

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹:			
Supreme Administrative Court (Korkein Hallinto-Oikeus)			
Date of the decision:	13 November 2020	Case number:²	KHO:4219:2020
Parties to the case:			
Applicant "A" Finnish Immigration Authorities (MIGRI)			
Decision available on the internet?		YES	
If yes, please provide the link:			
https://www.kho.fi/fi/index/paatokset/muitapaatoksia/1605179466674.html			
Language(s) in which the decision is written: Finnish			
Official court translation available in any other languages? NO			
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:³ Greece			
Is the country of asylum or habitual residence party to:			
<i>The 1951 Convention relating to the Status of Refugees</i> YES		<i>Relevant articles of the Convention on which the decision is based:</i>	
<p>For EU member states: <i>please indicate which EU instruments are referred to in the decision</i></p> <p>ECHR The Charter of Fundamental Rights of the European Union Regulation No 604/2013 (Dublin III) Directive No 2011/95/EU Directive No 2013/32/EU Directive No 2013/33/EU</p>		<p>Regulation No 604/2013 (Dublin III) art. 2, art. Art. 16(1), art. 3(1),(2), art. 17</p> <p>ECHR art. 3, art. 4</p> <p>The Charter of Fundamental Rights of the European Union art. 4</p>	

Key facts (max. 200 words)

A has been registered as an asylum seeker in Greece on 2 November 2018. While in Greece, A had slept outside in a tent during winter and he was only registered after being in Greece for 6 months. A has been diagnosed with depression by doctors in Finland. By a decision issued on 5 November 2019, the Finnish Immigration Service rejected A's application for a residence permit. The Finnish Immigration Service has decided to return A to Greece, which is responsible for processing his asylum application according to Regulation No 604/2013. Although there are still known to be problems with the Greek asylum procedure and reception conditions, in case of A; Finnish authorities consider his individual circumstances to be such that he can reasonably be transferred to Greece.

Greek authorities have accepted Finland's readmission application and have guaranteed adequate reception conditions for A as well as translation services upon return. Based on the above, A has appealed the decision to the Supreme Administrative Court.

Key considerations of the court *(translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]*

Transfers to Greece under the Dublin Regulation were suspended in 2011 due to systemic weaknesses in Greek reception conditions and the asylum system. Greece has since made legislative changes to ensure that the provisions of the Asylum Procedures and Reception Directives are transposed into national law. In its Recommendation of 8 December 2016, the European Commission stated that in 2011 after the M.S.S. judgment, Greece has significantly improved its asylum system. The Commission has recommended that transfers to Greece be gradually resumed from 15 March 2017. In its recommendation, the Commission called on the Member State authorities to cooperate with the Greek authorities before transfer to ensure that the person is received in reception facilities that comply with the Reception Conditions Directive and that his application is examined within the time limits set by the Asylum Procedures Directive.

The up-to-date country information provided by the Commission Recommendation and the Finnish Administrative Court Decision shows that there are still serious problems with the system, both in terms of reception conditions and the asylum procedure, as well as, for example, access to legal aid. Many of the reception facilities provided by Greece still do not meet the requirements of the Reception Conditions Directive. This is particularly true for facilities on the Greek islands, but there are also problems on the mainland. However, despite these shortcomings, it can be estimated that significant improvements have been made to the Greek asylum system since 2011, so that there are no longer any systemic weaknesses in the Greek asylum procedure and reception conditions within the meaning of Article 3 (2) of the Dublin Regulation. The appellant's transfer to Greece under the Dublin Regulation must therefore be seen in the light of the principle of non-refoulement.

As stated in the opinion of the Finnish Immigration Service, Greece is not in a position to provide reception conditions or an asylum procedure that guarantees fundamental rights to all asylum seekers. In the present case, however, the Greek authorities have accepted Finland's readmission request and have given assurances that the appellant will be accommodated in a reception center which meets the requirements of the Reception Directive and that he will be informed of the asylum procedure in a language he understands. There are no indications in the country data that Greece is not complying with its guarantees to other Member States. The Greek authorities will also provide detailed information on the location of the reception center when the date of the transfer is known, and the Finnish Immigration Service will still be able to verify the guarantees provided by Greece at that stage.

Given the individual assurances received by the Finnish Immigration Service from the Greek authorities that the appellant will be accommodated in a reception center that meets the requirements of the Reception Conditions Directive and will be informed of the asylum procedure, there are no grounds for considering that the transfer to Greece is contrary to, nor have there been any reasons why, the appellant's application should be dealt with in Finland under the discretionary clause in Article 17 of the Dublin Regulation.

Therefore, and otherwise taking into account the reasons for the decision of the administrative court set out above and the legal instructions applied by the administrative court, as well as the requirements of the Supreme Administrative Court and the explanation received, there are no grounds to change the result of the administrative court decision.

Other comments or references (*for example, links to other cases, does this decision replace a previous decision?*)

Case law:

ECtHR, M.S.S. v. Belgium and Greece;

ECtHR, Tarakhel v. Switzerland

N.S. v. Secretary of State for the Home Department

Other:

European Commission, Fourth Recommendation on 8 December 2016 in favour of the resumption of Dublin returns to Greece;

Hellenic Republic, Ministry of Migration & Asylum: Statistical Data of the Greek Asylum Service, 07.06.2013–29.02.2020;

Greek Council for Refugees & ECRE: Country Report: Greece, 2018 Update, March 2019;
UNHCR: Fact Sheet Greece, 1–30 September 2019;

Dutch Council for Refugees: Games of Responsibility: The Main Challenges that Asylum Seekers Face in Greece, May 2019;

ECRE: Housing out of reach? The reception of refugees and asylum seekers in Europe, 2019
ja Papatzani, Leivaditi, Ilias & Petracou: Reception Policies, Practices and Responses;

OHCHR: Working Group on Arbitrary Detention: Preliminary Findings from its visit to Greece
(2–13 December 2019);

Greek Law no. 4368/2016 on free access to health care services

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

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