Reports of Cases

Case C-194/19

H. A.
v
État belge

(Request for a preliminary ruling from the Conseil d'État (Belgium))

Judgment of the Court (Grand Chamber), 15 April 2021

(Reference for a preliminary ruling – Regulation (EU) No 604/2013 – Determination of the Member State responsible for examining an application for international protection – Article 27 – Remedy – Whether account should be taken of circumstances subsequent to the transfer decision – Effective judicial protection)

Border controls, asylum and immigration – Asylum policy – Criteria and mechanisms for determining the Member State responsible for examining an application for international protection – Regulation No 604/2013 – Action brought against a transfer decision taken in respect of an applicant for international protection – Member States' obligation to provide for an effective and rapid remedy – Scope – National legislation not allowing account to be taken of circumstances subsequent to the adoption of the transfer decision in the context of an action for annulment – Unlawful – Limit – Existence of a specific remedy

(Charter of Fundamental Rights of the European Union, Art. 47; European Parliament and Council Regulation No 604/2013, recital 19 and Art. 27(1))

(see paragraphs 35-38, 40, 42, 45-48, operative part)

Résumé

An applicant for asylum must be able to plead circumstances subsequent to the adoption of a transfer decision in respect of which he or she exercises a remedy

It is for each Member State to lay down procedural rules for legal actions that would safeguard that effective judicial protection

H. A., a third-country national, made an application for asylum in Belgium. However, the Spanish authorities having agreed to take charge of him, his application was rejected and a decision to transfer him to Spain was adopted. Shortly afterwards, H. A.'s brother also arrived in Belgium, where he lodged an application for asylum. H. A. then brought an action against the transfer decision made in his case, claiming, in particular, that their respective asylum applications should be examined together.

That action was dismissed on the ground that H. A.'s brother arrived in Belgium after the adoption of the disputed decision and that that circumstance could not therefore be taken into consideration in the assessment of the lawfulness of that decision. H. A. lodged an appeal on a point of law before the Conseil d'État (Council of State, Belgium), alleging infringement of his right to an effective remedy, as follows from the Dublin III Regulation [1] and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). Irrespective of the question whether the arrival of his brother was in fact capable of having any bearing on the identity of the Member State responsible for examining H. A.'s asylum application, [2] the Conseil d'État (Council of State) must determine whether an applicant for asylum must be able to rely on circumstances subsequent to the adoption of a transfer decision relating to him or her. It decided to put that question to the Court of Justice.

In a Grand Chamber judgment, the Court rules that EU law [3] precludes national legislation which provides that the court or tribunal seised of an action for annulment of a transfer decision may not, in the context of the examination of that action, take account of circumstances subsequent to the adoption of that decision which are decisive for the correct application of the Dublin III Regulation. The position is otherwise if that legislation provides for a specific remedy that may be exercised after such circumstances have arisen, provided that that remedy allows for an *ex nunc* examination of the situation of the person concerned, the results of which are binding on the competent authorities.

Findings of the Court

In reaching that conclusion, the Court recalls that the Dublin III Regulation [4] provides that a person who is the subject of a transfer decision is to have the right to an effective remedy against that decision and that that remedy must cover, inter alia, the examination of the application of that regulation. It also recalls that it has previously held that an applicant for international protection must have an effective and rapid remedy available to him or her which enables that applicant to rely on circumstances subsequent to the adoption of a transfer decision, where the taking into account of those circumstances is decisive for the correct application of the Dublin III Regulation. [5]

However, the Court emphasises that the Member States are not required to organise their systems of legal remedies in such a way that compliance with the requirement to take such circumstances into account takes place within the framework of the examination of the action brought to call into question the lawfulness of the transfer decision. The EU legislature has harmonised only some of the procedural rules governing the right to a remedy against the transfer decision and the Dublin III Regulation does not specify whether it necessarily means that the court or tribunal seised may carry out an *ex nunc* examination of the lawfulness of the transfer decision. Therefore, in accordance with the principle of procedural autonomy, it is for each Member State to establish those rules, on condition that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness).

[1] Article 27 of 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 (OJ 2013 L 180, p. 31; 'the Dublin III Regulation').

[2] See the definition of 'family members' in Article 2(g) of the Dublin III Regulation, and Article 10 of that regulation.

[3] Article 27(1) of the Dublin III Regulation, read in the light of recital 19 of the regulation and Article 47 of the Charter.

[4] Article 27(1) and recital 19 of the Dublin III Regulation.

[5] See judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805), and judgment of 25 January 2018, *Hasan* (C-360/16, EU:C:2018:35).

In the present case, as regards more specifically the principle of effectiveness, the Court states that an action for annulment brought against a transfer decision, in the context of which the court or tribunal seised cannot take account of circumstances subsequent to the adoption of that decision which are decisive for the correct application of the Dublin III Regulation, does not ensure sufficient judicial protection in that it does not enable the person concerned to exercise his or her rights under that regulation and Article 47 of the Charter. However, the Court adds that such protection may be afforded, in the context of the national judicial system viewed as a whole, by a specific remedy, distinct from an action seeking to have the lawfulness of a transfer decision reviewed, that enables such circumstances to be taken into account. That specific remedy must, however, ensure that the person concerned has the opportunity to prevent the competent authorities of the requesting Member State from being able to carry out the transfer of that person, where a circumstance arising after the transfer decision precludes its implementation. That remedy must also ensure, when a subsequent circumstance means that the requesting Member State is responsible for examining the application for international protection, that the competent authorities of that Member State are obliged to take the measures necessary to acknowledge that responsibility and to initiate that examination without delay. Furthermore, the exercise of that specific remedy must not be made conditional on the person concerned having been deprived of his or her liberty or on the fact that implementation of the transfer decision is imminent.