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LESS THAN 48H FOR AN ILLEGAL DEPORTATION, BUT STILL NO RETURN ORDERED THREE WEEKS AFTER COURT DECISION

After a German court questions legality of controversial “Seehofer Deal” between Greece and Germany, the undersigning organisations demand the immediate implementation of the judicial order

More than three weeks passed since the Administrative Court of Munich ordered in a [landmark judgment](#) in a summary proceeding, the return of a deported Afghan refugee to Germany and questioned the lawfulness of a controversial Administrative Arrangement ([so-called “Seehofer deal”](#)) concluded between Greece and Germany.

“Every day that passes without the concerning refugee being transferred is another day in unjustified detention in Athens for him! His arbitrary detention illustrates the gaps in the Greek protection system. Further, Greece’s reception system remains inadequate and faces tremendous challenges and gaps in the protection of individuals. There are 24,000 refugees and migrants stranded on the Aegean islands, most of them in severely overcrowded hotspots such as Moria. Meanwhile, refugee camps in the mainland are also overstretched and conditions there can be poor. Greece thus is not a place to return asylum-seekers,” says Natassa Strachini of Refugee Support Aegean (RSA).

“In this case both Germany and Greece by-passed EU law, namely the Dublin III Regulation, by applying a bilateral Administrative Arrangement. The German court decision restored the rule of law,” states Spyros Rizakos of AITIMA. “Both countries should proceed with all the necessary arrangements so that the Court decision is executed promptly and the asylum-seeker returns to Germany. What is more, from now on they should stop applying the Administrative Arrangement.”

“The German Federal Ministry of the Interior states that they are going to continue implementing the deal, as the ruling allegedly concerns the individual case, only. The Ministry clearly misjudges the decision, which says that the procedure is illegal and this procedure will apply for every upcoming person concerned. That makes the court order general, not individual,” explains Robert Nestler of Equal Rights Beyond Borders, “The deal makes legal protection nearly impossible. Every case addressed to a court is at the end of a long list of coincidences. Seehofer just hopes that there won't be many "individual" cases to come. The Ministry keeps implementing an evidently illegal practice. That shows the relationship to the rule of law. Its a scandal!”.

Karl Kopp of RSA/ PRO ASYL says, “The Court order is the beginning of the end of the so-called Seehofer deal. The policy of refused entry at the German-Austrian border and deportations to Greece are illegal. It is a violation of European Law. We call on the

German government to end this unlawful deal policy and return to the rule of law. And bring back the victim of this cynical deal policy immediately."

Administrative Court: Fundamental doubts regarding conformity with European Law

The case concerns an Afghan male asylum-seeker intercepted by the Federal Police after crossing the German-Austrian border in May 2019. Without any involvement of the German Asylum Service BAMF, the competent authority for asylum applications, the Federal Police returned the person concerned to Greece, only on the basis of a so-called EURODAC-1 hit (i.e. registration and application in Greece). No further examination took place. De facto, there was no access to a lawyer. The Federal Police stressed that they solely followed the so-called "Seehofer Deal". Within 48 hours, the concerned protection-seeker was back in Greece – where he has been imprisoned for almost three months to the present day. In Greece, his asylum procedure was interrupted without any examination of his claim in substance – a resumption of his asylum procedure did not take place in the meantime.

The court ordered the immediate return of the applicant to Germany. Nevertheless, the Federal Police took a whole week to inform their Greek colleagues about the illegal deportation and to arrange for the return. Still, the date of the implementation of the juridical order remains open.

Legally, the matter is clear - and has been confirmed several times [by legal experts](#): The binding EU Dublin Regulation lays down the procedure and criteria for whether and how an asylum applicant can be transferred from one Member State to another - after sufficient examination and with effective access to legal protection. These elementary rights have been repeatedly emphasized by the European Court of Justice, too.

The significant judgement confirms this assessment in expressing considerable doubts on the legality of the applied procedure.

However, the German Ministry of the Interior remains unimpressed by the judicially confirmed doubts and announced in its reply to parliamentary and press requests, its intention to uphold the fast track procedure.

The circumvention of the Dublin Regulation leads to the threat of human rights violations

First and foremost, the Dublin Regulation follows the principle, that an examination on the question which Member State is responsible for the asylum procedure has to be conducted as soon as an asylum application is lodged with the respective Member State. A EURODAC-1-hit can be an indication for the responsibility of Greece, there are however still other options, such as family ties, that take precedence. The procedure is also conducted because no one may be deported into an inhuman or degrading

situation (Article 3 of the European Convention on Human Rights). In Greece, however, there is an inadequate reception system, and there is seriously insufficient and appropriate shelter and basic medical care for thousands of asylum-seekers as well as many protection challenges. While the European Commission advised to resume returns under the Dublin Regulation to Greece gradually and under certain circumstances already in December 2016 only 7 returns have been effected in the [first half 2019](#) (between [01.01-31.12.2018](#), returns took place in 6 cases).

On the contrary, between August 2018 and July 2019, [28 returns to Greece](#) took place on basis of the “Seehofer deal” and without assessment of the conditions upon return. The Administrative Court of Munich, too, voiced considerable doubts whether returns to Greece are in accordance with human rights. The interruption of the applicant’s asylum procedure in Greece was further considered by the Court as one of the reasons ordering the applicant’s return.

Dodgy Deal bypassing parliamentary control

The deal has been the product of an undisclosed negotiation between Horst Seehofer, the German Minister of Interior and his Greek counterpart and was signed a year ago. It provides details on the cooperation between Greek and German authorities in cases of refusal of entry to persons seeking protection in the context of temporary checks at the internal German-Austrian border. Neither the German nor the Greek Parliament have been involved or informed. Only a [leak](#) by RSA / PRO ASYL has made the agreement publicly available in November 2018.