

**Case C-504/21**

**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:**

17 August 2021

**Referring court:**

Verwaltungsgericht Stade (Germany)

**Date of the decision to refer:**

17 August 2021

**Applicants:**

Applicant 1

Applicant 2

Applicant 3

Applicant 4

Applicant 5

**Party opposing the applications:**

Bundesrepublik Deutschland

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**Subject matter of the main proceedings**

Regulation (EU) No 604/2013 – 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 – Request to take charge – Negative reply – Legal remedies available to the persons concerned

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

Interpretation of EU law, Article 267 TFEU

## Questions referred for a preliminary ruling

### a. Justiciability

1. Is Article 27 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 ('the Dublin III Regulation'), whether or not read in conjunction with Articles 47 and 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), and while noting the provisions of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, to be interpreted as meaning that the requested Member State is obliged to provide applicants, including children, who are present in the requesting Member State and who are seeking a transfer pursuant to Articles 8, 9 or 10 of the Dublin III Regulation, or the members of their family in the requested Member State within the meaning of Articles 8, 9 or 10 of the Dublin III Regulation, with an effective remedy before a court in the requested Member State against refusal of the request to take charge?

2. In the event that Question a.1 is answered in the negative:

In that case, does the right to an effective remedy referred to in a.1 arise directly from Article 47 of the Charter, whether or not read in conjunction with Articles 7, 9 and 33 of the Charter, in the absence of adequate regulation in the Dublin III Regulation (see the judgments of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraphs 51 and 52, available from JURIS, and of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 58, available from JURIS)?

3. In the event that Question a.1. or Question a.2. is answered in the affirmative:

Is Article 47 of the Charter, whether or not read in conjunction with the principle of sincere cooperation (see the judgment of 13 November 2018, *X*, C-47/17 and C-48/17, EU:C:2018:900, available from JURIS), to be interpreted as meaning that the requested Member State is obliged to inform the requesting Member State about an appeal brought by the applicants against the refusal of the request to take charge, and that the requesting Member State is obliged to refrain from ruling on the merits of the applicants' asylum application pending a negative outcome of the appeal proceedings?

4. In the event that Question a.1. or Question a.2. is answered in the affirmative:

Is Article 47 of the Charter, whether or not the assessments set out in recital 5 of the Dublin III Regulation are to be considered, to be interpreted in a case such as that described above as meaning that the courts of the requested Member State are obliged to guarantee legal protection by way of summary proceedings? Is there a period within which the courts in the requested Member State must take a decision on the appeal?

b. Transfer of responsibilities

1. Does the third subparagraph of Article 21(1) of the Dublin III Regulation, read in conjunction with Article 5(2) of Regulation (EC) No 1560/2003, as amended by Regulation (EU) No 118/2014, ('the Implementing Regulation') effect, in principle, a non-appealable transfer of responsibilities to the requesting Member State, if the requested Member State refuses both the original request from the [requesting] Member State and the application for reconsideration within the period (see the judgment of 13 November 2018, X, C-47/17 and C-48/17, EU:C:2018:900, paragraph 80, available from JURIS)?

2. If Question b.1 is answered in the affirmative:

Is that also the case if the refusal decisions of the requested Member State are unlawful?

3. In the event that Question b.2 is answered in the negative:

Can the applicant for asylum in the requesting Member State invoke a transfer of responsibility that was unlawful due to failure to comply with responsibility criteria relating to family unity (Articles 8 to 11, 16, 17(2) of the Dublin III Regulation) against the requested Member State?

c. Subsequent application

1. Are Article 7(2) and Article 20(1) of the Dublin III Regulation to be interpreted as not precluding the applicability of the provisions in Chapter III or the implementation of a procedure for taking charge within the meaning of Chapter VI, Section II, of the Dublin III Regulation in cases where the applicants have already lodged an asylum application in the requesting Member State, which was originally rejected as inadmissible by the requesting Member State on the basis of Article 33(2)(c), read in conjunction with Article 38, of Directive 2013/32/EU, but – for example as a result of the de facto settlement in the 'EU-Turkey Statement of 18 March 2016' (see EN P-000604/2021, Answer given by Ms Johansson on 1 June 2021 on behalf of the European Commission) – an admissible subsequent

application procedure has since been initiated in the requesting Member State?

2. In the event that Question c.1 is answered in the negative:

In the case described under c.1., are Article 7(2) and Article 20(1) of the Dublin III Regulation then to be interpreted in such a way that they do not preclude the applicability of the provisions in Chapter III and the implementation of a procedure to take charge pursuant to Chapter VI, Section II, of the Dublin III Regulation in cases involving responsibility criteria relating to family unity (Articles 8 to 11 and 16 of the Dublin III Regulation)?

3. Is Article 17(2) of the Dublin III Regulation still applicable in the case where the applicants have already lodged an asylum application in the requesting Member State, which was originally rejected as inadmissible by the requesting Member State on the basis of Article 33(2)(c) read in conjunction with Article 38, of Directive 2013/32/EU, but – for example as a result of the de facto settlement in the ‘EU-Turkey Statement of 18 March 2016’ (see EN P-000604/2021, Answer given by Ms Johansson on 1 June 2021 on behalf of the European Commission) – an admissible subsequent application procedure has since been initiated in the requesting Member State?

4. If Question c.3 is answered in the affirmative:

Does Article 17(2) of the Dublin III Regulation grant applicants for asylum an enforceable subjective right in the requested Member State? Does EU law lay down any stipulations regarding the exercise of administrative discretion by the national authorities in this regard – for example maintaining family unity, the best interests of children – or is this governed by national law alone?

- d. Subjective rights of a family member residing in the requested Member State

Does a family member who is already resident in the requested Member State have a legally enforceable claim to ensure compliance with Article 8 et seq. of the Dublin III Regulation and the associated transfer rules (Articles 18 and 29 et seq. of the Dublin III Regulation, whether or not read in conjunction with recitals 13, 14 and 15 of the Dublin III Regulation, read in conjunction with Article 47 of the Charter) or with Article 17(2) of the Dublin III Regulation?

### **Provisions of EU law cited**

Charter of Fundamental Rights of the European Union, in particular Articles 7, 9, 33, 47 and 51

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 (recast) (OJ 2013 L 180, p. 31), corrigendum: OJ 2017 L 49, p. 50), in particular Articles 7, 8, 9, 10, 11, 16, 17, 18, 20, 21, 27, 29, 30, 31, 32 and 33

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60), in particular Articles 33 and 38

Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3), as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 (OJ 2014 L 39, p. 1), in particular Article 5

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12)

### **Provisions of national law cited**

Verwaltungsgerichtsordnung (Code of Administrative Court Procedure; ‘the VwGO’), in the version published on 19 March 1991 (BGBl. I, p. 686), as last amended by Article 3a of the Law of 16 July 2021 (BGBl. I, p. 3026), in particular Paragraph 123

Asylgesetz (Law on Asylum; ‘the AsylG’), in the version published on 2 September 2008 (BGBl. I, p. 1798), as last amended by Article 9 of the Law of 9 July 2021 (BGBl. I, p. 2467), in particular Paragraph 80

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

- 1 The applicants are Syrian nationals. Applicants 1 and 5 are a married couple. Applicants 2, 3 and 4 are the couple’s minor children.
- 2 Applicant 5 arrived in the Federal Republic of Germany on 20 October 2015, where he was granted subsidiary protection status on 11 October 2016.

- 3 Applicants 1, 2, 3 and 4 remained in Lebanon for a prolonged period. On 4 June 2019, having travelled via Turkey, they arrived in the Hellenic Republic (the island of Kos), where they lodged an asylum application on 26 February 2020. This was rejected as inadmissible pursuant to Article 38(1) of Directive 2013/32. On 8 February 2021, applicants 1, 2, 3 and 4 submitted a further asylum application, which appears to have been treated by the Greek authorities as an admissible subsequent application.
- 4 On 6 May 2021, the Hellenic Republic requested that the party opposing the applications take charge of applicants 1, 2, 3 and 4 pursuant to Article 9 of Regulation No 604/2013. The party opposing the applications refused that request by letter of 12 May 2021 on the ground that a decision had already been made about the first asylum application made by applicants 1, 2, 3 and 4 before the subsequent application.
- 5 By letter of 18 May 2021, the Hellenic Republic asked that its request be reconsidered. It argued that neither Directive 2011/95 nor Greek law distinguished between a first and a subsequent application. The Dublin rules, it argued, were still applicable, and the party opposing the applications was therefore obliged to take charge of applicants 1, 2, 3 and 4 pursuant to Article 9 and Article 17(2) of Regulation No 604/2013.
- 6 By letter of 20 May 2021, the party opposing the applications again refused the Hellenic Republic's request that it take charge.
- 7 On 7 July 2021, the applicants lodged an urgent application before the referring court.

#### **The essential arguments of the parties in the main proceedings**

- 8 The applicants request that the party opposing the applications accede to the Hellenic Republic's request that it take charge and declare itself responsible for examining the asylum application made by applicants 1, 2, 3 and 4. They take the view that a rapid decision is required on the grounds of effective judicial protection (Article 47 of the Charter of Fundamental Rights of the European Union).
- 9 The party opposing the applications argues that the first asylum application from applicants 1, 2, 3 and 4 had already been rejected in Greece, and that family reunification under Regulation No 604/2013 was therefore precluded. The wording of the relevant provisions, it is submitted, excluded their application following conclusion of the first procedure.

**Succinct presentation of the reasoning in the request for a preliminary ruling*****Admissibility of the appeal***

- 10 The referring court proceeds on the assumption that the appeal lodged by the applicants against the negative reply of the party opposing the applications is impermissible.
- 11 Regulation No 604/2013 expressly provides for only one appeal against a transfer decision (Article 27). The EU legislature was well aware of the lack of regulation surrounding the application of the humanitarian clause at the request of an asylum seeker (see Report from the Commission of 6 June 2007 on the evaluation of the Dublin system, COM (2007) 299 final, Section 2.3.1, under ‘Uniform application’).
- 12 It is true that Regulation No 604/2013 may grant an applicant for international protection the right to rely on compliance with the provisions of that regulation in judicial proceedings (see, to that effect, judgments of 26 July 2017, *Mengesteab*, C-670/16, EU:C:2017:587, paragraph 62, and of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 44).
- 13 However, the referring court takes the view that, on the basis of Regulation No 604/2013, such a right does not exist, at least not in cases such as that at issue in the main proceedings.
- 14 The family reunification sought in the recent appeal is not substantively regulated in Regulation No 604/2013, but in Directive 2003/86, which also obliges the Member States to provide corresponding legal remedies (Article 18). This guarantees effective judicial protection for the best interests of children and of the family.
- 15 A different outcome would also be incompatible with the objective of Regulation No 604/2013, which is to ‘make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection’ (recital 5).

***Urgency***

- 16 The questions of law forming the subject of the questions referred for a preliminary ruling have not been adjudicated consistently in the Member States (see, for example, The Migration Law Clinic of the VU Amsterdam, An Individual Legal Remedy against the Refusal of a Take Charge Request under the Dublin III Regulation, September 2020, Section 6, with further references), especially as they are usually decided in summary proceedings with non-appellable decisions.

- 17 They may affect a large number of cases in the Federal Republic of Germany alone (Supplementary information on asylum statistics for the year 2020 and the first quarter of 2021 – priority issues relating to the Dublin procedure, *Deutscher Bundestag* (German Federal Parliament), Document 19/30849).
- 18 In order to guarantee uniform interpretation and application and secure the *effet utile* of EU law, a decision from the Court of Justice of the European Union is therefore required, particularly in view of the fundamental importance of the right to an effective legal remedy in the EU legal order and the fundamental importance of Regulation No 604/2013 to the functioning of the Common European Asylum System.
- 19 As the main proceedings could be settled by a decision made within the typical duration of proceedings, for example by an interim decision by the Greek authorities on the asylum applications of applicants 1, 2, 3 and 4 or by irregular secondary migration, a rapid decision is required from the Court of Justice of the European Union.
- 20 Applicants 1, 2, 3 and 4 are currently living in precarious conditions in a refugee camp on the island of Kos. Under Greek law, they must remain on the island of Kos.