

Case C-184/24 [Sidi Bouzid]ⁱ

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:

7 March 2024

Referring court:

Tribunale Amministrativo Regionale per la Lombardia (Italy)

Date of the decision to refer:

5 March 2024

Applicant:

AF, in his own name and as person exercising parental responsibility over the child BF

Defendant:

Ministero dell'Interno – U.T.G. – Prefettura di Milano

Subject matter of the main proceedings

Action for annulment of the decision ordering the withdrawal of reception measures in relation to AF and BF.

Subject matter and legal basis of the request

Interpretation, under Article 267 TFEU, of Article 20 of Directive 2013/33/EU. In particular, it is necessary to determine whether that provision precludes national legislation which allows for the withdrawal of reception measures where the related conditions for granting those measures are no longer met – in particular, because the applicant for international protection refuses the transfer to a different accommodation centre – and there is a risk that, following that withdrawal, his basic needs can no longer be covered.

ⁱ The name of the present case is fictitious. It does not correspond to the real name of any of the parties to the proceedings.

Question referred for a preliminary ruling

Does Article 20 of Directive [2013/33/EU] and the principles set out by the Court of Justice in its judgments of 12 November 2019 in Case C-233/[18] and 1 August 2022 in Case C-422/[21] – in so far as they preclude the administrative authority of the Member State from ordering, as a sanction, the withdrawal of reception measures where that decision would be detrimental to the basic vital needs of the foreign national applying for international protection and of his family – preclude national legislation which permits, following a reasoned individual assessment, relating also to the necessity and proportionality of the measure, withdrawal of reception, not for sanctioning reasons, but because the conditions for being granted it are no longer met, in particular, on account of the foreign national's refusal, on grounds which do not relate to covering basic vital needs and protecting human dignity, to agree to the transfer to another accommodation centre, designated by the administrative authority on account of objective organisational needs and guaranteeing, under the responsibility of the administrative authority itself, that the material reception conditions equivalent to those enjoyed at the centre of origin will be maintained, where the refusal to transfer and subsequent decision ordering the withdrawal place the foreign national in the position of being unable to meet basic needs of personal and family life?

Provisions of European Union law and case-law relied on

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, in particular recital 25 and Article 20(1)(a) thereof

Judgments of the Court of Justice of 12 November 2019, C-233/18, and 1 August 2022, C-422/21

Provisions of national law relied on

Decreto legislativo n. 142/2015, attuativo delle direttive 2013/32/UE e 2013/33/UE (Legislative Decree No 142/2015, implementing Directives 2013/32/EU and 2013/33/EU):

Article 23(1)(a) – implementing Article 20(1)(a) of Directive 2013/33/EU – provides for the withdrawal of reception measures where the applicant for international protection does not report to the designated facility or abandons the accommodation centre, without prior reasoned notification to the competent prefettura (prefecture);

Article 23(2)*bis* provides that the measures concerned are to be taken individually, in accordance with the principle of proportionality and having regard to the situation of the applicant, and reasons are to be given.

Succinct presentation of the facts and procedure in the main proceedings

- 1 On 18 May 2023, the applicant, accommodated together with the child at an accommodation centre in Milan, refused (for the third time) to be transferred to another accommodation centre, also in Milan, as ordered by the administrative authority which manages those centres. Following that refusal, the reception measures from which he benefited were withdrawn.
- 2 The applicant submitted an application for interim measures, which was initially dismissed by the Tribunale Amministrativo Regionale per la Lombardia (Regional Administrative Court, Lombardy) – which considers that the withdrawal ordered in the present case is an expression of the organisational power of the administrative authority with regard to the management of reception centres – but then upheld on appeal by the Consiglio di Stato (Council of State, Italy) – which considers that the withdrawal ordered could infringe fundamental human rights such as access to food, an abode and clothing, which are basic needs.

The essential arguments of the parties in the main proceedings

- 3 The statement of reasons for the withdrawal decision refers to several facts relating to the applicant: first, the fact that he, together with the child, occupies accommodation intended not for two but for four people; secondly, the violent conduct of the applicant. However, the basis for the withdrawal is the applicant's repeated refusal of the transfers ordered by the administrative authority for organisational reasons.
- 4 The applicant justified the refusal on the basis that the child studies at a place close to the current accommodation centre.

He also claims that, if the measures were withdrawn, he would not be able to meet his and the child's basic vital needs.

He claims, in particular, that the withdrawal decision does not take into account the fact that the applicant and the child belong to the category of 'vulnerable persons', and complains of an infringement of Article 20 of Directive 2013/33/EU as interpreted by the Court of Justice in its judgments in Case C-233/18 and Case C-422/21, which, although relating to the situation governed by Article 23(1)(e) – a provision which has been repealed – expresses a general principle applicable to any scenario relating to withdrawal of the measure, even of a non-sanctioning nature.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 5 Article 23 of Legislative Decree No 142/2015 – which follows the approach of Article 20 of Directive 2013/33/EU – provides for the reduction of reception measures in several cases: serious or repeated infringement, by the applicant for

international protection, of the rules of the facility in which he or she is accommodated, including intentional damage to movable or immovable property, or seriously violent behaviour. In those situations, the adopted measure is sanctioning in nature, because it is the consequence of unlawful conduct.

- 6 Withdrawal may be ordered by the administrative authority in different situations, where the conditions for being granted the reception measures are no longer met. That is the case, under Article 23(1)(a) of Legislative Decree No 142/2015, where the applicant fails to report to the designated facility or abandons the accommodation centre, without prior reasoned notification to the competent prefecture. In those situations, withdrawal is not a sanction, but an administrative measure, resulting from the fact that the conditions for being granted the reception measures are no longer met.
- 7 The present case falls within the scope of Article 23(1)(a) of Legislative Decree No 142/2015; although the wording of that provision refers to the situation where the applicant for international protection fails to report to the facility assigned to him or her, or abandons the centre, that provision must also cover, for the same reasons and for consistency of the system set up in favour of those applying for international protection, the situation in which the foreign national, after having been granted the measures, refuses to be transferred to a different accommodation centre designated by the administrative authority for management and organisational reasons.
- 8 The principles referred to were affirmed, initially, by the judgment of the Court of Justice in Case C-233/18, in relation to foreign nationals belonging to categories of vulnerable persons within the meaning of Article 21 of Directive 2013/33/EU and then extended, by the subsequent judgment in Case C-422/21, to any applicant for international protection, that is to say, irrespective of whether they belong to the categories referred to in Article 21. It follows that withdrawal as a sanction may not be ordered where this leads to the foreign national being deprived in practice of the ability to provide for his or her most basic needs.
- 9 The reasons for the decisions of the Court of Justice and their connection with the fundamental principles of the EU legal order, which are intended to protect human dignity, may lead to the conclusion that the principles stated by the Court are of general application, and are therefore applicable beyond the cases of withdrawal as a sanction, which are the subject of the judgments cited, and therefore also to withdrawal not as a sanction provided for in Article 23(1)(a) of Legislative Decree No 142/2015.
- 10 According to that approach, the fact that the conditions for being granted the reception measures are no longer met cannot lead to withdrawal where that is to the detriment of the person's most basic needs.
- 11 The issue is central to the present case, given that the Council of State, the appellate court, overturned the decision on interim measures handed down by the

Regional Administrative Court, Lombardy, on the basis that the withdrawal could infringe fundamental human rights such as access to food, an abode and clothing, which are basic needs.

- 12 A recent line of national case-law has developed that approach, by considering, in relation to a withdrawal ordered because the applicant abandoned the accommodation centre, without prior communication to the prefecture, that the principles developed by the Court must also apply to that situation, even though the conditions for a sanction are not met.
- 13 It has been held (see Decision No 10999 of the Council of State, Section III, of 15 December 2022) that the withdrawal provided for in that situation by the Italian legislature leaves no room for differentiation and takes place as the only reaction of the legal order, thus infringing the principle of proportionality, and not allowing for the protection of the basic needs of the foreign national who is the subject of the measure, thereby conflicting with the need to protect human dignity.
- 14 On the basis of those conditions, the case-law cited above precluded the application of Article 23(1)(a) of Legislative Decree No 142/2015, on the ground that it infringed Article 20 of Directive 2013/33/EU.
- 15 However, that approach was established before Decree-Law No 20/2023, which, in order to bring the national legal order into line with EU law, made the power of withdrawal discretionary; that withdrawal must depend on a specific assessment of all the relevant factors and is no longer automatic. The non-application of the Italian legislation was therefore due to the rigid nature of the withdrawal provisions, whereas that rigid nature has now ceased to exist, and with it also the reason for the conflict with EU rules.
- 16 Under the current legal framework, which allows the principle of proportionality to be respected, the application of Article 23 of Legislative Decree No 142/2015 can therefore no longer be precluded in relation to the aspect mentioned above.
- 17 In the present case, the referring court considers that the administrative authority gave sufficient reasons for the withdrawal decision. The administrative authority did not wish to expel the applicant from the reception system, but only to transfer him to another centre, where he would have continued to benefit from full protection. The withdrawal of the reception measures is a direct effect of the refusal of the foreign national to continue to benefit from those reception measures, even if in another place. That ultimately amounts to voluntary withdrawal from the reception mechanism, making the case entirely equivalent to that of a foreign national who refuses to be included from the outset.
- 18 The fact remains, however, that, as a result of the decision at issue, the foreign national would be exposed (by his choice) to deprivation of his basic needs. Once again, the referring court notes that this is the same deprivation as that which the person may incur if he voluntarily refuses to be included in the reception system,

the application of which certainly cannot be imposed, but always requires the agreement of the person concerned.

- 19 At this stage, the general scope that the principles affirmed by the judgments of the Court of Justice cited above seem to have leads the referring court to have doubts as to the compatibility of Article 23(1)(a) of Legislative Decree No 142/2015, in relation only to the part specified above, with Article 20 of Directive 2013/33/EU.
- 20 It is necessary to determine whether the latter provision precludes national legislation which allows for the withdrawal of reception measures where the objective conditions for being granted those measures are no longer met and, in particular, where the foreign national refuses the transfer to a different accommodation centre ordered by the administrative authority for organisational reasons, where the withdrawal measure is necessary and proportionate, and is taken after a detailed examination of all the circumstances of the case, but exposes the foreign national to the risk, even if attributable to his own free decision, that his basic needs will no longer be met.
- 21 If EU law were to preclude such national legislation, the finding concerning basic needs would completely paralyse the power of withdrawal on the ground that the conditions for being granted the measure are no longer met, since it is not easy to envisage a case in which a person, who benefits from such reception precisely because of the difficulties he or she finds himself or herself in, may suddenly find accommodation and adequate means of subsistence.
- 22 However, while it is the case that the overriding interest in protecting human dignity may warrant such a consequence in the event of withdrawals of a sanctioning nature taken against a person who retains the entitlement to benefit from reception, it is, by contrast, doubtful that the same conclusion would also apply in the case of a person who, voluntarily and without appropriate justification, chooses to refuse to remain in the reception system (in another centre).
- 23 Ultimately, there seems to be a risk of abuse of the system which, according to the Court of Justice, justifies the withdrawal of reception measures (see judgments in Case C-422/21, paragraph 38, and Case C-233/18, paragraph 44).
- 24 It should be recalled that, when granting reception measures, it is for the national administrative authority to designate the accommodation centre in which to place the foreign national who is unable to provide for personal and family life needs and who has applied for international protection. The choice is the consequence of organisational and managerial assessments which are the responsibility of the administrative authority. The organisational power remains within the remit of the administrative authority while the measures are being implemented. The administrative authority therefore has the power to order the transfer of the beneficiaries if there are proven organisational needs.

- 25 In the present case, the administrative authority pointed out that the applicant occupied, together with the child, accommodation intended for four people and, therefore, suitable for the needs of a larger family. For those reasons, it ordered the transfer of the applicant to another centre, also situated in the city of Milan.
- 26 That aspect is particularly important, in so far as the Court of Justice (see judgment in Case C-233/18, paragraphs 49 and 50) has clarified that ensuring access to reception measures falls within the responsibility of the Member States, even where they have recourse to private natural or legal persons.
- 27 That aspect is complied with in the present case, in so far as the administrative authority, after having noted the existence of an objective organisational need for the transfer, directly designated a different centre, in the same city, in which the applicant, together with the child, could have continued to enjoy the reception measures.
- 28 Only the applicant's refusal to agree to the transfer led to the withdrawal of the measure, since the condition for being granted that measure was no longer met, that is to say, the applicant actually reporting to the centre designated by the administrative authority.
- 29 The refusal by the applicant is not linked to proven unsuitability of the centre subsequently designated by the administrative authority in relation to his living needs, but only to the greater proximity of the first centre to the school attended by the child; this is an aspect of the issue which, although taken into consideration, is not as important as the organisational needs of the centre, given that the child will nevertheless be provided with school services, even in the event of transfer.
- 30 Directive 2013/33/EU provides for the possibility for Member States to react to possible abuses of the protection granted by access to reception measures. The principle is confirmed in the judgments of the Court of Justice referred to above.
- 31 The referring court observes that, in that context, refusal constitutes an abuse of the reception measures against which the administrative authority has the power to adopt decisions to overcome that situation, in accordance with the principles laid down in the abovementioned decisions of the Court of Justice.
- 32 Withdrawal in the present case is the only measure which the administrative authority may adopt to tackle abuse, in so far as it is not possible to reduce reception, or to adopt other less restrictive measures, given that the reason for the transfer is determined by objective organisational needs linked to the use by the applicant and the child of accommodation intended for a family of four, not two, people, and that no other accommodation is available at the centre.
- 33 If it were to be considered that, in the situation at issue, Article 20 of Directive 2013/33/EU precludes the exercise of the power of withdrawal, the management of the accommodation centres would no longer, in practice, be at the disposal of

the administrative authority, in so far as the mere refusal to transfer, by the foreign national, could paralyse the organisation of those centres and introduce a ‘right to stay’ at the first centre assigned depending merely on the wishes of the foreign national, which has no basis in EU and national law and is incompatible with objective needs relating to the organisation of the measures.

WORKING DOCUMENT