Challenges related to *mutual trust* concerns raised in appeals within the Dublin III procedure

Wednesday 5 April 2023 (10:00 – 12:00 CET)

online via WebEx Meetings

Background Note[1]

1. Background information

In accordance with its mandate to support judicial training in the field of international protection[2] and with the support of the EUAA Courts and Tribunals Network, the EUAA is increasing the roll-out effect of their judicial activities through the EUAA expert panels. This activity was introduced in 2021 with the distinctive objective to address specialised topics in the field of international protection. It involves a panel of three judicial professionals and experts that engage in a discussion on a specific area of the CEAS, allowing attendees to deepen their knowledge in the respective field.

2. This EUAA Expert Panel

Building on suggestions by participants in previous expert panels and following consultation with the EUAA Courts and Tribunals Network, it was decided that the next EUAA expert panel addresses the issue of "*Challenges related to mutual trust concerns raised in appeals within the Dublin III procedure*".

First the meaning of the notion of *mutual trust* and its relevance in the context of Dublin III will be explored. The discussion will then move on to the main "obstacles" to Dublin transfers from the standpoint of respect for the principle of *mutual trust*. In particular, the analysis will tackle aspects related to the risk of inhuman treatment, indirect refoulement and pushbacks, to

[1] The present background note has been developed on the basis of the EUAA judicial publications and recent doctrinal and case-law research.

[2] See Article 8 of the EUAA Regulation: "The Agency shall establish, develop and review training for members of its own staff and members of the staff of relevant national administrations, **courts and tribunals**, and of national authorities responsible for asylum and reception" and Article 13: "The Agency shall organise and coordinate activities promoting a correct and effective implementation of Union law on asylum, including through the development of operational standards, indicators, guidelines or best practices on asylum-related matters, and the exchange of best practices in asylum-related matters among Member States."

procedural guarantees, such as access to procedure and effective remedy, to reception conditions, to detention and the respective legal remedies. Subsequently, the experts will review the available legal remedies against decisions taken within the Dublin III procedure to ensure the respect of CEAS standards and fundamental rights. Finally, experts will make a few reflections as to the ensuing actions to be taken by member states in case of cancellation of a transfer following a rebuttal of the principle of *mutual trust*. The case-law of the two European courts as well as of higher courts from EU member states will further guide the discussion.

The panel will comprise the following experts:

- ***Liesbeth Steendijk***, Judge, Member of the Judicial Department of the Council of State, Netherlands.
- ***Luca Perilli***, Judge, Chair of the specialized Court of international protection of Trento, Italy.
- ***Mikko Montin,*** Head of Dublin Section, Asylum Unit, Finnish Immigration Service, Finland.

The experts will lead a discussion on the topic structured around questions that participants will send in advance, upon registration.

The EUAA Expert Panel will take place online via the **WebEx Meetings platform** on **5 April 2023 from 10:00 to 12:00** Central European Time (CET).

3. Framing the topic

3.1. What is mutual trust and its relevance in the Dublin system

Mutual trust is one of the cornerstones of judicial cooperation in the EU. However, it is a concept that lacks a normative basis. This principle does not appear in the EU Treaties and does not find a definition in the European acquis, but a certain definition can be derived from the case-law of the Court of Justice of the European Union (CJEU).

Mutual trust suggests that each Member State (MS) is convinced that all other Member States are capable of correctly applying EU law in compliance with the framework of individuals' human rights. Thus, although *mutual trust* was not foreseen in the Treaties, it was demanded by the CJEU.

Notably, the ***CJEU's Opinion 2/13*** on the EU accession to the European Convention on Human Rights (ECHR)[3] mentions that *mutual trust* is a specific characteristic arising "from the very nature" of EU law as a sort of natural consequence of the independence and the autonomy of EU jurisdiction, on:

> *"the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence*

[3] CJEU, 18 December 2014, Opinion 2/13, ECLI:EU:C:2014:2454, available here.

of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the EU that implements them will be respected."[4]

Within the Common European Asylum System (CEAS), the principle of mutual or interstate trust implies that Member States establish a *mutual trust* in the quality and lawfulness of each other's laws and practices in relation to asylum.

Recent experience shows that *mutual trust* cannot be taken always for granted. Article 7 of the TEU foresees a procedure to control, and if necessary, to sanction, serious breaches by a Member State of the values referred to in Article 2 TEU, such as the respect for human dignity, democracy and the rule of law[5]. Often, Member States doubt the perfect compliance of the others with respect to EU law.

For the implementation of the Dublin III Regulation[6], the presumption of trust more specifically implies that all Member States are safe countries for the asylum seeker as these should be considered as compliant with EU law and fundamental rights.

The third recital of the preamble to the Dublin Regulation offers an indication of the basis for *mutual trust,* it refers to the Refugee Convention to which all Member States are parties and to the 'Common European Asylum System'. Another basis for *mutual trust*, although not explicitly referred to in the Dublin Regulation, is found in the fact that all Dublin states are party to the ECHR and are bound to comply with the *non-refoulement* principle derived from Article 3[7] and the right to effective remedies in Article 13 ECHR. The prohibition of refoulement is also included in Article 33 of the Refugee Convention and Article 4 of the EU Charter on Fundamental Rights (CFR).

Indeed, the Dublin system for responsibility allocation for the examination of international protection claims among participating MSs and Schengen partners is based on the assumption that 'all [these countries] respecting the principle of non-refoulement, are considered as safe…for third country nationals', so that transfers of asylum applicants inter se, through the 'take back' or the 'take charge' procedures, are presumed to respect 'the full and inclusive

[4] CJEU, Opinion 2/13, op.cit., fn. 3, paras. 166-168.

[5] For instance, in the field of CEAS the procedure of Article 7 has been activated in the past against Hungary for having found the [then] recently adopted Hungarian asylum legislation in some instances to be incompatible with EU law (see more details here) and against Poland for violations of EU law, including the right to effective judicial protection (see more details here). Most recently the Commission decided to open infringement procedures against Belgium, Greece, Spain and Portugal for failing to adequately transpose the provisions of the Reception Directive and against Greece, Portugal and Finland regarding the Qualification Directive (see more details here).

[6] The Dublin III Regulation lays down 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. It imposes obligations on Member States responsible under this Regulation to 'take charge' of an applicant who has lodged an application in a different Member State or to 'take back', inter alia, applicants whose application is under examination and who made an application in another Member. Therefore, if an applicant arrives in another Member State which has no primary responsibility according to the Dublin criteria, he or she can be sent back to the responsible state. The hierarchy, in which the criteria should be applied is described in Article 7. The regulation is available here.

[7] Article 3 ECHR obliges states not to expel a person to a country where there is a real risk that he or she will be subjected to inhuman or degrading treatment, or torture.

application of the Geneva Convention'[8]. In its ruling in the case ***N.S. and others***, the CJEU takes this presumption as the basis for the principle of *mutual trust*.[9]

3.2. Main "obstacles" to Dublin transfers from the standpoint of respect for *mutual trust*

However, the *mutual trust* among Member States is often challenged when, in the implementation of the Dublin III Regulation instances of violations of fundamental rights[10] occur.

Article 3(2), second subparagraph of the Dublin III Regulation states the following:

> "*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 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*".

However, the prohibition on transfers under Article 4 of the EU charter is not confined to risks which derive from the existence of systemic flaws in the asylum procedure and in the reception conditions for applicants in Member States. Basically, in its ruling in the case ***CK and others***, the CJEU ruled that even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of the Dublin III Regulation can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of Article 4 of the EU charter[11].

The level of protection provided for by the Charter is not represented only by the protection against torture enshrined in Article 4 CFR. The minimum standard of protection under EU asylum (including Dublin) law is the one reflected in the asylum Directives, based on (all applicable) Charter rights, the ECHR and the Refugee Convention, which CEAS instruments are meant to harmonise. Applying *mutatis mutandis* the principle stated by the CJEU in ***Stefano Melloni v. Ministerio Fiscal***, it can be affirmed that going below that harmonised standard within the Dublin regime amounts to a plain violation of the 'consensus reached by all the

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[8] Preamble, Recital 3, Dublin III Regulation, available here.

[9] See CJEU, judgment of 21 December 2011 (GC), NS v Secretary of State for the Home Department and ME and others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform, Joined Cases C-411/10 and 493/10, ECLI:EU:C:2011:865, para. 78 (NS and others), available here.

[10] In accordance with the settled case-law of the CJEU, the rules of secondary EU law, including the provisions of the Dublin III regulation, must be interpreted and applied in a manner consistent with the fundamental rights guaranteed by the EU Charter. The prohibition of torture, inhuman or degrading treatment or punishment, laid down in Article 4 of the charter, is, in that regard, of fundamental importance, to the extent that it is absolute in that it is closely linked to respect for human dignity, which is the subject of Article 1 of the charter. See CJEU, judgment of 16 February 2017, CK and others v Republika Slovenija, Case C-578/16, ECLI:EU:C:2017:127 (CK and others), para. 59, available here.

[11] CJEU, CK and others, op.cit., fn. 10, paras 65, 92 and 93.

Member States regarding the scope to be given under EU law to the [...] rights'[12] of asylum applicants too.

The following points only illustrate a few of such concerns of infringement of fundamental rights that either have already been under the scrutiny of the European and national courts or are currently pending before the CJEU. The experts will discuss whether the task of national authorities in the application of EU law has been simplified by the preliminary rulings of the CJEU and how the findings of the ECtHR relate to current and arising situations of concerns from the standpoint of *mutual trust*.

- **risk of inhuman treatment, indirect refoulement and pushbacks**

The principle of *non-refoulement* deriving from Article 3 ECHR and Article 4 CFR is deemed to constitute an absolute barrier to transfers to another Member State if this would result in a risk of torture, inhuman or degrading treatment or punishment[13]. All Dublin transfers 'resulting in a real risk of the person concerned suffering inhuman or degrading treatment within the meaning of Article 4 of the Charter'[14] are therefore prohibited.

The risk of a violation of Article 4 of the charter must be fully assessed on an individual basis in line with the jurisprudence of the ECtHR[15]. It comprises both the risk of direct and of indirect ('chain') refoulement, as well as risk arising out of the transfer itself. The ECtHR already ruled in several cases against European states who have violated the prohibition of collective expulsions of aliens whether by pushbacks or by returning asylum seekers to other MS where it has been ascertained that they would be exposed to the risk of refoulement[16].

A recently observed situation is that, in the aftermath of the developments in Afghanistan, determined by the differences in recognition rates, many Afghan asylum seekers chose to travel to Italy to submit a second application for asylum, in order to avoid refoulement to Afghanistan from Germany or Switzerland (after these states rejected their first applications). The issue whether a Dublin transfer from Italy to these states would expose the applicants to the risk of refoulement, was recently raised by Italian judges and is pending before the CJEU[17].

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[12] See CJEU, judgment of 26 February 2013 (GC), Stefano Melloni v Ministerio Fiscal, Case C-399/11, ECLI:EU:C:2013:107, para. 62 (Melloni), available here. The case concerned the interpretation of Framework Decision 2009/299 with regards to the procedural rights enjoyed by persons convicted in absentia who are the subject of a European arrest warrant.

[13] See the landmark judgments: ECtHR, judgment of 21 January 2011 (GC), MSS v Belgium and Greece, No 30696/09, ECLI:CE:ECHR:2011:0121JUD003069609, available here, and CJEU, NS and others, op.cit., fn. 9.

[14] See CJEU, CK and others, op.cit., fn. 10, para. 67: '*It must be recalled that the prohibition of inhuman or degrading treatment laid down in Article 4 of the charter corresponds to that laid down in Article 3 of the ECHR and that, to that extent, its meaning and scope are, in accordance with Article 52(3) of the charter, the same as those conferred on it by that convention*.'

[15] See CJEU, CK and others, op.cit., fn. 10, para. 65, where the Court refers extensively to the applicable jurisprudence of the ECtHR.

[16] See in particular the case of Afghan asylum seekers returned to Greece in ECtHR, MSS v Belgium and Greece, op.cit., fn. 13, and ECtHR, judgement of 21 October 2014, Sharifi and Others v. Italy and Greece, No 16643/09, ECLI:CE:ECHR:2014:1021JUD001664309, available here.

[17] See the requests for preliminary rulings by Italian courts, in particular cases C-254/21, C-297/21 and C-315/21, currently pending before the CJEU. Also, for an interesting analysis, see L.Perilli, "*Il ruolo del*

As regards the risk arising from the transfer itself, in its ***CK and others*** judgment, the CJEU has ruled that a special health situation might also be relevant in this assessment: if a '*particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in his state of health, that transfer would constitute inhuman and degrading treatment, within the meaning of [Article 4 of the EU charter]*[18].

- **procedural guarantees, access to procedure and effective remedy**

There may also be a violation of Article 4 of the CFR (or Article 3 ECHR respectively) if there is no access to the asylum procedure in the MS responsible. In the landmark case ***MSS v Belgium and Greece***, the ECtHR found that there was a violation by Greece with regard to Article 13 in conjunction with Article 3 ECHR because there was no access to a fair and efficient asylum procedure.[19] A similar recent finding concerns Malta in the ECtHR's ruling in the case ***S.H. v. Malta***[20], where the Court decided that the applicant had no access to an effective remedy under Article 13 for the purposes of his asylum claim.

The Dublin Regulation enshrines several procedural guarantees, such as the right to information (Article 4) and the right to a personal interview (Article 5). An issue related to the respect of procedural guarantees that can constitute an obstacle to a Dublin transfer, has recently been raised with regards to the procedural guarantees of the Dublin procedure itself. Several requests for preliminary rulings are currently pending before the CJEU with regards to the effect of a failure by the transferring MS to provide the applicant with the information (and leaflet) provided for in Article 4 of the Regulation[21].

- **reception conditions**

Based on the country of first entry rule rather than the principle of solidarity and fair sharing of responsibility, the Dublin system overburdens, in practice, a limited number of individual Member States that constitute, because of their geographical position, the traditional points of

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giudice nazionale nel sistema Dublino per la tutela dei diritti fondamentali dei richiedenti protezione. I cinque rinvii pregiudiziali dei giudici italiani alla Corte di giustizia dell'Unione europea passano in decisione." in Questione Giustizia, 16/01/2023, available here.

[18] See CJEU, CK and others, op.cit., fn. 10, paras. 68 and 74, and its reference to ECtHR, judgment of 13 December 2016 (GC), Paposhvili v Belgium, No 41738/10, ECLI:CE:ECHR:2016:1213JUD004173810, paras. 174-175, available here. In the case of C.K. and others the main applicant was a pregnant female travelling with her partner challenged a transfer decision issued by the Slovenian authorities to Croatia, on the basis that the specific matrix of vulnerabilities of the applicant could not be properly addressed within the reception system in Croatia.

[19] ECtHR, MSS v Belgium and Greece, op.cit., fn. 13, paras. 286ss.

[20] ECtHR, judgment of 20 December 2022, S.H. v. Malta, No. 37241/21, ECLI:CE:ECHR:2022:1220JUD003724121, available here. In this case, the Court based it's finding of violation on six major shortcomings in the asylum procedure: the lack of access to legal assistance for people in Malta's detention centres; the principle of benefit of doubt that needs to be accorded to asylum applicants while assessing their credibility; Malta should have provided detailed reasons as to why the applicant's evidence has been disregarded; the appeals were superficial because the national decisions were taken within twenty-four hours and resulted in brief stereotype decisions; the communication system between the authority and the applicant was clearly deficient; Malta's constitutional redress is not an appropriate remedy as it has no suspensive effect.

[21] See the requests for preliminary rulings by Italian courts, in cases C-228/21, C-315/21 and C-328/21, pending before the CJEU.

irregular entry into the territory of the EU. These increased inflows place extreme pressure on the reception infrastructures of those Member States and result in the degradation of their asylum systems, giving rise to serious concerns about their ability to respect the fundamental rights of applicants for international protection. Asylum seekers rely then on these serious fundamental rights considerations in order to challenge their removal to the MS normally responsible and to require the examination of their application by a MS that offers respectable living conditions.

As concerns the level of condition receptions, the CJEU clarified the general applicable rule in its Grand Chamber ruling in the case ***Abubacarr Jawo.*** The CJEU first ruled that an asylum applicant may not be transferred under the Dublin III Regulation to the MS responsible for processing their application, if the living conditions would expose them to a situation of extreme material poverty amounting to inhuman or degrading treatment within the meaning of Article 4 CFR. In this regard, the Court held that the threshold was only met where such deficiencies, in light of all the circumstances of the individual case, attained a particularly high level of severity beyond a high degree of insecurity or a significant degradation of living conditions. The latter finding is also supported by the jurisprudence of the European Court of Human Rights. Correspondingly, national courts had the obligation to examine, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, whether there was a real risk for the applicant to find himself in such situation of extreme material poverty[22].

Following on the landmark cases of ***M.S.S v. Greece and Belgium*** and ***N.S. and others***, the European courts made further rulings that concerned the ban on Dublin transfers to a number of other Member States.

In its judgement in the case ***Tarakhel v. Switzerland***, the ECtHR took into consideration the specific needs of certain categories of asylum seekers (families with minors) and the then state of the reception system in Italy, which resulted in the finding that '*the possibility that a significant number of asylum seekers removed to that country may be left without accommodation or accommodated in overcrowded facilities without any privacy, or even in insalubrious or violent conditions, is not unfounded*'[23]. In such a scenario, the Strasbourg Court emphasised that the authorities were under an obligation '*to obtain assurances from their Italian counterparts that on their arrival in Italy the applicants will be received in facilities and in conditions adapted to the age of the children, and that the family will be kept together*'[24].

Subsequently, other applications before the Strasbourg Court raising similar allegations with regards to conditions of reception in Italy were rejected as inadmissible in light of the 2020 reform of the Italian reception system[25]. Nonetheless, the situation of the Italian reception system might be coming back into the spotlight because of Italy's Circular of the 5th of December 2022 requesting the temporary suspension of Dublin transfer because of unavailability of reception facilities. On the 18th of January 2023, the District Court of The Hague

[22] See CJEU, judgment of 19 March 2019, Abubacarr Jawo v Bundesrepublik Deutschland, Case C- 163/17, ECLI:EU:C:2019:218, para. 98 (Jawo), available here.
[23] ECtHR, judgment of 4 November 2014 (GC), Tarakhel v Switzerland, No 29217/12, ECLI:CE:ECHR:2014:1104JUD002921712, para 115, available here.
[24] ECtHR, Tarakhel v Switzerland, op.cit, fn. 23, para. 120.
[25] See for instance ECtHR, judgement of 23 March 2021, M.T. v. the Netherlands, No. 46595/19, ECLI:CE:ECHR:2021:0323DEC004659519, available here.

took into consideration this as a potential problem affecting the principle of *mutual trust*, but not (yet) indicating structural and fundamental deficiencies in the Italian reception facilities. However, the Court declared that the Secretary would need to assess the asylum application if the temporary impediment last longer than the transfer deadline under the Dublin Regulation[26].

Besides Greece and Italy, more and more members states are facing serious challenges with regards to reception conditions, as it stems, for instance, from the recent judgment adopted by the ECtHR against France[27] and decision on request for interim measures against Belgium[28].

As pointed out by some scholars, what is particularly challenging for the CJEU is the task of balancing the application of the core principle of mutual confidence against the requirements of fundamental rights protection without encouraging secondary migration and penalizing those Member States that respect their obligations under the CEAS[29].

- **detention and the respective legal remedies**

Article 28(1) enshrines the fundamental principle that '*Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation*.' The only exception is when there are reasons in an individual case, which are based on objective criteria defined by law, for believing that the person subject to transfer may abscond. In such circumstances, Member States may detain the person concerned in order to secure transfer procedures, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively (Article 28(2) and (3)). Article 28(4) establishes that the conditions of detention shall be those established by the Reception Conditions Directive.

The systemic use of detention and lack of effective remedies was a key concern in general. For instance, two transfer decisions to Bulgaria were annulled by the courts in Italy because of systemic use of detention, insufficient reviews as to the length of detention and potential alternatives and of the living conditions within detention likely to amount to inhuman or degrading treatment within the parameters of Article 3[30].

When ruling, national courts gave due consideration to the CJUE ruling in the case of ***Al Chodor,*** specifically referring to the need for objective criteria for the concept of the risk of absconding to be clearly laid out in national law and for the need for the authorities to record

[26] Court of The Hague [Rechtbank Den Haag] (Netherlands), judgment of 18 January 2023, Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), NL22.23286, ECLI:NL:RBDHA:2023:357, available here. Abstract in English available here.
[27] See ECtHR, judgment of 8 December 2022, M.K. and Others v France**,** Nos. 34349/18, 34638/18, 35047/18, ECLI:CE:ECHR:2022:1208JUD003434918, available here.
[28] See ECtHR Press release of 16.12.2022, as regards cases Al-Shujaa and Others v. Belgium (application no. 52208/22 and 142 others), available here.
[29] See for an interesting analysis, Anagnostaras G (2020). The Common European Asylum System: Balancing Mutual Trust Against Fundamental Rights Protection. German Law Journal 21, 1180–1197, available here.
[30] See Tribunal of Torino, judgment of 14 July 2021, Applicant v Dublin Unit of the Ministry of the Interior (Unita di Dublino, Ministero dell'Interno), RG 23165/2020, available here.

any such reasoning and for this to be reviewed on a frequent basis with considerations of the suitability of alternatives for detention[31].

In a similar vein to reception conditions, also detention conditions of asylum seekers can amount to inhuman or degrading treatment within the meaning of Article 4 CFR, thus representing an obstacle to a Dublin transfer towards a MS where such conditions are present. On this matter, the case-law of the Strasbourg Court is of great relevance, since the cases alleging violations of the prohibition of inhuman and degrading treatment caused by conditions of detention in the prisons of many European states represent a significant part of this court's caseload.

Besides the situation in official detention facilities, the Strasbourg Court also examined the situation in prison-like facilities, such as it was the case of the Röszke transit zone in Hungary. On 2 March 2021, the ECtHR ruled in its judgment in ***R.R. and others v. Hungary***[32] that detention conditions in the Röszke transit zone amounted to inhuman and degrading treatment.

Recently, also the Maltese detention conditions of asylum seekers passed under the lens of the ECtHR in the case ***Feilazoo v. Malta.***[33] Making reference to the case-law of the ECtHR, national courts decided to annul transfers of asylum applicants to Malta[34].

3.3. Legal remedies within the Dublin III procedure fit for ensuring the respect of fundamental rights in line with *mutual trust*

The panel of expert will further debate what remedies does EU law offer in order to raise concerns for the respect of fundamental rights in line with the principle of *mutual trust* and to

[31] See CJEU, judgment of 15 March 2017, Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor, Ajlin Al Chodor, Ajvar Al Chodor, Case C- 528/15, ECLI:EU:C:2017:213, para. 47 (Al Chodor), available here.

[32] ECtHR, judgment of 2 March 2021, R.R. and others v. Hungary, No. 36037/17, ECLI:CE:ECHR:2021:0302JUD003603717, available here.

[33] ECtHR, judgment of 11 March 2021, Feilazoo v. Malta, No. 6865/19, ECLI:CE:ECHR:2021:0311JUD000686519, available here. The Strasbourg Court found that the applicant's rights under Article 3 had been breached due to the conditions of the detention with specific reference being made to the length of time the applicant was kept in isolation and inadequate natural light and ventilation. Furthermore, the applicant's detention was not lawful under Article 5 (1) ECHR, as it lasted for fourteen months, the authorities were aware that the deportation was not feasible and failed to pursue the matter with diligence.

[34] For instance, the Tribunal of Rome made a ruling annulling a transfer to Malta, making similar arguments to the ECtHR case, and relying on evidence offered by the applicant of the degradation of his medical conditions whilst subjected to detention during his previous time spent in Malta, see Tribunal of Rome (Italy), judgement of 7 April 2022, Applicant v Dublin Unit of the Ministry of the Interior (Unita di Dublino, Ministero dell'Interno), R.G. 4597/2022; English abstract of the case available here). One ruling made by the Council of State which upheld a previous decision to annul a transfer made by the Court of the Hague cited lack of access to appropriate medical care whilst in detention and a lack of access to an effective legal remedy as its reasoning for its decision relying on reports from Amnesty International and ECRE (Council of State [Afdeling Bestuursrechtspraak van de Raad van State] (Netherlands), judgment of 15 December 2021, Applicant v State Secretary for Justice and Security, 202104510/1/V3, ECLI:NL:RVS:2021:2791; English abstract of the case available here).

protect the right of those concerned? Which is the extent of the judicial remedy provided for in the Dublin Regulation.

The right to an effective legal remedy is guaranteed by Article 47 of the EU charter. One of the major innovations of the Dublin III Regulation is the right to a remedy against a transfer decision, together with a series of procedural guarantees as provided for in Article 27.

In ***Ghezelbash*** the CJEU observed that these changes demonstrated that:
"*the EU legislature did not confine itself, in [the Dublin III Regulation], to introducing organisational rules simply governing relations between Member States for the purpose of determining the Member State responsible, but decided to involve asylum-seekers in that process by obliging Member States to inform them of the criteria for determining responsibility and to provide them with an opportunity to submit information relevant to the correct interpretation of those criteria, and by conferring on asylum seekers the right to an effective remedy in respect of any transfer decision that may be taken at the conclusion of that process*."[35]

The scope of the legal remedy against a transfer decision is made clear in recital (19) of the Dublin III regulation which specifies that the appeal serves the purpose of establishing an effective remedy 'in accordance, in particular, with Article 47 of the Charter' and that '[i]n order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this regulation and of the legal and factual situation in the Member State to which the applicant is transferred'.

Issues related to the actual examination of such an appeal by the national judge, in particular as regards the burden of proof and obtaining and assessing the evidence pertaining to the situations contemplated in Article 3(2), were the object of requests before the CJEU.

Firstly, the burden of establishing the substantial grounds for believing that a transfer under the Dublin III Regulation would result in a violation of Article 4 of the EU Charter does not rest entirely on the applicant.

The Grand Chamber of the CJEU has analysed the evidentiary assessment of conditions in another Member State, albeit in the different context of the European Arrest Warrant. Among the points made by the CJEU in ***Pál Aranyosi and Robert Căldăraru*** were that:
"[...] the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN."[36]

[35] See CJEU, judgment of 7 June 2016 (GC), Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie, Case C- 63/15, ECLI:EU:C:2016:409, para. 51 (Ghezelbash), available here.
[36] See CJEU, judgment of 5 April 2016 GC, Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen, Joined Cases C-404/15 and C-659/15, ECLI:EU:C:2016:198, para. 89 (Aranyosi and Căldăraru), available here.

More recently, in ***Jawo,*** the CJEU addressed the question of evidence assessment in the context of Article 4 EU Charter and the CJEU's analysis has applicability, *mutatis mutandis*, to Article 3(2) Dublin III regulation. The CJEU held that:

> *"[W]here the court or tribunal hearing an action challenging a transfer decision has available to it evidence provided by the person concerned for the purposes of establishing the existence of such a risk, that court or tribunal is obliged to assess, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, whether there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people".*[37]

A question that can be raised is whether such an assessment shouldn't already take place in the previous phase[38], of adopting the transfer decision and thus constitute an obligation for that national authority to obtain and assess such objective, reliable, specific and properly updated information followed by the need to obtain individual guarantees from the responsible MS?

A question in similar terms has been raised before the CJEU by the Dutch courts in ***X v Staatssecretaris van Justitie en Veiligheid***[39] with regards to Poland, where fundamental rights breaches at the external borders have been alleged, where the national authorities have been accused of illegal push backs. Amongst other questions, the Dutch court inquired whether in the light of the references to the Union acquis in the recitals of the Dublin Regulation, does the transferring Member State have a duty of cooperation or verification, or, in the event of serious and systematic infringements of fundamental rights with respect to third-country nationals, is it necessary to obtain individual guarantees from the Member State responsible that the applicant's fundamental rights will (indeed) be respected after the transfer?

Recently, the CJEU ruled also on questions regarding the scope of the right to a judicial remedy contained in Article 27 of the Regulation, in particular as to the type of decisions against which a judicial remedy must be guaranteed and as to who the beneficiaries of such a judicial right are. In ***I, S v Staatssecretaris van Justitie en Veiligheid***, the Grand Chamber of the CJEU ruled that Article 27(1) read in conjunction with Articles 7, 24 and 47 of the Charter must be interpreted as meaning that it requires a Member State to which a take charge request has been made, based on Article 8(2) of Dublin III Regulation, to grant a right to a judicial remedy against its refusal decision to the unaccompanied minor, within the meaning of Article 2(j) of that regulation, who applies for international protection, but not to the relative of that minor, within the meaning of Article 2(h) of that regulation[40].

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[37] See Jawo, op.cit., fn.22, para 90.

[38] For this purpose, it is interesting to consider the decision taken by the Swiss Federal Administrative Court in the context of appeal against the transfer decision of a family to Italy, which made the object of the case Tarakhel before the ECtHR, op.cit, fn. 23. The Swiss Federal Administrative Court has ruled that in situations where a risk of inhuman and degrading treatment is alleged, assurances from the MS of destination that appropriate measure will be adopted, are to be seen as a prerequisite for a transfer decision and need therefore to have been obtained when the decision is issued and to be subject to a review by the competent court or tribunal at the national level.

[39] See application for preliminary ruling, Case C-392/22, X v Staatssecretaris van Justitie en Veiligheid, pending, available here.

[40] See CJEU, judgment of 1 August 2022 (GC), I, S v Staatssecretaris van Justitie en Veiligheid, Case C-19/21, ECLIEU:C:2022:605, available here.

3.4. Ensuing actions in case of cancellation of a transfer following a rebuttal of the principle of *mutual trust*

Once a transfer decision has been annulled by a court or a tribunal following a judicial appeal on the basis of a risk of violation of the principle of *mutual trust*, which actions are to be taken by the MS in order to safeguard the right of the applicant? Are MSs supposed to continue with the examination of the criteria setting the responsibility of another state or directly apply the discretionary clause?

Whilst the first option is stated explicitly only about cases where it is impossible to transfer the applicant due to systemic flaws in the asylum procedure and reception conditions in the MS primarily responsible, where the transfer is not possible for other reasons which would mean that transfer would result in a risk of a violation of Article 4 EU Charter, it is not excluded that the determining Member State may do likewise. However, a Member State may choose to conduct its own examination of the application for international protection by making use of the 'discretionary clause' laid down in Article 17(1) of the Dublin III regulation[41].

However, in circumstances such as those at issue in ***CK and others*** which concerned the state of health of the asylum seeker, the CJEU held that Article 17(1), read in the light of Article 4 of the charter, cannot be interpreted as meaning that it implies an obligation on that Member State to make use of it in that way[42].

Although the CJEU apparently clarified in ***N.S.*** the conditions when the *raison d'être* of the Area of Freedom, Security and Justice (AFSJ) – *mutual trust* – does not need to be followed, namely in cases of 'systemic flaws in the asylum procedure and reception conditions', this judgment actually opened a Pandora's Box for the national courts. They were subsequently confronted with ensuing questions, such as the conditions of when national courts can distrust Member States other than Greece, where the existence of systemic flaws was not as evident, and establishing the obligations incumbent upon the Member States in circumstances where *mutual trust* could be rebutted.

In its judgment in the case ***Puid***[43]**,** the CJEU held that the right of an asylum seeker subject to a Dublin transfer does not transform the right of the Member States under Article 3(2) Dublin II Regulation into an obligation to assume responsibility for assessing his asylum application.

In 2021, Italian courts applied before the CJEU calling on this European court to rule whether the application of the discretionary clause should be interpreted as "obligatory" in cases of risk

[41] The Dublin III Regulation contains discretionary clauses (a so-called 'sovereignty' clause and a humanitarian' clause), allowing Member States to examine asylum applications which are not their responsibility under the criteria laid out in Chapter III. Article 17(1) enshrines the 'sovereignty' clause which establishes that: By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.
[42] See CJEU, CK and others, op.cit., fn. 10, para. 88.
[43] See CJEU, judgment of 14 November 13, Bundesrepublik Deutschland v Kaveh Puid, Case C-4/11, ECLI:EU:C:2013:740, para. 35, (Puid) available here.

of indirect refoulment by the receiving MS of the applicant, should a Dublin transfer be performed to that MS[44].

In June 2022 the Dutch courts raised before the CJEU several questions regarding the obligations that are incumbent on the transferring state in order to safeguard the applicants from potential violations of fundamental rights. The request for preliminary rulings in the case ***X v Staatssecretaris van Justitie en Veiligheid***[45] concerns Poland, where fundamental rights breaches at the external borders have been alleged, where the national authorities have been accused of illegal push backs. The questions raised before the CJEU, amongst others, concern the concept of divisibility of *mutual trust*. More precisely, the Dutch authorities inquired if the relevant articles should be interpreted *"as meaning that, if the Member State potentially responsible infringes EU law in a serious and systematic way, the transferring Member State cannot, within the framework of the Dublin Regulation, rely blindly on the principle of inter-State trust but must eliminate all doubts or must demonstrate that, after the transfer, the applicant will not be placed in a situation which is contrary to Article 4 of the Charter of Fundamental Rights of the European Union?"*

It is not clear at this point in time when the CJEU will deliver preliminary rulings on these last two particular cases.

The application of the principle of *mutual trust* in the Dublin system and the subsequent appeals give rise to several questions amongst judges and other professionals applying Dublin III regulation and the European acquis in the field of CEAS. In which other types of breaches and deficiencies can mutual trust be rebutted? Is there a risk for the principle of *mutual trust* to become void of its meaning? Is there a risk of a principle of interstate mistrust to prevail? Is the caselaw of the CJEU setting light or casting more doubts on how to deal with judicial and substantive remedies on the matter? Will this risk to lead to an erosion of the Dublin system rather than to its consolidation?

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The suggested topics and directions outlined above are indicative only and are further to be specified by the experts sitting on this panel, according to the input that will be received from participants. For this purpose, annexed to this note can be found:

- a table that outlines relevant European legal framework
- relevant EUAA and other material
- a table with relevant case-law.

[44] See fn. 17.
[45] See application for preliminary ruling, Case C-392/22, op.cit., fn. 39.

ANNEX I

Legal Framework

Treaty on European Union	
Article 2	Human dignity, democracy, rule of law
Article 7	Respect the common values of the EU, including the rule of law

EU Charter of Fundamental Rights	
Article 1	Human dignity
Article 2	Right to life
Article 3	Right to integrity
Article 4	Prohibition of torture and inhuman or degrading treatment or punishment
Article 6	Right to liberty and security
Article 7	Respect for private and family life
Article 18	Right to asylum
Article 19	Protection in the event of removal, expulsion or extradition
Article 20	Equality before the law
Article 21	Non-discrimination
Article 47	Right to an effective remedy and to a fair trial
Article 52(1)(3)	Scope and interpretation of rights and principles (proportionality)

European Convention on Human Rights	
Article 2	Right to life
Article 3	Prohibition of torture
Article 5	Right to liberty and security
Article 8	Private and family life
Article 13	Right to an effective remedy
Article 14	Prohibition of discrimination

Regulation 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)	
Article 3(2)	Access to the procedure for examining an application for international protection
Article 4	Right to information
Article 5	Personal interview
Article 6	Guarantees for minors
Article 17(1)	Discretionary clauses
Article 26	Notification of a transfer decision
Article 27	Remedies
Article 28	Detention

ANNEX II

Relevant Material

EUAA

- EUAA (2016), Judicial Analysis - Introduction to the Common European Asylum System for courts and tribunals
- EUAA (2023), Judicial analysis - Evidence and credibility assessment in the context of the CEAS, 2nd edition
- EUAA (2023), Judicial Analysis - Qualification for international protection (Directive 2011/95/EU), 2nd edition
- EUAA (2020), Judicial Analysis - Detention of applicants for international protection in the context of the CEAS
- EUAA (2018), Judicial Analysis - Asylum Procedures and the principle of non- refoulement
- EUAA (2019), Practical guide on the implementation of the Dublin III Regulation
- EUAA (2021), Recommendations of the EASO Network of Dublin Units on Dublin transfers

OTHER

- AIDA-ECRE (2022), The implementation of the Dublin III Regulation in 2021
- ECtHR, Fact sheet – "Dublin cases", March 2021

ANNEX III
Case-law from CJEU and ECtHR

Case Title	Summary/Key points available in the EUAA case-law database
ECtHR Judgment of 20 December 2022, S.H. v. Malta, No. 37241/21, ECLI:CE:ECHR:2022: 1220JUD003724121	The ECtHR found violations of Article 3 and Article 13 of the European Convention due to the lack of adequate assessment of an asylum application lodged by a Bangladeshi national in Malta, the lack of legal assistance and lack of an effective remedy. Read more a full summary in the EUAA case – law database here.
ECtHR Decision of 13 December 2022, Al-Shujaa and Others v Belgium, No 52208/22 and 142 others	According to the press release of the ECtHR: "From September to December 2022 the Court received requests for interim measures under Rule 39 of the Rules of Court from about 832 applicants. They are asylum-seekers of various nationalities. About 58 of them have identified themselves to the Belgian authorities as unaccompanied minors. The applicants, who are in Belgium and have no accommodation, complain that they have not been allocated places in the reception system by the Federal Agency for the Reception of Asylum Seekers (Fedasil) in accordance with the Law of 12 January 2007 ("the 2007 Act"). Some of the applicants brought proceedings in the Brussels Labour Court (tribunal du travail) and obtained final domestic decisions directing that Fedasil was to assign them a place of accommodation and grant them the support required by section 6 of the 2007 Act, in default of which Fedasil was to be liable for damages which would continue to accrue until it did as directed. Those decisions have not been complied with to date. Some applicants have not sued in the Labour Court or have yet to receive a final domestic decision. Still others have been assigned places of accommodation since lodging interim measure requests with the Court. The applicants allege an infringement of their rights under Article 3 (prohibition of inhuman and degrading treatment) of the Convention. Some of them also allege a violation of Article 8 (right to respect for private and family life) of the Convention and of Article 6 (right to a fair hearing) read in conjunction with Article 13 (right to an effective remedy). The Court decided to indicate an interim measure to the Belgian State in the case of Al-Shujaa and Others v. Belgium (application no. 52208/22 and 142 others), concerning 143 applicants who had obtained domestic

	decisions which had become final. The Court directed the Belgian Government to comply with the decisions of the Brussels Labour Court and provide the applicants in question with accommodation and material assistance to meet their basic needs for the duration of the proceedings before the Court. The Court also decided, pursuant to Rule 39 § 2 of the Rules of Court, to give notice of the interim measure to the Committee of Ministers. Furthermore the Court decided to reject the requests for interim measures of those applicants (adults or unaccompanied minors) who had not obtained a final domestic decision. There are 57 such applicants. The Court took note of the withdrawal of the interim measure requests of some applicants (unaccompanied minors) as they had obtained accommodation."
ECtHR Judgment of 8 December 2022, **M.K. and Others v France,** Nos. 34349/18, 34638/18, 35047/18, ECLI:CE:ECHR:2022: 1208JUD003434918	According to the ECtHR press release: "The cases concerned asylum-seekers who were without accommodation at the time of the events because they had not been given access to the specialist reception facilities or to emergency accommodation. The urgent-applications judge of the Administrative Court, to whom they applied, ordered the State to find emergency accommodation for them. The applicants complained that, despite the orders granting their requests and the proceedings brought by them at domestic level to that end, the State had failed to enforce the judicial decisions in their favour. They alleged a breach of Article 6 § 1 of the Convention. The Court considered that in the present case the decision to grant or refuse emergency accommodation constituted a civil right, and held that Article 6 § 1 of the Convention was applicable. The Court noted that the Government, who maintained that the reception facilities in the Haute-Garonne département had been at saturation point, especially in July 2018, and that there had been insufficient funds to cover the cost of hotel accommodation, had not demonstrated before the Court the complexity of the proceedings to enforce the orders in the applicants' favour. It further observed that the applicants had been especially diligent in their efforts to secure enforcement of the orders. Furthermore, the prefect, who represented the State within the département, had not furnished the explanations sought by the Administrative Court at the administrative stage of the enforcement process and had not responded to the applicants' requests, nor had he enforced the orders in question until the Court had indicated interim measures. Only then had the applicants been provided with accommodation. The Court, after noting the passive attitude of the competent administrative authorities when it came to enforcing the decisions of the Administrative Court, especially in the context of disputes concerning protection of the human dignity of individuals in a particularly vulnerable situation, held that there had been a violation of Article 6 § 1 of the Convention."

CJEU Judgment of 1 August 2022 (GC), I and S v Staatssecretaris van Justitie en Veiligheid, Case C-19/21, ECLI:EU:C:2022:605	An Egyptian national applied for international protection in Greece in 2019 when he was still a minor. When he applied, he expressed the wish to be reunited with S, his uncle, also an Egyptian national, who resided regularly in the Netherlands and who had given his consent to this. In 2020, the Greek authorities requested the Dutch authorities to take charge of the applicant, under the Dublin III Regulation. The request was rejected on the grounds that the identity of the applicant and the alleged relationship to S could not be established. In addition, a request for reconsideration was rejected. I and S lodged a complaint with the Secretary of State against the refusal to take charge. The Secretary of State dismissed this claim as inadmissible on the grounds that the Dublin III Regulation does not provide for the possibility of applicants for international protection to challenge such a rejection decision. The Court of The Hague made a request for a preliminary ruling before the CJEU to determine if the persons concerned have the right to a judicial remedy. The CJEU held that the Dublin III Regulation, read in conjunction with the EU Charter provides a right of appeal to the unaccompanied minor against the decision to take charge. On the other hand, the relative of this minor does not benefit from such a right to appeal. The court observed that even if, on the basis of a literal interpretation, the Dublin III Regulation does not appear to grant a right of appeal to the applicant for international protection solely for the purpose of contesting a decision of transfer, it does not however exclude that a right of appeal is also granted to the unaccompanied minor applicant for the purpose of contesting a decision to refuse to accept a take charge request. The court also noted that the rules of secondary EU law must be interpreted and applied with respect for fundamental rights. The court highlighted that the judicial protection of an unaccompanied minor applicant cannot vary according to whether this applicant is the subject of a transfer decision by the requesting Member State, or of a decision by which the requested Member State rejects the request to take charge of the applicant. The CJEU noted also that unaccompanied minors require, because of their particular vulnerability, specific procedural safeguards. With regard to the relative of the minor, the CJEU held that no provision of the regulation confers him rights which he could claim in court against a decision not to take charge, and this relative cannot derive a right of appeal against such a decision solely on the basis of Article 47 of the EU Charter.
CJEU	The Court of the Hague referred a case for preliminary ruling before the CJEU on the question of the divisibility of the principle of interstate mutual trust in a case concerning a Dublin transfer to Poland. The Court submitted

C-392/22, Request for a preliminary ruling, pending Referral Decision: Court of The Hague [Netherlands], lodged on 15 June 2022, Applicant v State Secretary, NL22.6989 ECLI:NL:RBDHA:2022:5724	questions to the Court for the third time on the relationship between systematic pushbacks, standard detention, the CEAS and interstate trust after similar questions were submitted by the court in cases concerning Dublin transfer to Malta and Dublin transfer to Croatia. Those cases were revoked because the contested decisions in those proceedings were revoked and withdrawn after referral. The first case was referred to the CJEU on 4 October 2021 and withdrawn on 2 March 2022 and the second case was adopted on 18 March 2022 as referral for preliminary ruling and withdrawn from the list of the Court by order of 20 May 2022. The referring court asked the following questions: I In the light of recitals 3, 32 and 39 in the preamble and read in conjunction with Articles 1, 4, 18, 19 and 47 of the EU Charter, is the Dublin Regulation to be interpreted and applied that the interstate principle of trust is not divisible, thus that serious and systematic violations of EU law committed by the possibly responsible Member State before transfer with regard to third-country nationals who are not (yet) Dublin returnees absolutely preclude transfer to this Member State? II If the answer to the previous question is in the negative, Article 3(2) of the Dublin Regulation, read in conjunction with Articles 1, 4, 18, 19 and 47 of the EU Charter, must be interpreted as meaning that if the potentially responsible Member State seriously and systematically infringes the EU law, the transferring Member State cannot base itself on the principle of interstate confidence in the context of the Dublin Regulation, but must remove any doubts or must demonstrate that after transfer the applicant is not in a situation that is contrary to Article 4 of the EU Charter? III What means of evidence can the applicant use to substantiate his arguments that Article 3(2) of the Dublin Regulation precludes his transfer and what standard of proof should be used in this regard? In view of the references to the EU acquis in the preamble to the Dublin Regulation, does the transferring Member State have a cooperation and/or verification obligation, or should individual guarantees be issued in the case of serious and systematic violations of fundamental rights vis-à-vis third-country nationals? obtained from the responsible Member State that the applicant's fundamental rights are (are) respected after transfer? Is the answer to this question different if the applicant is in need of evidence if he cannot substantiate his consistent and detailed statements with documents, IV Is the answer to the previous questions under III different if the applicant demonstrates that complaining to the authorities and/or recourse to legal remedies in the responsible Member State will not be possible and/or effective?

CJEU C-328/21, Request for a preliminary ruling, pending Referral Decision: Tribunale di Trieste (Italy), GE v Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione – Unità Dublino, lodged on 26 May 2021.	Questions referred: Must Article 27 of Regulation (EU) No 604/2013 [1] be interpreted: • as meaning that a failure to provide the information leaflet required under Article 4(2) and (3) of Regulation (EU) No 604/2013 to a person who meets the conditions described in Article 23(1) of Regulation (EU) No 604/2013 in itself renders the transfer decision irremediably invalid (and potentially also establishes the responsibility of the Member State to which the person has submitted the new application to take a decision on the application for international protection); • or as meaning that it is for the appellant to prove in court that the procedure would have had a different outcome if the leaflet had been provided to him or her? Must Article 27 of Regulation (EU) No 604/2013 be interpreted: • as meaning that a failure to provide the information leaflet required under Article 29 of Regulation (EU) No 603/2013 to a person who meets the conditions described in Article 24(1) of Regulation (EU) No 604/2013 in itself renders the transfer decision irremediably invalid (and potentially also results in the need to provide a possibility to submit a new application for international protection); • or as meaning that it is for the appellant to prove in court that the procedure would have had a different outcome if the leaflet had been provided to him or her?
CJEU C-315/21, Request for a preliminary ruling, pending Referral Decision: Tribunale di Milano [Italy], PP v Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione – Unità Dublino, lodged on 17 May 2021.	The questions referred in the preliminary ruling are: "Must Articles 4 and 5 of Regulation (EU) 604/2013, the Dublin Regulation, be interpreted as meaning that infringement thereof in itself renders unlawful a decision challenged under Article 27 of Regulation (EU) 604/2013, irrespective of the specific consequences of that infringement for the content of the decision and the identification of the Member State responsible? Must Article 27 of Regulation (EU) 604/2013, read in conjunction with Article 18(1)(a) or with Articles 18(2)(b), (c) and (d) and with Article 20(5) of the Dublin III Regulation, be interpreted as identifying different subjects of appeal, different complaints to be raised in judicial proceedings and different aspects of infringement of the obligations to provide information and conduct a personal interview under Articles 4 and 5 of Regulation (EU) 604/2013? If the answer to question 2 is in the affirmative, must Articles 4 and 5 of Regulation (EU) No 604/2013 be interpreted as meaning that the guarantees relating to information, provided for therein, are enjoyed only in the scenario set out in Article 18(1)(a) and not also in the take back procedure, or must they be interpreted as meaning that in that procedure the obligations to provide information are enjoyed at least in relation to the

	cessation of responsibilities referred to in Article 19 or the systemic flaws in the asylum procedure and in the reception conditions for applicants which result in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union referred to in Article 3(2)? Must Article 3(2) be interpreted as meaning that 'systemic flaws in the asylum procedure' includes any consequences of final decisions rejecting an application for international protection already adopted by the court of the Member State effecting the take back, where the court seised pursuant to Article 27 of Regulation (EU) No 604/2013 considers that there is a real risk that the applicant could suffer inhuman and degrading treatment if he or she is returned to his or her country of origin by the Member State, also having regard to the presumed existence of a general armed conflict within the meaning of Article 15(c) of Directive 2011/95/EU of 13 December 2011? "
CJEU C-297/21, Request for a preliminary ruling, pending Referral Decision: Tribunale Ordinario di Firenze [Italy], XXX.XX v Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione – Unità Dublino, lodged on 7 May 2021	Questions referred: Must Article 17(1) of Regulation (EU) No 604/2013 be interpreted, in accordance with Articles 19 and 47 of the [Charter of Fundamental Rights of the European Union] and Article 27 of Regulation (EU) No 604/2013, as meaning that the court of the Member State, hearing an appeal against the decision of the Dublin Unit, may establish the responsibility of the Member State which would have to carry out the transfer under Article 18(1)(d), if it determines the existence, in the Member State responsible, of a risk of infringement of the principle of non-refoulement by returning the applicant to his country of origin, where the applicant's life would be in danger and where he would be at risk of inhuman and degrading treatment? In the alternative, must Article 3(2) of Regulation (EU) No 604/2013 be interpreted in accordance with Articles 19 and 47 of the [Charter] and Article 27 of Regulation (EU) No 604/2013, as meaning that the court may establish the responsibility of the Member State required to carry out the transfer under Article 18(1)(d) of that regulation, where it is established that: (a) there is a risk in the Member State responsible of infringing the principle of non-refoulement by returning the applicant to his country of origin, where his life would be in danger and where he would be at risk of inhuman or degrading treatment? (b) it is impossible to carry out the transfer to another Member State designated on the basis of the criteria set out in Chapter III of Regulation (EU) No 604/2013?"

CJEU C-254/21, Request for a preliminary ruling, pending Referral Decision: Tribunale ordinario di Roma [Italy], DG v Ministero dell'Interno – Dipartimento per le Libertà Civili e l'Immigrazione – Direzione Centrale dei Servizi Civili per L'Immigrazione e l'Asilo – Unità Dublino, lodged on 22 April 2021.	Questions referred: Does the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union require that Articles 4 and 19 of that charter, in the circumstances referred to in the main proceedings, also provide protection against the risk of indirect refoulement following a transfer to a Member State of the European Union which has no systemic flaws within the meaning of Article 3(2) of the Dublin Regulation (in the absence of other Member States responsible on the basis of the criteria set out in Chapters III and IV) and which has already examined and rejected the first application for international protection? Should the court of the Member State where the second application for international protection was lodged, hearing an appeal pursuant to Article 27 of the Dublin Regulation – and thus having jurisdiction to assess the transfer within the European Union but not to adjudicate on the application for protection – conclude that there is a risk of indirect refoulement to a third country, where the concept of 'internal protection' within the meaning of Article 8 of Directive 2011/95/EU 2 has been assessed differently by the Member State where the first application for international protection was lodged? Is the assessment of the [risk of] indirect refoulement, following the different interpretation by two Member States of the need for 'internal protection', compatible with the second part of Article 3(1) of the Dublin Regulation and with the general principle that third-country nationals may not decide in which Member State of the European Union the application for international protection is to be lodged? In the event that the previous questions are answered in the affirmative: Does the assessment of the existence of the [risk of] indirect refoulement, made by the court of the Member State in which the applicant lodged the second application for international protection following the rejection of the first application, require the application of the clause provided for in Article 17(1), defined by the Regulation as a 'discretionary clause'? Which criteria must the court seised [pursuant to] Article 27 of the Regulation apply in order to assess the risk of indirect refoulement, other than those identified in Chapters III and IV, given that that risk has already been ruled out by the country that examined the first application for international protection?
CJEU C-228/21, Request for a preliminary ruling, pending Referral Decision:	Questions referred for a preliminary ruling: 1. Should Article 4 of [Regulation (EU) No 604/2013] be interpreted as meaning that an action may be brought under Article 27 of [that regulation] against a transfer decision adopted by a Member State, using the mechanism provided for in Article 26 of [that regulation] and on the basis of the obligation to take back laid down in Article

Supreme Court of Cassation [Italy], Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione – Unità Dublino v CZA, lodged on 8 April 2021	18(1)(b) thereof, solely because of a failure to deliver the information leaflet required under Article 4(2) of [that] regulation by the Member State which adopted the transfer decision? 2. Should Article 27 of [that regulation], read in conjunction with recitals 18 and 19 and Article 4 thereof, be interpreted as meaning that, where it has been determined that there has been a failure to fulfil the obligations laid down in Article 4 [of that regulation], an effective remedy requires that the court adopt a decision annulling the transfer decision? 3. If the answer to Question 2 above is in the negative, should Article 27 of [that regulation], read in conjunction with recitals 18 and 19 and Article 4 thereof, be interpreted as meaning that, where it has been determined that there has been a failure to fulfil the obligations laid down in Article 4 [of that regulation], an effective remedy requires that the court verify the significance of that failure to fulfil obligations in the light of the circumstances alleged by the applicant and permits confirmation of the transfer decision in all cases where there are no grounds for adopting a transfer decision with different content?
ECtHR judgement of 23 March 2021, M.T. v. the Netherlands, No. 46595/19 ECLI:CE:ECHR:2021: 0323DEC004659519	The case concerned a Dublin transfer to Italy of an asylum applicant and her minor children. The applicant, an Eritrean national, and her two minor daughters, arrived in the Netherlands on 21 March 2018. As it was found that the Italian authorities were considered responsible for the processing of her asylum application, the Dutch authorities did not examine her application and held that the asylum and reception systems in Italy were not affected by systemic shortcomings. The applicant challenged the decision and argued before the ECtHR that, in the abscence of individual guarantees from the Italian authorities, the transfer would breach Article 3 as they would be left without adequate reception facilities and access to medical care. The ECtHR dismissed the application as manifestly ill-founded, holding that the Italian Government confirmed that under the new regime, the applicant would be given priority as a single mother with minor children and she would be eligible for placement in the SAI network. The court further noted that the latest legislative amendments included an extension of the services provided in the first-tier reception facilities, where the applicant might receive accomodation pending an availablity in the secon-tier accomodation. In addition, the court also noted that the applicant did not argue that the necessary treatment for one of her daughters was not available in Italy. The court concluded that the applicant did not prove that her prospects in Italy, from a material, physical or psychological perspective, amounted to a sufficiently real and imminent risk of hardship that fell within the scope of Article 3 of the Convention.

ECtHR judgment of 11 March 2021, Feilazoo v. Malta, No. 6865/19 ECLI:CE:ECHR:2021:0311JUD000686519	The applicant, a Nigerian national, was placed in immigration detention pending deportation. His detention lasted for around fourteen months. The applicant complained, inter alia, of the conditions of his detention. In relation to the proceedings before the ECtHR, he alleged that he had not had the opportunity to correspond with the court without interference by the prison authorities, and had been denied access to materials intended to substantiate his application. According the ECtHR's Press release, the case concerned the conditions of the applicant's immigration detention and its lawfulness. It also concerned complaints in relation to the proceedings before the ECtHR, mainly related to interference with correspondence and domestic legal-aid representation. The ECtHR took issue with many aspects of the applicant's detention, including time spent detained in de facto isolation without exercise, and a subsequent period where he had been detained with people under Covid-19 quarantine unnecessarily. Overall it found the conditions inadequate. The ECtHR also found that the authorities had not been diligent enough in processing his deportation, and that the reasons for the applicant's detention had ceased to be valid. It also found that the authorities had not guaranteed the applicant's right to petition before the Court, as they had tampered with his correspondence and had not guaranteed to him adequate legal representation.
ECtHR judgment of 2 March 2021, R.R. and others v. Hungary, No. 36037/17, ECLI:CE:ECHR:2021:0302JUD003603717	The applicants are a family of five, one Iranian and four Afghan nationals, who arrived in Hungary on 19 April 2017 from Serbia and entered the Röszke transit zone, situated on Hungarian territory at the border between the two countries. They applied for asylum on the same date. In the transit zone, they stayed initially in a 13 sq. m. container, with three bunk beds without child safety rails, which the applicants reported to be extremely hot and with poor ventilation in the summer. R.R. was not entitled to the reception of meals from the Office for Immigration and Asylum (IAO) as he had already applied for asylum in Hungary before entering the transit zone with his family. On 29 June 2017, the applicants were moved to an isolation section because the applicant's mother and children had hepatitis B. They were provided with inadequate food for children, basic medical care but no psychiatric treatment, no refrigerator, microwave and washing machine was present in the section, no activities were organised for the children. The police officers/guards often raided their living containers to perform security checks. They reported that no interpreter was present during medical examinations and during gynaecological examinations of one applicant, male guards had been present. The youngest applicant child, born in August 2016 in Serbia, had not been given the vaccines recommended at six months.

	On 15 August 2017, the applicants were granted leave to enter and temporarily stay in the territory of Hungary (admitted alien status, befogadott). The applicants left for Germany on 25 August 2017, where they were later granted international protection. The applicant complained that the fact of and the conditions of their detention in the transit zone were in violation of Articles 3 (prohibition of inhuman or degrading treatment), 13 (right to an effective remedy), 5 (right to liberty and security), and 34 (right of individual petition) of the European Convention. The Court held that there had been a violation of Article 3, due to the issues posed by the confinement of minors, who are vulnerable individuals, the lack of attention of the State to assess the needs of the applicants, and the living conditions examined in the Röszke transit zone by the Grand Chamber of the Court in the case of Ilias and Ahmed v. Hungary (no. 47287/15). The Court also found that the extended duration of the stay of the applicants in the transit zone, the considerable delays in the examination fo the asylum claims, the conditions of the stay and the lack of judicial review of the applicants' detention in the transit zone amounted to a violation of Article 5 § 1 and § 4 of the Convention. The Court did not consider it necessary to examine the complaints under Article 13 and Article 34 of the Convention.
CJEU judgment of 19 March 2019, Abubacarr Jawo v Bundesrepublik Deutschland, Case C-163/17, EU:C:2019:218	The Court ruled: 1. The second sentence of Article 29(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 an applicant 'absconds', within the meaning of that provision, where he deliberately evades the reach of the national authorities responsible for carrying out his transfer, in order to prevent the transfer. It may be assumed that that is the case where the transfer cannot be carried out due to the fact that the applicant has left the accommodation allocated to him without informing the competent national authorities of his absence, provided that he has been informed of his obligations in that regard, which it is for the referring court to determine. The applicant retains the possibility of demonstrating that the fact that he has not informed the authorities of his absence is due to valid reasons and not the intention to evade the reach of those authorities. Article 27(1) of Regulation No 604/2013 must be interpreted as meaning that, in proceedings brought against a transfer decision, the person concerned may rely on Article 29(2) of that regulation, by claiming that, since he had not absconded, the six-month transfer time limit had expired.

	2. The second sentence of Article 29(2) of Regulation No 604/2013 must be interpreted as meaning that, in order to extend the transfer time limit by a maximum of 18 months, it suffices that the requesting Member State informs the Member State responsible, before the expiry of the six-month transfer time limit, that the person concerned has absconded and specifies, at the same time, a new transfer time limit. 3. EU law must be interpreted as meaning that the question whether Article 4 of the Charter of Fundamental Rights of the European Union precludes the transfer, pursuant to Article 29 of Regulation No 604/2013, of an applicant for international protection to the Member State which, in accordance with that regulation, is normally responsible for examining his application for international protection, where, in the event of such protection being granted in that Member State, the applicant would be exposed to a substantial risk of suffering inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights, on account of the living conditions that he could be expected to encounter as a beneficiary of international protection in that Member State, falls within its scope. Article 4 of the Charter of Fundamental Rights must be interpreted as not precluding such a transfer of an applicant for international protection, unless the court hearing an action challenging the transfer decision finds, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, that that risk is real for that applicant, on account of the fact that, should he be transferred, he would find himself, irrespective of his wishes and personal choices, in a situation of extreme material poverty.
CJEU judgment of 15 March 2017, Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor, Ajlin Al Chodor, Ajvar Al Chodor, Case C- 528/15, EU:C:2017:213	This request for a preliminary ruling concerns the interpretation of Article 28 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'), read in conjunction with Article 2 of that regulation. 2. The request has been made in an appeal on a point of law brought by the Policie ČR, Krajské ředitelství Ústeckého kraje, odbor cizinecké policie (Police Force of the Czech Republic, Regional Police Directorate of the Ústí nad Labem Region, Foreigners Police Section; 'the Foreigners Police Section') concerning the annulment, by a lower court, of the decision taken by the Foreigners Police Section to detain Salah, Ajlin and Ajvar Al Chodor ('the Al Chodors') for 30 days for the purpose of transferring them to Hungary. Ruling: Article 2(n) and Article 28(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, read in conjunction, must be

	interpreted as requiring Member States to establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant for international protection who is subject to a transfer procedure may abscond. The absence of such a provision leads to the in-applicability of Article 28(2) of that regulation. Paragraphs relevant for detention: 24-47.
CJEU judgment of 16 February 2017, CK and others v Republika Slovenija, Case C-578/16, ECLI:EU:C:2017:127	The main applicant was a pregnant female travelling with her partner, who challenged a transfer decision issued by the Slovenian authorities to Croatia, on the basis that the specific matrix of vulnerabilities of the applicant could not be properly addressed within the reception system in Croatia. The Court (Fifth Chamber) ruled that: 1. Article 17(1) of the Dublin III Regulation must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU. 2. Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that: – even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Regulation No 604/2013 can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article; – in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article; – it is for the authorities of the Member State having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk of a significant and permanent worsening of his state of health, it is for the authorities of the Member States concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer; and – where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting Member State may choose to conduct its own

	examination of that person's application by making use of the 'discretionary clause' laid down in Article 17(1) of Regulation No 604/2013. 3. Article 17(1) of Regulation No 604/2013, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that Member State to apply that clause.
ECtHR judgment of 13 December 2016 (GC), Paposhvili v Belgium, No 41738/10, ECLI:CE:ECHR:2016: 1213JUD004173810	The Court held, unanimously, that there would have been: a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if Mr Paposhvili had been removed to Georgia without the Belgian authorities having assessed the risk faced by him in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, and a violation of Article 8 (right to respect for private and family life) if Mr Paposhvili had been removed to Georgia without the Belgian authorities having assessed the impact of removal on the applicant's right to respect for his family life in view of his state of health. The case concerned an order for Mr Paposhvili's deportation to Georgia, issued together with a ban on re-entering Belgium. The Court noted that the medical situation of Mr Paposhvili, who had been suffering from a very serious illness and whose condition had been life-threatening, had not been examined by the Belgian authorities in the context of his requests for regularisation of his residence status. Likewise, the authorities had not examined the degree to which Mr Paposhvili had been dependent on his family as a result of the deterioration of his state of health. The Court found, in particular, that in the absence of any assessment by the domestic authorities of the risk facing Mr Paposhvili, in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, the information available to those authorities had been insufficient for them to conclude that the applicant, if returned to Georgia, would not have run a real and concrete risk of treatment contrary to Article 3 of the Convention. The Court also found that it had been up to the national authorities to conduct an assessment of the impact of removal on Mr Paposhvili's family life in the light of his state of health. In order to comply with Article 8 the authorities would have been required to examine whether, in the light of the applicant's specific situation at the time of removal, the family could reasonably have been expected to follow him to Georgia or, if not, whether observance of Mr Paposhvili's right to respect for his family life required that he be granted leave to remain in Belgium for the time he had left to live.

CJEU judgment of 7 June 2016 (GC), Mehrdad Ghezelbash v Staatssecretaris van Veiligheid en Justitie, Case C- 63/15, ECLI:EU:C:2016:409	The Grand Chamber of the court ruled: 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, read in the light of recital 19 of the regulation, must be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, in particular the criterion relating to the grant of a visa set out in Article 12 of the regulation.
CJEU judgment of 5 April 2016 GC, Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen, Joined Cases C-404/15 and C-659/15, ECLI:EU:C:2016:198	The Grand Chamber of the court ruled: Article 1(3), Article 5 and Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.

ECtHR judgment of 4 November 2014 (GC), Tarakhel v Switzerland, No 29217/12 ECLI:CE:ECHR:2014: 1104JUD002921712	The judgment concerns the threatened expulsion to Italy under Dublin II Regulation of a family of Afghan nationals seeking asylum. According to the case report published by ECHR: "The requirement of "special protection" of asylum-seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when the children seeking asylum are accompanied by their parents. National authorities intending to issue a removal order under the Dublin II Regulation must therefore obtain assurances that on arrival in the requested State the persons concerned will be received in facilities and in conditions adapted to the age of the children and that the family unit will be kept together; otherwise, the removal order is liable to be in breach of Article 3 of the Convention (see paragraphs 119-20 of the judgment)."
ECtHR judgement of 21 October 2014, Sharifi and Others v. Italy and Greece, No 16643/09, ECLI:CE:ECHR:2014: 1021JUD001664309	The case concerned 32 Afghan nationals, two Sudanese nationals and one Eritrean national, who alleged, in particular that they had entered Italy illegally from Greece and been returned to that country immediately, with the fear of subsequent deportation to their respective countries of origin, where they faced the risk of death, torture or inhuman or degrading treatment. They also submitted, with regard to Italy, that they had been subjected to indiscriminate collective expulsion. The Court held that there had been a violation by Italy of Article 4 of Protocol No. 4 to the Convention concerning the four applicants who had maintained regular contact with their lawyer in the proceedings before the Court considering that the measures to which they had been subjected in the port of Ancona had amounted to collective and indiscriminate expulsions. It also held, concerning the four same applicants, that there had been a violation by Italy of Article 13 (right to an effective remedy) combined with Article 3 (prohibition of inhuman or degrading treatment) of the Convention and Article 4 of Protocol No. 4 on account of the lack of access to the asylum procedure or to any other remedy in the port of Ancona. It further held that there had been a violation by Greece of Article 13 combined with Article 3 on account of the lack of access to the asylum procedure for them and the risk of deportation to Afghanistan, where they were likely to be subjected to ill-treatment, and a violation by Italy of Article 3, as the Italian authorities, by returning these applicants to Greece, had exposed them to the risks arising from the shortcomings in that country's asylum procedure. In this case, the Court held, in particular, that it shared the concerns of several observers with regard to the automatic return, implemented by the Italian border authorities in the ports of the Adriatic Sea, of persons who, in the majority of cases, were handed over to ferry captains with a view to being removed to Greece, thus depriving them of any procedural and substantive rights. In addition, the Court reiterated that the "Dublin" system – which serves to determine which European Union Member State is

	responsible for examining an asylum application lodged in one of the Member States by a third-country national – must be applied in a manner compatible with the Convention: no form of collective and indiscriminate returns could be justified by reference to that system, and it was for the State carrying out the return to ensure that the destination country offered sufficient guarantees in the application of its asylum policy to prevent the person concerned being removed to his country of origin without an assessment of the risks faced.
CJEU judgement of 14 November 2013, Bundesrepublik Deutschland v Kaveh Puid, Case C-4/11, ECLI:EU:C:2013:740	According 31to the CJEU press release: the Court recalls, first of all, that a Member State is required not to transfer an asylum seeker to the Member State initially identified as responsible where systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible provide substantial grounds for believing that the applicant would face a real risk of being subjected to inhuman or degrading treatment. In this connection, the Court points out that, faced with such a situation, a Member State may decide, in accordance with the Regulation, itself to examine the application. However, the Court makes clear that if that State does not wish to avail itself of that right, it is not, in principle, required to examine the application. In those circumstances, it is to identify the Member State responsible for the examination of the asylum application by continuing to examine the criteria set out in the Regulation. If it does not succeed in so doing, the first Member State with which the application was lodged is to be responsible for examining it. Lastly, the Court states that the Member State in which the asylum seeker is located must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. Accordingly, if necessary, it must itself examine the application.
CJEU judgment of 26 February 2013 (GC), Stefano Melloni v Ministerio Fiscal, Case C-399/11, ECLI:EU:C:2013:107	The case concerned the interpretation of Framework Decision 2009/299 with regards to the procedural rights enjoyed by persons convicted in absentia who are the subject of a European arrest warrant. The court ruled that Article 4a(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as precluding the executing judicial authorities, in the circumstances specified in that provision, from making the execution of a European arrest warrant issued for the purposes of executing a sentence conditional upon the conviction rendered in absentia being open to review in the issuing Member State. 2. Article 4a(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299,

	is compatible with the requirements under Articles 47 and 48(2) of the Charter of Fundamental Rights of the European Union. 3. Article 53 of the Charter of Fundamental Rights of the European Union must be interpreted as not allowing a Member State to make the surrender of a person convicted in absentia conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by its constitution.
CJEU judgment of 21 December 2011 (GC), Joined Cases C-411/10 and 493/10, NS v Secretary of State for the Home Department and ME and others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform, ECLI: EU:C:2011:865	Judgment: 1. The two references for preliminary rulings concern the interpretation, first, of 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 (OJ 2003 L 50, p. 1) and, second, the fundamental rights of the European Union, including the rights set out in Articles 1, 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and, third, Protocol (No 30) on the application of the Charter to Poland and to the United Kingdom (OJ 2010 C 83, p. 313; 'Protocol (No 30)'). 2. The references have been made in proceedings between asylum seekers who were to be returned to Greece pursuant to Regulation No 343/2003 and, respectively, the United Kingdom and Irish authorities. Ruling: 1. The decision adopted by a Member State on the basis of 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, whether to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of that Regulation, implements European Union law for the purposes of Article 6 TEU and/or Article 51 of the Charter of Fundamental Rights of the European Union. 2. European Union law precludes the application of a conclusive presumption that the Member State which Article 3(1) of Regulation No 343/2003 indicates as responsible observes the fundamental rights of the European Union. Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision. Subject to the right itself to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the Member State which should

	carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application. The Member State in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003. 3. Articles 1, 18 and 47 of the Charter of Fundamental Rights of the European Union do not lead to a different answer. 4. In so far as the preceding questions arise in respect of the obligations of the United Kingdom of Great Britain and Northern Ireland, the answers to the second to sixth questions referred in Case C-411/10 do not require to be qualified in any respect so as to take account of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom.
ECtHR judgment of 21 January 2011 (GC), MSS v Belgium and Greece, No 30696/09, ECLI:CE:ECHR:2011: 0121JUD003069609	According to the ECtHR Press Release: In the Grand Chamber judgment in the case M.S.S. v. Belgium and Greece (application no. 30696/09), which is final, the European Court of Human Rights held, by a majority, that was: - A violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) of the European Convention on Human Rights by Greece both because of the applicant's detention conditions and because of his living conditions in Greece; - A violation of Article 13 (right to an effective remedy) taken together with Article 3 by Greece because of the deficiencies in the asylum procedure followed in the applicant's case; - A violation of Article 3 by Belgium both because of having exposed the applicant to risks linked to the deficiencies in the asylum procedure in Greece and because of having exposed him to detention and living conditions in Greece that were in breach of Article 3; - A violation of Article 13 taken together with Article 3 by Belgium because of the lack of an effective remedy against the applicant's expulsion order. The case concerned the expulsion of an asylum seeker to Greece by the Belgian authorities in application of the EU Dublin II Regulation.

National Case-law

Netherlands Court of The Hague [Rechtbank Den Haag]	Judgment of 18 January 2023, Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), NL22.23286, ECLI:NL:RBDHA:2023:357, available here. Abstract in English available here.
Italy Tribunal of Rome	Judgment of 7 April 2022, Applicant v Dublin Unit of the Ministry of the Interior (Unita di Dublino, Ministero dell'Interno), R.G. 4597/2022; English abstract of the case available here.
Netherlands Council of State [Afdeling Bestuursrechtspraak van de Raad van State]	Judgment of 15 December 2021, Applicant v State Secretary for Justice and Security, 202104510/1/V3, ECLI:NL:RVS:2021:2791; English abstract of the case available here.
Italy Tribunal of Torino	Judgment of 14 July 2021, Applicant v Dublin Unit of the Ministry of the Interior (Unita di Dublino, Ministero dell'Interno), RG 23165/2020, available here.