

**Case C-228/21****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

8 April 2021

**Referring court:**

Corte suprema di cassazione (Supreme Court of Cassation, Italy)

**Date of the decision to refer:**

29 March 2021

**Appellant:**

Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione – Unità Dublino

**Respondent:**

CZA

**Subject matter of the main proceedings**

Appeal brought by the Ministero dell'Interno (Ministry of the Interior) against the order of the Tribunale di Catanzaro (District Court, Catanzaro, Italy) by which that court annulled the decision to transfer Mr CZA to Slovenia because of a breach of the duty to provide information laid down in Article 4 of Regulation (EU) No 604/2013.

**Subject matter and legal basis of the reference**

The reference for a preliminary ruling, made under Article 267 TFEU, concerns the interpretation 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, and, in particular, the obligation to provide information laid down in Article 4 of that regulation.

### **Questions referred for a preliminary ruling**

1. Should Article 4 of [Regulation (EU) No 604/2013] be interpreted as meaning that an action may be brought under Article 27 of [that regulation] against a transfer decision adopted by a Member State, using the mechanism provided for in Article 26 of [that regulation] and on the basis of the obligation to take back laid down in Article 18(1)(b) thereof, solely because of a failure to deliver the information leaflet required under Article 4(2) of [that] regulation by the Member State which adopted the transfer decision?

2. Should Article 27 of [that regulation], read in conjunction with recitals 18 and 19 and Article 4 thereof, be interpreted as meaning that, where it has been determined that there has been a failure to fulfil the obligations laid down in Article 4 [of that regulation], an effective remedy requires that the court adopt a decision annulling the transfer decision?

3. If the answer to Question 2 above is in the negative, should Article 27 of [that regulation], read in conjunction with recitals 18 and 19 and Article 4 thereof, be interpreted as meaning that, where it has been determined that there has been a failure to fulfil the obligations laid down in Article 4 [of that regulation], an effective remedy requires that the court verify the significance of that failure to fulfil obligations in the light of the circumstances alleged by the applicant and permits confirmation of the transfer decision in all cases where there are no grounds for adopting a transfer decision with different content?

### **Provisions of EU law relied on**

Regulation (EU) No 604/2013, recitals 18 and 19, Articles 4, 18 and 27

Article 47 of the Charter of Fundamental Rights of the European Union

### **Provisions of national law relied on**

Article 3 of decreto legislativo 28 gennaio 2008, n. 25/2008 (Legislative Decree No 25 of 28 January 2008) implementing Directive 2005/85/EC, repealed and replaced by Directive 2013/32/EU on common procedures for granting and withdrawing international protection.

That article, in the version updated following the amendments made by decreto legislativo 18 agosto 2015, n. 142 (Legislative Decree No 142 of 18 August 2015) and decreto-legge 17 febbraio 2017, n. 13 (Decree-Law No 13 of 17 February 2017), converted with amendments into legge 13 aprile 2017, n. 46 (Law No 46 of 13 April 2017), provides:

‘ ...

3. The authority responsible for determining the Member State responsible for examining an application for international protection pursuant to Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 is the Unità Dublino (Dublin Unit), operating within the Dipartimento per le libertà civili e l'immigrazione (Department of Civil Liberties and Immigration).

3-bis. Actions against transfer decisions adopted by the authority indicated in paragraph 3 may be brought before the court that is the seat of the specialist chamber on immigration, international protection and free movement of EU citizens ...

3-ter. To be admissible, actions must be brought within 30 days of notification of the transfer decision.

3-quater. Enforcement of the decision being contested may be suspended, at the request of one of the parties, where there are serious, proven reasons to do so, by means of a reasoned order based on summary information, where applicable. Such orders shall be issued within five days of submission of the request for suspension, without prior reference to the authority indicated in paragraph 3. To be admissible, the request for suspension must be lodged with the application initiating proceedings. The decision ordering or refusing to order the suspension of the decision being contested shall be notified by the court registry. The parties may file pleadings within five days of notification. Pleadings in response may be filed within five days of the expiry of the deadline indicated in the previous sentence. Where pleadings have been filed in accordance with the fifth and sixth sentences of this paragraph, the court shall issue a new order within the following five days confirming, amending or cancelling the measures already issued. An order issued under this paragraph shall not be subject to appeal.

3-quinquies. The authority that adopted the decision shall be notified of the action ...

3-septies. ... The procedure shall be resolved by means of an order (not subject to appeal) issued within 60 days of the bringing of the action. The deadline for lodging an appeal in cassation shall be 30 days from notification of the order ...

3-octies. Where the action described in the preceding paragraphs is accompanied by a request for suspension of the effects of the transfer decision, the transfer shall be suspended automatically and the time limit for the transfer of the applicant laid down in Article 29 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 shall run from notification of the decision rejecting that request for suspension or, if the request is accepted, from notification of the order dismissing the action'.

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 Mr CZA lodged an application for international protection in Italy. The Dublin Unit, the competent Italian authority under Article 35 of Regulation (EU) No 604/2013 ('the Regulation' or 'the Dublin III Regulation'), took the decision to transfer Mr CZA to Slovenia, the country in which he had previously lodged an application for international protection. Following checks, Italy sent Slovenia a take back request, in accordance with Article 18(1)(b) of the Regulation, which was accepted on 16 April 2018.
- 2 The transfer decision was contested before the Tribunale di Catanzaro [(‘the Tribunale’)] by an action based on a failure to fulfil the obligation to provide information laid down in Article 4 of the Regulation.
- 3 The Tribunale held that the administrative authority had not demonstrated that it had delivered the information leaflet required under Article 4 [of that regulation], and did not consider the production of the minutes of the personal interview – drafted in accordance with Article 5 of the Regulation – and the delivery of another information leaflet at the time of the formal application for international protection in Italy to be sufficient.
- 4 The Tribunale therefore held that the breach of the duty to provide information laid down in Article 4 of the Regulation meant that the transfer decision was invalid.
- 5 The Ministry of the Interior (which includes the Dublin Unit, the unit responsible for transfer decisions) brought an appeal against that decision before the Corte [suprema] di cassazione [(‘the Corte di cassazione’)]. Mr CZA is asking the Corte di cassazione to dismiss the appeal lodged by the Ministry of the Interior.

### **Essential arguments of the parties in the main proceedings**

- 6 The Ministry of the Interior submits that the Tribunale erred in applying Article 4 of the Regulation because, in this specific case, even if the information leaflet had not been delivered, the administrative authority, correctly applying the criteria laid down in the Regulation, could not have made a different decision.

### **Succinct presentation of the reasons for the reference**

- 7 The Corte di cassazione (the referring court) notes, first of all, that in the case at issue in the main proceedings, the administrative authority actually conducted the interview required by Article 5 of the Regulation. The issue before the referring court is therefore only the significance of the failure to deliver the information leaflet required under Article 4 of the Regulation to Mr CZA as part of the take back procedure governed by Article 18(1)(b) of that regulation.

- 8 There are two different interpretative approaches to Article 4 of the Regulation in Italian case-law, differing in particular in terms of the significance and consequences of infringement of that article.
- 9 According to one interpretation, the provision is essential and must be applied, without exception, in all cases where a procedure has been initiated to determine the Member State responsible for examining an application for international protection in accordance with the Dublin III Regulation. Infringement of that provision means that the transfer decision is irretrievably unlawful and, if contested by the party concerned on the ground of a failure by the State to fulfil its obligations to provide information, must be annulled on that basis. According to this interpretation, for the purpose of determining whether the transfer decision is invalid, it does not matter that the asylum seeker fails to allege or demonstrate a specific injury to his or her rights of action and defence.
- 10 According to a second interpretation, infringement of Article 4 of the Regulation cannot be relied on to contest a take back transfer decision under Article 18 of the Regulation, because the asylum seeker may only claim systemic flaws in the asylum procedure and in the reception conditions for applicants in the Member State designated in the light of the second subparagraph of Article 3(2) of the Regulation. In any case, on the basis of this second interpretation, the court may not annul the transfer decision following a take back request already accepted by a Member State for purely formal breaches, such as a failure to deliver the information leaflet required under Article 4 [of the Regulation].
- 11 The Corte di cassazione is uncertain as to whether such approaches are in line with the Dublin III Regulation, in the light of factors including paragraphs 93 and 95 of the judgment of the Court of Justice of 26 July 2017, *Mengesteab*, C-670/2016.
- 12 Indeed, considering the effectiveness of the remedy, but also the specific role that the Dublin III Regulation assigns to the first Member State in which an application for international protection is lodged, the Corte di cassazione asks whether, in the circumstances of the main proceedings, and specifically in the case of an action brought against a transfer decision under Article 26 and Article 18(1)(b) [thereof], Article 4 of the Regulation should be interpreted as meaning that a failure to fulfil the obligation to provide information laid down in that article may be relied on only on condition that the asylum seeker indicates what information he or she would have provided to the administrative authority to enable it to apply correctly the responsibility criteria laid down in the Regulation and also indicates how that information would have been decisive for the adoption of a transfer decision with different content or would have led the administrative authority to choose not to adopt the decision.
- 13 The Corte di cassazione is uncertain, in particular, as to whether the first approach, which considers merely complaining of a formal breach of the procedure sufficient for a transfer decision under Article 18(1)(b) [of the

Regulation] to be annulled, is in line with the Regulation. Indeed, the [referring] court feels that this would make it possible to contest, indirectly, the responsibility of the Member State in which the application for protection was first lodged, for reasons other than the correct application of the criteria laid down in the Regulation itself.

- 14 The referring court also notes that the Regulation does not offer any indication of the consequences that infringement of Article 4 [of that regulation] produces on the transfer decision, and that Article 27 of the Regulation gives no indication of what is meant by an effective remedy in this case.
- 15 In particular, the Corte di cassazione doubts that the first approach described above, whereby proven infringement of Article 4 of the Regulation requires the court in all cases to annul the administrative transfer decision, is in line with the aim of the Regulation. The Regulation is intended to enable a swift and correct identification of the Member State responsible, while respecting the fundamental rights of the asylum seeker, and at the same time to discourage secondary movements, namely movements of migrants from the Member State of arrival to another Member State.
- 16 This solution does not permit a timely identification of the Member State responsible and exposes the State issuing the transfer decision to the risk of exceeding the maximum time limits for enforcing the transfer decision. Conversely, an interpretation whereby the asylum seeker must allege the relevant circumstances leading to a different decision ensures that the remedy provided by the Regulation is effective and at the same time allows the procedures identified by the Regulation for determining the Member State responsible for examining an application for international protection to operate in a timely and effective manner.