

CASE LAW COVER PAGE

Name of the court: Korkein hallinto-oikeus (Supreme Administrative Court)	
Date of the decision:	20 April 2016
Case number:	KHO:2016:53
Parties to the case: Applicant from Afghanistan, Finnish Immigration Service	
Decision available on the internet? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2016/201601503	
Language(s) in which the decision is written: Finnish	
Official court translation available in any other languages? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Short summary in Swedish: http://www.finlex.fi/sv/oikeus/kho/vuosikirjat/2016/201601503	
Countr(y)(ies) of origin of the applicant(s): Afghanistan	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Finland	
Any third country of relevance to the case: Hungary, Serbia	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision	Relevant articles of the EU instruments referred to in the decision: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, lodged in one of the Member States by a third-country national or a stateless person (recast), "Dublin III": Article 3, Section 1-3 and Article 17, Section 1 Charter of Fundamental Rights of The European Union: Articles 4, 18 and 19

Topics / Key terms:

Asylum
International Protection
Non-Refoulement
Dublin III

Key facts (as reflected in the decision):

The appellant (A) has applied for international protection in Finland on 7 October 2014. A has claimed to be a citizen of Afghanistan and to be born in 1994. A has an Afghan identity document and marriage certificate. A claimed to have left Afghanistan four months earlier and that he came to Finland via Iran, Turkey, Greece, Macedonia, Serbia, Hungary, Germany, Denmark and Sweden.

A had been registered in Hungary as an asylum-seeker on 17 September 2014. Prior to that, A had been registered for irregular entry in Greece on 7 August 2014.

The Finnish Immigration Service (Migri) did not grant the appellant residence permit and his asylum application was left uninvestigated on 12 December 2014. Migri decided to deport the appellant to Hungary. The Hungarian authorities accepted Migri's request for readmission on 30 October 2014. The Helsinki Administrative Court dismissed the appellant's appeal concerning Migri's decision on the case. The Supreme Administrative Court on 25 February 2016 prohibited implementation of the deportation until the court would have decided the case.

The Supreme Administrative Court overturned the decisions of the Finnish Immigration Service and the Helsinki Administrative Court and returned the case to the Finnish Immigration Service for new consideration.

Key considerations of the court

The question to be solved by the Supreme Administrative Court was whether the *non-refoulement* principle as defined by fundamental and human rights law and Section 147 of the Aliens Act prevented the appellant, an Afghan citizen, from being transferred to Hungary, that was responsible for the appellant's asylum application under the Dublin III regulation and that had accepted the appellant's transfer.

The Supreme Administrative Court stated that the European Union's Common Asylum System is based on mutual trust between Member States and on the presumption that the State responsible for handling the asylum application on the basis of the Dublin III regulation is respecting the asylum-seeker's fundamental rights in such a manner that the applicant can be transferred without a substantive examination of the application in the returning state. However, this presumption is rebuttable. According to Article 3 section 2 of the Dublin III Regulation, the presumption is to be diverged from if there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in the Member State primarily designated as responsible.

Even though the threshold to diverge from the above mentioned presumption of transfer according to the Dublin III Regulation is high, the case law of other European Union member states and other material assessed by the Supreme Administrative Court strongly implicate that there are systemic flaws (as defined by paragraph 2 of Article 3 of the Dublin regulation) in Hungary. Additionally, when the principle of benefit of the doubt, as well as the principle of interpreting laws in a fundamental and human rights friendly manner were taken into consideration, the case had to be decided in favour of the appellant in this uncertain situation. Taking into account the up-to-date country of origin information, it was not possible to reliably conclude that transferring the appellant to Hungary would not be in violation of Article 4 of the Charter of Fundamental Rights of the European Union or Article 3 of the European Convention of Human Rights.

The Supreme Administrative Court emphasized that the situation concerning returns to Hungary may be assessed differently in so far as new information, related to the question of Serbia being considered a safe country would become available through changes made to the Hungarian asylum policy, through the case law of the European Court of Human Rights or through other means.

The appellant's application for international protection must be assessed in Finland based on Article 3, section 2 of the Dublin III regulation.

Other comments or references

References made by the court to legal provisions, case law, regulations and studies:

Constitution of Finland: Section 9, paragraph 4

Finnish Aliens Act: Section 147

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast, Dublin III): Article 3, Section 1-3 and Article 17, Section 1

Charter Of Fundamental Rights Of The European Union: Articles 4, 18 and 19

European Convention on Human Rights: Article 3

Court of Justice of the European Union: C-394/12 - Abdullahi (Judgment of the Court (Grand Chamber) of 10 December 2013), C-695/15 PPU - Mirza (Judgment of the Court (Fourth Chamber) of 17 March 2016).

European Court of Human Rights, case law: Halimi v. Austria and Italy of 18 June 2013; Mohammadi v. Austria of 3 July 2014; Tarakhel v. Switzerland of 4 November 2014.

Case law of other EU Member States:

- Tribunal administrative de Lyon, France, 6 October 2014 (No. 14075559)
- Upper Tribunal, United Kingdom, 29 January 2015 (R v. Secretary of State for the Home Department)
- Verwaltungsgerichtshof, Austria, 8 September 2015 (Ra 2015/18/0113)
- Verwaltungsgerichtshof, Austria, 24 November 2015 (E1363/2015)
- Raad van State, The Netherlands, 26 November 2015 (201507248/1/V3)
- Conseil du Contentieux des Etrangers, Belgium, 15 December 2015 (Arrêt no 158 621)
- Verwaltungsgericht Düsseldorf, Germany, 22 December 2015 (22K 5240/15.A)
- Verwaltungsgericht Köln, Germany, 22 December 2015 (2 K 6214/14.A)
- Migrationsdomstolen (Förvaltningsrätten i Stockholm), Sweden, 2 March 2016 (Mål nr UM 587-16)
- Verwaltungsgericht Braunschweig, Germany, 3 March 2016 (7 A460/15)
- Verwaltungsgericht Frankfurt am Main, Germany, 9 March 2016 (7 L 353/16.F.A)
- Conseil d'Etat, France, 29 March 2016 (No 397922)
- Cour administrative d'appel de Paris, France, 30 March 2016 (No 15PA03470)

Hungarian Asylum legislation 2007 No. LXXX (menedékjogról szóló 2007. évi LXXX. törvény; Magyar Közlöny 2007/83)

European Council on Refugees and Exiles, Crossing Boundaries: The new asylum procedure at the border and the restrictions to accessing protection in Hungary. 1 October 2015.