

EUROPEAN UNION / JUDGMENT

Ministerstvo vnitra v E.K.

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Provisional text

JUDGMENT OF THE COURT (Second Chamber)

24 September 2026 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Asylum policy – Criteria and mechanisms for determining the Member State responsible for examining an application for international protection – Regulation (EU) No 604/2013 – Member State responsible for examining an application for international protection pursuant to the first subparagraph of Article 3(2) of that regulation – Application for international protection lodged in another Member State – Article 17 – Discretionary clause – Scope)

In Case C-511/25 [Prokoda], (i)

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), made by decision of 16 July 2025, received at the Court on 31 July 2025, in the proceedings

Ministerstvo vnitra

v

E.K.,

THE COURT (Second Chamber),

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

Advocate General: D. Spielmann,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– E.K., by Z. Candigliota, advokátka,

– the Czech Government, by J. Vláčil, A. Edelmannová and L. Halajová, acting as Agents,

– the European Commission, by E. Garello, A. Katsimerou and M. Monfort, acting as Agents, having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 17(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31) ('the Dublin III Regulation').

2 The request has been made in proceedings between the Ministerstvo vnitra (Ministry of the Interior, Czech Republic) and E.K., a Russian national, concerning the determination of the Member State responsible for examining E.K.'s application for international protection.

Legal context

3 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) ('the Dublin II Regulation') was repealed and replaced by the Dublin III Regulation. The latter regulation, which was in turn repealed by Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, 2024/1351), is applicable *ratione temporis* to the dispute in the main proceedings.

The Dublin II regulation

4 Article 3(1) and (2) of the Dublin II Regulation provided:

'1. Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant.'

5 Chapter III of that regulation established the hierarchy of criteria for determining the Member State responsible and defined those criteria.

6 In that Chapter III, Article 13 of that regulation provided the following:

‘Where no Member State responsible for examining the application for asylum can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the application for asylum was lodged shall be responsible for examining it.’

7 Chapter IV of the Dublin II Regulation, entitled ‘Humanitarian clause’, contained the sole Article 15 of that regulation.

The Dublin III Regulation

8 Under recital 17 of the Dublin III Regulation:

‘Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.’

9 Chapter II of that regulation, which defined the ‘general principles and safeguards’, contained Article 3 of that regulation, entitled ‘Access to the procedure for examining an application for international protection’, provided, in paragraphs 1 and 2 thereof:

- ‘1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.
2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union [(“the Charter”)], the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

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

10 Chapter III of the Dublin III Regulation defined the criteria for determining the Member State responsible. It comprised Articles 7 to 15 of that regulation.

11 Article 17 of that regulation, entitled ‘Discretionary clauses’, provided, in the first subparagraph of paragraph 1 thereof:

‘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.’

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

12 E.K., a Russian who is a member of the Jewish community, was born and officially registered as female. He identifies as male and has started a gender transition process.

13 E.K. lodged an application for international protection in the Czech Republic. By decision of 28 January 2025, the Ministry of the Interior concluded that, under the first subparagraph of Article 3(2) of the Dublin III Regulation, the Kingdom of the Netherlands was the Member State responsible for examining that application.

14 On appeal by E.K., the Krajský soud v Brně (Regional Court, Brno, Czech Republic), by judgment of 9 April 2025, annulled that decision. First, that court held that the Ministry of the Interior failed to sufficiently verify whether the Netherlands asylum system was vitiated by systemic flaws that may expose E.K. to the risk of inhuman and degrading treatment, within the meaning of Article 4 of the Charter. Furthermore, it held that the Ministry had not sufficiently explained the reasons why there were no grounds for exercising the discretion provided for in Article 17 of the Dublin III Regulation.

15 The Ministry of the Interior brought an appeal against that judgment before the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), which is the referring court. It challenges the assessment made in that judgment regarding the exercise of the discretion provided for in Article 17 of the Dublin III Regulation.

16 The referring court points out that, under Czech law, the exercise of that discretion by the administration is subject to judicial review. That court has doubts as to the definition of the scope of that discretion, as defined by the wording ‘by way of derogation from Article 3(1) [of the Dublin III Regulation]’ in the first subparagraph of Article 17(1) thereof. In its view, two conflicting interpretations of that provision are possible.

17 According to a first interpretation, the discretion provided for in Article 17(1) of the Dublin III Regulation can be exercised only where the Member State responsible has been determined in accordance with the rules referred to in Article 3(1) of that regulation, that is to say, in accordance with the criteria set out in Chapter III thereof. It is therefore not possible to derogate, by exercising that discretion, from the determination of the Member State responsible made pursuant to the residual criterion laid down in the first subparagraph of Article 3(2) of that

regulation. That interpretation is based on the very wording of the first subparagraph of Article 17(1) of that regulation, in particular the phrase ‘by way of derogation from Article 3(1) [thereof]’.

18 According to a second interpretation, based on contextual and teleological arguments, the discretion provided for in Article 17(1) of the Dublin III Regulation could also be exercised where the Member State responsible has been determined on the basis of the first subparagraph of Article 3(2) of that regulation. First of all, the residual criterion laid down in that provision is an integral part of the rules for determining the Member State responsible. Next, it would not be logical to limit the exercise of discretion when Member States enjoy a broad discretion in that regard. Lastly, under the Dublin II Regulation, it was possible, through the exercise of discretion, to derogate from the determination of the Member State responsible based on the residual criterion set out in Article 13 of that regulation.

19 In those circumstances, the Nejvyšší správní soud (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘Proceeding in accordance with the first subparagraph of Article 17(1) of [the Dublin III Regulation], is it possible to derogate from the determination of the responsible Member State under Article 3(2) of that regulation, or is the use of discretionary powers only reserved for situations when the Member State responsible has been determined on the basis of Article 3(1) of that regulation?’

Consideration of the question referred

20 By its single question, the referring court seeks, in essence, to ascertain whether the first subparagraph of Article 17(1) of the Dublin III Regulation must be interpreted as meaning that a Member State, which the criteria set out in Chapter III of that regulation do not indicate as responsible, may decide to examine an application for international protection lodged with it, where the Member State responsible for examining that application has been designated on the basis of the first subparagraph of Article 3(2) of that regulation.

21 As a preliminary point, it should be borne in mind that, under Article 3(1) of the Dublin III Regulation, an application for international protection is to be examined by a single Member State, which is to be the one which the criteria set out in Chapter III of that regulation indicate is responsible. Chapter III includes Articles 7 to 15 of that regulation.

22 In accordance with the first subparagraph of Article 3(2) of that regulation, where no Member State responsible can be designated on the basis of the criteria listed in the Dublin III Regulation, the first Member State in which the application for international protection was lodged is to be responsible for examining it.

23 It is under the latter provision that the Ministry of the Interior held, in the dispute in the main proceedings, that the examination of E.K.’s application for international protection was the responsibility of the Kingdom of the Netherlands.

24 It is in the light of those preliminary observations that Article 17(1) of the Dublin III Regulation must be interpreted.

25 According to that provision, ‘by way of derogation from Article 3(1) [of that regulation,] 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.’

26 It is true, having regard to the wording of Article 17(1) of the Dublin III Regulation, that the wording ‘by way of derogation from Article 3(1) [of that regulation]’ could argue in favour of an interpretation of Article 17(1) of that regulation to the effect that that provision allows Member States to derogate solely from the criteria for designating the Member State responsible set out in Chapter III of that regulation. The application of that provision would therefore be precluded if the Member State responsible had been designated in accordance with the first subparagraph of Article 3(2) of the Dublin III Regulation, since that Member State does not fall within Chapter III.

27 However, the wording of Article 17(1) of that regulation also provides that a Member State may examine an application for international protection ‘even if such examination is not its responsibility under the criteria laid down in [that] Regulation’. In so doing, that provision refers to all the criteria laid down in that regulation, including, therefore, the criterion enshrined in the first subparagraph of Article 3(2) thereof.

28 It follows that the wording of Article 17(1) of the Dublin III Regulation is not clear-cut.

29 Since the wording of that provision does not, in itself, enable an answer to be given to the question referred, it is necessary, for the purposes of interpreting that provision, to take into account its context and the objective which it pursues (see, to that effect, judgment of 22 June 2021, *Staatssecretaris van Justitie en Veiligheid (Effects of an expulsion decision)*, C-719/19, EU:C:2021:506, paragraph 70 and the case-law cited). The origins of a provision of EU law may also provide information relevant to its interpretation (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 50).

30 As regards the context of Article 17(1) of the Dublin III Regulation, account must be taken of the system for determining the Member State responsible established by the EU legislature, of which that provision forms an integral part (see, to that effect, judgments of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 53, and of 18 April 2024, *Minister for Justice (Discretionary clause – Remedies)*, C-359/22, EU:C:2024:334, paragraphs 32 and 51).

31 In that regard, it should be noted that Article 3 of the Dublin III Regulation, which appears in Chapter II thereof, entitled ‘General principles and safeguards’, defines the principles governing access to the procedure for examining an application for international protection.

32 More specifically, Article 3(1) of that regulation lays down the principle of a single examination of the application, according to which each application for international protection is to be examined by a single Member State, which is to be the one which the binding criteria set out in Chapter III of that regulation indicate is responsible.

33 Article 3(2) of the Dublin III Regulation is applicable in the alternative (see, to that effect, judgment of 1 August 2022, Bundesrepublik Deutschland (Child of refugees, born outside the host State) , C-720/20, EU:C:2022:603, paragraph 44) in the specific situations which it identifies. Thus, first, the first subparagraph of Article 3(2) of that regulation lays down a residual criterion for determining the Member State responsible where no Member State responsible can be designated on the basis of the criteria set out in Chapter III of that regulation. As has already been pointed out in paragraph 22 above, responsibility for examining the application for international protection lies, in that situation, with the first Member State in which that application was lodged. Second, the second and third subparagraphs of Article 3(2) of that regulation concern the situation in which the applicant cannot be transferred to the Member State 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.

34 It follows from those considerations that, as all the parties and interested parties which submitted written observations have stated, Article 3 of the Dublin III Regulation must be regarded as constituting a set of rules governing the determination of the Member State responsible for examining the application for international protection. It sets out, in its two paragraphs, a basic principle and residual criteria for the purposes of that determination. Those residual criteria are relevant where the application of the criteria referred to in Article 3(1) of the Dublin III Regulation and set out in Chapter III thereof does not permit the designation of a Member State responsible or where it leads to the designation of a Member State responsible to which the applicant cannot be transferred, due to systemic flaws and the risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter.

35 In those circumstances, it would be inconsistent to take the view, in the interpretation of Article 17(1) of the Dublin III Regulation, that the latter provision confers on Member States the power to derogate only from the designation of the Member State responsible made under Article 3(1) of that regulation, and not from that made on the basis of the first subparagraph of Article 3(2) thereof.

36 That interpretation is all the more compelling in the light of the legislative history of Article 3 and Article 17(1) of the Dublin III Regulation.

37 In that regard, it should be recalled that the residual criterion laid down in the first subparagraph of Article 3(2) of the Dublin III Regulation was, initially, to be found in Article 13(1) of the Dublin II Regulation. Unlike that criterion, which is provided for by the Dublin III Regulation, the criterion provided for by the Dublin II Regulation appeared therein as one of the criteria for determining the Member State responsible, as set out in Chapter III of the latter regulation.

38 Article 3(1) of the Dublin II Regulation, which was incorporated into Article 3(1) of the Dublin III Regulation, included the principle of a single examination of the application for international protection by the Member State responsible, designated on the basis of the criteria set out in Chapter III of the Dublin II Regulation. Those criteria covered, as is apparent from the preceding paragraph, in particular the residual criterion referred to in Article 13(1) of that regulation. Article 3(2) thereof, which corresponds to Article 17(1) of the Dublin III Regulation, provided for the possibility for any Member State to examine, ‘by way of derogation from Article 3(1)’, an application for international protection for which it was not responsible.

39 Thus, by Article 3(1) and (2) of the Dublin II Regulation, read in conjunction with Article 13(1) thereof, that regulation unequivocally allowed Member States to decide to examine an application for international protection made to them if, as in the case in the main proceedings, the Member State responsible had been designated on the basis of the residual criterion referred to in Article 13(1) of that regulation.

40 However, it is apparent from page 6, point 3, and page 9, point 4, of the Explanatory Memorandum to the Commission’s proposal of 3 December 2008 (COM(2008) 820 final), leading to the adoption of the Dublin III Regulation, that, by that regulation, the EU legislature sought to maintain the founding principles of the Dublin II Regulation, in particular the principle of a single examination of the application, and to bring together, for the sake of clarity, the discretionary and humanitarian clauses, which were set out in Article 3(2) and Article 15 of the Dublin II Regulation respectively, in a single provision, namely Article 17 of the Dublin III Regulation. It follows that the EU legislature did not seek to amend the scope of the discretionary clause set out, successively, in Article 3(2) of the Dublin II Regulation and then in Article 17(1) of the Dublin III Regulation.

41 In view of the EU legislature’s clearly stated intention to maintain the founding principles of the Dublin II Regulation, it must be held that the inclusion, in Article 17(1) of the Dublin III Regulation, of the wording ‘by way of derogation from Article 3(1) [thereof]’, is explained by the general scheme of Article 3(1) and (2) of the Dublin II Regulation, recalled in paragraph 38 above, and is more akin to an oversight on the part of that legislature to remove the reference to paragraph 1 rather than to an intention to amend the scope of the discretionary clause set out in Article 17(1) of the Dublin III Regulation.

42 Furthermore, as regards that discretionary clause, the Court has already stated that, since the terms of that provision coincide, in essence, with those of Article 3(2) of the Dublin II Regulation, which provided for the sovereignty clause, the interpretation of the latter provision is also transposable to Article 17(1) of the Dublin III Regulation (judgments of 16 February 2017, C. K. and Others , C-578/16 PPU, EU:C:2017:127, paragraph 53, and of 23 January 2019, M.A. and Others , C-661/17, EU:C:2019:53, paragraph 55).

43 As has been noted in paragraph 39 above, Article 3(2) of the Dublin II Regulation allowed any Member State to decide to examine an application for international protection lodged with it, including where the Member State responsible had been designated on the basis of the residual criterion referred to in Article 13(1) of that regulation.

44 It follows from that contextual information that Article 17(1) of the Dublin III Regulation must be interpreted as allowing Member States to decide to examine an application for international protection lodged with them, and in respect of which another Member State has been designated as the Member State responsible in accordance with the criteria laid down in that regulation, including where that other Member State was designated on the basis of the residual criterion laid down in the first subparagraph of Article 3(2) of that regulation.

45 That interpretation is supported by the objectives pursued by Article 17(1) of the Dublin III Regulation.

46 According to the Court's case-law, that provision seeks to maintain the prerogatives of the Member States in the exercise of the right to grant international protection (judgment of 5 July 2018, X , C-213/17, EU:C:2018:538, paragraph 61 and the case-law cited), by allowing each Member State to decide, in its absolute discretion, on the basis of political, humanitarian or practical considerations, to agree to examine an application for international protection, even if it is not responsible under the criteria laid down in the Dublin III Regulation (see, to that effect, judgments of 4 October 2018, Fathi , C-56/17, EU:C:2018:803, paragraph 53; of 23 January 2019, M.A. and Others , C-661/17, EU:C:2019:53, paragraph 58; and of 16 February 2023, Staatssecretaris van Justitie en Veiligheid (Unborn child at the time of the asylum application) , C-745/21, EU:C:2023:113, paragraph 50).

47 That is an optional provision which grants a broad discretion to the Member States (see, to that effect, judgment of 10 December 2013, Abdullahi , C-394/12, EU:C:2013:813, paragraph 57 and the case-law cited). In the light of the extent of the discretion thus conferred on the Member States, it is for the Member State concerned to determine the circumstances in which it wishes to use the option conferred by the discretionary clause set out in Article 17(1) of the Dublin III Regulation and to agree to examine itself an application for international protection for which it is not responsible under the criteria defined by that regulation (judgments of 23 January 2019, M.A. and Others , C-661/17, EU:C:2019:53, paragraph 59, and of 30 November 2023, Ministero dell'Interno and Others (Common leaflet – Indirect refoulement) , C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, EU:C:2023:934, paragraph 147). The exercise of that option is thus not subject to any particular condition (see, to that effect, judgment of 30 May 2013, Halaf , C-528/11, EU:C:2013:342,

paragraph 36).

48 In the light of the scope of that discretion and the objective pursued under Article 17(1) of the Dublin III Regulation, of allowing any Member State to decide, in its absolute discretion, to examine an application for international protection for which it is not responsible, it must be held that the scope of that provision is not limited solely to the situation in which the Member State responsible would be designated on the basis of the criteria set out in Chapter III of that regulation.

49 On the contrary, any Member State is free to decide to examine an application for international protection submitted to it, in respect of which the Member State responsible has been designated in accordance with the first subparagraph of Article 3(2) of the Dublin III Regulation.

50 In the light of all the foregoing reasons, the answer to the single question is that the first subparagraph of Article 17(1) of the Dublin III Regulation must be interpreted as meaning that a Member State, which the criteria set out in Chapter III of that regulation do not indicate as responsible, may decide to examine an application for international protection lodged with it, where the Member State responsible for examining that application has been designated on the basis of the first subparagraph of Article 3(2) of that regulation.

Costs

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

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

The first subparagraph of Article 17(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 must be interpreted as meaning that a Member State, which the criteria set out in Chapter III of that regulation do not indicate as responsible, may decide to examine an application for international protection lodged with it, where the Member State responsible for examining that application has been designated on the basis of the first subparagraph of Article 3(2) of that regulation.

[Signatures]

* Language of the case: Czech.

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

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