



St. Gallen, 31 March 2023

Press Release

regarding judgment E-1488/2020 of 22 March 2023

Dublin transfers to Croatia

Asylum seekers who are transferred to Croatia under the Dublin III Regulation are granted access to the asylum procedure there even against the backdrop of the well-known pushback problem. This is the conclusion reached by the Federal Administrative Court in a reference judgment.

For some time Croatia has been accused of unlawfully deporting persons seeking protection to the Bosnian-Herzegovinian and Serbian borders without examining their asylum applications or their personal situations, in some cases with the use of force, or even of pushing them back directly at the border.

The Federal Administrative Court (FAC) presumes it is highly probable that such unlawful removals constitute regular practice. The Court also presumes that a significant number of protection seekers regard Croatia merely as a transit country and that they do not generally intend to seek protection or await the outcome of their asylum procedure there. Migrants who have not filed an application for asylum, or whose applications are withdrawn, are in the country unlawfully and their removal is basically legal. The FAC underscores that this in no way justifies the sometimes inhumane expulsion methods that have been reported time and again. The Court further highlighted the relevant case law of the European Court of Human Rights (ECHR) in this regard.

Implications for Dublin transfers

According to this reference judgement,¹ the main focus in the context of a transfer based on the Dublin III Regulation is to establish whether the asylum seeker, whom the Croatian authorities have agreed to take responsibility for, will be given access to the asylum procedure there. The question whether it was extremely difficult for the person seeking protection to reach the Croatian territory in the first place is no longer of prime concern. One cannot a priori assume that Dublin returnees are exposed to similar danger as persons trying to enter or transit the country for the first time. This assessment is supported by recent reports and by most of the jurisprudence from other Dublin states consulted by the Court. In particular, there is no indication in the available sources that persons transferred to Croatia in the Dublin context are being unlawfully removed

¹ This judgment was coordinated by all judges from divisions IV, V and VI. It analyses the conditions of the existing situation in a given country and provides a legal assessment which holds not only for this case but for many other proceedings as well.

despite expressing the will to undergo the asylum procedure in that country. Finally, the reference judgment states that this applies to both take-charge and take-back transfer proceedings.

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 351 employees (296.1 FTE) and its 73 judges (65.1 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative 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 6,500 judgments every year.