



Press release

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No extension of Dublin transfer time limit for mere non-compliance with an order to appear

The mere fact that an asylum applicant does not comply with an order to appear at a specific time for a forced transfer to the EU Member State responsible for conducting the asylum procedure (*Selbstgestellung*) does not suffice to assume "absconding" within the meaning of the Dublin III Regulation with the result that an extension of the transfer time limit to 18 months cannot be justified. This was decided by the Federal Administrative Court (BVerwG, *Bundesverwaltungsgericht*) in Leipzig today.

After requesting protection in other EU Member States, the claimants, nationals of third countries, had filed asylum applications in Germany, which were rejected as inadmissible (section 29 (1) no. 1a of the Asylum Act (*AsylG*, *Asylgesetz*)) by the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, hereinafter Federal Office). The Foreigners Authority therefore - partly after unsuccessful transfer attempts - ordered them to appear at the police authority at a specific time for a transfer to the EU Member State responsible for conducting the asylum procedure. After they had not complied with this order, the Federal Office extended the transfer time limit to 18 months towards the Member State responsible, since they had "absconded" (article 29 (2) second sentence second half-sentence of the Dublin III Regulation). The lower instances have annulled the inadmissibility decisions of the Federal Office. The claimants had not absconded. Thus, the transfer time limit must not have been extended, which is why in the meantime, due to the expiry of the transfer time limit, the responsibility for conducting the asylum procedure had been transferred to the defendant.

The 1st Senate of the Federal Administrative Court confirmed the decisions of the lower instances. According to the case-law of the Court of Justice of the European Union (CJEU, hereinafter Court of Justice) a person seeking protection "absconds" within the meaning of the Dublin III Regulation, if he or she deliberately evades the reach of the national authorities responsible for carrying out the transfer, in order to prevent the transfer, and if this conduct is causal for the transfer in fact being (temporarily) objectively impossible (CJEU, judgment of 19 March 2019 - C-163/17 - Jawo). In examining whether an applicant has absconded at the relevant point in time for an authority's associated extension of the transfer time limit, the court must take all objectively existing reasons into consideration, even if the authority did not base its extension decision on them. By itself, a breach of obligations to cooperate, at least in the case of a forced transfer, does not generally justify the assumption of "absconding", as long as the applicant's residence is known to the competent authority and the authority is objectively able to perform a transfer - if applicable, by exercising direct force. Unwillingness to board a flight, stay at an open church asylum, or a single failure to encounter an applicant at an accommodation does generally not suffice for the establishment of "absconding". Irrespective of the nature of an order to appear within the Dublin transfer procedure and its legal basis within national law, non-compliance with this order does also not constitute "absconding" in the sense provided under EU law.

BVerwG 1 C 26.20 - judgment of 17 August 2021

BVerwG 1 C 38.20 - judgment of 17 August 2021

BVerwG 1 C 51.20 - judgment of 17 August 2021

BVerwG 1 C 55.20 - judgment of 17 August 2021

