country of Applicant:

Pakistan

Date of Decision:

17-03-2016

Citation:

Case C-695/15

Court Name:

Court of Justice of the European Union, PPU

Keywords:[Dublin Transfer](#) [1][Effective access to procedures](#) [2][Effective remedy \(right to\)](#) [3][Detention](#) [4][Request to take back](#) [5][Safe third country](#) [6]**Relevant Legislative Provisions:**

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 3](#) [8]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 7](#) [9]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 12](#) [10]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 18](#) [11]

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

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 27](#) [13]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [14] > [Article 28](#) [15]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [14] > [Article 33](#) [16]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [14] > [Article 38](#) [17]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [14] > [Article 39](#) [18]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [14] > [Article 46](#) [19]

Headnote:

An asylum applicant can be sent to a Safe Third Country by a Member State who has admitted responsibility under Dublin III in the context of a take back request, where the applicant has left the responsible Member State before a decision on the first asylum application has been taken on its merits.

The absence of information being provided to the sending Member State by the receiving Member State on the latter's legislation and practice regarding STC does not prevent an asylum applicant being sent to a STC or breach an applicant's right to an effective remedy

Where an applicant has been taken back by a responsible Member State there is no obligation on the State to re-open the examination of the application at the exact point where it was left.

Facts:

The facts of the case pertain to a national from Pakistan who having passed through Serbia applied for asylum in Hungary. He later left to the Czech Republic where a 'take back' request pursuant to Article 18(1)(c) of the Dublin Regulation III was made by the Czech authorities and accepted by Hungary. Upon return to Hungary the applicant lodged a second asylum application and the applicant was placed in detention. The second application was rejected as inadmissible on the grounds that Serbia was a Safe Third Country, deemed to be so by national decree. As the applicant had previously transited through Serbia prior to his arrival in Hungary such national provisions were applicable to the applicant. An appeal was later lodged against the decision by the applicant to the Debrecen Court, which subsequently decided to stay proceedings and refer the following questions to the CJEU under the urgent preliminary reference procedure:

?Should Article 3(3) of [the Dublin III Regulation] be interpreted as meaning that

a) Member States may exercise the right to send an applicant to a safe third country only before determining the Member State responsible or that they may also exercise that right after making that determination?

b) Is the answer to the preceding question different if the Member State establishes that it is the State responsible not at the time when the application is first lodged with its authorities in accordance with Article 7(2) of the Dublin III Regulation and Chapter III of that regulation but when it receives the applicant from another Member State following a transfer or take back request pursuant to Chapters V and VI of the Dublin III Regulation?

2) If, on the basis of the interpretation given by the Court in response to the first question, the right to send an applicant to a safe third country may also be exercised after a transfer carried out pursuant to the Dublin procedure:

Can Article 3(3) of the Dublin III Regulation be interpreted as meaning that Member States may

also exercise that right if, in the course of the Dublin procedure, the Member State carrying out the transfer has not been informed of the precise national rules governing the exercise of that right or of the practice applied by the national authorities?

3) Can Article 18(2) of the Dublin III Regulation be interpreted as meaning that, in the case of an applicant who has been taken back pursuant to Article 18[(1)](c) of that regulation, the procedure must be continued at the stage where it was discontinued during the preceding procedure??

Decision & Reasoning:

The Court first acceded to the demand of urgency prescribed by Article 107 of the Rules of Procedure of the Court on account that the Dublin III Regulation raises questions in the area of Title V of the TFEU. Moreover, the criterion of urgency has been met given that the applicant is currently deprived of his liberty, continuance of which depends on the finding of the domestic court in relation to the legality of refusing his application for protection.

1. The affirmation of responsibility of a Member State under Dublin and the application of Article 3(3) DR III.

The Court first outlines that Dublin III does not contain any temporal limit preventing an asylum applicant from being sent to a Safe Third Country (STC). In other words, Dublin III does not provide any rules on when an asylum applicant can be sent to a STC, whether it is before or after the determination of the responsible Member State. The Court further finds that, on the basis of Article 3(3), the concept of a STC can be applied by all Member States, whether they are responsible under Chapter III of the Dublin Regulation or not.

The Court refers specifically to Article 33 of the recast asylum procedures directive with regards to the question of whether a MS can send an asylum applicant to a STC after the MS has accepted responsibility under Dublin. The Court finds that Article 33 does not restrict the scope of Article 3(3) of Dublin III, which solely aims to lessen the obligations of responsible MS through its definition of inadmissible applications. Indeed, the phrasing of Article 33(1) of the recast asylum procedures Directive adds to the cases foreseen by the Dublin Regulation, such as the transfer of the asylum applicant to the responsible Member State provided by Article 26(1) where the request for international protection is not examined. Consequently, the Court finds that the fact that a MS has accepted responsibility under Dublin III does not prevent said MS from later sending the applicant to a STC. This conclusion is not further called into question by Article 18(2) line 2 of the DR III which only requires MS to complete the examination of the application and does not affect the right to send an applicant to a STC. Article 18 does, therefore, not restrict the scope of Article 3(3) of DR III with regards to a MS who in the context of a 'take back' procedure admits responsibility for an asylum applicant who had left said MS before a decision had been taken on the merits of the first application. Any other reading of Article 18(2) would create an exception to Article 3(3) and effectively create a more favourable regime for those who had left to another MS compared to those who had stayed in the MS responsible for the entire duration of the procedure.

2. The inapplicability of Article 3(3) according to the knowledge and information presented to the sending MS of the legislation and practices of the receiving MS

The Court refers to the context of this question, notably domestic legislation which codifies a presumption of inadmissibility on applications for international protection where the applicants had arrived on Hungarian territory via Serbia and had not introduced an application for asylum in Serbia. The Court goes on to underline that in the context of a take back procedure the Dublin III

Regulation does not require the responsible MS to inform the sending MS of its national legislation or administrative practice relating to sending applicants to a STC. According to the court, national practice on STC does not affect the determination of the responsible MS under Dublin and the transfer of the applicant to said MS. This conclusion stands regardless of Article 38(5) of the recast procedures directive which requires MS to regularly inform the Commission of which third countries the STC concept is applied to. The Court advances that a lack of communication by the responsible MS to the sending MS regarding information on STC does not infringe the applicant's right to an effective remedy against the transfer and the decision on the application for asylum. The Court goes on to highlight several procedural safeguards that the applicant has at hand to contest the transfer decision, notably Article 27 of Dublin III and Article 46 of the recast asylum procedures Directive which allows an effective appeal against an inadmissibility decision on grounds of a STC determination.

3. Definition attributed to Article 18(2) of Dublin III

Whilst highlighting that Article 18(2) line 2 of the Regulation requires the responsible MS to complete the examination of an asylum application where the applicant has been taken back, the Court highlights that the article does not oblige the MS to resume the examination at a particular procedural stage. Article 18 (2) whilst requiring the MS to not view the application as a subsequent one does not prescribe the manner in which the procedure should be reopened nor does it deprive the MS of the possibility of declaring the application inadmissible. This finding is also in line with Article 28(2) of the recast Procedures Directive.

Outcome:

- 1. Article 3(3) of the Dublin Regulation III should be interpreted as meaning that an asylum applicant can be sent to a Safe Third Country by a MS who has admitted responsibility under Dublin III in the context of a take back request for an applicant who has left said MS before a decision on the first asylum application had been taken on its merits.**
- 2. Article 3(3) should be interpreted as meaning that it does not obstruct the sending of an asylum application to a STC where the sending MS was not informed during the take back procedure of the responsible MS legislation on the sending of applicants to STC or administrative practice in this area.**
- 3. Article 18(2) of the Dublin III Regulation should be interpreted as meaning that where an applicant has been taken back there is no obligation that the examination of the application should be reopened at the point where it was left.**

Observations/Comments:

The judgment neatly follows the argumentation presented by Advocate General Kokott and aligns itself with all of the AG's recommendations to the Court. The AG, however, does place greater importance than the Court on the dichotomy between a genuine asylum applicant who does not leave the territory of the responsible Member State to go elsewhere and the applicant who does not show good faith by leaving said State.

Case Law Cited:

CJEU - Case C-601/15 PPU, J. N. v Staatssecretaris van Veiligheid en Justitie

CJEU - C-237/15 Lanigan

Attachment(s):

[C 695_15 PPU Mirza.docx](#)[20]

Authentic Language:

Hungarian

Country of preliminary reference:

Hungary

National / Other Legislative Provisions:

Hungary - Act LXXX of 2007 on Asylum

Hungary - Act LXXX of 2007 on Asylum - Art 2

Hungary - Act LXXX of 2007 on Asylum - Art 45

Hungary - Act LXXX of 2007 on Asylum - Art 45(5)

Hungary - Act LXXX of 2007 on Asylum - Art 51

Hungary - Act LXXX of 2007 on Asylum - Art 53

Hungary - Governmental Decree 21 July 2015

Hungary - Governmental Decree 21 July 2015 - Art 3(2)

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1213

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A11

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2488

[6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A73

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

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

[9] https://www.asylumlawdatabase.eu/node/4037#toc_130

[10] https://www.asylumlawdatabase.eu/node/4037#toc_154

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

[12] https://www.asylumlawdatabase.eu/node/4037#toc_279

[13] https://www.asylumlawdatabase.eu/node/4037#toc_285

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

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

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