

France ? Rennes Administrative Tribunal, 5 January 2018, Application no. 1705747

Country of Decision:

France

Country of Applicant:

Sudan

Date of Decision:

05-01-2018

Citation:

Application no. 1705747

Court Name:

Rennes Administrative Tribunal

Keywords:

Dublin Transfer

Effective access to procedures

Inhuman or degrading treatment or punishment

Material reception conditions

Reception conditions

Request to take back

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 - Charter of Fundamental Rights of the European Union](#) [3] > [Article 4](#) [4]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 3](#) [6]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 17](#) [7]

Headnote:

There are systemic deficiencies in the Italian asylum procedure and in its reception conditions for asylum applicants which amount to inhuman or degrading treatment.

Facts:

The case concerns a national of Sudan who had received a decision by the Prefect that he would be sent back to Italy, the country responsible for his asylum application, under the Dublin Regulation. The applicant appeals this decision on grounds that he would be exposed to inhumane treatment in Italy, that his application for asylum would not be examined in the country in light of the memorandum of understanding between Italy and Sudan and that he would subsequently be removed to his country of origin in violation of Article 33 of the Geneva Convention.

Decision & Reasoning:

The Tribunal first states that Article 4 of the Charter of Fundamental Rights is to be interpreted as meaning that Member States may not transfer an applicant under the Dublin Regulation where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment.

Applying this to the facts of the case the Tribunal notes that Italy has registered, as of 1 September 2017, 100,000 asylum applications after the arrival of over 180,000 migrants to the country in 2016. Notwithstanding the immense pressure that this places on Italy, and other maritime frontier states, Italy cannot absolve itself from its obligations under Article 3 of the ECHR. The Tribunal notes the applicant's allegations as to the police brutality which he experienced in Italy resulting in his fingerprints being taken by force. These have been confirmed by international organisations, namely the Swiss NGO OSAR which highlights that reception centres are in fact detention centres for individuals up until their registration, that such detention lacks a legal basis in Italian law and that no assessment of vulnerabilities is undertaken by the Italian authorities.

The Tribunal lastly assesses the conditions that the applicant faced in Italy, namely in the Sicilian hotspot. Whilst the applicant's stay there was relatively short, the conditions which he was exposed to would have added to his previous conditions of life in Libya; feelings of arbitrariness, inferiority, anxiousness and a serious violation to his dignity, resulting in inhuman treatment at the moment of his arrival to Italy and the registering of his fingerprints. The Tribunal notes that the applicant's distress is accentuated by his inherent vulnerability as an asylum seeker which results from the traumatising experiences he has lived. The applicant has shown that the reception capacity in Italy is saturated to such a point that an effective processing of asylum applications cannot be guaranteed.

Concluding, the Tribunal underlines that there are systemic deficiencies in the Italian asylum procedure and in its reception conditions for asylum applicants which amount to inhuman or degrading treatment.

Outcome:

The transfer decision to Italy is annulled and the Prefecture is obliged to allow the applicant to register his application in France and provide an acknowledgment of his application three days from the dated judgment.

Observations/Comments:

This decision follows on from decisions given by other Administrative Tribunals preventing Dublin transfers to Italy, namely Pau, 26 January 2018, which prevented a Dublin transfer of a Sudanese national that had filed complaints (with 37 others) against Italian authorities for degrading treatment and had provided a medical certificate to the Prefecture to substantiate his claim; Melun, 6 November 2017 1708232 which prevented a Dublin transfer of a Sudanese national on grounds of chain refoulement if he were transferred back to Italy; Nantes, 8 January 2016, 1600051 and 12 February 2016, 1601004, which prevented transfers on grounds that the authorities had not undertaken an individualised assessment of the applicant's claims and that the reception conditions had greatly deteriorated in the country.

Attachment(s):



[Admin Tribunal Rennes 1705747.pdf](#)[8]

National / Other Legislative Provisions:

[France - Administrative Justice Code \(Article L.761-1\)](#) [9]

[France - Constitution 1958 - Art 53-1](#) [10]

Links:

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

[2] https://m.asylumlawdatabase.eu/node/195#toc_12

[3] <https://m.asylumlawdatabase.eu/node/453>

[4] https://m.asylumlawdatabase.eu/node/453#toc_29

[5] <https://m.asylumlawdatabase.eu/node/4037>

[6] https://m.asylumlawdatabase.eu/node/4037#toc_85

[7] https://m.asylumlawdatabase.eu/node/4037#toc_185

[8]

<https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/Admin%20Tribunal%20Rennes%20%201705747.pdf>

[9] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/france-administrative-justice-code-article-l761-1>

[10] <https://m.asylumlawdatabase.eu/en/taxonomy/term/7132>