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## **CJEU - C-528/11, Zuheyr Frayeh Halaf v Darzhavna agentsia za bezhantsite pri Ministerskia savet**

**Country of Applicant:**

Iraq

**Date of Decision:**

30-05-2013

**Citation:**

C-528/11

**Court Name:**

Fourth Chamber of the CJEU

**Keywords:**

[Dublin Transfer](#) [1]

[Request that charge be taken](#) [2]

[Responsibility for examining application](#) [3]

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**Headnote:**

Use of the sovereignty clause in the Dublin Regulation is not conditional on the initially responsible Member State not responding to a request for transfer. When it is apparent from UNHCR documents that the responsible Member State is in breach of EU asylum laws, there is no obligation to request UNHCR to present its views on a particular transfer.

**Facts:**

The main proceedings concern an Iraqi national who applied for asylum in Bulgaria in 2010. The Bulgarian authorities discovered via EURODAC that he had previously lodged an asylum application in Greece and requested the Greek authorities to take him back in accordance with the Dublin Regulation. As the Greek authorities did not respond to the request within the time period provided by the Dublin Regulation, the Bulgarian authorities decided not to proceed to the examination of the application and authorised his transfer to Greece. The Applicant appealed this decision, arguing that UNHCR had called on European governments to refrain from sending asylum seekers back to Greece. The referring Bulgarian Court stayed proceedings and made a preliminary reference to the CJEU.

## Questions referred for a preliminary ruling

1. *Is Article 3(2) of [the Regulation] to be interpreted as meaning that it permits a Member State to assume responsibility for examining an application for asylum where no personal circumstances exist in relation to the asylum seeker which establish the applicability of the humanitarian clause in Article 15 of [the Regulation] and where the Member State responsible pursuant to Article 3(1) of [the Regulation] has not responded to a request to take back the applicant pursuant to Article 20(1) of [the Regulation], given that that regulation does not contain any provisions concerning compliance with the principle of solidarity pursuant to Article 80 TFEU?*
2. *What is the content of the right to asylum under Article 18 of the Charter...in conjunction with Article 53 of that Charter and in conjunction with the definition in Article 2 (c) and of recital 12 in the preamble to [the Regulation]?*
3. *Is Article 3(2) of [the Regulation], in relation to the obligation under Article 78(1) TFEU to comply with instruments under international law on asylum, to be interpreted as meaning that in the procedure for determining the Member State responsible pursuant to [the Regulation], the Member States are obliged to request the [UNHCR] to present its views, where facts and conclusions therefrom are set out in documents of that Office to the effect that the Member State responsible pursuant to Article 3(1) of [the Regulation] is in breach of provisions of European Union law on asylum?*
4. *If [the third] question is answered in the affirmative, ... [if] such a request is not made to the [UNHCR] to present its views, does this constitute a substantial infringement of the procedure for determining the Member State responsible pursuant to Article 3 [of the Regulation] and an infringement of the right to good administration and the right to an effective legal remedy pursuant to Articles 41 and 47 of the Charter..., specifically also in the light of Article 21 of Directive [2005/85], which provides that that Office has the right to present its views when individual applications for asylum are examined?*

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### **Decision & Reasoning:**

With regard to the first question, the Court noted that the exercise of the sovereignty clause in Article 3(2) of the Dublin Regulation is not subject to any particular condition. Therefore, whether the Member State notionally responsible for an asylum application under the Dublin Regulation has or has not responded to a request to take back the asylum seeker has no bearing on the possibility to use the sovereignty clause. The Court hence answers that *Article 3(2) of the Regulation must be interpreted as permitting a Member State, which is not indicated as responsible under the criteria in Chapter III of the Regulation, to examine an application for asylum even though no circumstances exist which establish the applicability of the humanitarian clause in Article 15 of the Regulation. That possibility is not conditional on the Member State responsible under those criteria having failed to respond to a request to take back the asylum seeker concerned.*

The Court considers that the second question would only be relevant if the sovereignty clause could only be exercised in cases where the right granted to asylum seekers under Article 18 of the Charter is not respected in the Member State responsible under the Dublin Regulation. As the Court had determined in question 1 that the exercise of the sovereignty clause is not conditional, it sees no need to answer the second question.

In relation to the third question, the Court notes that the various forms of cooperation between UNHCR and the Member States provided for in the Asylum Procedures Directive do not apply to

the procedures under the Dublin Regulation. However, at the same time, the Court recalls that documents from UNHCR are among the instruments likely to enable Member States to assess the functioning of the asylum system of the Member State that appears to be responsible for an asylum application under the Dublin Regulation. Such documents are particularly relevant in view of the role attributed to the UNHCR by the Geneva Convention, in consistency with which the EU law must be interpreted. The CJEU, confining itself narrowly to the circumstances of the case, decided that, in the process of determining the Member State responsible for an asylum application, the Member State in which the asylum seeker is present is *not* obliged to request UNHCR to present its views *where it is apparent from UNHCR documents* that the responsible Member State according to the Dublin Regulation is in breach of the rules of European Union law on asylum. In view of this answer, the Court saw no need to respond to the fourth question. Whether there is such an obligation when a breach is *not* apparent from UNHCR documents does not appear to be decided by the Court in this case.

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### **Outcome:**

The operative part of the judgment is as follows:

1. Article 3(2) of Council Regulation (EC) No 343/2003 of 18 February 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 must be interpreted as permitting a Member State, which is not indicated as responsible by the criteria in Chapter III of that regulation, to examine an application for asylum even though no circumstances exist which establish the applicability of the humanitarian clause in Article 15 of that regulation. That possibility is not conditional on the Member State responsible under those criteria having failed to respond to a request to take back the asylum seeker concerned.
  2. The Member State in which the asylum seeker is present is not obliged, during the process of determining the Member State responsible, to request the Office of the United Nations High Commissioner for Refugees to present its views where it is apparent from the documents of that Office that the Member State indicated as responsible by the criteria in Chapter III of Regulation No 343/2003 is in breach of the rules of European Union law on asylum.
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### **Case Law Cited:**

CJEU - C-509/10, Josef Geistbeck and Thomas Geistbeck v Saatgut-Treuhandverwaltungs GmbH

CJEU - C-570/07 and C-571/07 [GC], José Manuel Blanco Pérez and María del Pilar Chao Gómez v Consejería de Salud y Servicios Sanitarios, and Principado de Asturias

CJEU - C-470/11, SIA Garkalns v R?gas dome

CJEU - C-169/07, Hartlauer Handelsgesellschaft mbH v. Wiener Landesregierung and Others

[CJEU - C-411-10 and C-493-10, Joined cases of N.S. v United Kingdom and M.E. v Ireland](#) [4]

[CJEU - C-364/11 Mostafa Abed El Karem El Kott, Chadi Amin A Radi, Hazem Kamel Ismail v Bevandorlasi es Allampolgarsagi Hivatal \(BAH\)](#) [5]

### **Attachment(s):**



**Other sources cited:**

Commission proposal that led to the adoption of the Dublin Regulation (COM(2001) 447 final)

**Authentic Language:**

Bulgarian

**Country of preliminary reference:**

Bulgaria

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**Links:**

[1] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A1213](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1213)

[2] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A1211](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1211)

[3] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A1200](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1200)

[4] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-411-10-and-c-493-10-joined-cases-ns-v-united-kingdom-and-me-v-ireland>

[5] <https://www.asylumlawdatabase.eu/en/content/cjeu-c-36411-mostafa-abed-el-karem-el-kott-chadi-amin-radi-hazem-kamel-ismail-v-bevandorlasi>

[6] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgment%20-%20C-528.11.pdf>