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4.2.8 Assessing transfers to specific countries: The cases of Bulgaria, Greece and Italy

Bulgaria

The Federal Administrative Court in Switzerland delivered a key judgment in February 2020 after examining the situation of applicants in Bulgaria after being returned under the Dublin III Regulation. It concluded that there were no systemic deficiencies in the asylum and reception systems that should lead to a general suspension of transfers. Each individual case should undergo a thorough examination to avoid any risk of inhuman and degrading treatment, and national authorities can request individual guarantees from Bulgarian authorities. 374

Greece

The European Commission published its recommendation on the resumption of transfers to Greece in 2016, yet some Member States still do not send requests to the country or send requests on a limited basis. For example, German authorities do not generally send take charge requests for unaccompanied minors and vulnerable persons to Greece, and transfers are only carried out if the Greek authorities explicitly agree and provide assurance that the applicant's asylum process and material reception conditions are in conformity with the recast Asylum Procedures Directive and the recast Reception Conditions Directive.

The Supreme Administrative Court in Finland delivered its first decision related to the resumption of transfers to Greece, stating that while the asylum and reception systems have shortcomings, the situation has significantly improved since 2011 and the deficiencies are not of a systemic nature. In addition, the Greek authorities provided guarantees that the applicant would be provided material reception conditions in line with the recast Reception Conditions Directive and there were no reasons for Finland to assume responsibility for examining the applicant's asylum application under the Dublin III Regulation, Article 17.

Nonetheless, the number of transfers to Greece in 2020 was low, with just 16 transfers reported to have been implemented by four countries. While it is possible that some countries which did not implement transfers had no Dublin cases with Greece as a partner, data presented in *Section 4.2.2* show that the low number is more likely to be linked to other reasons: i) some Member States

decided not to send requests to Greece; and ii) those who did send requests reported that Greece usually rejected the requests (just 3% of the decisions issued by Greece accepted responsibility).

Italy

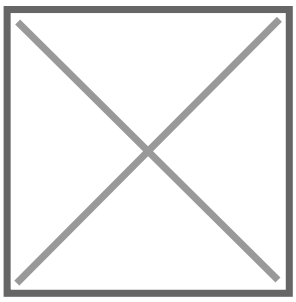


Courts in different Member States had divergent approaches when assessing the possibility of transferring applicants to Italy. For example, in the beginning of 2020, the Portuguese Supreme Administrative Court noted that national authorities were only obliged to obtain information on whether specific applicants would be at risk of inhuman or degrading treatment in Italy when valid reasons pointed to systemic failures in the asylum and reception systems which would amount to such a treatment. The court concluded that these applicants would not be at risk following a transfer to Italy. In contrast, the court reviewed another case in November 2020 and annulled the transfer decision because the authority had not considered the applicant's specific situation before rendering its decision.

The Dutch Council of State confirmed that transfers to Italy were possible in the case of a single woman with a child and another case of a man with a serious illness. It assessed the situation prior to the COVID-19 pandemic and held that, even though material reception conditions were reduced in Italy, the reduction was not to the extent that the applicants could not be accommodated adequately. In a third related case, the court assessed the situation in Italy after the start of the COVID-19 pandemic and found that Italy remained responsible for examining the application, even though the transfer was temporarily impossible in practice.

Courts were also called to assess the implementation of transfers to Italy in light of the significant number of COVID-19 cases in the country. In March 2020, the Austrian Federal Administrative Court referred a case of a Nigerian mother and her two children back to the BFA. The transfer decision was made in this case in February 2020, before the authority could have any detailed, accurate and reliable information on the COVID-19 pandemic. The court found that the authority only undertook a general assessment of the situation in Italy and did not mention and assess the developments in the country during the COVID-19 pandemic.

In a similar case in August 2020, the Austrian Supreme Administrative Court ruled on a transfer decision to Czechia and noted that decisions need to be taken swiftly in admissibility cases, such as Dublin cases. Thus, the Federal Administrative Court may only refer back a case to the BFA when the court cannot investigate the case by the standards established in the BFA Procedures Act, Article 21(3). However, when the court can easily research the relevant information, the case should not be referred back. In contrast, in September 2020, the Administrative Tribunal in Luxembourg found that the health situation in Italy was not so serious that it would result in a risk of inhuman or degrading treatment and noted that the situation related to the pandemic had considerably improved in Italy, which was not the case for Luxembourg at the time.



[374] Federal Administrative Court | Bundesverwaltungsgericht | Tribunal administratif fédéral | Tribunale amministrativo federale. (2020, February 19). *Dublin transfers to Bulgaria: No systemic flaws but rather case-by-case analysis* . https://www.bvger.ch/bvger/en/home/media/medienmitteilungen-2020/dublin-ueberstellungennach_bulgarien.html





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