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Judgment of the Court of Justice in Joined Cases C-245/21 and C-248/21 | Federal Republic of Germany  
(Administrative suspension of the transfer decision)

### **The suspension, due to the Covid-19 pandemic, of the implementation of a decision to transfer an asylum seeker to the Member State responsible does not have the effect of interrupting the six-month time limit for transfer**

*Once that period has expired, the requesting Member State becomes responsible for examining the asylum application*

During 2019, LE, MA and PB applied for asylum in Germany. However, LE had previously lodged an application for international protection in Italy and MA and PB had unlawfully entered the territory of the latter Member State, where they had been registered as applicants for international protection. Therefore, the competent German authority requested the Italian authorities to take back LE and to take charge of MA and PB on the basis of the Dublin III Regulation. <sup>1</sup> That authority subsequently declared the asylum applications of the persons concerned inadmissible and ordered their deportation to Italy.

In February 2020, the Italian authorities informed the German authorities that, due to the COVID-19 pandemic, transfers to and from Italy under the Dublin III Regulation would no longer take place. By decisions adopted in March 2020 and April 2020, the competent German authority suspended, until further notice, the implementation of the removal orders of the persons concerned pursuant, inter alia, to that regulation, <sup>2</sup> on the grounds that, in view of the development of the Covid-19 pandemic, the implementation of such transfers was not possible.

In judgments delivered in June 2020 and August 2020, the Verwaltungsgericht (Administrative Court, Germany) annulled the decisions by which the authority had declared the asylum applications of the persons concerned inadmissible and ordered their deportation. That court found that, even if Italy had been responsible for the examination of the asylum applications of the persons concerned, that responsibility had been transferred to Germany due to the expiry of the time limit for transfer provided for in the Dublin III Regulation, <sup>3</sup> since the expiry of

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<sup>1</sup> 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').

<sup>2</sup> Those decisions were adopted on the basis of Article 27(4) of the Dublin III Regulation, according to which Member States may provide that the competent authorities may decide, acting ex officio, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.

<sup>3</sup> See Article 29(1) of the Dublin III Regulation, according to which the transfer of the applicant from the requesting Member State to the Member State responsible is to be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge of or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with

that time limit had not been interrupted by the abovementioned suspension decisions.

The referring court, seized of an appeal on a point of law against those judgments, has doubts as to whether the decisions to suspend the implementation of the removal orders taken in respect of the persons concerned may have the effect of interrupting the time limit for transfer.

The Court rules that the time limit for transfer provided for by the Dublin III Regulation<sup>4</sup> is not interrupted where the competent authorities of a Member State adopt, on the basis of that regulation,<sup>5</sup> a revocable decision to suspend the implementation of a transfer decision on the ground that such implementation is materially impossible because of the Covid-19 pandemic.

### **Assessment of the Court**

The Court states first of all that, where an appeal against a transfer decision has been granted suspensive effect by a decision taken by the competent authorities under the conditions laid down by the Dublin III Regulation,<sup>6</sup> the time limit for transfer runs from the final decision on that appeal, so that the transfer decision must be enforced no later than six months from the final decision on that appeal. That solution presupposes, however, that the decision to suspend the implementation of the transfer decision was adopted by those authorities within the limits of the scope of the provision providing for that suspensive effect.<sup>7</sup>

With regard to that scope, the Court emphasises, on the one hand, that the application of that provision is closely linked to the lodging by the person concerned of an appeal against the transfer decision, since the suspension ordered by those authorities is to occur 'pending the outcome of the appeal'.

On the other hand, as regards the context of that provision, it forms part of the section entitled 'Procedural safeguards'.<sup>8</sup> In addition, that provision is contained in an article entitled 'Remedies' and follows a paragraph dealing with the suspensive effect of the action against the transfer decision, which it complements by authorising Member States to allow the competent authorities to suspend the implementation of the transfer decision in cases where its suspension following the bringing of an action does not result from the effects of legislation or a judicial decision.

Finally, as regards the objectives pursued by the Dublin III Regulation, the six-month time limit for transfers laid down in that regulation is intended to ensure that the person concerned is actually transferred as soon as possible to the Member State responsible for examining his or her application for international protection. Having regard to the effect of interrupting that time limit for transfer, which the suspension of the implementation of a transfer decision has, to interpret the provision concerned as allowing Member States to permit the competent authorities to suspend the implementation of transfer decisions on grounds which have no direct link with the judicial protection of the person concerned would risk rendering ineffective the time limit for transfer, altering the division of responsibilities between the Member States resulting from the Dublin III Regulation and substantially prolonging the processing of applications for international protection.

Therefore, the Court holds that a suspension of the implementation of a transfer decision may be ordered by the competent authorities, within the framework defined for that purpose by the Dublin III Regulation, only where the circumstances surrounding that implementation mean that the person concerned must, in order to ensure his or her effective judicial protection, be authorised to remain in the territory of the Member State which adopted that

Article 27(3).

<sup>4</sup> See Article 29(1) of the Dublin III Regulation.

<sup>5</sup> The decision is thus based on Article 27(4) of the Dublin III Regulation.

<sup>6</sup> In accordance with Article 27(4) of the Dublin III Regulation.

<sup>7</sup> This concerns Article 27(4) of the Dublin III Regulation.

<sup>8</sup> Section IV of Chapter VI of the Dublin III Regulation.

decision until a final decision on the appeal has been taken. Therefore, a revocable decision to suspend the implementation of a transfer decision on the ground that its implementation is materially impossible cannot be regarded as falling within that framework. The fact that the material impossibility of enforcing a transfer decision may, under the national law of the Member State concerned, mean that that decision is unlawful cannot call that conclusion into question. First, the revocable nature of a decision to suspend the implementation of a transfer decision prevents that suspension from being regarded as having been ordered pending a ruling on the appeal against the transfer decision and with the aim of guaranteeing the judicial protection of the person concerned as it cannot be excluded that the suspension may be revoked before the appeal is decided. Secondly, it is clear from various provisions of the Dublin III Regulation that the EU legislature did not consider that the material impossibility of implementing the transfer decision should be regarded as justifying the interruption or suspension of the time limit for transfer.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment and the [résumé](#) are published on the CURIA website on the day of delivery.

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