

Research on Dublin cases

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To: Claudie Ashonie Wilson <claudie08@ru.is>;

09/00039-102

Dear Claudie,

In reference to our conversation and your email of May 6th, these are my answers.
The best of luck on writing the remainder of your thesis.

1. Can a person who has already received a negative decision in Norway prior to absconding, submit a fresh application upon return or get a review of the previous decision? If yes, on what grounds?

A person that has absconded after receiving a negative decision from the Norwegian Appeals Board can get his case reviewed upon submitting a request for reversal of the previous decision.

However, in case the deadline according to the Dublin regulation II/III for transferring the individual to one of the member states has expired and Norway hence is responsible for examining the asylum application, the individual has to submit a fresh application upon return.

2. If yes to question 1, does Norway provide free legal assistance?

In general an individual does not qualify for free legal assistance after a final decision has been made by the Appeals Board. The individual must bear the costs himself when a request for reversal is submitted.

If the individual submits a fresh application legal assistance will be given free of cost if the applicant receives a negative decision in the first instance (UDI).

3. Also, is the review whether by the Courts or Appeals body with automatic suspensive effect? Thus, allowing the individual to remain in Norway pending the final outcome.

Submitting a request for reversal does not in itself mean that suspensive effect is granted. The right to remain in the country pending a decision depends on a careful assessment of the new information provided and the merits of the case.

4. Does Norway also require that only "systemic deficiency" can stop a transfer to another Dublin state? How is this evaluated?

Before transferring an asylum seeker to another member state section 73 of the Immigration Act must be assessed in each and every case. The section entails the legal obligation undertaken by Norway to ensure and uphold the principle of non refoulement.

A foreign national may not be sent to an area where he or she would be in a situation as mentioned in section 28, first paragraph (a) or (b) of the same Act.

The wording of Section 28, first paragraph (a) and (b) is that "A foreign national who is in the realm or at the Norwegian border shall, upon application, be recognised as a refugee if the foreign national

(a) has a well-founded fear of being persecuted for reasons of ethnicity, origin, skin colour, religion,

nationality, membership of a particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin, see Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967, or

(b) without falling within the scope of (a) nevertheless faces a real risk of being subjected to a death penalty, torture or other inhuman or degrading treatment or punishment upon return to his or her country of origin.”

In the assessment the Norwegian Appeals Board uses reports from international organizations (e.g. UNHCR), decisions from the ECHR and case law of the Court of Justice (CJEU). Norway is not directly bound by the judgements made in the latter mentioned institutions, but considers them to be important sources of law.

Best regards,

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