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Divergence across Member States in asylum and reception practices challenged courts to apply the principle of mutual trust in different contexts within the framework of the Dublin III Regulation.443

Bulgaria

Bulgaria

Tribunals in Italy annulled transfer decisions to Bulgaria after consulting several reports on gaps in the asylum and reception systems, particularly in relation to the identification of vulnerabilities, the provision of legal aid, reception and detention conditions, and the content of international protection. Similarly, the Rome Tribunal referred to the principle of caution when examining the guarantees in place for the fundamental rights of foreign nationals in Bulgaria.

ECRE noted that the Strasbourg Bar Association condemned the transfer of four Afghan nationals to Bulgaria in September 2021 as the country had not suspended returns to Afghanistan despite the Taliban takeover.444

Overall, transfers to Bulgaria more than doubled in 2021 compared to 2020, mainly on account of rising transfers from Germany and France.

Croatia

Croatia

When examining the situation of persons who had crossed the Croatian border irregularly and those who were returned to the country under the Dublin III Regulation, the Dutch Council of State concluded that there was no indication that Dublin transferees are pushed back from Croatia to third countries without the possibility to apply for international protection.

The Swiss Refugee Council continued with its Dublin project and published a selection of national jurisprudence on assessing transfers to Croatia, providing examples of both authorising

and annulling transfer decisions. Noting the divergent jurisprudence, the organisation suggested to avoid transfers to Croatia due to information obtained on pushbacks and underlined the importance of obtaining individual guarantees when a transfer is implemented.445 Indeed, throughout 2021, the Federal Administrative Court observed in some cases that the State Secretariat for Migration did not sufficiently investigate alleged police violence and the risk of pushbacks, and the court ordered a re-examination by the authority (see here and here).

However, the court observed several times that there were no systematic failures in the Croatian reception system that would require the annulment of a transfer decision (see here and here). Then in January 2022, the court annulled for the second time a transfer decision to Croatia, noting that the State Secretariat for Migration should have not relied on old reports to conclude the absence of systematic flaws in the asylum and reception systems, a decision which was welcomed by several Swiss civil society organisations.446

Related specifically to the availability of medical care, the Swiss Federal Administrative Court noted that there were no indications to suggest that Croatia would not provide necessary medical treatment to asylum applicants, but the court also observed that, while support for applicants with special needs might be prescribed by law, sources suggested that it is not generally available. In this case, the court found that the State Secretariat for Migration did not have sufficiently detailed medical reports to adequality analyse the possibility to transfer the applicants back to Croatia.

In another case, the court confirmed the transfer decision of an applicant with an anxiety disorder, noting that the country had sufficient medical infrastructure. In addition to state support, NGOs were also offering assistance with mental health issues.

Cyprus

Cyprus

The Dutch Council of State found that there were no serious structural shortcomings in reception conditions and accessing legal aid in Cyprus to conclude that the transfer of a single male applicant would be contrary to the ECHR, Article 3 and the EU Charter of Fundamental Rights, Article 4 (*see Section 4.10*). However at the end of 2021, in another case, the Court of the Hague ordered the annulment of a transfer decision and the re-examination of the case within 6 weeks, as it found that reception conditions were insufficient in Cyprus due to the large influx of applicants throughout September and October 2021.

Denmark

Denmark

The Dutch Council of State confirmed the transfer decisions of Syrian nationals to Denmark for an applicant whose international protection was revoked due to committing a criminal offence, and for another one whose status was revoked as Damascus was considered to be a place where the applicant could safely return.

The court underlined that the Dutch authorities could rely on the principle of mutual trust, as the Danish authorities were applying the new policy on Damascus on a case-by-case assessment, applicants could use legal remedies in case of disagreement and can have access to legal aid in that process.

Germany

Germany

The Dutch Council of State assessed the availability of legal aid and the risk of indirect *refoulement* in Germany for a single male applicant from Afghanistan and dismissed the appeal against the transfer, noting that in both aspects German legislation fulfils the requirements of the recast Asylum Procedures Directive *(see Section 4.10)*.

Greece

Greece

Courts have delivered several judgments in past years related to the assessment of Dublin transfers to Greece in individual cases,447after the publication of the European Commission's recommendation on the resumption of transfers to Greece.448 In 2021, courts delivered less judgments related to Dublin transfers, but the number of cases increased in relation to recognised beneficiaries of international protection in Greece moving to other Member States outside of the scope of the Dublin III Regulation *(see Section 4.3)*. Nonetheless, civil society organisations continued to assess the situation of Dublin transfers to Greece.

Refugee Support Aegean reported that Dublin returnees to Greece did not have access to the asylum procedure and accommodation. It also warned about the risk of refoulement to Turkey, which was declared to be safe for certain nationalities of applicants.449

Referring to this report, ECRE sounded the alarm on insufficient reception conditions *(see Section 4.8)* and the risks of chain *refoulement* for Dublin returnees based on new legislation related to the safe third country concept
(see Section 4.3).450

Italy

Italy

The jurisprudence on transfers to Italy remained varied, although the majority of case law examples from 2021 confirmed that transfers are still being organised to the country. In fact, transfers to Italy increased in 2021 by + 17% compared to 2020. This was mainly due to more transfers from Greece, France, Portugal and Switzerland. In contrast, transfers from Germany and Austria dropped significantly (- 44% and - 18%, respectively).

The ECtHR dismissed the complaints of an applicant with two minor daughters as manifestly unfounded, noting the significant changes in the organisation of and access to reception in Italy in 2020 451 and the Italian government's confirmation that they would be given priority within

the reception system as a single mother with minor children. The court concluded that the applicant did not prove that her prospects in Italy amounted to a sufficiently real and imminent risk that would fall within the scope of the ECHR, Article 3. The court came to the same conclusion on the transfer of a Libyan family with five children.

The Dutch courts followed this reasoning, for example in the case of a Nigerian family with minor children, in a case of a single parent with a minor child, and in a case where the applicant might find himself without accommodation for a few days in Italy but this was not seen as a plausible reason to prevent the transfer in the light of the ECtHR decision.

The Portuguese Administrative Court, the Administrative Tribunal in Luxembourg (for example, in the case of a Syrian applicant and in the case of an applicant from Chad) and the Swiss Federal Administrative Court all came to the conclusion in several cases that there was no evidence of systematic flaws in the asylum and reception systems in Italy following legislative changes. Swiss civil society sources assessed that the Federal Administrative Court's decision focused on the legal framework and did not take into account the realities of reception conditions in Italy.452

The Higher Administrative Court of Baden-Württemberg decided in favour of transfers to Italy in cases related to young, healthy and fit-for-work persons.

Nonetheless, in other cases courts annulled transfer decisions to Italy. The Higher Administrative Court of North Rhine Westphalia in Germany decided against an applicant's transfer to Italy since the person had lost the right to accommodation after leaving the allocated accommodation in Italy without permission or a prior justified notification. In addition, the applicant would not have access to social benefits. Similarly, the Belgian CALL annulled an applicant's transfer decision to Italy, as he had been suffering from serious psychological and psychiatric issues and based on objective medical reports it could not be excluded that he would be at risk of treatment contrary to the ECHR, Article 3.

The Swiss Refugee Council published an update of its assessment of reception conditions in Italy but still advised against any transfers of asylum applicants, noting that their situation was assessed to be precarious.453

Malta

Malta

Transfers to Malta increased in 2021 (72 compared to 53 transfers in 2020), but more than one-half were executed under the family unity provisions of the Dublin III Regulation.

The approach of Dutch courts on assessing transfers to Malta developed throughout the year. Although reception and detention conditions have reportedly been very difficult in Malta for several years, the Council of State found at the beginning of 2021 that the applicant did not demonstrate that he would not be eligible for reception, that the daily allowance would not provide for his subsistence and that Dublin returnees are automatically detained.

In another interim decision, the Council of State noted that it was not in a position to decide on the transfer as the evidence presented reception and detention conditions in Malta up to 31 December 2019 and not in their current state. The court assessed that the EUAA would be in the best position to provide up-to-date and objective information on these aspects. In a later interim decision, the court suspended the execution of the applicant's transfer to Malta and requested more information from the national authority and clarity on the treatment that the applicant would face upon return.

The deliberations on another transfer decision to Malta prompted the Court of The Hague to send questions for a preliminary ruling to the CJEU to interpret the principle of mutual trust within the Dublin III Regulation: where lies and what is the burden of proof when it is alleged that the transfer would infringe the applicant's fundamental rights and under what conditions is the transferring country obliged to request individual guarantees?

Based on newly-emerging information from international organisations and civil society publications, the Council of State held in a case at the end of 2021 that there may still be structural and organisational issues in detention and reception in Malta and requested the Dutch asylum authority to conduct further investigation.

Romania

Romania

The Dutch Council of State confirmed transfer decisions to Romania even though the applicant may not receive reception for 5 days while the admissibility of a subsequent application was being assessed (see here and here). The court noted that the situation was not equivalent to the high threshold of seriousness established by the Jawo judgment. The Supreme Administrative Court in Czechia considered reception conditions in Romania in another case concerning the detention of a person for the purpose of a Dublin transfer, and underlined that it was not made aware of any evidence suggesting shortcomings in the Romanian asylum and reception systems.

In contrast, a regional administrative court in Germany found that the high threshold of seriousness was likely to be reached for an applicant who could only submit a subsequent application once returned to Romania, as it determined that subsequent applicants did not have access to material reception conditions. Despite improvements to the reception system, an Italian tribunal also considered that the transfer of an Afghan applicant and her son should be annulled. In fact, Italy did not carry out any transfers to Romania in 2021 despite an increase in accepted requests (up to 140).

While the jurisprudence varied, transfers to Romania increased more than five-fold compared to 2020, particularly from Germany, Austria and Slovakia.

Spain

Spain

The Dutch Council of State found no structural shortcomings in the Spanish reception system for Dublin returnees that would reach the high threshold of breaching the ECHR, Articles 3 and 4. While the reception conditions could be improved, the court noted the measures that the Spanish authorities had undertaken, especially the instructions issued in 2019 by the Spanish Ministry of Labour, Migration and Social Security to ensure that applicants transferred back to Spain were entitled to material reception conditions.454

The data for 2021 show that transfers to Spain increased by approximately one-fifth compared to 2020, mainly due to more transfers from France, Germany and Switzerland.

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