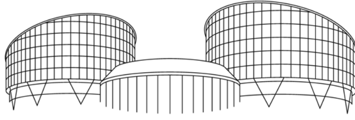

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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This factsheet does not bind the Court and is not exhaustive

"Dublin" cases

"Dublin" Community Law

The "Dublin" system serves to determine which European Union (EU) Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national[1].

The Dublin Regulation[2] establishes the principle that only one Member State is responsible for examining an asylum application. The objective is to avoid asylum seekers from being sent from one country to another, and also to prevent abuse of the system by the submission of several applications for asylum by one person.

The Member State designated as responsible for the asylum application must take charge of the applicant and process the application. If a Member State to which an asylum application was submitted deems that another Member State is responsible, it can call on that Member State to take charge of the application. Where the requested State accepts to take charge of or to take back the person concerned, a reasoned decision stating that the application is inadmissible in the State in which it was lodged and that there is the obligation to transfer the asylum seeker to the Member State responsible is sent to the applicant.

T.I. v. the United Kingdom (application no. 43844/98)

7 March 2000 (decision on the admissibility)

The applicant, a Sri-Lankan national, had left Germany and applied for asylum in the United Kingdom. The United Kingdom Government requested that Germany accept responsibility for the applicant's asylum request pursuant to the *Dublin Convention*. The applicant feared that the German authorities would simply send him back to Sri Lanka, where he claimed there was a real risk of him being subjected to treatment contrary to Article 3 (prohibition of torture or inhuman or degrading treatment) of the European Convention on Human Rights[3] at the hands of the security forces, the LTTE (a Tamil organisation engaged in an armed struggle for independence) and Tamil pro-Government activist organisations. He alleged that he had been subjected to ill-treatment by the LTTE in Sri-Lanka and had had to leave his home. He also claimed that he had been held prisoner in Colombo for three months and tortured by the security forces, who suspected him of being a Tamil Tiger.

The European Court of Human Rights declared the application **inadmissible** (manifestly ill-founded). It considered that the existence of a real risk that Germany would return the applicant to Sri Lanka in violation of Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention had not been established[4].

K.R.S. v. the United Kingdom (no. 32733/08)

2 December 2008 (decision on the admissibility)

The applicant, an Iranian national, had made his way to the United Kingdom after passing through Greece. In compliance with the *Dublin II Regulation*, the British authorities had requested that Greece accept responsibility for his asylum request and

[1]. All EU Member States shall apply the Regulation, as well as Norway, Iceland, Switzerland and Liechtenstein.
[2]. See the page on the Dublin Regulation on the European Commission Internet site.
[3]. Article 3 of the European Convention on Human Rights: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".
[4]. In its decision the Court said that removing the applicant to a third country did not absolve the United Kingdom of the responsibility to ensure that the deportation would not expose him to treatment contrary to Article 3 of the Convention.

Greece accepted. The applicant alleged that his expulsion from the United Kingdom to Greece would be contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention, because of the situation of asylum seekers in Greece.

The Court declared the application **inadmissible** (manifestly ill-founded). The evidence before the Court indicated that Greece was not removing people to the applicant's country of origin, Iran. Further, in the absence of any proof to the contrary, it was to be presumed that Greece would comply with its obligation to make the right of any returnee to lodge an application with the Court under Article 34 of the Convention (and request interim measures[5] under Rule 39 of the Rules of Court) both practical and effective in respect of returnees including the applicant.

M.S.S. v. Belgium and Greece (no. 30696/09)

21 January 2011 (Grand Chamber judgment)

The applicant is an Afghan national who entered the EU via Greece before arriving in Belgium, where he applied for asylum. In accordance with the *Dublin II Regulation*, the Belgian Aliens Office asked the Greek authorities to take responsibility for the asylum application. The applicant complained in particular about the conditions of his detention and his living conditions in Greece, and alleged that he had no effective remedy in Greek law in respect of these complaints. He further complained that Belgium had exposed him to the risks arising from the deficiencies in the asylum procedure in Greece and to the poor detention and living conditions to which asylum seekers were subjected there. He further maintained that there was no effective remedy under Belgian law in respect of those complaints.

Regarding in particular the applicant's transfer from Belgium to Greece, the Court held, considering that reports produced by international organisations and bodies all gave similar accounts of the practical difficulties raised by the application of the Dublin system in Greece, and the United Nations High Commissioner for Refugees had warned the Belgian Government about the situation there, that the Belgian authorities must have been aware of the deficiencies in the asylum procedure in Greece when the expulsion order against him had been issued. Belgium had initially ordered the expulsion solely on the basis of a tacit agreement by the Greek authorities, and had proceeded to enforce the measure without the Greek authorities having given any individual guarantee whatsoever, when they could easily have refused the transfer. The Belgian authorities should not simply have assumed that the applicant would be treated in conformity with the Convention standards; they should have verified how the Greek authorities applied their asylum legislation in practice; but they had not done so. There had therefore been a **violation *by Belgium* of Article 3** (prohibition degrading treatment) of the Convention. As far as Belgium is considered, the Court further found a **violation of Article 13** (right to an effective remedy) **taken together with Article 3** of the Convention because of the lack of an effective remedy against the applicant's expulsion order.

In respect of Greece, the Court found a **violation of Article 13 taken in conjunction with Article 3** of the Convention because of the deficiencies in the Greek authorities' examination of the applicant's asylum application and the risk he faced of being removed directly or indirectly back to his country of origin without any serious examination of the merits of his application and without having had access to an effective remedy. As far as Greece is concerned, the Court further held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention both because of the applicant's detention conditions and because of his living conditions in Greece.

[5]. These are measures taken as part of the procedure before the Court which are binding on the State concerned. They do not prejudge the Court's subsequent decisions on the admissibility or merits of the cases concerned. If the Court allows the request for an interim measure the applicant's expulsion is suspended while the Court examines the application (however, the Court follows the applicant's situation, and can lift the measure during its examination of the case). See also the factsheet on "Interim measures".

Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court held that it was ***incumbent on Greece***, without delay, to proceed with an examination of the merits of the applicant's asylum request that met the requirements of the European Convention on Human Rights and, pending the outcome of that examination, to refrain from deporting the applicant.

In a Grand Chamber judgment of 21 December 2011, the Court of Justice of the European Union (CJEU) adopted a similar position to that of the European Court of Human Rights, referring explicitly to the judgment in *M.S.S. v. Belgium and Greece* (see, in particular, paragraphs 88 to 91 of the CJEU judgment).

Mohammed Hussein v. the Netherlands and Italy

2 April 2013 (decision on the admissibility)

This case concerned a Somali asylum seeker who claimed in particular that she and her two young children would be subjected to ill-treatment if transferred from the Netherlands to Italy under the *Dublin II Regulation*. In the interest of the parties and the proper conduct of the proceedings before it, the European Court of Human Rights had requested the Netherlands Government, under Rule 39 (interim measures) of the Rules of Court, not to expel the applicant to Italy pending the Court's decision on the case.
The Court declared the application **inadmissible** (manifestly ill-founded). It found in particular that, if returned to Italy, the future prospects of the applicant and her two children did not disclose a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. Nor did the general situation of asylum seekers in Italy show any systemic failings. Therefore, it decided to lift the suspension of the expulsion.

See also: **Halimi v. Austria and Italy**, inadmissibility decision of 18 June 2013; **Abubeker v. Austria and Italy**, inadmissibility decision of 18 June 2013.

Mohammed v. Austria

6 June 2013 (Chamber judgment)

This case concerned the complaint of a Sudanese national facing removal from Austria to Hungary under the *Dublin II Regulation* that his forced transfer there would subject him to conditions amounting to inhuman treatment, and that his second asylum request in Austria did not have a suspensive effect in relation to the transfer order.
The Court held that there had been a **violation of Article 13** (right to an effective remedy) **in conjunction with Article 3** (prohibition of torture and of inhuman or degrading treatment) of the Convention. The applicant had been deprived of a protection against forced transfer in the course of the proceedings concerning his second asylum application while having – at the relevant time – an arguable claim that his Convention rights would be violated in case of his transfer. At the same time, the Court found that, in view of recent legislative amendments in Hungary improving the situation of asylum-seekers, **the applicant's transfer there would not violate Article 3** of the Convention.

Sharifi v. Austria

5 December 2013 (Chamber judgment)

This case concerned an Afghan national's transfer by the Austrian authorities from Austria to Greece, under the *Dublin II Regulation*, in October 2008. The applicant complained that the transfer in question had exposed him to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention as Greece had been unable to deal properly with asylum requests and had provided inadequate conditions for asylum seekers.
The Court held that **the applicant's transfer did not violate Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that while the Austrian authorities must have been aware of serious deficiencies in the Greek asylum procedure and the living and detention conditions for asylum seekers, they ought not to have known at the time, that those deficiencies reached the threshold of Article 3.

See also: **Safaii v. Austria**, judgment (Chamber) of 7 May 2014.

Mohammadi v. Austria

3 July 2014 (Chamber judgment)

This case concerned an expulsion order to Hungary against an Afghan asylum-seeker issued by the Austrian authorities under the *Dublin II Regulation*. The applicant alleged in particular that, if forcibly transferred to Hungary, where asylum seekers were systematically detained, he would be at risk of imprisonment under deplorable conditions. He further complained that he would be at risk of *refoulement* to a third country, possibly Serbia (the country he had travelled through before arriving in Hungary), without his asylum claim being examined on the merits in Hungary.

The Court held that **the applicant's transfer** to Hungary **would not violate Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Considering that the relevant country reports on the situation in Hungary for asylum-seekers, and Dublin returnees in particular, did not indicate systematic deficiencies in the Hungarian asylum and asylum detention system, it concluded that the applicant would currently not be at a real, individual risk of being subject to treatment contrary to Article 3 of the Convention if expelled to Hungary.

Sharifi and Others v. Italy and Greece

21 October 2014 (Chamber judgment)

This case concerned 32 Afghan nationals, two Sudanese nationals and one Eritrean national, who alleged, in particular that they had entered Italy illegally from Greece and been returned to that country immediately, with the fear of subsequent deportation to their respective countries of origin, where they faced the risk of death, torture or inhuman or degrading treatment.

The Court held, concerning the four applicants who had maintained regular contact with their lawyer in the proceedings before the Court[6], that there had been: a **violation** by Greece **of Article 13** (right to an effective remedy) **combined with Article 3** (prohibition of inhuman or regarding treatment) of the Convention on account of the lack of access to the asylum procedure for them and the risk of deportation to Afghanistan, where they were likely to be subjected to ill-treatment; a **violation** by Italy **of Article 4 of Protocol No. 4** (prohibition of collective expulsion of aliens) to the Convention; a **violation** by Italy **of Article 3** of the Convention, as the Italian authorities, by returning these applicants to Greece, had exposed them to the risks arising from the shortcomings in that country's asylum procedure; and, a **violation** by Italy **of Article 13 combined with Article 3** of the Convention **and Article 4 of Protocol No. 4** to the Convention on account of the lack of access to the asylum procedure or to any other remedy in the port of Ancona.

In this case, the Court held, in particular, that it shared the concerns of several observers with regard to the automatic return, implemented by the Italian border authorities in the ports of the Adriatic Sea, of persons who, in the majority of cases, were handed over to ferry captains with a view to being removed to Greece, thus depriving them of any procedural and substantive rights.

In addition, it reiterated that the Dublin system must be applied in a manner compatible with the Convention: no form of collective and indiscriminate returns could be justified by reference to that system, and it was for the State carrying out the return to ensure that the destination country offered sufficient guarantees in the application of its asylum policy to prevent the person concerned being removed to his country of origin without an assessment of the risks faced.

[6]. In respect of the 31 other applicants, the Court struck the application out of its list of cases, pursuant to Article 37 (striking out applications) of the Convention.

Tarakhel v. Switzerland

4 November 2014 (Grand Chamber judgment)

This case concerned the refusal of the Swiss authorities to examine the asylum application of an Afghan couple and their six children and the decision to send them back to Italy. The applicants alleged in particular that if they were returned to Italy "in the absence of individual guarantees concerning their care", they would be subjected to inhuman and degrading treatment linked to the existence of "systemic deficiencies" in the reception arrangements for asylum seekers in Italy. They also submitted that the Swiss authorities had not given sufficient consideration to their personal circumstances and had not taken into account their situation as a family.

The Court held that there would be a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together. The Court found in particular that, in view of the current situation regarding the reception system in Italy, and in the absence of detailed and reliable information concerning the specific facility of destination, the Swiss authorities did not possess sufficient assurances that, if returned to Italy, the applicants would be taken charge of in a manner adapted to the age of the children. The Court further considered that the applicants had had available to them an effective remedy in respect of their complaint under Article 3 of the Convention. Accordingly, it **rejected** their **complaint under Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3** as manifestly ill-founded.

See also: **S.M.H. v. the Netherlands (no. 5868/13)**, inadmissibility decision of 17 May 2016; **N.A. and Others v. Denmark (no. 15636/16)**, inadmissibility decision of 28 June 2016.

A.M.E. v. the Netherlands (no. 51428/10)

13 January 2015 (decision on the admissibility)

The applicant, a Somali asylum seeker, complained that his removal to Italy would expose him to poor living conditions and he feared that the Italian authorities would expel him directly to Somalia without an adequate examination of his asylum case.

The Court declared the applicant's complaint under Article 3 (prohibition of inhuman or degrading treatment) of the Convention **inadmissible** (manifestly ill-founded), finding that he had not established that his future prospects, if returned to Italy, whether taken from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship severe enough to fall within the scope of Article 3. The Court noted in particular that unlike the applicants in the case of *Tarakhel v. Switzerland* (see above), who were a family with six minor children, the applicant was an able young man with no dependents and that the current situation in Italy for asylum seekers could in no way be compared to the situation in Greece at the time of the *M.S.S. v. Belgium and Greece* judgment (see above). The structure and overall situation of the reception arrangements in Italy could not therefore in themselves act as a bar to all removals of asylum seekers to that country.

A.S. v. Switzerland (no. 39350/13)

30 June 2015 (Chamber judgment)

The applicant, a Syrian national of Kurdish origin, complained that, if returned to Italy, he would face inhuman or degrading treatment. In particular he argued that due to systemic deficiencies in the reception system for asylum seekers in Italy, he would not be provided with proper housing and adequate medical treatment. He further alleged, in particular, that his removal to Italy would sever his relationship with his sisters in Switzerland and violate his right to respect for private and family life.

The Court held that, **if** the applicant were **removed** to Italy, there would be **no violation of Article 3** (prohibition of inhuman or degrading treatment) and **no**

violation of Article 8 (right to respect for private and family life) of the Convention. It observed in particular that the applicant was not critically ill and found that there was currently no indication that he would not receive appropriate psychological treatment if removed to Italy. While the Court had previously raised serious doubts as to the capacities of the reception system for asylum seekers in Italy, the reception arrangements there could not in itself justify barring all removals of asylum seekers to Italy.

M.T. v. the Netherlands (no. 46595/19)

23 March 2021 (decision on the admissibility)

This case concerned the transfer to Italy of an Eritrean asylum seeker and her two minor daughters pursuant to the Dublin III Regulation. The applicant submitted in particular that the family's transfer under the Dublin III Regulation, without individual guarantees from the Italian authorities of adequate reception facilities and access to medical care, would breach Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that the applicant had not demonstrated that her future prospects, if transferred to Italy with her children, whether looked at from a material, physical or psychological perspective, disclosed a sufficiently real and imminent risk of hardship that was severe enough to fall within the scope of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

See also: **A.B. and others v. Finland (n° 41100/19)**, decision (Committee) on the admissibility of 20 April 2021.

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