

JUDGMENT OF THE COURT (Second Chamber)

5 March 2026 (*)

(Reference for a 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 Member State responsible, of the taking charge and taking back of asylum seekers – Directive (EU) 2013/32 – Article 33 – Inadmissible applications)

In Case C-458/24 [Daraa], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Sigmaringen (Administrative Court, Sigmaringen, Germany), made by decision of 7 May 2024, received at the Court on 27 June 2024, in the proceedings

DO

v

Bundesrepublik Deutschland,

THE COURT (Second Chamber),

composed of K. Jürimäe (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, F. Schalin, M. Gavalec and Z. Csehi, Judges,

Advocate General: M. Szpunar,

Registrar: G. Chiapponi, Administrator,

having regard to the written procedure and further to the hearing on 18 June 2025,

after considering the observations submitted on behalf of:

- DO, by M. Weidmann, Rechtsanwalt,
- the German Government, by R. Kanitz, acting as Agent,
- the Danish Government, by D. Elkan, M. Jespersen, C.A.-S. Maertens and J. Sandvik Loft, acting as Agents,
- the French Government, by B. Dourthe, O. Duprat-Mazaré and B. Fodda, acting as Agents,
- the Italian Government, by W. Ferrante and S. Fiorentino, acting as Agents,
- the Austrian Government, by A. Posch, J. Schmoll and M. Kopetzki, acting as Agents,
- the Finnish Government, by H. Leppo, acting as Agent,
- the European Commission, by M. Debieuvre, E. Garello, A. Katsimerou and J. Vondung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 October 2025,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(2) and of Article 27(1) 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 (OJ 2013 L 180, p. 31; ‘the Dublin III Regulation’), and, in particular, of Article 33(1) of that regulation, and of 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).
- 2 The request has been made in proceedings between DO, a Syrian national, and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning a decision from the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany; ‘the Federal Office’) rejecting his application for asylum and ordering his removal to Italy.

Legal context

European Union law

Dublin III Regulation

- 3 Recitals 4 and 5 of the Dublin III Regulation are worded as follows:
 - ‘(4) The Tampere conclusions also stated that the [Common European Asylum System] should include, in the short term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.
 - (5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, 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.’
- 4 Article 3 of that regulation, entitled ‘Access to the procedure for examining an application for international protection’, provides, in paragraphs 1 and 2 thereof:
 - ‘1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.
 - 2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, 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 [(“the Charter”)], the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.’

5 Chapter III of that regulation defines the criteria for determining the Member State responsible. It comprises Articles 7 to 15 of that regulation.

6 Article 18 of the Dublin III Regulation is in Chapter V thereof, concerning the obligations of the Member State responsible, and provides, in paragraph 1(a) and (b):

‘The Member State responsible under this Regulation shall be obliged to:

- (a) take charge, under the conditions laid down in Articles 21, 22 and 29, of an applicant who has lodged an application in a different Member State;
- (b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document’.

7 Chapter VI of that regulation concerns the procedures for taking charge and for taking back applicants and includes Articles 20 to 33 of the regulation.

8 Article 22 of the Dublin III Regulation, entitled ‘Replying to a take charge request’, provides, in paragraphs 1 and 7:

‘1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of receipt of the request.

...

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.’

9 In that context, Article 26 of the Dublin III Regulation, entitled ‘Notification of a transfer decision’, provides, in paragraph 1:

‘Where the requested Member State accepts to take charge of or to take back an applicant or other person as referred to in Article 18(1)(c) or (d), the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. ...’

10 Article 27 of that regulation, entitled ‘Remedies’, provides in paragraphs 1 and 4:

‘1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

...

4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.’

11 Article 29 of the regulation, entitled ‘Modalities and time limits’, provides, in paragraphs 1 and 2:

‘1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

...

2. Where the transfer does not take place within the six months’ time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.’

Regulation No 1560/2003

12 Article 8 of 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) (‘Regulation No 1560/2003’), that article being entitled ‘Cooperation on transfers’, provides, in paragraph 1:

‘It is the obligation of the Member State responsible to allow the asylum seeker’s transfer to take place as quickly as possible and to ensure that no obstacles are put in his way. ...’

13 Under Article 9 of Regulation No 1560/2003, entitled ‘Postponed and delayed transfers’:

‘1. The Member State responsible shall be informed without delay of any postponement due either to an appeal or review procedure with suspensive effect, or physical reasons such as ill health of the asylum seeker, non-availability of transport or the fact that the asylum seeker has withdrawn from the transfer procedure.

...

2. A Member State which, for one of the reasons set out in Article 29(2) of [the Dublin III Regulation], cannot carry out the transfer within the normal time limit of six months from the date of acceptance of the request to take charge or take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect, shall inform the Member State responsible before the end of that time limit. Otherwise, the responsibility for processing the application for international protection and the other obligations under [the Dublin III Regulation] falls to the requesting Member State, in accordance with Article 29(2) of that Regulation.

...’

Directive 2013/32

14 Under the heading ‘Inadmissible applications’, Article 33 of Directive 2013/32 provides:

‘1. In addition to cases in which an application is not examined in accordance with [the Dublin III Regulation], Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as

beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)] where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:
 - (a) another Member State has granted international protection;
 - (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;
 - (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;
 - (d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or
 - (e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application.'

German law

15 Directive 2013/32 was transposed into German law by the Asylgesetz (Law on Asylum), in its version published on 2 September 2008 (BGB1. 2008 I, p. 1798; 'the AsylG').

16 Paragraph 29(1) of the AsylG, in the version applicable to the dispute in the main proceedings, provides:

'An application for asylum shall be inadmissible if:

1. another State is responsible for conducting the asylum procedure
 - (a) under [the Dublin III Regulation] or
 - (b) on the basis of other provisions of EU law or of an international treaty.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 DO, a Syrian national, entered Germany on 18 April 2023 and applied for asylum on 26 April 2023.

18 On the basis of the information contained in the Eurodac database, the Italian Republic was, however, identified as the Member State responsible for examining that application.

19 On 27 April 2023, the Federal Office thus sent the Italian Republic a request to take charge of DO. The Italian authorities failed to reply, with the result that they are deemed to have accepted the request, in accordance with Article 22(7) of the Dublin III Regulation.

20 By decision of 18 July 2023, the Federal Office dismissed DO's application for asylum as inadmissible pursuant to point 1(a) of Paragraph 29(1) of the AsylG, in the version applicable to the dispute in the main proceedings, on the ground that the Italian Republic was responsible for examining that application. It also ordered DO's removal to Italy.

- 21 On 27 July 2023, DO brought an action against that decision before the Verwaltungsgericht Sigmaringen (Administrative Court, Sigmaringen, Germany), the referring court. By order of 26 October 2023, the referring court granted suspensive effect to that action.
- 22 The referring court notes that it is apparent from two circulars dated 5 and 7 December 2022 respectively, issued by the Italian ‘Dublin’ Unit to all other ‘Dublin’ units, 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 thus refuses to take charge of any applicants for whom it is responsible pursuant to that regulation.
- 23 The referring court argues that, in the first place, it is thus necessary to determine whether, as a result of that refusal, the Federal Republic of Germany became the Member State responsible pursuant to the second and third subparagraphs of Article 3(2) of that regulation. If so, the decision of the Federal Office is unlawful.
- 24 In that regard, the referring court agrees that, in the light of its wording, that provision applies only where, in the Member State responsible, there are systemic flaws in the asylum procedure and in the reception conditions for applicants resulting in a risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter. In its view, refusal by a Member State to take charge of applicants does not amount to such systemic flaws.
- 25 That being said, that court takes the view that such a refusal constitutes a ‘breakdown in the system’ of the Dublin III Regulation and calls on the Court to remedy it. It argues that the regulation is based on the assumption, founded on mutual trust, that the Member States will take charge of applicants who have lodged an application for international protection the examination of which is their responsibility. In the light of that assumption and of the objective of rapid processing of applications, it would be appropriate to take the view that the willingness of the Member State responsible to take charge of applicants for international protection is an ‘unwritten constituent element’ of the second subparagraph of Article 3(2) of that regulation. Accordingly, refusal to take charge of those applicants would therefore entail an infringement of the abovementioned provision, regardless of the reception conditions in the Member State responsible. That provision could therefore, in the case before the referring court, lead to a transfer of responsibility from the Italian Republic to the Federal Republic of Germany.
- 26 In the second place, however, in the event that the Court rules out such a transfer of responsibility, the referring court notes that DO’s application would have to be rejected as inadmissible under German law. It argues that it is impossible, at this stage, to know whether DO’s transfer to Italy will be able to take place within the six-month time limit for transfer set out in the first subparagraph of Article 29(1) of the Dublin III Regulation. DO would therefore be placed in a ‘refugee in orbit’ situation for a period of time equal to the time limit for transfer, during which no Member State actually considers itself responsible for his application. This would lead to the processing of his application being unduly delayed. The referring court asks whether that situation is compatible with the requirements of Article 33(1) of Directive 2013/32.
- 27 In the third and last place, the referring court is uncertain about the factual circumstances which may lead it to assume that a Member State is generally refusing to take charge of persons who are the subject of a transfer decision and asks whether such a refusal may infringe the subjective rights of those persons.
- 28 In the light of those circumstances, the Verwaltungsgericht Sigmaringen (Administrative Court, Sigmaringen) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is Article 3(2) of [the Dublin III Regulation], or [that regulation] as such, to be interpreted as meaning that the determining Member State must continue its examination of the criteria set out in Chapter III and itself becomes responsible if the Member State responsible on the basis of those criteria is not willing to take charge of [persons who are the subject of a transfer decision under that regulation]?’

- (2) Does that obligation incumbent upon the determining Member State to continue its examination of the criteria set out in Chapter III also apply if there are no systemic flaws within the meaning of the second subparagraph of Article 3(2) of [the Dublin III Regulation] in the Member State that is not willing to take charge, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the [Charter]?
- (3) Is Article 33(1) of [Directive 2013/32] to be interpreted as precluding national legislation under which an asylum application has to be rejected as inadmissible where the Member State responsible under [the Dublin III Regulation] is not willing to take charge?
- (4) Does the determining Member State have to assume that the Member State responsible under [the Dublin III Regulation] is not willing to take charge if the Ministry of the Interior of the Member State responsible declares in writing that no [person who is the subject of a transfer decision under that regulation is] being taken charge of for the time being and if the Member State responsible subsequently prevents the taking charge [thereof]?
- (5) Does the refusal of the Member State responsible to take charge of [persons who are the subject of a transfer decision under the Dublin III Regulation], taken in isolation and regardless of any resulting risk for the purposes of Article 4 of the [Charter], infringe subjective rights of the person concerned? Does Article 27(1) of [that regulation] also provide for an effective remedy for such an infringement of subjective rights?’

Procedure before the Court

- 29 By order of the President of the Court of 9 September 2024, the referring court’s request that the present case be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court was rejected.

Consideration of the questions referred

The first and second questions

- 30 By its first and second questions, which it is appropriate to consider together, the referring court seeks, in essence, to ascertain whether the second and third subparagraphs of Article 3(2) of the Dublin III Regulation must be interpreted as meaning that the determining Member State is required to continue its examination of the criteria laid down in Chapter III of that regulation, or even itself become the Member State responsible, where the Member State initially designated as responsible under those criteria unilaterally suspended the taking charge and taking back of persons who are the subject of a transfer decision under that regulation, even where there are no systemic flaws in the latter Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter.
- 31 In the first place, it should be borne in mind that the second subparagraph of Article 3(2) of the Dublin III Regulation provides that an applicant for international protection cannot be transferred to the Member State responsible for examining his or her application if there are substantial grounds for believing that he or she would be at risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, because of systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in that Member State. In that situation, in accordance with the second and third subparagraphs of Article 3(2) of that regulation, the determining Member State becomes the Member State responsible for examining the application for international protection if it finds, following examination of the criteria set out in Chapter III of that regulation, that the transfer cannot be made to any Member State designated on the basis of those criteria or to the first Member State in which the application was lodged (judgment of 19 December 2024, *Tudmur*, C-185/24 and C-189/24, EU:C:2024:1036, paragraph 34 and the case-law cited).

- 32 It follows from the very wording of the second subparagraph of Article 3(2) of the Dublin III Regulation that the application of that provision is subject to two cumulative conditions. Only ‘systemic’ flaws, ‘resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the [Charter]’, make the transfer of an applicant for international protection to the Member State responsible impossible and require the further examination of the criteria set out in Chapter III of that regulation for the purpose of determining the Member State responsible (see, to that effect, judgments of 29 February 2024, *Staatssecretaris van Justitie en Veiligheid (Mutual trust in the event of transfer)*, C-392/22, EU:C:2024:195, paragraphs 57 and 58, and of 19 December 2024, *Tudmur*, C-185/24 and C-189/24, EU:C:2024:1036, paragraph 35).
- 33 The first of those conditions, relating to the existence of ‘systemic flaws’, is satisfied where the flaws in question remain in place and concern, generally, the asylum procedure and the reception conditions applicable to applicants for international protection or, at the very least, to certain groups of applicants for international protection as a whole. Those flaws must, moreover, attain a particularly high level of severity, which depends on all the circumstances of the case (see, to that effect, judgment of 19 December 2024, *Tudmur*, C-185/24 and C-189/24, EU:C:2024:1036, paragraphs 36 and 37 and the case-law cited).
- 34 The second condition, which relates to there being a risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, is verified where such systemic flaws result in a risk, for the person concerned, of being exposed, in the Member State designated as responsible, to treatment that is contrary to Article 4 of the Charter (see, to that effect, judgments of 29 February 2024, *Staatssecretaris van Justitie en Veiligheid (Mutual trust in the event of transfer)*, C-392/22, EU:C:2024:195, paragraph 62, and of 19 December 2024, *Tudmur*, C-185/24 and C-189/24, EU:C:2024:1036, paragraph 38).
- 35 The Court has already held that the fact that the Member State designated as responsible under the criteria established in Chapter III of the Dublin III Regulation has unilaterally suspended the taking charge and taking back of applicants for international protection is not capable, in itself, of justifying the finding, pursuant to the second subparagraph of Article 3(2) of that regulation, of systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter (judgment of 19 December 2024, *Tudmur*, C-185/24 and C-189/24, EU:C:2024:1036, paragraph 43).
- 36 It follows that, in the absence of any other evidence establishing the existence of systemic flaws giving rise to such a risk, it must be held that, in a situation where the Member State designated as responsible under the criteria set out in Chapter III of the Dublin III Regulation has unilaterally suspended the taking charge and taking back of applicants for international protection, the cumulative conditions for application of the second subparagraph of Article 3(2) of that regulation are not satisfied. Accordingly, in such a case, the determining Member State must neither continue to examine the criteria set out in Chapter III of that regulation on the basis of that provision nor itself become the Member State responsible under the third subparagraph of Article 3(2) of that regulation.
- 37 That interpretation is also borne out by the aims of the Dublin III Regulation, which seeks, inter alia, to establish a clear and effective method for determining the Member State responsible and to prevent secondary movements of asylum seekers between Member States (judgments of 30 November 2023, *Ministero dell’Interno and Others (Common leaflet – Indirect refoulement)*, C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, EU:C:2023:934, paragraph 141, and of 19 December 2024, *Tudmur*, C-185/24 and C-189/24, EU:C:2024:1036, paragraph 41).
- 38 The Member State designated as responsible under the criteria set out in Chapter III of the Dublin III Regulation cannot discharge itself, by a mere unilateral announcement, of its responsibilities under that regulation. Such a possibility would lead to those criteria being disregarded and would thus risk jeopardising the proper functioning of the system put in place by that regulation. Moreover, to consider that it may be inferred from such a unilateral announcement that there are systemic flaws in the asylum procedure and in the reception conditions for applicants, resulting in a serious risk of inhuman or degrading treatment, to the point of preventing all transfers of applicants for international protection to the

Member State responsible and involving a transfer of responsibility of that Member State to the Member State of secondary movement, would be likely to encourage such movements by inducing applicants to continue their migratory journey to another Member State which they believe will offer more favourable conditions (judgment of 19 December 2024, *Tudmur*, C-185/24 and C-189/24, EU:C:2024:1036, paragraph 42).

- 39 In the light of those factors, it cannot be held that the second and third subparagraphs of Article 3(2) of the Dublin III Regulation contain, in addition to and independently of the two conditions referred to in paragraph 32 above, an unwritten condition of application, according to which the Member State responsible should be willing to take charge or to take back applicants for international protection. Apart from the fact that such a condition is in no way apparent from the clear wording of that provision, it would be irreconcilable with the aims of that regulation, as set out in paragraph 37 above, and would ultimately make compliance with the regulation optional for that Member State.
- 40 In the second place, in so far as the referring court is nevertheless concerned that, in a situation such as that referred to in paragraph 36 above, the applicant for international protection concerned will have his or her access to the international protection procedure unduly impeded and that, ultimately, no Member State will examine his or her application, it should be recalled that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court may find it necessary to consider provisions of EU law which the national court has not referred to in its question (see judgments of 20 March 1986, *Tissier*, 35/85, EU:C:1986:143, paragraph 9, and of 1 August 2025, *Alace and Canpelli*, C-758/24 and C-759/24, EU:C:2025:591, paragraph 44).
- 41 The fact that the referring court has formally referred, in its questions, to certain specific provisions of EU law does not prevent the Court from providing it with all the elements of interpretation which may be useful for the judgment in the main proceedings, by extracting from the body of material provided by that court, and in particular from the statement of reasons for the order for reference, the elements of EU law which require interpretation in the light of the subject matter of the dispute (see judgments of 29 November 1978, *Redmond*, 83/78, EU:C:1978:214, paragraph 26, and of 1 August 2025, *Alace and Canpelli*, C-758/24 and C-759/24, EU:C:2025:591, paragraph 45).
- 42 In the light of that case-law, in order to give the referring court a full answer, it is necessary to interpret also Article 29 of the Dublin III Regulation, on which the parties and the other interested persons referred to in the first paragraph of Article 23 of the Statute of the Court of Justice of the European Union submitted their observations at the hearing before the Court.
- 43 Article 29(1) of the Dublin III Regulation provides that the transfer of the person concerned to the Member State responsible is to be carried out as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back that person or of the final decision on an appeal where there is a suspensive effect in accordance with Article 27(3) of that regulation.
- 44 According to Article 29(2) of that regulation, where the transfer does not take place within the six-month time limit, the Member State responsible for examining the application for international protection is relieved of its obligations to take charge or to take back the person concerned and responsibility is then transferred to the requesting Member State.
- 45 In the first place, according to the Court's case-law, it is apparent from the very wording of Article 29(2) that it provides for an automatic transfer of responsibility to the requesting Member State, without making that transfer conditional on any reaction by the Member State responsible (judgment of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 30).

- 46 Furthermore, as the Advocate General pointed out, in essence, in points 51 and 52 of his Opinion, Article 29(2) of the Dublin III Regulation is worded in broad terms and does not contain any limitation of the transfer of responsibility to specific situations. On the contrary, under that provision, that transfer of responsibility is to occur, automatically, ‘where the transfer [of the applicant for international protection] does not take place within the six months’ time limit’. In view of the wording of that provision, that transfer of responsibility thus occurs regardless of the reasons why the transfer of the applicant for international protection did not take place and irrespective of whether this is attributable to the requesting Member State, to the Member State responsible or to the person concerned.
- 47 It follows that the same transfer of responsibility also occurs where the transfer of the person concerned could not be carried out within the time limit for transfer laid down in Article 29(1) of the Dublin III Regulation, on account of the unilateral suspension, by the Member State designated as responsible under the criteria set out in Chapter III of that regulation, of the taking charge and taking back of applicants for international protection.
- 48 In the second place, that literal interpretation is supported by the context of Article 29(2) of the Dublin III Regulation and by the aims of that regulation.
- 49 As regards, first, the context, it is apparent from a combined reading of Article 29(1) of that regulation and Article 8(1) and Article 9 of Regulation No 1560/2003 that the requesting Member State and the Member State responsible must consult each other with a view to having the person concerned transferred and that the Member State responsible is required to allow that transfer as soon as possible and to ensure that no obstacles are put that person’s way on its territory.
- 50 Moreover, it must be emphasised that it follows from Article 29(1) of the Dublin III Regulation that the EU legislature did not consider that the fact that it was materially impossible to implement the transfer decision should be regarded as a justification for the interruption or suspension of the time limit for transfer referred to in Article 29(1) of that regulation. The EU legislature did not include in that regulation any general provision for such interruption or suspension of that time limit (see, to that effect, judgments of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraphs 65 and 66, and of 12 January 2023, *Staatssecretaris van Justitie en Veiligheid (Time limit for transfer – Multiple applications)*, C-323/21 to C-325/21, EU:C:2023:4, paragraph 69). A fortiori, the EU legislature has made no provision either for any derogation from the automatic transfer of responsibility for examining the application for international protection at the end of that time limit.
- 51 Furthermore, as regards certain frequent cases where it is materially impossible to implement the transfer decision, that legislature has confined itself, in Article 29(2) of that regulation, to providing that the time limit for transfer may be extended to a maximum of one year if it has not been possible to carry out the transfer because the person concerned has been imprisoned, or to a maximum of 18 months if the person concerned absconds. In addition to the fact that that provision envisages not the interruption or suspension of the time limit for transfer but its extension, it should be noted that that extension is of an exceptional nature and must therefore be interpreted strictly, which precludes its application by analogy to other cases in which it is impossible to implement the transfer decision (judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraphs 67 and 68).
- 52 For those reasons, the Court held that the time limit for transfer laid down in Article 29(1) of the Dublin III Regulation applied in situations where the transfer of the person concerned was impossible (judgment of 12 January 2023, *Staatssecretaris van Justitie en Veiligheid (Time limit for transfer – Multiple applications)*, C-323/21 to C-325/21, EU:C:2023:4, paragraph 70 and the case-law cited), including on account of circumstances not attributable to the requesting Member State, such as the state of health of that person (see, to that effect, judgment of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 89) or the COVID-19 pandemic (see, to that effect, judgment of 22 September

2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 71).

- 53 As regards, secondly, the objectives pursued by the Dublin III Regulation, it must be borne in mind that it follows from recitals 4 and 5 of that regulation that its purpose is to establish a clear and workable method, based on objective and fair criteria for both the Member States and the persons concerned, in order to determine rapidly the Member State responsible for examining an application for international protection, so as to guarantee effective access to the procedures for granting such protection and not to compromise the objective of the rapid processing of applications for international protection (judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 56 and the case-law cited).
- 54 With a view to achieving that objective of expedition, the EU legislature provided, as a framework for the take-charge and take-back procedures under the Dublin III Regulation, a set of mandatory time limits intended to ensure that those procedures are implemented without undue delay (judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 57 and the case-law cited).
- 55 In particular, the six-month time limit for transfers laid down in Article 29(1) of the Dublin III Regulation is intended to ensure that the person concerned is effectively transferred as soon as possible to the Member State responsible for examining his or her application for international protection, while allowing, having regard to the practical complexity and organisational difficulties involved in implementing the transfer of that person, the necessary time for the two Member States concerned to consult each other with a view to carrying out that transfer and, more specifically, the requesting Member State to determine the details for implementing the transfer (judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 58 and the case-law cited).
- 56 Those time limits thus testify to the particular importance that the EU legislature has attached to the rapid determination of the Member State responsible for the examination of an application for international protection and to the fact that, having regard to the aim of ensuring effective access to the procedures for granting international protection and of not compromising the objective of rapid processing of applications for international protection, the EU legislature regards it as essential that such applications are, when necessary, examined by a Member State other than that designated as being responsible pursuant to the criteria set out in Chapter III of that regulation (see, to that effect, judgments of 25 October 2017, *Shiri*, C-201/16, EU:C:2017:805, paragraph 39; of 13 November 2018, *X and X*, C-47/17 and C-48/17, EU:C:2018:900, paragraphs 69 and 70; and of 30 March 2023, *Staatssecretaris van Justitie en Veiligheid (Suspension of the transfer time limit on appeal)*, C-556/21, EU:C:2023:272, paragraph 38).
- 57 As such, the transfer of responsibility for examining the application for international protection where the transfer of the applicant does not take place within the prescribed time limit for transfer contributes to the rapid determination of the Member State responsible and guarantees the applicant's effective access to the asylum procedure.
- 58 In that regard, it is true that Article 29(2) of the Dublin III Regulation, as interpreted in the present judgment, de facto allows the Member State initially designated as responsible under the criteria set out in Chapter III of the Dublin III Regulation to escape, at the end of the time limit for transfer and simply by unilateral suspension of the procedures for taking charge and for taking back applicants for international protection, its responsibilities under that regulation and thus to alter the division of responsibilities between the Member States resulting from that regulation.
- 59 However, first, it must be pointed out that, even in the case of such a unilateral suspension, it is for the requesting Member State and the Member State responsible, as is apparent from paragraph 49 above, to consult each other and cooperate with a view to a transfer before the expiry of the time limit for transfer laid down in Article 29(1) of the Dublin III Regulation. Furthermore, as the Advocate General pointed out

in point 70 of his Opinion, the responsibility of the Member State designated as responsible under the criteria set out in Chapter III of that regulation remains full and complete during the time limit for transfer, with the result that, during that time, the system of criteria for determining responsibility established by that regulation is to be maintained.

- 60 Second, the automatic transfer of responsibility for examining the application for international protection where the transfer of the person concerned does not take place within that time limit is, ultimately, the only way in which that person can be guaranteed effective access to the asylum procedure and, thus, the effectiveness of his or her fundamental right to seek asylum in a Member State, as guaranteed in Article 18 of the Charter.
- 61 In the third place and in any event, it should be added that the requesting Member State cannot refuse to apply Article 29(2) of the Dublin III Regulation on the ground that the Member State designated as responsible under the criteria set out in Chapter III of that regulation has suspended the application of the procedures established by that regulation.
- 62 In that regard, it must be recalled that, in accordance with settled case-law, a Member State may not rely on the fact that other Member States have also failed to perform their obligations in order to justify its own failure to fulfil its obligations under EU law. In fact, in the EU legal order established by the FEU Treaty, the implementation of EU law by the Member States cannot be made subject to a condition of reciprocity. Articles 258 and 259 TFEU provide the appropriate remedies in cases where Member States fail to fulfil their obligations under the FEU Treaty (see, to that effect, judgments of 11 January 1990, *Blanguernon*, C-38/89, EU:C:1990:11, paragraph 7, and of 11 July 2018, *Commission v Belgium*, C-356/15, EU:C:2018:555, paragraph 106 and the case-law cited).
- 63 Thus, the remedy for a possible infringement of the Dublin III Regulation by the Member State initially designated as responsible under the criteria set out in Chapter III of that regulation, such as that identified by the referring court in the dispute in the main proceedings, would lie in the possibility for the European Commission and any other Member State to institute proceedings for failure to fulfil obligations against that Member State under Articles 258 and 259 TFEU respectively (see, by analogy, judgments of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, paragraph 53, and of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 79).
- 64 It follows from the foregoing that, as regards the dispute in the main proceedings, it is only on expiry of the time limit for transfer that, if necessary, the Federal Republic of Germany will, in the event that the transfer decision is not implemented, become the Member State responsible for examining DO's application for international protection.
- 65 In that regard, it is important, in order to give the referring court a useful and complete answer, to add that Article 29(1) of the Dublin III Regulation must be interpreted as meaning that, where suspensive effect has been given to an appeal against a transfer decision, as is the case in the main proceedings, in accordance with Article 27(4) of that regulation, the time limit for transfer runs from the final decision on that appeal, so that the transfer decision must be implemented no later than six months from the final decision on that appeal (see, to that effect, judgment of 22 September 2022, *Bundesrepublik Deutschland (Administrative suspension of the transfer decision)*, C-245/21 and C-248/21, EU:C:2022:709, paragraph 49).
- 66 In the light of all of the foregoing, the answer to the first and second questions is as follows:
- the second and third subparagraphs of Article 3(2) of the Dublin III Regulation must be interpreted as meaning that the determining Member State is not required to continue its examination of the criteria set out in Chapter III of that regulation, nor does it itself become the Member State responsible, where the Member State initially designated as responsible under those criteria has unilaterally suspended the taking charge and taking back of persons who are the subject of a transfer decision under that regulation, where there are no systemic flaws in the latter Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter;

- Article 29(2) of the Dublin III Regulation must be interpreted as meaning that, where the transfer of those persons cannot take place within the time limit for transfer laid down in Article 29(1) of that regulation, responsibility for examining applications for international protection is automatically transferred to the requesting Member State, even if the transfer does not take place as a consequence of the suspension, decided unilaterally by the Member State initially designated as responsible under the criteria set out in Chapter III of that regulation, of the taking charge and taking back of those persons.

The third question

- 67 By its third question, the referring court seeks, in essence, to ascertain whether Article 33(1) of Directive 2013/32 must be interpreted as allowing an application for international protection to be rejected as inadmissible on the ground that the Member State responsible is not willing to take charge or to take back the applicant for international protection.
- 68 Article 33(1) of Directive 2013/32 provides that, in addition to cases in which an application for international protection is not examined in accordance with the Dublin III Regulation, Member States are not required to examine whether an applicant qualifies for international protection in accordance with Directive 2011/95 where an application is considered inadmissible pursuant to that article. In that regard, Article 33(2) of that directive sets out an exhaustive list of the situations in which the Member States may consider an application for international protection to be inadmissible (judgments of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 76, and of 1 August 2022, *Bundesrepublik Deutschland (Child of refugees, born outside the host State)*, C-720/20, EU:C:2022:603, paragraph 48).
- 69 It follows both from the exhaustiveness of the list in Article 33(2) of Directive 2013/32 and from the fact that the grounds of inadmissibility set out in that list are exemptions that that provision must be interpreted strictly and cannot therefore be applied to a situation which does not correspond to its wording (see, to that effect, judgment of 1 August 2022, *Bundesrepublik Deutschland (Child of refugees, born outside the host State)*, C-720/20, EU:C:2022:603, paragraph 51).
- 70 Neither the fact that another Member State is responsible for examining an application for international protection nor, a fortiori, the unilateral suspension, by that other Member State, of the procedures for taking charge and for taking back applicants for international protection is among the situations listed in Article 33(2) of Directive 2013/32.
- 71 Moreover, it follows from the wording of Article 33(1) of Directive 2013/32, and in particular from the clause ‘in addition to cases in which an application is not examined in accordance with [the Dublin III Regulation]’, that that provision clearly distinguishes cases in which an application for international protection is not examined in accordance with that regulation from those in which such an application may be rejected as inadmissible on one of the grounds exhaustively listed in Article 33(2) of that directive (see, to that effect, order of 5 April 2017, *Ahmed*, C-36/17, EU:C:2017:273, paragraph 38).
- 72 Where the determining Member State decides not to examine an application for international protection on the ground, not referred to in Article 33(2) of Directive 2013/32, that another Member State is responsible for examining that application and that other Member State has accepted a request to take charge of or to take back the applicant, the EU legislature took the view that the rejection of such an application had to be made not by means of a decision of inadmissibility, pursuant to that provision, but by means of a decision to transfer and not to examine the application, pursuant to Article 26 of the Dublin III Regulation (see, by analogy, order of 5 April 2017, *Ahmed*, C-36/17, EU:C:2017:273, paragraphs 39 and 41, and of 19 March 2019, *Ibrahim and Others*, C-297/17, C-318/17, C-319/17 and C-438/17, EU:C:2019:219, paragraph 79).
- 73 In the light of the foregoing, the answer to the third question is that Article 33(1) of Directive 2013/32 must be interpreted as not allowing an application for international protection to be rejected as

inadmissible on the ground that the Member State responsible is not willing to take charge or to take back the applicant for international protection.

The fourth and fifth questions

- 74 In view of the answers given to the first and to second question, there is no need to answer the fourth and fifth questions.

Costs

- 75 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **The second subparagraph of Article 3(2) 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**

must be interpreted as meaning that the determining Member State is not required to continue its examination of the criteria set out in Chapter III of that regulation, nor does it itself become the Member State responsible, where the Member State initially designated as responsible under those criteria has unilaterally suspended the taking charge and taking back of persons who are the subject of a transfer decision under that regulation, where there are no systemic flaws in the latter Member State, 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.

2. **Article 29(2) of Regulation No 604/2013**

must be interpreted as meaning that, where the transfer of those persons cannot take place within the time limit for transfer laid down in Article 29(1) of that regulation, responsibility for examining applications for international protection is automatically transferred to the requesting Member State, even if the transfer does not take place as a consequence of the suspension, decided unilaterally by the Member State initially designated as responsible under the criteria set out in Chapter III of that regulation, of the taking charge and taking back of those persons.

3. **Article 33(1) of 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**

must be interpreted as not allowing an application for international protection to be rejected as inadmissible on the ground that the Member State responsible is not willing to take charge or to take back the applicant for international protection.

[Signatures]

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