



Reports of Cases

Case C-60/16

Mohammad Khir Amayry
v
Migrationsverket

(Request for a preliminary ruling from the
Kammarrätten i Stockholm — Migrationsöverdomstolen)

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national — Article 28 — Detention for the purposes of transfer of an applicant for international protection to the Member State responsible — Deadline for carrying out the transfer — Maximum period of detention — Calculation — Request to take charge accepted before the detention — Suspension of the implementation of the transfer decision)

Summary — Judgment of the Court (Third Chamber), 13 September 2017

1. *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 — Detention for the purposes of transfer — Detention after the acceptance of the take charge request — Maximum duration — Two months — Conditions — To be determined by the national court*

(Charter of Fundamental Rights of the European Union, Art. 6; European Parliament and Council Regulation No 604/2013, Art. 28)

2. *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 — Detention for the purposes of transfer — Detention after the acceptance of the take charge or take back request and before the lifting of the suspensive effect of an appeal or a review brought against a transfer decision — Lifting of the suspensive effect — Deadline for carrying out the transfer — Calculation — Exclusion of the period of detention which has already taken place*

(European Parliament and Council Regulation No 604/2013, Art. 28(3))

3. *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 — Detention for the purposes of transfer — Lifting of the suspensive effect of an appeal or a review brought against a transfer decision — Deadline for carrying out the transfer — Lack of prior request for the suspension of the transfer decision by the person concerned — Irrelevant*

(European Parliament and Council Regulation No 604/2013, Art. 28(3))

1. Article 28 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, read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that:

- it does not preclude national legislation, such as that at issue in the main proceedings, which provides that, where the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request, that detention may be maintained for no longer than two months, provided, first, that the duration of the detention does not go beyond the period of time which is necessary for the purposes of that transfer procedure, assessed by taking account of the specific requirements of that procedure in each specific case and, second, that, where applicable, that duration is not to be longer than six weeks from the date when the appeal or review ceases to have suspensive effect; and
- it does preclude national legislation, such as that at issue in the main proceedings, which allows, in such a situation, the detention to be maintained for 3 or 12 months during which the transfer could be reasonably carried out.

The third subparagraph of Article 28(3) of the Dublin III Regulation must therefore be interpreted as meaning that the period no longer than six weeks within which the transfer of a detained person must be carried out, laid down by that provision, applies only in the situation where the person concerned is already detained when one of the two events covered by that provision takes place. Consequently, when the detention of the person concerned pending his transfer begins after the requested Member State has accepted the take charge or take back request, the duration of the detention is circumscribed by one of the specific deadlines set out in Article 28(3) of that regulation, where appropriate, only from the date on which the appeal or review loses its suspensive effect in accordance with Article 27(3) of that regulation.

Failing any maximum duration of detention being set out in the Dublin III Regulation, such detention must nonetheless be compatible with, first of all, the principle laid down by the first subparagraph of Article 28(3) of that regulation that the detention be for as short a period as possible and not for longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer is carried out. Furthermore, the person concerned may not be detained for a period vastly in excess of six weeks during which the transfer could be reasonably carried out, in so far as it follows from the third subparagraph of Article 28(3) of the Dublin III Regulation that that period is, in principle, sufficient as regards, in particular, the simplified nature of the transfer procedure between the Member States established by that regulation so that the competent authorities proceed with the transfer (see, by analogy, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 60).

Consequently, given that the fact that the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request is not such as to render the transfer of that applicant particularly difficult, detention of 3 or 12 months during which the transfer may be reasonably carried out exceeds the period of time which is reasonably necessary for the required administrative procedures with due diligence until the transfer is carried out to be satisfied.

By contrast, in such a situation, as regards the discretion enjoyed by the Member States in the adoption of measures seeking to implement EU legislation, a period of detention of two months would not be found to be necessarily excessive, its suitability in relation to the facts of each specific case having nevertheless to be assessed by the competent authority under the supervision of national courts.

(see paras 39-41, 45-47, 49, operative part 1)

2. Article 28(3) of Regulation No 604/2013 must be interpreted as meaning that the number of days during which the person concerned was already detained after a Member State has accepted the take charge or take back request need not be deducted from the six week period established by that provision, from the moment when the appeal or review no longer has suspensive effect.

The fact that the person concerned was already detained on the date on which the suspensive effect of the review or appeal was lifted is not, in itself, such as to substantially facilitate the transfer since the Member States concerned cannot regulate the practical details of the transfer when neither its subject nor, *a fortiori*, its date is settled.

Furthermore, in the situation where the person concerned had lodged an appeal or a review only after several weeks in detention, a possible reduction of the second period established by the third paragraph of Article 28(3) of the Dublin III Regulation equal to the number of days during which that person was already in detention could, in practice, deprive the competent authority of any possibility of carrying out the transfer before the detention ends and also prevent it making effective use of the power laid down by the EU legislature to hold the person concerned in detention in order to counter the significant risk of that person absconding.

(see paras 57-59, operative part 2)

3. Article 28(3) of Regulation No 604/2013 must be interpreted as meaning that the six week period beginning from the moment when the appeal or review no longer has suspensive effect, established by that provision, also applies when the suspension of the execution of the transfer decision was not specifically requested by the person concerned.

It must moreover be noted that the EU legislature refers to the lifting of the suspensive effect ‘in accordance with Article 27(3)’ of the Dublin III Regulation, without drawing a distinction between the Member States which have decided to give an appeal or a review an automatic suspensive effect pursuant to Article 27(3)(a) and (b) of that regulation and the Member States which have chosen to make the grant of that suspensive effect subject to the intervention of a judicial decision to that effect on the request of the person concerned within the meaning of Article 27(3)(c) of that regulation.

Admittedly, Article 28(3) of the Dublin III Regulation does not directly make reference to the situation provided for by Article 27(4) of that regulation in which the suspension of the execution of a transfer does not follow from the effects of legislation or a judicial decision but from a decision taken by the competent authority. However, in such a case, the person concerned finds himself in a situation in every respect comparable to that of a person whose appeal or review is recognised as having suspensive effect pursuant to Article 27(3) of that regulation.

(see paras 64, 67, 68, 73, operative part 3)