

Research on Dublin cases

Kristin Søvik <kso@une.no>

Tue 5/6/2014 07:10

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

Hi Claudie, with reference to your email of April 5th and to the previous emails in our correspondence. I hope that the information in this email will be of assistance to you in your further work with your theses.

To answer your questions:

1.

Yes, in these 16 cases, referred to in this press release, the Norwegian authorities/ The Norwegian Directorate of Immigration (UDI) obtained an individual guarantee from Greek authorities. The purpose of this guarantee was to ensure that the asylum seekers would get a satisfactory asylum procedure in accordance with the Dublin Regulation when/ if returned to Greece. The background; the ministry responsible for asylum cases, as of 21.07.2008, adopted a procedure where they ordered the directorate to obtain such a guarantee.

2./3.

The outcome in these 16 cases varied. In some of the cases the applicant disappeared after receiving a negative decision (Norwegian authorities considered that Greece was responsible for the applicant in accordance with the Dublin regulation). Two (of these) applied for asylum in another Schengen member state afterwards, but was not returned to Norway. The Norwegian Appeals Board (UNE) have no information whether these applicants have been sent back to Greece bt this member state.

In some cases Norway took responsibility for examining the asylum application, because the deadline in accordance with the Dublin regulation for transferring them had expired.

Three asylum seekers were returned to Greece in autumn 2009. Of these three, one asylum seeker has been returned to Norway. UNE received a request for reversal of the decision from the appellant's legal representative in 2013. UNE reversed the former decision. I quote the grounds of the decision (my translation):

"UNE points out that the Grand Chamber of the European Court of Human Rights (ECtHR) on 21/01/2011 made a decision in the case MSS v. Belgium and Greece. The majority of the judges held that Belgium had violated the European Convention on Human Rights (ECHR) Article 3 by transferring the asylum seeker to Greece. UNE recognizes that the sources of law have changed because of the ECtHR ruling compared to the situation at the time of UNE's earlier decision. A decision from the ECtHR has great importance as a source of law.

UNE's assessment, as the appellant's case has factual and legal similarities identical with the case treated by ECtHR, is that the case decision must be reflected in UNE's assessment of the appellant's case. UNE underlines that the member states are obliged to respect and secure Convention rights within their jurisdiction , cfr. ECHR Article 1.

Greek authorities were required by the ECtHR (in the case MSS v. Belgium and Greece) to process the asylum seeker's application in accordance with the ECHR. The fact is however that the Norwegian authorities/UNE has not been informed so far that Greek authorities will provide adequate security that

the claimant has received or will receive a proper asylum procedure in Greece if returned (an assessment of the documentation presented before the Court and the outcome of the Courts decision) (By transferring the applicant to Greece under the circumstances will possibly be in violation of ECHR article 3).

UNE's assessment is therefore that the conditions of the earlier decision has changed and there are grounds for a reversal of the decision. The application will effectively be returned to the UDI, first instance, for a new assessment of the merits of the application.

It is essential that the case is admissible, and that there are no other grounds for denying admissibility under the Norwegian immigration act other than Greece being considered responsible to process the application for protection under the Dublin Regulation. Greece will only be considered responsible under the regulation if the applicant is living in Greece. If the applicant is living in another member country, the Norwegian authorities must consider whether Norway will be closest to applying the sovereignty clause."

The case was then returned to the UDI for review/subsequent procedures of the case, who rejected the applicant's grounds for asylum. UNE is at the present moment considering the applicant's complaint of this decision. The outcome is not yet settled.

4. In cases where Norwegian authorities assumed responsibility for an asylum application, because the deadline in accordance with the Dublin regulation for transferring them had expired, the cases were sent to a regular asylum procedure of the UDI (for first instance assessment of the merits). Outcome in these cases vary. Some were granted asylum, others were granted residence on humanitarian grounds, and others were returned to their country by IOM.

Best regards,

Kristin Søvik

Legal advisor

The Norwegian Appeals Board (UNE)

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Fra: Claudie Ashonie Wilson [mailto:claudie08@ru.is]

Sendt: 5. april 2014 10:46

Til: Kristin Søvik

Emne: Re: Research on Dublin cases

Dear Kristin,

Once again, thank you so much for all your help thus far.

I do have just a few further questions, I hope you will be able to assist me. These will be my final questions, unless there is a need for clarification.

Here below is a link to a press release by UNE from 7 May 2009, regarding the decision to transfer 16 individuals back to Greece under the DRII.

<http://www.une.no/no/Aktuelt/For-pressen/Pressemeldinger/Retur-til-Hellas--pa-visse-vilkar/>

My Questions are:

1. Did the Norwegian authorities seek special assurances "diplomatic assurance" if you will, that these individuals would gain access to asylum procedures in Greece?

There is a statement in the press release which translates to this :

" In all decisions it was emphasized that the Greek authorities in each case has provided a guarantee that the person will have access to the asylum procedure by returning to Greece"

Here is the original:

" Í alle vedtakene ble det videre lagt vekt på at greske myndigheter i hver enkelt sak har gitt garanti om at vedkommende vil få tilgang til asylprosedyren ved retur til Hellas."

2. Was the transfer of these individuals eventually carried out?

3. If so, was that the final act of Norway pertaining to these individuals?

Just to elaborate a little here. Iceland made a similar decision to Norway and transferred a few individuals to Greece during this period. However, one of those individuals was brought back to Iceland in accordance with the Icelandic Administrative Procedures Act (revocation of a prior decision). There were subsequent procedures in his case and he issued a residence permit on humanitarian grounds.

4. Finally, in the event that Norway revoked the decision to return them or never transferred them, could you explain how their cases were treated?

Thank you again Kristin, and I anticipate your response.

Regards,

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