Please cite as: EUAA, '4.2.7. Deliberations on remedies under the Dublin III Regulation' in *Asylum Report 2022*, mai 2022.

4.2.7. Deliberations on remedies under the Dublin III Regulation

4.2.7. Deliberations on remedies under the Dublin III Regulation

Among legislative and policy changes across EU+ countries, a modification to the Asylum Law came into force in Luxembourg in July 2021. An appeal against a Dublin transfer decision means an automatic suspension of the transfer until the administrative court takes a final decision within 1 month.

Several aspects of remedies under the Dublin III Regulation still required interpretation and guidance from courts. For example, the French Council of State held that the extension of the transfer deadline is one way to implement the initial decision on a transfer and does not imply a new decision. Thus, it cannot be regarded as a separate decision subject to an appeal.

The CJEU delivered a preliminary ruling related to the right to an effective remedy against a decision to transfer an applicant to another Member State *(see Section 2.4)*. The ruling was much commented on by various stakeholders with diverse perspectives on the case.455

Nonetheless, many new questions were referred to the CJEU for further clarification. For example, the Court of the Hague referred questions for a preliminary ruling to clarify whether an applicant, who was an unaccompanied minor at the moment of lodging the application, had the right to an effective remedy against the decision of a Member State which refused a take charge request.

A German Regional Administrative Court referred a similar question for a preliminary ruling in the context of a referral covering 12 questions related to four thematic areas. However, the respective administrative court decided on 18 February 2022 to withdraw the request in accordance with the Rules of Procedure of the CJEU, Article 100(1), due to the fact that the applicants withdrew their application. The case involved a Syrian family, where the father received subsidiary protection in Germany, while the mother and their three children entered the EU later through Greece. Their application was first considered inadmissible, but then the Greek authorities accepted their subsequent application and requested Germany to take charge of the application. The German authorities rejected the request, noting that a decision had already been made on the family's application.

The Rome Tribunal also made a reference for a preliminary ruling to clarify whether the right to an effective remedy also provides protection against the risk of indirect *refoulement* following a transfer to a Member State which does not have systematic flaws within the meaning of the Dublin III Regulation, Article 3(2). At the core of the dilemma was the fact that Italian authorities assess the concept of internal protection differently than the responsible Member State where the applicant's first asylum claim was lodged and refused. The court of Firenze sought clarification from the CJEU on similar questions. Adding to the discussion, Forum réfugiés–Cosi pointed out this occurrence especially for the Dublin transfer of Afghan applicants to EU+ countries that did not suspend returns to Afghanistan.[456]

Finally, the labour court of Liège in Belgium asked the CJEU whether national legislation is in line with EU law when an application for an ordinary suspension of a transfer (under regular time limits) and an application for the annulment of the transfer decision do not suspend the implementation of the transfer. However, the court dismissed the case as manifestly inadmissible.

455 See for example: Néraudau, E. (May 2021). Recours effectif et transfert Dublin: Le juge national doit tenir compte des circonstances postérieures à l'adoption de la décision de transfert Dublin [Effective appeal and Dublin transfer: The national court must take into account the circumstances subsequent to the adoption of the Dublin transfer decision]. Université catholique de Louvain (Catholic University of Louvain). https://uclouvain.be/fr/instituts-recherche/juri/cedie/actualites/c-j-u-e-g-c-arret-du-15-avril-2021-h-a-etat-belge-c-194-19.html

456 Forum réfugiés-Cosi. (2021, November 9). Afghanistan. Après la prise de pouvoir des talibans, comment protéger les réfugiés? [Afghanistan. After the Taliban took power, how to protect refugees?]. https://www.forumrefugies.org/s-informer/positions/france/979-afghanistan-apres-la-prise-de-pouvoir-des-talibans-comment-proteger-les-refugies; Forum réfugiés-Cosi. (2021, October 2). Pour les Afghans présents en France, de multiples enjeux pour accéder à une protection au titre de l'asile [For Afghans in France, multiple challenges to access protection under asylum]. https://www.forumrefugies.org/s-informer/publications/articles-d-actualites/en-france/961-pour-les-afghans-presents-en-france-de-multiples-enjeux-pour-acceder-a-une-protection-au-titre-de-l-asile