

Urgent appeal against deportation to Greece in Dublin II proceedings successful

Press release no. 137/2009 dated December 9, 2009

Decision of December 08, 2009

2 BvR 2780/09

The applicant is an Eritrean national. On the occasion of an application for asylum submitted to the Federal Office for Migration and Refugees, the latter established that the applicant had previously been registered in Greece. It decided that the asylum application was inadmissible and ordered deportation to Greece, which was obliged to readmit the applicant in accordance with Council Regulation (EC) No. 343/2003 of February 18, 2003, the so-called Dublin II Regulation.

The Düsseldorf Administrative Court rejected an urgent appeal against the deportation because the Asylum Procedure Act precludes the suspension of deportations to a Member State of the European Union responsible for processing an asylum application in accordance with the Dublin II Regulation as part of interim legal protection. With his constitutional complaint, the applicant is seeking the annulment of this decision.

The 1st Chamber of the Second Senate of the Federal Constitutional Court issued the interim order and provisionally suspended the applicant's deportation. As in the case on which the temporary injunction of September 8, 2009 - 2 BvQ 56/09 - was based (press release no. 103/2009 of September 9, 2009), the decisive factor for this was that it was no longer possible to prevent or reverse any legal impairments that might already occur with the deportation or as a result of it.

The constitutional complaint is neither manifestly inadmissible nor manifestly unfounded. It gives rise to an examination of whether the requirements developed in the judgment of the Federal Constitutional Court of 14 May 1996 - 2 BvR 1938, 2315/93 - (BVerfGE 94, 49) on Art. 16a para. 2 GG regarding the constitutionally required exceptions to the exclusion of provisional legal protection against the deportation of asylum applicants to third countries responsible for processing the asylum application should be specified more precisely. Furthermore, it must be clarified whether case constellations are conceivable in which the deportation of an asylum applicant to a member state of the European Union may be suspended under provisional legal protection, as is possible under European law in accordance with the Dublin II Regulation.

It could also be necessary to clarify whether and what requirements the Basic Law sets for the granting of provisional protection for the period that the European Union institutions need to evaluate findings about actual or legal deficits in the asylum system of a Member State that pose a threat to asylum seekers and to enforce the necessary measures. When assessing Article 16a (2) and (5) of the Basic Law and Article 19 (4) of the Basic Law, the requirements of European Union law to maintain and further develop the European Union as an area of freedom, security and justice may also play a role in this context, as the legislator amending the constitution has created the basis for an overall European system of granting protection to refugees with the aim of sharing the burden between the states participating in such a system by introducing Article 16a of the Basic Law.

In addition, the question of what effects the principle of solidarity under European law, which also applies to a common asylum policy in the area of freedom, security and justice, has on the rights of the individual asylum applicant and on the interpretation of the Basic Law in the

event of a considerable overload of the asylum system of a Member State can also become significant.

The Federal Constitutional Court has so far temporarily prohibited the transfer of asylum applicants to Greece in five other cases. An initial decision in the main case is expected by summer 2010.