

Netherlands - Council of State, Administrative Law section, 19 December 2018, 201808522/1/V3

Land van besluit:

Netherlands

Land van herkomst:

Eritrea

Datum van besluit:

19-12-2018

Zaaknummer:

201808522/1/V3

Andere aanduiding:

ECLI:NL:RVS:2018:4131

Court Name:

Council of State

Trefwoorden- primair:

Burden of proof
Dublin Transfer
Inadmissible application
Material reception conditions
Reception conditions
Standard of proof
Vulnerable person

Toepasselijke bepalingen van EU recht:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]

Council of Europe Instruments

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [3] > [Article 3](#) [4]

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

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [6] > [Article 17](#) [7]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [6] > [Article 21](#) [8]

Kop:

The Council of State concludes that the Legislative Decree 113/2018 (also referred to as ?Salvini Decree?) that reorganises the Italian reception facilities for asylum seekers does not affect the principle of mutual trust between EU member states underpinning the Dublin Regulation. The expected limits on access to adequate reception centres, specifically for vulnerable persons, does not amount to systemic flaws in the sense of Article 3 of the Dublin Regulation.

Feiten:

The applicant?s request for international protection (Vreemdelingenwet art. 28) was not taken into consideration by the State Secretary for Security and Justice who argued that, according to the Dublin Regulation, Italy was the member state responsible for examining the application.

The applicant?s appealed this refusal before the court of The Hague. She argued that, especially after the Legislative Decree 113/2018 (the so-called ?Salvini-decree?) entered into force on October 5th, she cannot be transferred to Italy because of systemic flaws in reception conditions for applicants (Dublin Regulation Article 3.2). Whereas previously vulnerable asylum seekers had access to SPRAR-centers (Sistema di protezione per richiedenti asilo e rifugiati), the Decree limits access to these centers to unaccompanied minors and beneficiaries of international protection. Asylum seekers will have access to first reception centres only, which are often overcrowded and where living conditions are bad. The applicant is vulnerable because of her psychological condition, which has been acknowledged by the State Secretary in the previous proceedings. The Court concluded that the State Secretary had not sufficiently motivated against the alleged systemic flaws and granted the appeal.

The State Secretary appeals this decision before the Council of State.

Besluit en motivering:

The Council of State refers to its conclusion in previous cases that Dublin transfers to Italy are not contrary to the principle of mutual trust between EU member states.

The Council argues that, although the Legislative Decree 113/2018 implies changes in the reception conditions for third country nationals, it will not completely exempt vulnerable claimants from reception facilities. The applicant, according to the Council, has not sufficiently proven that the Decree will lead to systemic flaws in reception conditions for applicants. The Court acknowledges the general shortcomings in the situation in Italy and the reception of asylum seekers, but concludes that the principle of mutual trust between EU member states still holds. In this respect, the Council considers it relevant that the State Secretary will, in respect of Article 32 of the Dublin Regulation, transmit to Italy information on the special needs of the applicant. It also points out that the lower numbers of third-country nationals arriving in 2018, as compared to previous years, make the risk of structural flaws in reception conditions less likely.

Uitkomst:

Appeal granted.

Subsequent Proceedings :

National remedies exhausted.

Observations/Comments:

The Council of State concluded that the expected negative effects on the reception conditions for vulnerable applicants for internationale protection of the so-called Salvini Decree (and the shortcomings already existing) do not prohibit Dublin transfers to Italy. To decide otherwise could have had a significant impact on the implementation of the Dublin Regulation and would have caused political controversy.

The Council places the burden of proof on the applicant: she has to make it sufficiently plausible that the Salvini Decree will cause a deterioration in the reception conditions in Italy such that applicants like her run the risk of inhuman and degrading treatment. Without thorough investigation, the Council accepts the State Secretary's argument that reception conditions still meet the standards.

Other sources cited:

Netherlands ? Council of State, Administrative Law Section, 10 August 2016, 201508456/1/V3, ECLI:NL:RVS:2016:2278

Netherlands ? Council of State, Administrative Law Section, 10 October 2018, 201806712/1/V3, ECLI:NL:RVS:2018:3246

Netherlands ? Council of State, Administrative Law Section, 11 October 2018, 201801988/1/V3, ECLI:NL:RVS:2018:3323

H and others v. Switzerland (application no. 67981/16) [inadmissibility decision], 15 May 2018

UNHCR, ?Italy weekly snapshot?, 31 December 2017

UNHCR, ?Italy weekly snapshot?, 2 December 2018

National / Other Legislative Provisions:

[Italy - Legislative Decree 113/2018](#) [9]

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/4037>

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

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

[6] <https://m.asylumlawdatabase.eu/node/353>

[7] https://m.asylumlawdatabase.eu/node/353#toc_326

[8] https://m.asylumlawdatabase.eu/node/353#toc_376

[9] <https://m.asylumlawdatabase.eu/nl/taxonomy/term/12129>