Court of Justice of the European Union
PRESS RELEASE No 33/19
Luxembourg, 19 March 2019

Press and Information

Judgments in Case C-163/17 Jawo
and in Joined Cases C-297/17, C-318/17 Ibrahim, C-319/17 Sharqawi and Others and C-438/17 Magamadov

An asylum seeker may be transferred to the Member State that is normally responsible for processing his application or that has previously granted him subsidiary protection unless the expected living conditions in that Member State of those granted international protection would expose him to a situation of extreme material poverty, contrary to the prohibition of inhuman or degrading treatment

Inadequacies in the social system of the Member State concerned do not warrant, in and of themselves, the conclusion that there is a risk of such treatment

The Jawo case primarily concerns the question whether the Charter of Fundamental Rights of the European Union ('the Charter') precludes the transfer of an applicant for international protection, pursuant to the Dublin III Regulation,[1] to the Member State normally responsible for processing his application, if he would be exposed to a substantial risk of suffering in that Member State inhuman or degrading treatment on account of the living conditions that he could be expected to encounter as a beneficiary of international protection (assuming that he is granted such protection).

Mr Abubacarr Jawo, of Gambian origin, lodged an initial application for asylum in Italy, which he had reached by sea. Continuing his journey, he submitted another application for asylum in Germany. The German authorities rejected that application as being inadmissible and ordered the removal of Mr Jawo to Italy. However, the attempt in June 2015 to transfer Mr Jawo to Italy failed because he was not present at the accommodation centre where he lived. Mr Jawo stated upon his return that he had visited a friend in another German city and that no-one had advised him that he needed to report his absence.

Before the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg, Germany), Mr Jawo claimed that Germany had become the Member State responsible due to the expiry of the time limit of 6 months laid down by the Dublin III Regulation for his transfer to the Member State normally responsible, that being Italy. As Mr Jawo had not absconded when the transfer was attempted, that time limit could not be extended to a maximum of eighteen months. In addition, he asserted that his transfer to Italy would be unlawful because there are systemic deficiencies in the asylum procedure, reception conditions for applicants and living conditions of beneficiaries of international protection in that Member State.

The Verwaltungsgerichtshof Baden-Württemberg asks the Court of Justice to interpret the Dublin III Regulation and the prohibition of inhuman or degrading treatment set out in the Charter. It refers to the Swiss Refugee Council's report of August 2016, which contains specific information supporting a conclusion that beneficiaries of international protection in Italy are exposed to a risk of becoming homeless and reduced to destitution in a life on the margins of society. According to that report, the inadequately developed Italian social system is, in respect of the Italian population, offset by support in family structures, which does not help beneficiaries of international protection. That report also states that there are shortcomings in the integration arrangements in Italy.

[1] 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 (OJ 2013 L 180, p. 3).

The Ibrahim and Others cases concern the option provided for in the 'Procedures Directive' [2] to reject applications for asylum as being inadmissible because of the prior granting of subsidiary protection in another Member State.

Stateless Palestinians that resided in Syria were granted subsidiary protection in Bulgaria and a Russian national who declares himself to be Chechen was granted such protection in Poland. As the further applications for asylum that they subsequently submitted in Germany were rejected, they brought actions before the German courts.

In the cases concerning the stateless Palestinians, the Bundesverwaltungsgericht (Federal Administrative Court, Germany) seeks, in particular, to ascertain whether the option of rejecting an application as inadmissible lapses where the living conditions of those granted subsidiary protection in the Member State that granted such protection must be regarded as inhuman or degrading treatment, or where those persons do not receive, in that Member State, any subsistence allowance, or where such an allowance as they receive is markedly inferior to that in other Member States, though they are not treated differently, in that regard, from the nationals of that Member State.

By today's judgments, the Court recalls that, in the context of the Common European Asylum System, which is based on the principle of mutual trust between the Member States, it must be presumed that a Member State's treatment of applicants for international protection and persons granted subsidiary protection complies with the requirements of the Charter, the Geneva Convention and the European Convention on Human Rights.

It is not however inconceivable that that system may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that applicants for international protection may be treated, in that Member State, in a manner incompatible with their fundamental rights, and in particular with the absolute prohibition of inhuman or degrading treatment.[3]

Accordingly, where the court hearing an action challenging a transfer decision or a decision rejecting a further application for international protection as being inadmissible has available to it evidence provided by the applicant for the purposes of establishing the existence of a risk of inhuman or degrading treatment in the other Member State, that court is required to assess whether there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people.

However, such **deficiencies are in breach of the prohibition of inhuman or degrading treatment only where they attain a particularly high level of severity**, which depends on all the circumstances of the case. **That threshold is attained where the indifference of the authorities of a Member State would result in a person wholly dependent on State support finding himself,** irrespective of his wishes and personal choices, **in a situation of extreme material poverty that does not allow him to meet his most basic needs, such as, inter alia, food, personal hygiene and a place to live, and that undermines his physical or mental health or puts him in a state of degradation incompatible with human dignity.**

A high degree of insecurity or a significant degradation of living conditions do not attain that threshold where they do not entail extreme material poverty placing that person in a situation of such gravity that it may be equated with inhuman or degrading treatment.

Furthermore, **the circumstance that those granted subsidiary protection do not receive, in the Member State which granted such protection to the applicant, any subsistence allowance, or where such an allowance as they receive is markedly inferior to that in other Member States, though they are not treated differently from nationals of that Member State, can lead to the finding that that applicant is exposed in that Member State to a real risk of**

---

[2] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

[3] Case: C-411/10 and C-493/10 N. S. and Others see also Press Release No 140/11.

suffering inhuman or degrading treatment only if the consequence is that the applicant would find himself, because of his particular vulnerability, irrespective of his wishes and personal choices, **in a situation of extreme material poverty.**

In any event, the mere fact that social protection and/or living conditions are more favourable in the Member State to which the further application for international protection was submitted than the Member State that is normally responsible or has already granted subsidiary protection is not capable of supporting the conclusion that the person concerned would be exposed, in the event of transfer to the latter Member State, to a real risk of inhuman or degrading treatment.

The Court concludes that EU law does not preclude the transfer of an applicant for international protection to the Member State responsible or the rejection of an application for the grant of refugee status as being inadmissible on the ground that the applicant has been previously granted subsidiary protection by another Member State, unless it is established that the applicant would, in that other Member State, be in a situation of extreme material poverty, irrespective of his wishes and personal choices.

In the *Ibrahim and Others* case, the Court adds that the fact that the Member State which granted subsidiary protection to an applicant for international protection systematically refuses, without real examination, to grant refugee status does not prevent the other Member States from rejecting a further application submitted to them by the person concerned as being inadmissible. In such circumstances, it is for the Member State that granted subsidiary protection to resume the procedure for the obtaining of refugee status. It is only if, following an individual assessment, it is found that an applicant for international protection does not satisfy the conditions for the grant of refugee status that he may, where appropriate, be granted subsidiary protection.

In the *Jawo* case, the Court also states that **an applicant 'absconds' where he deliberately evades the reach of the national authorities responsible for carrying out his transfer, in order to prevent the transfer. It may be presumed that that is the case where the transfer cannot be carried out due to the fact that the applicant has left the accommodation allocated to him without informing the competent national authorities of his absence, provided that he has been informed of his obligations in that regard**, which it is for the national court to determine. The applicant retains the possibility of demonstrating that the fact that he has not informed the authorities of his absence is due to valid reasons and not the intention to evade the reach of those authorities.

Moreover, in proceedings brought against a transfer decision in accordance with the Dublin III Regulation, **the applicant for international protection** concerned **may claim that, since he had not absconded, the six-month transfer time limit had expired and that, because of that expiry, the Member State that decided to transfer him has become responsible for examining his application.**

Finally, the Court notes that, in order to extend the transfer time limit up to a maximum of eighteen months, it suffices that the requesting Member State informs the Member State that is normally responsible, before the expiry of the six-month transfer time limit, that the person concerned has absconded and specifies, at the same time, a new transfer time limit.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The full text of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "Europe by Satellite" ☎ (+32) 2 2964106