

CJEU - Case C 201/16, Shiri, 25 October 2017

Country of Applicant:

Iran

Date of Decision:

25-10-2017

Citation:

C-201/16

Court Name:

Court of Justice of the European Union, Grand Chamber

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

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [5] > [Article 8](#) [6]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Recital \(4\)](#) [8]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Recital \(5\)](#) [9]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Recital \(19\)](#) [10]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 3](#) [11]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 17](#) [12]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 18](#) [13]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 22](#) [14]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 25](#) [15]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [7] > [Article 27](#) [16]

Headnote:

When a Dublin transfer does not take place within the six-month time limit prescribed in the Dublin III Regulation, responsibility for examining the application for international protection is automatically shifted to the Member State that requested the Dublin transfer. Moreover, the Court extends the scope of the right to an effective remedy provided in the Dublin III Regulation, specifying that an applicant for international protection can challenge a Dublin transfer before a national court by invoking the expiry of the prescribed six-month time limit.

Facts:

Mr Shiri, an Iranian national, entered the territory of the European Union in Bulgaria, where he applied for international protection on February 2015. He then went to Austria where he applied for international protection again on March 2015. Austria decided that Bulgaria was the Member State responsible for his application and Bulgaria agreed to take him back. Mr. Shiri appealed that decision arguing that Austria had become the Member State responsible for his asylum application since the transfer was not carried out within the six-month period from the acceptance of that request, as required under the Dublin III Regulation in Article 29(1) and (2).

The referring court sought the CJEU's guidance on (1) whether the right to an effective remedy under Article 27(1) DRIII entitles an applicant for international protection to challenge a transfer decision claiming that the responsibility for examining his application has been transferred from a Member State to another due to the expiry of the six-month time limit; and (2) whether such transfer of responsibility under Article 29(2) DRIII follows automatically from the expiry of that deadline or if there are additional procedural conditions to be satisfied by the Member States.

Decision & Reasoning:

The Court first focuses on the second question. The CJEU found apparent from the wording of Article 29(2) DRIII that responsibility is automatically transferred to the requesting Member State after the expiry of the six-month period, without the need of any reaction from the part of the requested Member State. The Court argued that this interpretation is also consistent with the objectives of the Dublin III Regulation, particularly the rapid processing of applications for international protection.

With regard to the first question, concerning the scope of the right to an effective remedy laid down in Article 27(1) DRIII, the Court, in line with its ruling in *Mengesteab*, affirms that Article 27(1) DRIII must be interpreted as meaning that the observance of procedural safeguards laid down in that Regulation fall under the right to an effective remedy. Therefore, an applicant for international protection can rely, before a court or tribunal, on the expiry of the period laid down for his transfer to another Member State in order to challenge that transfer. That is true irrespective of whether that period expired before or after the transfer decision was adopted. The Member State that became responsible for the application following the expiry of the six-month period must take, on their own initiative, the necessary measures to acknowledge that responsibility and to initiate the examination of the application for international protection.

Outcome:

1. Article 29(2) 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, where the transfer does not take place within the six-month time limit as defined in Article 29(1) and (2) of that regulation, responsibility is transferred automatically to the requesting Member State, without it being necessary for the Member State responsible to refuse to take charge of or take back the person concerned.

2. Article 27(1) of Regulation No 604/2013, read in the light of recital 19 thereof, and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted. The right which national legislation such as that at issue in the main proceedings accords to such an applicant to plead circumstances subsequent to the adoption of that decision, in an action brought against it, meets that obligation to provide for an effective and rapid remedy.

Observations/Comments:

The findings were broadly in line with the Opinion of AG Sharpston. With regard to the first question, AG Sharpston stressed the enhanced protection to applicants under DRIII and put forward that time limits provide a degree of certainty for applicants, thus not being limited to a procedural matter. Therefore, as a safeguard against leaving applicants ?in orbit?, AG Sharpston is of the opinion that an applicant must in principle be able to challenge a Dublin transfer not carried out within the requested six month period. Regarding the second question, based on the wording and purposes of Article 29(1), the Advocate General argued that inserting additional conditions into the process of transferring responsibility would be incompatible with the aim of determining swiftly the MS responsible ? thus, the expiry of the six month period is sufficient of itself for the shifting of responsibility to take place.

Case Law Cited:

[CJEU - Case C-550/16 A and S, 12 April 2018](#) [18]

[CJEU - C?670/16, Tsegezab Mengesteab v Bundesrepublik Deutschland](#) [19]

Attachment(s):



[CJEU - Shiri.docx](#)[20]

Other sources cited:

Article 8 of Regulation (EC) No 1560/2003 of 2 September 2003 laying down rules for the application of Council Regulation (EC) No 343/2003

Article 83 of the Rules of Procedure of the Court of Justice

Authentic Language:

English

Country of preliminary reference:

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%3A2488
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- [18] <https://www.asylumlawdatabase.eu/en/content/cjeu-case-c-55016-and-s-12-april-2018>
- [19] <https://www.asylumlawdatabase.eu/en/content/cjeu-c%E2%80%919167016-tsegezab-mengesteab-v-bundesrepublik-deutschland>
- [20] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CJEU%20-%20Shiri.docx>