



Press Release

St. Gallen, 12 January 2018

Judgment E-1998/2016 of 21 December 2017

Dublin III Regulation: Enhanced legal protection for asylum seekers

In a landmark ruling amending previous case-law, the Federal Administrative Court (FAC) has decided to recognise the general right of asylum seekers to challenge the incorrect application of responsibility criteria under the Dublin III Regulation. The FAC has therefore endorsed the appeal of an Iraqi family.

The Dublin III Regulation lays down 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. If the Swiss authorities deem another Member State responsible, then they will not carry out a substantive examination of the asylum application and will transfer the asylum seeker in question to the responsible Member State.

Asylum applications filed in two different countries

In this case, the FAC was asked to examine the merits of a decision rendered by the State Secretariat for Migration (SEM) to dismiss an asylum application filed by the appellants – a couple from Iraq with two children – on the grounds that they had also filed an asylum application in Germany previously. After receiving confirmation of acceptance from the German authorities, the SEM had concluded that it was Germany that was responsible for examining this family's asylum application. The family then lodged a complaint with the FAC on the grounds that the responsibility criteria set forth in the Dublin III Regulation had not been correctly applied; that it was actually Switzerland, and not Germany, that was responsible for examining their asylum application.

Complaint admissible or not?

In the case at hand, there was particular controversy over whether it was even possible to hear a complaint regarding the incorrect application of responsibility criteria or whether the responsibility criteria in question were purely an intergovernmental concern. In its previous practice, the FAC had generally drawn a distinction between directly applicable and indirectly applicable responsibility

criteria. While the incorrect application of directly applicable responsibility criteria could be challenged before the FAC, complaints related to indirectly applicable jurisdiction criteria were dismissed outright because according to case-law no individual legal positions of asylum seekers were affected.

Should the FAC now align itself with revised CJEU practice?

However, in recent judgments relating to the Dublin III Regulation, the Court of Justice of the European Union (CJEU) has stated that the right to an effective remedy covers an applicant's right to challenge transfer decisions as a general rule. The FAC therefore had to decide whether it should align its own practice with the more recent CJEU practice. Under established case-law, in order to ensure uniform application and interpretation of the Dublin III Regulation, departures from CJEU practice may only be made if there are strong grounds for doing so. The FAC concluded that no such grounds existed in this case. In modification of previous case law, the FAC therefore decided that asylum seekers have the general right to challenge decisions of the SEM for the incorrect application of the responsibility criteria of the Dublin III Regulation.

In the case of the Iraqi family, this change in practice led the FAC to approve the appeal because the SEM had missed the three-month deadline for submitting a take charge request to the German authorities. It had thus become the competent authority for the examination of the asylum requests of the appellants.

This judgment is final and may not be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 347 employees (306.2 FTE) and its 77 judges (69 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court.

The FAC is composed of six divisions. It renders an average of 7,500 judgments every year. Most of these decisions are not appealable before the Federal Supreme Court (FSC) and only a few of the appealable ones are challenged before the FSC.