

## Germany ? Administrative Court Lüneburg, 24. May 2016, 5 A 194/ 4

**Country of Decision:**

Germany

**Country of Applicant:**

Somalia

**Date of Decision:**

24-05-2016

**Citation:**

5 A 194/4

**Court Name:**

Administrative Court Lüneburg

**Keywords:**

Dublin Transfer

Responsibility for examining application

Right to remain pending a decision (Suspensive effect)

**Relevant Legislative Provisions:**European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [1] > [Article 4](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 8](#) [4]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 2](#) [6]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 3](#) [7]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 7](#) [8]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 8](#) [9]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 9](#) [10]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 13](#) [11]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#)

[5] > [Article 16](#) [12]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 20](#) [13]

European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [5] > [Article 49](#) [14]

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### **Headnote:**

Art 20 (3) of the Dublin III Regulation is no longer applicable when a minor subsequently enters another member state after the application for international protection of his/ her relative is completed.

### **Facts:**

The applicant (born 2009) is a Somali national and entered Germany together with his grandparents in August 2013.

The mother of the applicant subsequently entered Germany as well and claimed asylum on 20 February 2014. She had previously been granted refugee status in Italy on 29 June 2011.

The applicant claims that he flew directly from Ethiopia to Germany. He believes that the Dublin III Regulation is not applicable in either his or his mother's case.

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### **Decision & Reasoning:**

The Member State responsible, in accordance with the criteria set out in Art 7 (2) of the Dublin III Regulation, shall be determined on the basis of the situation at the time when the applicant first lodged his or her application for international protection with a Member State.

Contrary to the opinion of the defendant, Italy's responsibility does not ensue from Art 20 (3) of the Dublin III Regulation. Thereafter, for the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and shall be a matter for the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests.

There's no danger of separating the applicant from his mother with due regard to Art 6 of the German Basic Law and Art 8 of the ECHR- because the mother is also entitled to a residence permit under Sections 27, 36 of the Residence Act.

Furthermore, the present case is also a special case, because the mother cannot be sent back to Italy at the moment - with due regard to Art 6 of the German Basic Law and Art 8 of the ECHR - since the Italian authorities are unable to assure that the applicant's mother (and her 7 months old daughter as well as the applicant) will be accommodated in such a way that family unity is ensured. (see Administrative Court Lüneburg, decision from 16 May 2016 ? 4 A 267/14).

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### **Outcome:**

The application is admissible and well founded.

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### **Observations/Comments:**

This case summary was written by Ana-Maria Bucataru, an LLM graduate in Human Rights Law at Queen Mary's University.

This case summary was proof read by Ann-Christin Bölter, an LLM graduate in Human Rights Law at Queen Mary's University.

### Attachment(s):



[VG Luneburg 24 may 2016 interpretation of 20\(3\) Dublin III.pdf](#)[15]

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### National / Other Legislative Provisions:

[Germany - AsylG \(Asylum Law\) Article 77](#) [16]

[Germany - AsylG \(Asylum Law\) Article 26a](#) [17]

[Germany - AsylG \(Asylum Law\) Article 27a](#) [18]

[Germany - AsylG \(Asylum Law\) Article 27 a para 13](#) [19]

[Germany - AsylG \(Asylum Law\) Article 27 a para 14](#) [20]

[Germany - AsylG \(Asylum Law\) Article 27 a para 24](#) [21]

[Germany - AsylG \(Asylum Law\) Article 27 a para 31](#) [22]

[Germany - GG \(Basic Law of the Federal Republic of Germany\) ? Art 6](#) [23]

[Germany - GG \(Basic Law of the Federal Republic of Germany\) ? Art 16a](#) [24]

[Germany ? VwGO \(Code of Administrative Court Procedure\) Art 88](#) [25]

[Germany ? VwGO \(Code of Administrative Court Procedure\) Art101\(2\)](#) [26]

[Germany ? VwGO \(Code of Administrative Court Procedure\) 113\(1\)1](#) [27]

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### Links:

[1] <https://www.asylumlawdatabase.eu/node/453>

[2] [https://www.asylumlawdatabase.eu/node/453#toc\\_29](https://www.asylumlawdatabase.eu/node/453#toc_29)

[3] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[4] [https://www.asylumlawdatabase.eu/node/195#toc\\_46](https://www.asylumlawdatabase.eu/node/195#toc_46)

[5] <https://www.asylumlawdatabase.eu/node/4037>

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[10] [https://www.asylumlawdatabase.eu/node/4037#toc\\_143](https://www.asylumlawdatabase.eu/node/4037#toc_143)

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[14] [https://www.asylumlawdatabase.eu/node/4037#toc\\_464](https://www.asylumlawdatabase.eu/node/4037#toc_464)

[15]

[https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/VG%20Luneburg%2024%20may%202016%](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/VG%20Luneburg%2024%20may%202016%20.pdf)

[16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylg-asylum-law-article-77>

[17] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylg-asylum-law-article-26a>

[18] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylg-asylum-law-article-27a>

[19] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylg-asylum-law-article-27-para-13>

- [20] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylg-asylum-law-article-27-para-14>
- [21] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylg-asylum-law-article-27-para-24>
- [22] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-asylg-asylum-law-article-27-para-31>
- [23] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-gg-basic-law-federal-republic-germany-%E2%80%93-art-6>
- [24] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-gg-basic-law-federal-republic-germany-%E2%80%93-art-16a>
- [25] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-%E2%80%93-vwgo-code-administrative-court-procedure-art-88>
- [26] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-%E2%80%93-vwgo-code-administrative-court-procedure-art1012>
- [27] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/germany-%E2%80%93-vwgo-code-administrative-court-procedure-11311>