

**Case C - 458/24 [Flower] ( i )**

**DO**

**against**

**Federal Republic of Germany**

(Request for a preliminary ruling, submitted by the Verwaltungsgericht Sigmaringen)

**Judgment of the Court (Second Chamber) of 5 March 2026**

“Preliminary ruling – Asylum policy – Regulation (EU) No 604/2013 – Article 3(2) – Article 29 – Transfer of the asylum seeker to the Member State responsible for examining the application for international protection – Suspension, by the responsible Member State, of the taking and retaking of asylum seekers – Directive (EU) 2013/32 – Article 33 – Inadmissible applications”

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 – Procedures for taking charge and retaking charge – Time limit for transferring the applicant for international protection – Consequences of failure to meet this time limit – Transfer of responsibility for examining the application for international protection to the requesting Member State – Causes of failure to meet the time limit and State or person responsible – No impact*

(Regulation of the European Parliament and of the Council No 604/2013 , Article 29, paragraphs 1 and 2)

(see points 45-47, 49-61)

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 – Procedures for taking charge and retaking charge – Unilateral suspension by the Member State initially designated as responsible – Absence of systemic deficiencies leading to a risk of inhuman or degrading treatment – Member State determining the responsible Member State – Obligation for that State to examine the criteria for determining the responsible Member State and to become responsible itself – Absence – Persons subject to a transfer decision – Failure to comply with the transfer deadline – Responsibility for examination automatically transferred to the requesting Member State – Non-compliance caused by unilateral suspension – No impact*

(Regulation of the European Parliament and of the Council No 604/2013 , Article 3, paragraph 2, subparagraphs 2<sup>and 3</sup> , and Article 29, paragraphs 1 and 2)

(see point 66, item 1)

3. *Border controls, asylum and immigration – Asylum policy – Procedures for granting and withdrawing international protection – Directive 2013/32 – Procedure for examining an application for international protection – Application that may be deemed inadmissible by Member States – Grounds – Other Member State responsible for the examination and having accepted a request to take over or return the applicant – Inadmissibility – Decision to transfer and not examine pursuant to Regulation No 604/2013 – Admissibility*

(Directive 2013/32/EC of the European Parliament and of the Council, art. 33, § 1)

(see point 73, item 3)

## **Résumé**

Seized for a preliminary ruling by the Verwaltungsgericht Sigmaringen (Administrative Court of Sigmaringen, Germany), the Court interprets Regulation No <sup>604/2013</sup> ( [1](#) ) and Directive 2013/32 ( [2](#) ) in order to clarify the responsibilities relating to the examination of applications for international protection in a situation of suspension, by the responsible Member State, of the taking charge of the applicants concerned.

DO, a Syrian national, entered Germany on April 18, 2023, and submitted an asylum application there on April 26 of the same year. However, the Italian Republic was identified as the Member State responsible for examining this application.

The German Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge) submitted a request to the Italian Republic for DO's transfer of asylum, but received no response. Pursuant to Article 22(7) of the Dublin III Regulation, it therefore considered the request accepted and decided, on 18 July 2023, to reject DO's asylum application as inadmissible.

On July 27, 2023, DO filed an appeal against this decision with the Administrative Court of Sigmaringen, the referring court.

This court notes that it appears from two circulars issued by the Italian authorities in December 2022 that, provisionally and subject to exceptions, the Italian Republic would no longer accept transfers of applicants for international protection to Italy under the Dublin III Regulation. It would thus refuse any responsibility for applicants falling under its jurisdiction under this regulation.

In these circumstances, the referring court decided to refer several preliminary questions to the Court of Justice, essentially seeking to ascertain whether, firstly, in the specific situation where a Member State designated as responsible has unilaterally suspended the taking and readmission of applicants for international protection, the responsibility for examining an application is transferred to the Member State determining the responsible Member State. Secondly, the referring court asks the Court of Justice to clarify whether Directive 2013/32 allows a responsible Member State to reject an application for international protection as inadmissible on the grounds that it is unwilling to take or readmission of an applicant for international protection.

### *Court's assessment*

First, regarding responsibility for examining an application for international protection, the Court reiterates that the Member State determining the responsible Member State may itself become responsible for that examination. This is the case if, due to "systemic deficiencies" in the asylum procedure and the reception conditions for applicants resulting in "a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union," it is unable to transfer the applicant to the responsible Member State and if, after continuing its examination of the criteria set out in Chapter III of the Dublin III Regulation, it finds that it cannot transfer the applicant to a Member State designated on the basis of those criteria or to the first Member State in which the application was lodged.

However, the Court has already ruled that a unilateral suspension of the taking and resumption of care of applicants for international protection, such as that in the present case, is not, in itself, sufficient to justify the finding of such a systemic failure resulting in a risk of inhuman or degrading treatment.

In such a case, the Member State determining the responsible Member State must neither continue the examination of the criteria set out in Chapter III of the Dublin III Regulation on the basis of that provision, nor become itself the responsible Member State under Article 3(2), third subparagraph, of the same Regulation.

It cannot therefore be considered that there is an unwritten condition for the application of Article 3, paragraph 2, second and third subparagraphs, of the Dublin III Regulation, according to which the responsible Member State should be willing to take or take back responsibility for applicants for international protection.

Next, still in the situation of a unilateral suspension of the taking and resumption of care of applicants for international protection by a Member State, the Court examines the risk, raised by the referring court, that the applicant for international protection concerned may have his access to the international protection procedure unduly hindered and that ultimately no Member State may examine his application.

In this regard, it recalls that Article 29(2) of the Dublin III Regulation provides for an automatic transfer of responsibility to the requesting Member State, without making this transfer conditional upon any action by the responsible Member State, when the transfer of the applicant in question to that Member State is not carried out within the transfer period, which is in principle six months. This provision is formulated in broad terms, without any limitation of the transfer of responsibility to specific circumstances. Therefore, this transfer of responsibility occurs regardless of the reasons for the failure to carry out the transfer within the prescribed period and whether the failure is attributable to the requesting Member State, the responsible Member State, or the person concerned. It thus takes place even when the transfer of the person concerned could not be completed within the prescribed transfer period due to the unilateral suspension of the taking and retaking of responsibility by the Member State designated as responsible under the criteria set out in Chapter III of the Dublin III Regulation.

The objectives pursued by the Dublin III Regulation support this interpretation. In this regard, the Court notes that, given the objectives of speed in determining the Member State responsible for examining an application for international protection and of guaranteeing effective access to procedures for granting such protection, it is important that applications for international protection be examined, where appropriate, by a Member State other than the one designated as responsible under the criteria set out in Chapter III of the Dublin III Regulation, in the event of non-execution of the transfer of the applicant within the prescribed transfer period.

In this regard, the Court acknowledges that this interpretation allows the responsible Member State to evade its responsibilities under the Dublin III Regulation, simply by unilaterally suspending the procedures for taking charge of and returning asylum seekers after the transfer period has expired. However, it emphasizes that, even in such a case, the requesting Member State and the responsible Member State are required to consult and cooperate to ensure a transfer before the expiry of the transfer period. Furthermore, the latter Member State's responsibility remains fully intact during this period, so that the system of criteria for determining responsibility established by the Dublin III Regulation remains in effect.

The automatic transfer of responsibility to examine the application for international protection in the event of non-execution of the transfer of the person concerned within this period is, ultimately, the only way to guarantee that person effective access to the asylum procedure.

Finally, a Member State cannot justify its failure to fulfill its obligations under Union law by the failure of other Member States to fulfill their obligations. The remedy against a potential breach of the Dublin III Regulation by the Member State initially designated as responsible lies in the possibility for the European Commission, as well as for any other Member State, to bring infringement proceedings against that Member State.

Secondly, regarding the question of whether an application for international protection can be rejected as inadmissible on the grounds that the Member State responsible is unwilling to take in or re-take charge of the applicant for international protection, the Court notes that Article 33(1) of Directive 2013/32 exhaustively lists the situations in which Member States may consider an application for international protection inadmissible. Consequently, and given the exceptional nature of the grounds for inadmissibility in this list, that provision must be interpreted strictly and therefore cannot be applied to a situation that does not correspond to its wording.

However, this provision clearly distinguishes between cases in which an application for international protection is not examined under the Dublin III Regulation and cases in which such an application may be rejected as inadmissible for one of the reasons exhaustively listed in Article 33(2) of that directive.

Therefore, the Court states that this provision does not allow an application for international protection to be rejected as inadmissible on the grounds that the responsible Member State is not willing to take or re-take charge of the applicant for international protection.

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[i](#) The name of this case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

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[1](#) Regulation (EU) No <sup>604/2013</sup> of the European Parliament and of the Council of 26 June 2013 laying down 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, hereinafter the "Dublin III Regulation").

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[2](#) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for the granting and withdrawal of international protection (OJ 2013, L 180, p. 60).