Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 25 July 2018 [1]

Case C-163/17

Abubacarr Jawo
v
Bundesrepublik Deutschland

(Request for a preliminary ruling
from the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court,
Baden-Württemberg, Germany))

(Reference for a preliminary ruling — Area of freedom, security and justice — Borders, asylum and immigration — Dublin system — Regulation (EU) No 604/2013 — Transfer of an asylum seeker to the Member State responsible — Article 29(1) — Rules governing extension of the time limit — Article 29(2) — Definition of absconding — Whether permissible to refuse to transfer the person concerned on account of a substantial risk of inhuman or degrading treatment following the asylum procedure — Article 3(2) — Living conditions of beneficiaries of international protection in the Member State responsible — Article 4 of the Charter of Fundamental Rights of the European Union)

I. Introduction

1. This request for a preliminary ruling, lodged at the Court Registry on 3 April 2017 by the Verwaltungsgerichtshof Baden-Württemberg (Germany) (Higher Administrative Court, Baden-Württemberg, Germany), concerns the interpretation of the second subparagraph of Article 3(2) and 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 [2] ('the Dublin III Regulation') and Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter').

2. The request has been made in proceedings between an asylum seeker, Mr Abubacarr Jawo, and the Bundesrepublik Deutschland (Federal Republic of Germany) relating to a decision of the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, Germany; 'the Office') of 25 February 2015 rejecting Mr Jawo's application for asylum as inadmissible and ordering his removal to Italy.

1 Original language: French.

2 OJ 2013 L 180, p. 31.

II. Legal context

A. International law

1. The Geneva Convention

3. Article 21 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951[3], which entered into force on 22 April 1954 and was supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which entered into force on 4 October 1967) ('the Geneva Convention'), headed 'Housing', provides:

'As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.'

2. The Convention for the Protection of Human Rights and Fundamental Freedoms

4. Under the heading 'Prohibition of torture', Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), provides:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

B. European Union law

1. The Charter

5. Under Article 1 of the Charter, headed 'Human dignity':

'Human dignity is inviolable. It must be respected and protected.'

6. Article 4 of the Charter, headed 'Prohibition of torture and inhuman or degrading treatment or punishment', states:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

7. Article 19(2) of the Charter, that article being headed 'Protection in the event of removal, expulsion or extradition', provides:

'No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.'

3 *United Nations Treaty Series*, Vol. 189, p. 150, no 2545 (1954).

8. Article 51(1) of the Charter, that article being headed ‘Field of application’, provides:

‘The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.’

9. Article 52(3) of the Charter, that article being headed ‘Scope and interpretation of rights and principles’, provides:

‘In so far as this Charter contains rights which correspond to rights guaranteed by [the ECHR], the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.’

2. The Dublin III Regulation

10. Regulation No 604/2013 establishes 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.[4] The relevant recitals and articles of that regulation are set out below:

11. Recital 32

‘With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.’

12. Recital 39

‘This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in [the Charter]. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.’

13. Article 3

‘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. …

4 The Dublin III Regulation repealed and replaced 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).

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], 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.

…'

14. Article 29

'1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall 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 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 Article 27(3).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

…

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of 18 months if the person concerned absconds.

…'

3. Regulation No 1560/2003

15. Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Regulation No 343/2003,[5] as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014[6] ('the implementing regulation'), contains detailed rules for the application of the Dublin III Regulation.

16. Article 8 of Regulation No 1560/2003, headed 'Cooperation on transfers', provides:

'1. It is the obligation of the Member State responsible to allow the asylum seeker's transfer to take place as quickly as possible and to ensure that no obstacles are put in his way. That Member State shall determine, where appropriate, the location on its territory to which the asylum seeker will be transferred or handed over to the competent authorities, taking account of geographical constraints

5 OJ 2003 L 222, p. 3.

6 OJ 2014 L 39, p. 1.

and modes of transport available to the Member State making the transfer. In no case may a requirement be imposed that the escort accompany the asylum seeker beyond the point of arrival of the international means of transport used or that the Member State making the transfer meet the costs of transport beyond that point.

2. The Member State organising the transfer shall arrange the transport for the asylum seeker and his escort and decide, in consultation with the Member State responsible, on the time of arrival and, where necessary, on the details of the handover to the competent authorities. The Member State responsible may require that three working days' notice be given.

3. The standard form set out in Annex VI shall be used for the purpose of transmitting to the responsible Member State the data essential to safeguard the rights and immediate needs of the person to be transferred. This standard form shall be considered a notice in the meaning of paragraph 2.'

17. Under Article 9 of that regulation, headed 'Postponed and delayed transfers':

'1. The Member State responsible shall be informed without delay of any postponement due either to an appeal or review procedure with suspensive effect, or physical reasons such as ill health of the asylum seeker, non-availability of transport or the fact that the asylum seeker has withdrawn from the transfer procedure.

1a. Where a transfer has been delayed at the request of the transferring Member State, the transferring and the responsible Member States must resume communication in order to allow for a new transfer to be organised as soon as possible, in accordance with Article 8, and no later than two weeks from the moment the authorities become aware of the cessation of the circumstances that caused the delay or postponement. In such a case, an updated standard form for the transfer of the data before a transfer is carried out as set out in Annex VI shall be sent prior to the transfer.

2. A Member State which, for one of the reasons set out in Article 29(2) of [the Dublin III Regulation], cannot carry out the transfer within the normal time limit of six months from the date of acceptance of the request to take charge or take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect, shall inform the Member State responsible before the end of that time limit. Otherwise, the responsibility for processing the application for international protection and the other obligations under [the Dublin III Regulation] falls to the requesting Member State, in accordance with Article 29(2) of that Regulation.

…'

18. Annexes VI and IX to the implementing regulation contain the standard forms for, respectively, the transfer of data and the exchange of health data prior to a transfer under the Dublin III Regulation.

4. Directive 2011/95/EU

19. Under Article 2(h) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted,[7] an 'application for international protection' is 'a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, …'.

7 OJ 2011 L 337, p. 9.

20. Chapter VII of Directive 2011/95, headed 'Content of international protection', contains the following provisions:

21. Article 20(1)

'This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.'

22. Article 26(1)

'Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.'

23. Article 27(1)

'Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals.'

24. Article 29(1), 'Social welfare'

'Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State.'

25. Article 30(1), 'Healthcare'

'Member States shall ensure that beneficiaries of international protection have access to healthcare under the same eligibility conditions as nationals of the Member State that has granted such protection.'

26. Article 32(1), 'Access to accommodation'

'Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories.'

III. The dispute in the main proceedings and the questions referred for a preliminary ruling

27. Mr Jawo, who is unmarried and in good health, is, by his own account, a Gambian national born on 23 October 1992. He left Gambia on 5 October 2012 and reached Italy by sea, where he lodged an asylum application on 23 December 2014.

28. From Italy, he travelled on to Germany. On 26 January 2015 the Office, after receiving a Eurodac [8] hit indicating that Mr Jawo had lodged an asylum application in Italy, requested the Italian Republic to take him back. [9] According to the referring court, 'no response from Italy to that request was forthcoming …'.

8 See Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ 2013 L 180, p. 1) ('the Eurodac Regulation').

9 See Article 18(1)(b) of the Dublin III Regulation.

29. By decision of 25 February 2015, the Office rejected Mr Jawo's asylum application as inadmissible and ordered his removal to Italy, a transfer for the purpose of implementing an asylum procedure to which Mr Jawo objects.

30. Mr Jawo brought an action on 4 March 2015 and made an application for interim relief on 12 March 2015, which the Verwaltungsgericht Karlsruhe (Administrative Court, Karlsruhe, Germany) dismissed as inadmissible by order of 30 April 2015 on the ground that the application had been lodged out of time. Upon a further application for interim relief, that court subsequently ruled by order of 18 February 2016 that the action had suspensory effect.

31. On 8 June 2015 the applicant was due to be transferred to Italy. However, the transfer was unsuccessful because he could not be found at the accommodation centre in Heidelberg where he lived. Following inquiries by the Regierungspräsidium Karlsruhe (Karlsruhe Regional Council, Germany), the City of Heidelberg's emergency accommodation department reported on 16 June 2015 that Mr Jawo had left the accommodation centre some time ago, which was confirmed by the centre's caretaker. At the hearing before the national court, Mr Jawo stated in that regard — for the first time in the judicial proceedings — that he had travelled to visit a friend living in Freiberg/Neckar at the beginning of June 2015.

32. He added that, one or two weeks later, he received a telephone call from his roommate in Heidelberg informing him that the police were looking for him. He then decided to return to Heidelberg but had no money to pay for the return journey and first had to borrow the sum necessary. According to his statement, he returned to Heidelberg just two weeks later, whereupon he went to the Sozialamt (welfare office) and asked whether he still had a room, which he did. However, no one had advised him that he needed to report his lengthy absence.

33. The Office notified the Italian Ministry of the Interior by a form dated 16 June 2015 that the transfer was not possible at that time because Mr Jawo had absconded, which the Office had become aware of on the same day. The form also stated that a transfer would take place by 10 August 2016 at the latest, 'in accordance with Article 29(2) of Regulation No 604/2013'.

34. A second transfer was scheduled for 3 February 2016. That transfer also failed because the applicant refused to board the aircraft.

35. By judgment of 6 June 2016, the Verwaltungsgericht Karlsruhe (Administrative Court, Karlsruhe) dismissed Mr Jawo's action.

36. In the appeal proceedings, Mr Jawo argued that he did not abscond in June 2015 and that the Office was not entitled to extend the time limit in accordance with Article 29(2) of the Dublin III Regulation. Mr Jawo contended that 'the interim order should also be set aside because no ruling as to the existence of a national prohibition of deportation, required since 6 August 2016, has yet been made' and 'in view of his training taken up with permission of the authority responsible for foreign nationals'.[10] In addition, Mr Jawo asserted that a transfer to Italy would also be unlawful because there are systemic flaws in the asylum procedure and the reception conditions for applicants in that Member State, within the meaning of the second subparagraph of Article 3(2) of the Dublin III Regulation.

37. During the appeal proceedings, the Office ascertained that Italy had granted Mr Jawo a national residence permit on humanitarian grounds valid for one year which had expired on 9 May 2015.

10 See paragraph 9 of the request for a preliminary ruling.

38. In those circumstances, the national court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is an asylum seeker absconding within the meaning of the second sentence of Article 29(2) of [the Dublin III Regulation] only where he purposefully and deliberately evades the reach of the national authorities responsible for carrying out the transfer in order to prevent or impede the transfer, or is it sufficient if, for a prolonged period, he ceases to live in the accommodation allocated to him and the authority is not informed of his whereabouts and therefore a planned transfer cannot be carried out?

Is the person concerned entitled to rely on the correct application of the provision and to plead in proceedings against the transfer decision that the transfer time limit of six months has expired, because he was not absconding?

(2) Does an extension of the time limit provided for under the first subparagraph of Article 29(1) of [the Dublin III Regulation] arise solely as a result of the fact that the transferring Member State informs the Member State responsible, before the expiry of the time limit, that the person concerned has absconded, and at the same time specifies an actual time limit, which may not exceed 18 months, by which the transfer will be carried out, or is an extension possible only in such a way that the Member States involved stipulate by mutual agreement an extended time limit?

(3) Is transfer of the asylum seeker to the Member State responsible inadmissible if, in the event of international protection status being granted, he would be exposed there, in view of the living conditions then to be expected, to a serious risk of experiencing treatment as referred to in Article 4 of [the Charter]?

Does this question as formulated still fall within the scope of application of EU law?

According to which criteria under EU law are the living conditions of a person recognised as a beneficiary of international protection to be assessed?'

IV. Procedure before the Court

39. The national court requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court in view of the far-reaching implications of the third question referred. According to the national court, that question is relevant for all transfer procedures to Italy and the end result of an incalculable number of cases is therefore contingent upon it. The national court also submits that protracted uncertainty as to the outcome risks impairing the functioning of the system established by the Dublin III Regulation and, in consequence, weakening the Common European Asylum System.

40. On 24 April 2017, the Fifth Chamber decided not to grant the referring court's request that the case be dealt with under the urgent preliminary ruling procedure referred to in Article 107 of the Rules of Procedure.

41. Written observations were submitted by Mr Jawo, the German, Italian, Hungarian, Netherlands and United Kingdom Governments, the Government of the Swiss Confederation and the European Commission.

42. At the joint hearing held on 8 May 2018 in Case C-163/17 and Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, the applicant in the main proceedings in those cases, the Office, the German, Belgian, Italian, Netherlands and United Kingdom Governments and the Commission presented oral argument.

V. Assessment

A. The first question referred for a preliminary ruling

1. Whether the applicant for international protection can rely on the expiry of the six-month time limit set out in Article 29(1) and (2) of the Dublin III Regulation and the fact that he did not abscond in order to challenge his transfer

(a) The six-month time limit

43. By the second part of the first question referred, which should be examined first, the referring court asks, in essence, whether the second sentence of Article 29(2) of the Dublin III Regulation must be interpreted as meaning that an applicant for international protection may rely, in an action brought against a decision to transfer him, on the expiry of the time limit of six months laid down in Article 29(1) and (2) of that regulation 'because he was not absconding'.

44. Under Article 29(1) of the Dublin III Regulation, the transfer of an applicant for international protection to the Member State responsible is to be carried out as soon as practically possible, and at the latest within six months of acceptance by another Member State of the request to take charge of or take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect. In paragraph 41 of its judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805), the Court ruled that 'the periods set out in Article 29 of the Dublin III Regulation [were] intended to provide a framework not only for the adoption but also for the implementation of the transfer decision'. According to the first sentence of Article 29(2) of that regulation, where the transfer does not take place within that six-month time limit, responsibility is to lie with the requesting Member State. However, the second sentence of Article 29(2) states that the time limit of 6 months may be extended up to a maximum of 18 months if the person concerned absconds.

45. Article 27(1) of the Dublin III Regulation provides that an applicant for international protection is to have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal. In paragraph 48 of the judgment of 26 July 2017, *Mengesteab* (C-670/16, EU:C:2017:587), the Court held that 'that provision must be interpreted as ensuring that the applicant for international protection has effective judicial protection by, inter alia, guaranteeing him the opportunity of bringing an action against a transfer decision made in respect of him, which may concern the examination of the application of [the Dublin III Regulation], including respect of the procedural guarantees laid down in that regulation'.

46. In paragraphs 39 and 40 of the judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805), the Court found that the take charge and take back procedures established by the Dublin III Regulation should, in particular, be carried out in compliance with a series of mandatory time limits, which include the six-month time limit referred to in Article 29(1) and (2) of that regulation. Whilst those provisions are intended to provide a framework for those procedures, they also contribute, in the same way as the criteria set out in Chapter III of the regulation, to determining the Member State responsible. The expiry of that time limit without the transfer of the applicant from the requesting Member State to the Member State responsible having been carried out results in the automatic transfer of responsibility from the second Member State to the first. Accordingly, in order to ensure

that the contested transfer decision is adopted following a proper application of those procedures, the court or tribunal dealing with an action challenging a transfer decision must be able to examine the claims made by an applicant for international protection that that decision was adopted in breach of the provisions set out in Article 29(2) of the Dublin III Regulation in so far as the requesting Member State is said to have already become the Member State responsible on the day when that decision was adopted, on account of the prior expiry of the six-month time limit as defined in Article 29(1) and (2) of that regulation.

47. Furthermore, in paragraph 46 of its judgment of 25 October 2017, *Shiri* (C-201/16, EU:C:2017:805), the Court ruled that 'Article 27(1) of the Dublin III Regulation, read in the light of recital 19 thereof,[11] and Article 47 of [the Charter] [had to] be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted'.

48. Under Article 29(2) of the Dublin III Regulation, a finding that the person concerned has absconded may result in the 6-month time limit being extended to a maximum of 18 months. In view of the consequences of such a finding on the situation of the persons concerned — the tripling of the time limit — it is imperative that, under Article 27(1) of the Dublin III Regulation and Article 47 of the Charter, the person concerned has an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period by pleading, where appropriate, that he did not abscond and, therefore, that that period could not be extended.

49. It follows from the foregoing considerations that Article 27(1) of the Dublin III Regulation and Article 47 of the Charter must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted by pleading, where appropriate, that he did not abscond and, therefore, that that period could not be extended.

(b) Concept of 'absconding' for the purposes of the second sentence of Article 29(2) of the Dublin III Regulation

50. By the first part of the first question referred, the national court seeks clarification of the concept of 'absconding' for the purposes of the second sentence of Article 29(2) of the Dublin III Regulation and of the circumstances in which an applicant for international protection may be considered to have absconded in which case the transfer time limit of 6 months can be extended to a maximum of 18 months. In particular, it enquires whether the concept of 'absconding' for the purposes of the second sentence of Article 29(2) of the Dublin III Regulation requires proof that the applicant for international protection has 'purposefully and deliberately evade[d] the reach of the national

11 The scope of the remedy available to an applicant for international protection against a decision to transfer him is explained in recital 19 of the Dublin III Regulation, which states that, in order to ensure compliance with international law, the effective remedy introduced by that regulation in respect of transfer decisions must cover (i) the examination of the application of that regulation and (ii) the examination of the legal and factual situation in the Member State to which the asylum seeker is to be transferred.

authorities responsible for carrying out the transfer in order to prevent or impede the transfer', or whether it is 'sufficient if, for a prolonged period, he ceases to live in the accommodation allocated to him and the authority is not informed of his whereabouts and therefore a planned transfer cannot be carried out'. [12]

51. The Dublin III Regulation does not contain any definition of the concept of 'absconding' for the purposes of the second sentence of Article 29(2) [13] of that regulation.

52. In addition, although they convey the intention of escaping from something, the words 'fuite' (in the French version), 'flucht' [14] (in the German version), 'absconds' (in the English version) and 'fuga' (in the Spanish, Italian and Portuguese versions) used in the second sentence of Article 29(2) of the Dublin III Regulation do not refer to a requirement of proof of the intentions of the applicant for international protection, particularly proof that he purposefully and deliberately evaded the transfer.

53. Furthermore, nor it is possible to conclude from the wording of the second sentence of Article 29(2) of the Dublin III Regulation that it is sufficient to prove that the applicant for international protection 'absconded' by reference to one or more objective circumstances, particularly his unexplained and lengthy absence from his usual address.

54. Given the lack of detail in the wording of the Dublin III Regulation, the concept of 'absconding' for the purposes of the second sentence of Article 29(2) of that regulation [15] must be interpreted having regard not only to its wording, but also its context and the objectives pursued by the rules of which it forms part. [16]

55. Moreover, as the person concerned is an applicant for international protection, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [17] and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection form part of the relevant context. [18]

12 The national court 'sees no indications that the provision in the second sentence of Article 29(2) of [the Dublin III Regulation] is intended to penalise conduct on the part of the foreign national which is disapproved of. [Its] understanding of the meaning and purpose of the provision is to the effect of ensuring the effective functioning of the Dublin system. That functioning may be considerably impaired if transfers cannot take place in a timely manner because that is precluded by reasons which do not fall within the sphere of responsibility of the transferring Member State. Moreover, from a practical point of view, there would often be considerable investigative and evidential difficulties if the person concerned had to be shown to have left his or her accommodation and/or hidden specifically in order to render a transfer impossible or more difficult'.

13 On the other hand, Article 2(n) of the Dublin III Regulation refers to 'risk of absconding' defined as 'the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond'. That concept seems to me to concern the circumstances in which an applicant for international protection may be detained for the purpose of transfer (Article 28 of that regulation). Consequently, Article 2(n) of the Dublin III Regulation does not concern the circumstances in which an applicant for international protection must be regarded as having absconded in terms of the second sentence of Article 29(2) of the Dublin III Regulation.

14 'wenn die betreffende Person flüchtig ist.'

15 I note in that connection that Articles 8 and 9 of Regulation No 1560/2003 do not contain any detail either.

16 See judgment of 23 November 2006, *Lidl Italia* (C-315/05, EU:C:2006:736, paragraph 42). It should be noted that the second sentence of Article 29(2) of the Dublin III Regulation does not make any reference to national law. See also judgment of 30 April 2014, *Kásler and Káslerné Rábai* (C-26/13, EU:C:2014:282, paragraph 37): 'According to settled case-law, the need for the uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question.'

17 OJ 2013 L 180, p. 60.

18 OJ 2013 L 180, p. 96.

(1) The objectives of Article 29 of the Dublin III Regulation

56. It is apparent, inter alia, from recitals 4 and 5 of the Dublin III Regulation that the objective of that regulation is to establish a clear and workable method based on objective, fair criteria for determining the Member State responsible for examining an application for international protection. That method should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures granting international protection while preserving the objective of the rapid processing of applications for international protection.

57. Under the first subparagraph of Article 29(1) of the Dublin III Regulation, the transfer of the person concerned is to be carried out as soon as practically possible and, at the latest, within six months. The Court held in paragraph 40 of its judgment of 29 January 2009, *Petrosian* (C-19/08, EU:C:2009:41), that the purpose of the six-month time limit, in view of the practical complexities and organisational difficulties associated with implementing such a transfer, was to allow the two Member States concerned to collaborate with a view to carrying out the transfer and, in particular, the requesting Member State to determine the practical details for implementing the transfer, which is to be carried out in accordance with that State's legislation. [19]

58. Article 29(2) of the Dublin III Regulation states that, where the transfer does not take place within the six-month time limit, the Member State responsible is to be relieved of its obligations to take charge of or take back the person concerned and responsibility is then to be transferred to the requesting Member State.

59. I consider that, in the light of the objective of the rapid processing of applications for international protection, the possibility of extending the time limit of 6 months to up to 18 months applies only where there is convincing evidence that the person concerned has absconded. Like Mr Jawo, I think that the second sentence of Article 29(2) of the Dublin III Regulation is in the nature of a derogation entailing significant consequences for the person concerned and the determination of the Member State responsible. [20] It follows that that provision must be interpreted restrictively.

60. However, notwithstanding the fact that the second sentence of Article 29(2) of the Dublin III Regulation is in the nature of a derogation, an obligation to prove that the applicant for international protection has purposefully and deliberately evaded the reach of the national authorities responsible for carrying out the transfer in order to prevent or impede the transfer is, in my view, unreasonable and is liable to cause considerable disruption to the already complex and difficult system of transfers established by the Dublin III Regulation. [21]

19 On the transfer procedure, see Articles 8 and 9 of the implementing regulation.

20 If the six-month time limit expires, responsibility for processing the application for international protection lies, as a rule, with the requesting Member State.

21 All the more so because applicants for international protection, who must be reachable and are informed about the course of the procedure, can very easily report absences from their place of usual residence, especially long absences.

61. In line with the Commission's observations, I consider that if the 'absconding' test were to require proof of a specific subjective intention on the part of the applicant for international protection, 'it would often be the case that such an intention could be established only with great difficulty, over a number of arduous hearings, the duration of which would frequently exceed the six-month period laid down in Article 29(2)' of the Dublin III Regulation. Put another way, instead of being an exception or requiring a strict interpretation, the second sentence of Article 29(2) of the Dublin III Regulation would be virtually impossible to apply.[22]

(2) The context: effect of Directives 2013/32 and 2013/33

62. In my view, the question whether an applicant for international protection has absconded must be determined on the basis of specific and objective evidence of the 'absconding', taking account of all the relevant circumstances and the context of the case in the main proceedings, irrespective of any proof of the intentions of the person concerned who has absconded. Since the procedure established by the Dublin III Regulation is not of a criminal nature, the standard of proof should be that applicable in civil cases (on the balance of probabilities). The burden of proof necessarily lies on the competent national authorities claiming that the person concerned has absconded, since it is those authorities that seek to benefit from the derogation provided for in Article 29(2) of the Dublin III Regulation.

63. As regards the particular context at issue, although applicants for international protection may, in accordance with Article 7(1) of Directive 2013/33, 'move freely within the territory of the host Member State or within an area assigned to them by that Member State', that right *is not absolute* and may be subject to conditions and obligations.

64. Member States may (i) 'decide on the residence of the applicant for reasons of public interest, public order or, when necessary, *for the swift processing and effective monitoring of his or her application for international protection*'[23] and (ii) 'make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by [them]'.[24] Furthermore, 'Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible'.[25] In my view, those restrictions and obligations are necessary to ensure, in particular, that the applicant for international protection can be located quickly to facilitate the examination of his application and, where appropriate, his transfer to another Member State under Article 29 of the Dublin III Regulation.

22 According to the German Government, 'there would often be considerable investigative and evidential difficulties if the persons concerned had to be shown to have left their accommodation or hidden specifically in order to render a transfer impossible or more difficult. Such an interpretation might encourage asylum seekers to invent tales in order to protect themselves. Asylum seekers "*abscond*" for the purposes of the second sentence of Article 29(2) of the Dublin III Regulation where, for reasons attributable to them, they cannot be traced by the authorities of the Member State making the transfer. That is particularly the case where asylum seekers cease to reside, for a relatively long period, in the accommodation allocated to them and the authorities are no longer aware of their whereabouts, with the result that a planned transfer cannot be carried out' (paragraphs 67 and 68 of its observations). The Hungarian Government submits that 'besides the fact that the applicant's intentions are a subjective element of no relevance at all in the light of the objective pursued by [the Dublin III Regulation], the effective functioning of the regulation would be undermined if a transfer were made to depend on that circumstance' (paragraph 10 of its observations). The Netherlands Government argues that 'a proper interpretation of the concept of "*absconding*" for the purposes of the second sentence of Article 29(2) of [the Dublin III Regulation] is one where what is essentially in issue is a lack of … reachability. That interpretation does not mean that, in order for a finding to be made that the asylum seeker has '*absconded*', his non-reachability must be intentional. The precise reason or motive for the asylum seeker's non-reachability is irrelevant under the system and in the light of the objective of ensuring that the transfer to the Member State responsible can take place as quickly as possible' (paragraphs 15 and 16 of its observations). According to the Swiss Confederation, 'the asylum seeker is duty-bound to remain at the disposal of the authorities and to report any absences to them. That should apply with even greater force where the transfer to the Member State responsible is imminent and the person concerned is aware of that fact. Absconding should therefore be understood as covering situations which render the transfer impossible due to the absence of the person concerned and are attributable to that person' (paragraph 11 of its observations). Emphasis added.

23 Article 7(2) of Directive 2013/33. My emphasis.

24 Article 7(3) of Directive 2013/33. Article 7(4) of that directive provides that 'Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 3 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative'.

25 Article 7(5) of Directive 2013/33.

65. According to the Commission, Article 7(2) to (4) of Directive 2013/33 was transposed by the Federal Republic of Germany by Paragraphs 56 to 58 of the Asylgesetz (Law on Asylum). It states that, under those provisions, Mr Jawo 'was under an obligation not to leave — even temporarily — the district covered by the City of Heidelberg's foreign nationals department without administrative authorisation, something which he nevertheless did at the start of June 2015'.

66. It should be noted, however, that under Article 5 of Directive 2013/33, Member States *must inform* applicants for international protection, in writing and in a language they understand or are reasonably supposed to understand, of the obligations with which they must comply relating to reception conditions.[26] It follows that if those rules have not been observed, non-compliance with the restrictions on freedom of movement may not be relied on against applicants for international protection.

67. In addition, Article 13(2)(a) of Directive 2013/32 provides for the possibility for Member States to require applicants for international protection 'to report to the competent authorities or to appear before them in person, either without delay or at a specified time'.[27] I consider that such an obligation may be relevant in a case such as that at issue in the main proceedings, even though Mr Jawo's asylum application was rejected by the Office as inadmissible and he was ordered to be removed to Italy. The competent national authority must be able to contact an applicant for international protection in order to transfer him so that his application for international protection can be examined by the authorities of the Member State responsible under the Dublin III Regulation.

68. It follows from the above considerations that provided an applicant for international protection has been informed[28] of the restrictions on his right to move freely and of his obligations to report to the competent national authorities under the national provisions transposing Article 5 of Directive 2013/33 and Article 13(2)(a) of Directive 2013/32, the fact that he has ceased to reside, over a relatively long period, in the accommodation allocated to him so that those authorities were not informed of his whereabouts and therefore a planned transfer could not be carried out is sufficient, in my view, to extend the transfer time limit to 18 months in accordance with Article 29(2) of the Dublin III Regulation.

B. The second question referred for a preliminary ruling

69. By its second question, the national court enquires whether the second sentence of Article 29(2) of the Dublin III Regulation must be interpreted as meaning that an extension of the 6-month transfer time limit arises solely as a result of the fact that, before the expiry of that time limit, the requesting Member State informs the Member State responsible that the person concerned has absconded and, at the same time, specifies an actual time limit, which may not exceed 18 months, by which the transfer will be carried out, or whether an extension of the 6-month time limit is possible only if the Member States involved stipulate by mutual agreement an extended time limit.

26 Where appropriate, this information may *also* be supplied orally. The reception conditions include the right to move freely.

27 The United Kingdom Government observed that 'in the United Kingdom, asylum seekers who are not detained are subject to reporting conditions, which require them to report to the Home Office on a regular basis. For most asylum seekers, reporting takes place on a weekly basis. For those who are subject to transfer procedures under the Dublin [III] Regulation, reporting would be once every two weeks, unless the individual was involved in litigation challenging his removal, in which case reporting would take place once every month. The purpose of this procedure is to ensure that the asylum seeker remains in contact with the relevant authorities; and to ensure that the relevant authorities are aware of his presence and location. Ultimately, it ensures the proper application of the Regulation because it enables transfers to take place. Furthermore, the United Kingdom operates a policy which provides that an asylum seeker who fails to report on three occasions is to be treated as having absconded. The United Kingdom considers that this approach offers the necessary degree of certainty to the national authorities and to the asylum seeker, as well as allowing a degree of flexibility in case, for genuine reasons (for example, because of ill health) the asylum seeker is unable to report' (paragraphs 51 and 52 of its observations).

28 At the hearing, the Office was unable to confirm whether that information had been provided. It will be for the referring court to verify that point.

70. It should be noted that the second sentence of Article 29(2) of the Dublin III Regulation does not envisage any consultation between the requesting Member State and the Member State responsible [29] concerning the extension of the time limit laid down.

71. In addition, the power to establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, was delegated to the Commission by Article 29(4) of the Dublin III Regulation. Those uniform conditions are laid down, in particular, by Article 9 of the implementing regulation.

72. In my view, it follows from a combined reading of Article 29(2) of the Dublin III Regulation and Article 9 of Regulation No 1560/2003 that where it is established that the person concerned has absconded, the requesting Member State *may* [30] unilaterally extend the time limit of 6 months provided for in Article 29 of that regulation to a maximum of 18 months provided that it *informs* the other Member State without delay of the postponement of the transfer in accordance with the detailed rules laid down in Article 9 of the implementing regulation. Under Article 9(2) of Regulation No 1560/2003, it must do so *before* the expiry of the six-month time limit laid down in Article 29(1) and (2) of the Dublin III Regulation.

73. In the light of the foregoing, I consider that the second sentence of Article 29(2) of the Dublin III Regulation and Article 9(2) of Regulation No 1560/2003 must be interpreted as meaning that an extension of the transfer time limit arises solely as a result of the fact that the requesting Member State, before the expiry of the 6-month time limit, informs the Member State responsible that the person concerned has absconded and, at the same time, specifies an actual time limit, which may not exceed 18 months, by which the transfer will be carried out.

C. The third question referred for a preliminary ruling

74. By its third question, the national court enquires, in the first place, whether the transfer of an applicant for international protection to the Member State responsible is unlawful if, in the event of international protection being granted in that Member State, he would be exposed there to a serious risk of inhuman and degrading treatment within the meaning of Article 4 of the Charter in view of the living conditions then to be expected. In the second place, the national court wonders whether that question falls within the scope of EU law. In the third place, it seeks clarification of the criteria to be applied in order to assess the living conditions of a beneficiary of international protection.

75. I will examine the second, first and third parts of the third question referred in turn.

29 See, *a contrario*, Article 29(1) of the Dublin III Regulation which makes express provision for consultation between the Member States at issue.
30 The extension of the six-month time limit is not automatic.

1. Preliminary remarks

76. In accordance with the settled case-law of the Court, 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 Charter. The prohibition of 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. [31]

77. The Common European Asylum System was conceived in a context making it possible to assume that all the participating States, whether Member States or third States, observe fundamental rights, including the rights based on the Geneva Convention, and on the ECHR, and that the Member States can trust in each other in that regard. It is because of that principle of mutual trust that the EU legislature adopted, in particular, the Dublin III Regulation. In those circumstances, the Court has held that it has to be assumed that the treatment of asylum seekers in all Member States complies with the requirements of the Charter, the Geneva Convention and the ECHR. [32]

78. Notwithstanding that presumption of compliance, the Court has also ruled that it is not inconceivable that the Common European Asylum System may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that asylum seekers may, when transferred to that Member State, be treated in a manner incompatible with their fundamental rights. [33]

79. In paragraph 99 of its judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), the Court clearly stated 'that an application of [the Dublin III Regulation] on the basis of the conclusive presumption that the asylum seeker's fundamental rights will be observed in the Member State primarily responsible for his application is incompatible with the Member State's duty to interpret and apply [the Dublin III Regulation] in a manner consistent with fundamental rights'.

80. The presumption of compliance is therefore rebuttable.

81. The Court also pointed out in its judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 86 to 94 and 106), that the transfer of asylum seekers within the framework of the Dublin system may, in certain circumstances, be incompatible with the prohibition laid down in Article 4 of the Charter. It thus held that an asylum seeker would run a real risk of being subjected to inhuman or degrading treatment, within the meaning of that article, in the event of a transfer to a Member State in which there are substantial grounds for believing that there are *systemic flaws in the asylum procedure and in the conditions for the reception of applicants*. Consequently, in accordance with the prohibition laid down in that article, within the framework of the Dublin system, the Member States may not carry out transfers to a Member State in the case where they cannot be unaware that such flaws exist in that Member State. [34]

31 Judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraph 59 and the case-law cited). The rights enjoyed by asylum seekers were moreover strengthened by the Dublin III Regulation. See, to that effect, judgment of 7 June 2016, *Ghezelbash* (C-63/15, EU:C:2016:409, paragraph 34). According to the Court, the prohibition of inhuman or degrading treatment laid down in Article 4 of the Charter corresponds to that laid down in Article 3 ECHR and, 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 (judgment of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 67). Furthermore, it follows from Article 15(2) ECHR that no derogation is possible from Article 3 thereof and the Court has confirmed that the case-law of the European Court of Human Rights ('the ECtHR') relating to Article 3 ECHR must be taken into account when interpreting Article 4 of the Charter (judgment of 16 February 2017, *C. K. and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 68).

32 See, to that effect, judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 78 to 80).

33 Judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 81).

34 See judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraph 60 and the case-law cited).

82. The judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), arose in a situation similar to that at issue in the judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece*,[35] relating to Article 3 ECHR, that is to say the transfer of an asylum seeker by the Belgian authorities to Greece which was the Member State responsible for examining his application.[36] In paragraph 88 of its judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), the Court pointed out that the ECtHR had held, inter alia, that the Kingdom of Belgium had infringed Article 3 ECHR, first, by exposing the applicant to the risks arising from the deficiencies in the asylum procedure in Greece, since the Belgian authorities knew or ought to have known that the applicant had no guarantee that his asylum application would be seriously examined by the Greek authorities and, secondly, by knowingly exposing him to conditions of detention and living conditions that amounted to degrading treatment.[37]

83. Although the line of authority devolving from the judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), concerning the existence in the requested Member State of systemic flaws in the asylum procedure and the reception conditions for applicants was codified in 2013 in the second subparagraph of Article 3(2) of the Dublin III Regulation, the Court has nonetheless ruled that it cannot be concluded from that fact that any infringement of a fundamental right by the Member State responsible will affect the obligations of the other Member States to comply with the provisions of the Dublin III Regulation.[38] It would not be compatible with the aims and scheme of the Dublin III Regulation were the slightest infringement of the rules governing the common asylum system to be sufficient to prevent the transfer of an asylum seeker to the Member State primarily responsible.[39]

84. Concerning the risks associated with the *transfer itself* of an applicant for international protection, the Court held, in paragraph 65 of its judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127), that a transfer can take place only in conditions which preclude it from resulting in a real risk of the person concerned suffering inhuman or degrading treatment, within the meaning of

35 CE:ECHR:2011:0121JUD003069609.

36 It should be noted that, when examining the reception conditions for applicants for international protection in Greece, the ECtHR took into account the obligations of the Greek authorities under Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ 2003 L 31, p. 18). (Judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece*, CE:ECHR:2011:0121JUD003069609, paragraph 263.)

37 In its judgment, the ECtHR held that a situation *of extreme material poverty* could raise an issue under Article 3 ECHR. It then noted that the situation in which the applicant found himself was particularly serious. The ECtHR observed that '[the applicant had explained that he had] spent months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live. Added to that was the ever-present fear of being attacked and robbed and the total lack of any likelihood of his situation improving' (judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609, paragraphs 252 to 254)). In paragraph 263 of its judgment, the ECtHR stated that the Greek authorities 'have not had due regard to the applicant's vulnerability as an asylum seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The Court considers that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 [ECHR]'.

38 See judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 82).

39 Judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 84).

Article 4 of the Charter. In that regard, the Court took into consideration the particularly serious state of health of the person concerned [40] which might mean that it is not possible to transfer him to another Member State even in the absence of systemic flaws in the asylum procedure and the reception conditions for asylum seekers in the requesting Member State.

85. In that context, in paragraph 91 of its judgment, the Court expressly rejected the Commission's argument that it follows from the second subparagraph of Article 3(2) of the Dublin III Regulation that only the existence of systemic flaws in the Member State responsible is capable of affecting the obligation to transfer an asylum seeker to that Member State. [41]

86. The Court focused on the general character of Article 4 of the Charter, which prohibits inhuman or degrading treatment in all its forms, and the fact that it would be manifestly incompatible with the absolute character of that prohibition if the Member States could disregard a real and proven risk of inhuman or degrading treatment affecting an asylum seeker under the pretext that it does not result from a systemic flaw in the Member State responsible. [42]

87. Paragraph 95 of the judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127), makes clear that the impossibility of carrying out the transfer in the circumstances at issue in that case '*fully respects the principle of mutual trust* since, far from affecting the existence of a presumption that fundamental rights are respected in each Member State, it ensures that the exceptional situations referred to in the present judgment are duly taken into account by the Member States. *Moreover, if a Member State were to proceed with the transfer of an asylum seeker in such situations, the resulting inhuman and degrading treatment would not be attributable, directly or indirectly, to the authorities of the Member State responsible, but to the first Member State alone*'. [43]

88. That careful approach, focusing on the protection of fundamental principles and human rights, also reflects the case-law of the ECtHR. In paragraph 126 of its judgment of 4 November 2014, *Tarakhel v. Switzerland* (CE:ECHR:2014:1104JUD002921712), the ECtHR recalled 'that an applicant's complaint alleging that his or her removal to a third State would expose him or her to treatment prohibited under Article 3 [ECHR] must imperatively be subject to close scrutiny by a national authority'.

40 Judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraphs 71, 73 and 96). In that case, the Court held that there were no substantial grounds for believing that there were systemic flaws in the asylum procedure and the conditions for the reception of asylum seekers in the Member State responsible. However, the Court stated that it could not be ruled out that the transfer itself of an asylum seeker whose state of health is particularly serious may, per se, result, for the person concerned, in a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, irrespective of the quality of the reception and the care available in the Member State responsible for examining his application. The Court considered that 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 his state of health, that transfer would constitute inhuman and degrading treatment within the meaning of that article. The Court added that it was 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 State 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.

41 I note that in its judgment of 4 November 2014, *Tarakhel v. Switzerland* (CE:ECHR:2014:1104JUD002921712), the ECtHR held that in order to determine whether the transfer of an applicant for international protection under the Dublin system constituted inhuman or degrading treatment, it was necessary to ascertain whether, in view of the overall situation with regard to the reception arrangements for asylum seekers in the Member State responsible and the *applicants' specific situation*, there are substantial grounds for believing that the applicants would be at risk of treatment contrary to Article 3 ECHR if they were returned to Italy. The ECtHR found that, at the relevant time, the situation in Italy could in no way be compared to the situation in Greece at the time of the judgment of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609), and that the approach in the case before it could not be the same as in the case giving rise to that judgment. However, the ECtHR ruled that were the applicants (a couple with six minor children, children who were entitled to special protection in view of their specific needs and extreme vulnerability) to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together, there would be a violation of Article 3 ECHR.

42 See judgment of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127, paragraph 93).

43 Emphasis added.

89. Unlike the circumstances at issue in the cases giving rise to the judgments of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), and of 16 February 2017, *C. K. and Others* (C-578/16 PPU, EU:C:2017:127) — the first of which concerned systemic flaws in the asylum procedure and the reception conditions for applicants and the second of which related to the actual transfer of an applicant for international protection — the case in the main proceedings involves the taking into account of the situation that may arise *after* the grant of international protection in the Member State responsible.

90. That is a novel issue that the Court has not yet dealt with.

2. The second part of the third question referred for a preliminary ruling[44]

(a) Arguments of the parties

91. The Italian Government submitted no observations on the third question referred for a preliminary ruling. It claims that the alleged systemic flaws attributed to the Member State responsible, as explained by the national court, relate in actual fact to the social welfare system in force in Italy and do not therefore amount to a breach of Article 4 of the Charter but may, as the case may be, infringe Articles 34 and 35 of the Charter and the provisions of Directive 2011/95.

92. According to the Italian Government, the national court relies on a hypothetical 'systemic flaw' which does not concern either the asylum procedure or the reception conditions for asylum seekers, but rather a later stage, namely the stay on the Member State's territory of asylum seekers to whom international protection has been granted. The alleged risk is therefore hypothetical, since Mr Jawo's situation is that of an asylum seeker whose application for international protection has neither been examined nor decided on.

93. The German Government argues that, in accordance with the settled case-law of the Court, 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 Charter.

94. On that basis, the German Government submits that the living conditions of a person whose entitlement to international protection has been recognised must be assessed in the light of Directive 2011/95. It states that while Directive 2013/33 lays down uniform minimum standards for the reception of applicants for international protection, Directive 2011/95 and the Geneva Convention provide for national treatment or equality of treatment with nationals of third States in the Member State responsible. According to the German Government, 'that particular circumstance should … be taken into account in the assessment of the living conditions of persons whose entitlement to international protection has been recognised when determining whether those conditions are acceptable in the light of Article 4 of the Charter. That choice of legislative technique (the use of an exception)[45] also affects the scope of the fundamental rights of the European Union. The fundamental rights of the European Union apply, under the first sentence of Article 51(1) of the Charter, [only] within the framework of the implementation of EU law. Consequently, the measures that are not included in [Directive 2011/95] and in the context of which Member States act under their own powers do not fall within the scope of the Charter [and] the criterion of primary law (Article 4 of the Charter in this instance) is triggered only in so far as secondary EU law imposes requirements on Member States'.

44 As indicated in point 75 of this Opinion, I will first examine the second part of the third question referred by the national court.

45 Namely, national treatment instead of uniform minimum standards.

95. The German Government adds that the national court bases its reasoning on a misinterpretation of the scope of EU fundamental rights where it suggests that, when assessing the living conditions of persons whose entitlement to international protection has been recognised, a national court may, in addition to compliance with the basic standards imposed by EU law in Directive 2011/95, examine the question of a possible breach of Article 4 of the Charter. The German Government also submits that the substantive examination of the asylum application is a matter for the Member State responsible alone and it is not clear on what factual basis the transferring Member State could conduct that examination beforehand to be able to establish with certainty whether recognition will be granted in the Member State responsible.

96. The Netherlands Government argues that the requesting Member State cannot be held responsible for inhuman or degrading treatment within the meaning of Article 4 of the Charter to which an applicant for international protection might be subjected after completion of the asylum procedure because it is not the transfer that directly exposes the applicant to such treatment. Responsibility for the situation in which the applicant for international protection 'will find himself *after* the asylum procedure lies *exclusively* with the Member State designated by the Dublin Regulation to deal with the asylum application and to assume the associated obligations'.

97. According to the United Kingdom Government, it would plainly be well beyond the scope of the Dublin system to allow an asylum seeker to challenge a transfer decision based on allegations about the living conditions in the Member State responsible *after* the grant of international protection. First, the wording of the Dublin III Regulation does not support such a wide interpretation. Secondly, the Dublin system is concerned with establishing the Member State with responsibility for examining an asylum application; it is not concerned with the outcome of an asylum application or with the situation of asylum seekers following the grant of international protection if the application is successful. Thirdly, the outcome of an asylum application once the asylum seeker is present in the Member State responsible is uncertain. Fourthly, the United Kingdom Government argues that a challenge based on living conditions following the grant of international protection would be premature. It states that it might take a considerable amount of time for the transfer to take place and, thereafter, for the asylum application to be examined and also contends that living conditions might change greatly over that period. According to the United Kingdom Government, if a beneficiary of international protection faces a risk of treatment contrary to Article 4 of the Charter after the grant of protection, then, provided EU law is engaged, he can seek the protection of the courts in the host Member State at that stage.

98. The Hungarian Government submits that the scope of the Dublin III Regulation covers the period encompassing the implementation of the procedure for determining the Member State responsible for examining the application for international protection but, by contrast, does not cover the rules governing the period thereafter. It claims that the circumstances following the transfer and examination of the application for international protection do not fall within any of the circumstances to be considered under Article 3(2) of the Dublin III Regulation. It states that living conditions, after the application has been examined, cannot be examined objectively because the Member States' social systems are not comparable and there is no national decision that could be challenged on the ground that it is inappropriate. According to the Hungarian Government, it is therefore legitimate to ask, in essence, what the basis would be for a national authority or court's refusal to transfer a person under the Dublin procedure if it were necessary to examine beforehand, in the first place, whether the applicant would be given refugee status in the Member State responsible and, in the second place, whether there is in that specific case a real risk of unacceptable living conditions.

99. The Commission argues that the Dublin III Regulation, even interpreted in the light of Article 4 of the Charter, does not require Member States, first, to examine whether beneficiaries of international protection would be exposed to a real risk, *after* completion of their asylum procedure, of falling into poverty and therefore of suffering treatment contrary to human dignity in the context of transfer procedures under that regulation, and, secondly, to suspend individual transfers for such reasons. It

contends, instead, that for as long as the Member State responsible fulfils its obligations towards beneficiaries of protection under the Geneva Convention and Directive 2011/95 — that is to say, in particular, that it grants them genuine access, *on equal terms*, to education, employment, social assistance, accommodation and healthcare — other Member States may rely on the fact that that State and its society as a whole do enough to ensure that even the poor are not subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

(b) Assessment

100. The national court enquires whether the examination by the requesting Member State, before carrying out the transfer, of the existence of real and proven risks that the person concerned will be subjected to inhuman or degrading treatment in the requested Member State if international protection is granted falls within the scope of EU law or whether, on the contrary, such risks could be regarded as being too remote with the result that it would be premature to examine them and take them into account. [46]

101. Article 51(1) of the Charter states that its provisions are addressed to the Member States only when they are implementing EU law. It follows that compliance with Article 4 of the Charter, concerning the prohibition of inhuman and degrading treatment or punishment, is binding on Member States when they transfer an applicant for international protection to the Member State responsible under Article 29 of the Dublin III Regulation. [47]

102. Where a Member State transfers an applicant for international protection, it implements Article 29 of the Dublin III Regulation, not the provisions of Directive 2011/95. Accordingly, the German Government's observations that the Charter does not apply in this case if Directive 2011/95 does not impose requirements on Member States are not relevant.

103. As regards the Italian Government's observations on Articles 34 and 35 of the Charter, it should be noted that the national court has not submitted any questions concerning those provisions. Furthermore, I consider that the possible application of those provisions does not mean that Article 4 of the Charter should be dismissed as irrelevant.

104. Moreover, besides the general and absolute nature of the prohibition laid down in Article 4 of the Charter which is conducive to a broad application of that provision, it should be recalled that the Court held in its judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), that the *Common European Asylum System* was based on mutual trust and a presumption of compliance by other Member States with EU law and, in particular, fundamental rights, thus allowing, in principle, the transfer to the Member State responsible under the Dublin system of applicants for international protection.

46 The national court considers that the Common European Asylum System does not merely regulate the phase for the reception of applicants for international protection and the procedure for granting such protection. That system should also take account of the persons to whom the Member State responsible has granted international protection upon completion of the procedure. The national court takes the view that the examination of whether there are systemic flaws in a Member State within the meaning of the second subparagraph of Article 3(2) of the Dublin III Regulation must not be confined to answering the question whether the reception conditions during the procedure itself are free of such flaws, but must also include the situation thereafter. '…, this then necessarily has the consequence that systemic defects which do not respect human dignity even only in one phase lead overall to the result that the persons concerned cannot rely on the procedure in the Member State actually responsible if they would otherwise incur the real risk of experiencing ill-treatment as referred to in Article 4 of [the Charter].'

47 See, to that effect, judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 64 to 69).

105. It is apparent from paragraphs 84 and 85 of the judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), that in its analysis of the Common European Asylum System, the Court took into account not only Directive 2003/9 but also Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted[48] and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.[49]

106. Directive 2004/83, like Directive 2011/95 which replaced it, contained rules on the treatment of beneficiaries of international protection[50] and laid down, in particular, minimum standards for access by the persons concerned to education, social welfare, healthcare and accommodation. It is precisely the access to those social rights in Italy that is at issue in the main proceedings.

107. In addition, the processing of applications for international protection and the possible grant of such protection clearly result from the determination of the Member State responsible under the Dublin III Regulation.

108. Although each stage has its own specific rules and time limits, I think that the determination of the Member State responsible, the examination of the application for international protection and the possible grant of that protection together make up the Common European Asylum System. All of those individual stages follow on from each other and are intrinsically linked. In the circumstances at issue in the main proceedings, where a risk of inhuman and degrading treatment in the Member State responsible has been claimed, it would be artificial to separate the stages concerning the transfer of the applicant for international protection, his reception and the examination of his application from the stage concerning the grant of international protection, particularly in view of the proximity in time of all those stages.[51] Therefore, to plead that there is a real risk of a breach of Article 4 of the Charter after the grant of international protection in order to challenge a transfer decision does not, to my mind, give rise to a premature examination.

109. In addition, since Member States are required — before transferring an applicant for international protection under Article 29 of the Dublin III Regulation — to review the asylum procedure and the reception conditions in the Member State responsible in the light of Article 4 of the Charter where it is claimed that there are systemic flaws in that regard in that Member State,[52] the argument of the Hungarian and German Governments that Member States would not be able to review the living conditions of beneficiaries of international protection in other Member States must be rejected. Moreover, such a refusal of responsibility based on a lack of practical resources is clearly at odds with the case-law of the ECtHR which requires national authorities to conduct 'close scrutiny'.[53]

110. In the light of the foregoing, I consider that the scope of EU law covers the question whether the transfer of an applicant for international protection to the Member State responsible under Article 29 of the Dublin III Regulation is unlawful if, in the event of international protection being granted in that Member State, he would be exposed there, in view of the living conditions then to be expected, to a substantial risk of treatment of the kind referred to in Article 4 of the Charter.

48 OJ 2004 L 304, p. 12. Directive 2004/83 was repealed and replaced by Directive 2011/95.

49 OJ 2005 L 326, p. 13. Directive 2005/85 was repealed and replaced by Directive 2013/32.

50 Or of subsidiary protection.

51 Under Article 31(3) of Directive 2013/32, 'Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application'. According to that provision, *the time limit of six months is to start to run from the moment the Member State responsible for its examination is determined* in accordance with the Dublin III Regulation and the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

52 See the second subparagraph of Article 3(2) of the Dublin III Regulation.

53 See paragraph 126 of the judgment of 4 November 2014, *Tarakhel v. Switzerland*, (CE:ECHR:2014:1104JUD002921712).

3. The first part of the third question referred for a preliminary ruling

111. In my view, it follows from my answer to the second part of the third question submitted by the national court and, in particular, the general and absolute nature of the prohibition of inhuman and degrading treatment laid down in Article 4 of the Charter that the answer to the first part of the third question should be that the transfer of an applicant for international protection to the Member State responsible under Article 29 of the Dublin III Regulation is unlawful if, in the event of international protection being granted in that Member State, he would be exposed there, in view of the living conditions then to be expected, to a substantial risk of treatment of the kind referred to in Article 4 of the Charter. Consequently, the transfer of an applicant for international protection within the framework of the Dublin III Regulation can take place only in conditions which preclude that transfer from resulting in a substantial risk of the person concerned suffering inhuman or degrading treatment within the meaning of Article 4 of the Charter after the grant of international protection.

4. The third part of the third question referred for a preliminary ruling

112. By the third part of its third question, the national court seeks clarification of the criteria under EU law to be applied in order to assess the living conditions in a Member State of a person whose entitlement to international protection has been recognised there.

113. The national court states that Directive 2011/95 'so far as concerns the living conditions of the beneficiaries of protection, … generally promises only national treatment [except Article 32 of Directive 2011/95 concerning access to accommodation which requires only equality of treatment with other third-country nationals] and in EU law no specific (minimum) standards are set under the Common European Asylum System. However, national treatment may be insufficient, even if the standards for nationals are still in keeping with human dignity. This is because the European Union must nevertheless take into consideration the fact that the people concerned here are typically vulnerable and uprooted persons, and in any case persons with many different disadvantages, who will not be in a position automatically or even at all on their own to assert effectively the rights which the legal order of the host State as such formally guarantees. They must therefore first move into the same or a comparable de facto position from which the indigenous population asserts and is able to assert its rights. Only against that social background does the principle of national treatment find its justification and viability. Consequently, it is with good reason that Article 34 of [Directive 2011/95] requires Member States to ensure effective access to integration programmes to which a specifically countervailing function is assigned, and to do so unconditionally and without restriction'. [54]

114. The national court also states that it is in possession, among other documents, of the detailed research report of the Swiss Refugee Council, entitled 'Reception Conditions in Italy', of August 2016 (see p. 32 et seq.) [55] ('the Swiss Refugee Council report'), 'from which concrete indications emerge that beneficiaries of international protection could be exposed to a real risk of becoming homeless and reduced to poverty in a life totally on the margins of society' in that Member State. 'The Swiss Refugee Council repeatedly emphasises that the totally inadequately developed social system is largely to be explained by support in family structures, or, looked at another way, poverty and hardship are not a general phenomenon only because of that support among the Italian population. Those structures are however completely lacking among the beneficiaries of international protection'.

54 The national court adds that 'in concrete terms, this then also means that that Common European Asylum System must at least guarantee an appropriately scaled integration programme able to cope with the deficits of the category of persons under consideration here, in so far as that is necessary in any event to guarantee and ensure national treatment in actual practice and not merely formally and legally, something which may then necessitate different requirements from Member State to Member State. That standard constitutes a refugee and human rights minimum in the context of EU law' (paragraph 25 of its observations).

55 Available at the following internet address: http://www.asylumineurope.org/sites/default/files/resources/160908-sfh-bericht-italien-f.pdf.

(a) Arguments of the parties

115. Mr Jawo submits that it is 'nonsensical, for the person concerned, to be removed to a country where, admittedly, the conditions for asylum seekers are acceptable but the conditions for those entitled to receive protection are, by contrast, open to criticism. In those circumstances, a favourable outcome of the asylum procedure would result in a weakening of the legal position of the person concerned. That would be absurd. It also shows that the assertion that asylum seekers would not be exposed in Italy to any risk of treatment of the kind prohibited by Article 4 of the Charter cannot be correct'.

116. The Italian Government states that the national court questions whether the public social integration system is fit for purpose and that the hypothetical shortcomings in that system are, in themselves, irrelevant for the purposes of Article 3 ECHR. It argues that there can be no question of inhuman or degrading treatment, where there is a social welfare system in place on the basis of which a State ensures that beneficiaries of international protection enjoy the same rights and safeguards as those afforded to its own nationals, merely because the countervailing integration measures taken on account of the position of particular weakness and vulnerability of those beneficiaries are not the same as those taken in other countries or have a number of shortcomings. According to the Italian Government, the flaws must be such as to prevent (or to be sufficiently likely to prevent), in the case in point, the beneficiary of international protection from exercising his rights through the receipt of core social services. It argues that in order for there to be a serious risk of inhuman treatment, the flaws must create a real obstacle to the implementation of those minimum core social services such that there is a high probability that the beneficiary of international protection will become marginalised and fall into poverty.

117. The Italian Government observes that the (only) report from a non-governmental organisation considered by the national court [56] is contradicted by another independent report [57] and moreover does not appear to contain sufficiently detailed information providing evidence of systemic flaws capable of leading to a derogation from the rules of the Dublin III Regulation. [58]

118. The United Kingdom Government submits that Directive 2011/95 was drafted to ensure that beneficiaries of international protection would not receive better treatment than the nationals of the Member States conferring such protection.

119. The Hungarian Government argues that national authorities must act with due regard for the mutual trust between Member States.

120. The Netherlands Government questions whether the living conditions in Italy, described by the national court, can be classified as treatment of the kind contrary to Article 4 of the Charter. It states that those conditions are not comparable to the situation at issue in the case giving rise to the judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), and the judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609).

56 Namely, the Swiss Refugee Council report.

57 Namely, the report of another non-governmental organisation, AIDA (Asylum Information Database, Country report: Italy (February 2017)), ('the AIDA report'). Available at the following internet address: http://www.asylumineurope.org/reports/country/italy.

58 According to the Italian Government 'nor does the AIDA report identify any critical situation of such a kind as to result in inhuman and degrading treatment in the system for integration and assistance after the recognition of international protection' (paragraph 88 of its observations).

121. The Commission contends that Article 34 of Directive 2011/95 is drafted with great circumspection. According to the Commission, Member States are required only to ensure access to the integration programmes 'they deem appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status' or to create pre-conditions which guarantee beneficiaries of protection access to non-State integration programmes. It submits that deficiencies in the preparation of integration programmes are not sufficient to posit the assumption put forward in the request for a preliminary ruling, namely that beneficiaries of protection who have not yet been able to integrate into society because of inadequate language skills, for example, could consider themselves to have been abandoned, by a society and State that are indifferent to a fate so miserable that their human dignity would be violated.

122. The Swiss Confederation did not submit observations on the third question.

(b) Assessment

123. In accordance with the principle of mutual trust, it must be assumed that the treatment of beneficiaries of international protection in all Member States complies with the requirements of the Charter, the Geneva Convention and the ECHR.[59] That presumption of compliance is stronger where a Member State transposes *de jure*[60] and also de facto the provisions of Chapter VII of Directive 2011/95 ('Content of international protection') which provides the beneficiaries at issue with a level of social welfare that is equivalent to or even higher than that provided for by the Geneva Convention.

124. Even so, as I have already stated in point 80 of this Opinion, that presumption of compliance (with Article 4 of the Charter, in particular) is not irrebuttable.

125. I consider that it is apparent by analogy from paragraphs 253 and 254 of the judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609), the relevance of which in a context similar to that at issue here was confirmed by the judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraph 88), that a Member State would infringe Article 4 of the Charter if beneficiaries of international protection, wholly dependent on State support, were faced with official indifference in such a way that they would find themselves in a situation of serious deprivation or need incompatible with human dignity.

126. In other words, in order to find that there are substantial grounds for believing that beneficiaries of international protection would be exposed to a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, on account of their living conditions in the Member State responsible under the Dublin III Regulation, they must be in *a particularly serious situation*[61] resulting from systemic flaws affecting them in that Member State.

127. The determination of whether or not such a situation exists in the Member State responsible is based solely on a specific assessment of the facts and circumstances. The national court must take account of all the evidence submitted by the person concerned on *all the relevant facts* as they relate to the living conditions of beneficiaries of international protection in the Member State responsible, including laws and regulations and the way in which that legislation is actually implemented.

59 See judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 78 to 80).

60 Under Article 288 TFEU, Member States are bound as to the result to be achieved.

61 See judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609, paragraph 254).

128. In addition, reports and documents published by the EU institutions and agencies, the Commissioner for Human Rights of the Council of Europe ('the Commissioner') and the United Nations High Commissioner for Refugees (HCR), together with reports and documents published by non-governmental organisations,[62] also enable the national court to assess the living conditions of beneficiaries of international protection and, therefore, appraise the actual risks to the person concerned if he were to be transferred to the Member State responsible.[63]

129. While documents from the Commission, the HCR and the Commissioner are particularly relevant,[64] the national court must determine the relevance and weight to be attached to the data and appraisals contained in reports and documents from non-governmental organisations in the light of, inter alia, the methodology used to prepare them and the impartiality of those organisations.

130. The fact that a Member State does not comply with the obligations laid down in the provisions of Chapter VII of Directive 2011/95 is a relevant fact. However, it should be recalled that since a breach of Article 4 of the Charter related to the living conditions of beneficiaries of international protection in the Member State responsible requires those persons to be in *a particularly serious situation*,[65] infringement of the provisions of Directive 2011/95 does not necessarily constitute sufficient evidence.

131. At the hearing, several governments (the Belgian, German and Netherlands Governments) insisted on the concept of 'particularly serious situation' to avoid encouraging 'secondary migration' and creating a 'unilateral burden' for States with the best benefits, stating that the differences between national social welfare systems do not infringe EU law.

132. The Netherlands Government asserted that the principle of mutual trust should be set aside only on very serious grounds and that minor breaches of Directive 2011/95 should be punished only through proceedings before the national courts or infringement proceedings brought by the Commission before the Court.

(c) Application to the present case

133. I note that the national court contemplates only systemic flaws and not isolated cases.

134. Furthermore, there is nothing in the documents before the Court to suggest that Mr Jawo is in a position of particular vulnerability which distinguishes him individually or differentiates him from other beneficiaries of international protection in Italy[66] and would result in his classification as a vulnerable person within the meaning of Article 20(3) of Directive 2011/95.

135. According to the request for a preliminary ruling, Mr Jawo is an unmarried adult in good health.

62 Such as the Swiss Refugee Council report and the AIDA report cited by the national court.

63 See, by analogy, judgment of 30 May 2013, *Halaf* (C-528/11, EU:C:2013:342, paragraph 44), and judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609, paragraph 255).

64 The Court has made specific reference to the role conferred on the HCR by the Geneva Convention in the light of which the rules of EU law governing asylum must be interpreted (see judgment of 30 May 2013, *Halaf* (C-528/11, EU:C:2013:342, paragraph 44).

65 Judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609, paragraph 254).

66 As regards the enhanced protection of vulnerable persons, see Article 20(3) of Directive 2011/95, which provides that 'when implementing [Chapter VII on the content of international protection], Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence'. I note that in paragraph 94 of its judgment of 4 November 2014, *Tarakhel v. Switzerland* (CE:ECHR:2014:1109JUD002921712), the ECtHR held 'that to fall within the scope of Article 3 [ECHR] the ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim'.

136. It would appear from the request for a preliminary ruling that *de jure*, that is formally speaking, beneficiaries of international protection in Italy have in particular access to employment, education, social welfare and healthcare under the same conditions as Italian nationals.[67] As regards access to accommodation, a distinction is made between nationals and applicants for international protection.

137. While I consider that distinction to be regrettable on a human level, it is, in principle, consistent with EU law and public international law. Unlike the provisions on employment,[68] education,[69] social welfare[70] and healthcare,[71] which require the same treatment as that provided to nationals of the Member State,[72] the distinction between nationals of a Member State and beneficiaries of international protection as regards access to accommodation is expressly provided for in Article 32 of Directive 2011/95 and Article 21 of the Geneva Convention.

138. Furthermore, I note that in paragraph 249 of its judgment of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609), the ECtHR held that 'Article 3 [ECHR] cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home … Nor does Article 3 [ECHR] entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living'.[73]

139. It should nevertheless be pointed out that although Member States are not in principle required to provide national treatment to beneficiaries of international protection as regards access to accommodation, they must ensure that those beneficiaries have access in particular to employment, education, social welfare and healthcare under the same conditions as nationals, thus ensuring that the objectives pursued by Directive 2011/95 are actually achieved. It may be that the only way of achieving those objectives in the Member State responsible is to provide national treatment for access to accommodation to beneficiaries of international protection. It would only be possible to reach that conclusion following a detailed and reasoned analysis. In that connection, I should mention here that at the joint hearing of 8 May 2018, the Italian Government claimed that, in Italy, beneficiaries of international protection were entitled to *national treatment*.

140. It is also important to note that the referring court, on the basis of the Swiss Refugee Council report, expressed doubts as to whether the Italian Republic complied with its obligations under Article 34 of Directive 2011/95 on access to integration facilities. The referring court referred to the language difficulties encountered by beneficiaries of international protection which would make it difficult to ensure effective access to social welfare on an equal footing with nationals.

141. It is true that the lack of integration programmes designed to take into account the specific needs of beneficiaries of international protection[74] and the difficulties they face, particularly language difficulties, would be a relevant fact if it were established by the referring court.

67 According to the Commission, 'it is important to note that the order for reference does not refer to any evidence suggesting that, in Italy, refugees or beneficiaries of subsidiary protection are denied the social security benefits generally applicable because of discrimination' (paragraph 43 of its observations).

68 See Article 26 of Directive 2011/95. Also see Articles 17 to 19 of the Geneva Convention.

69 See Article 27 of Directive 2011/95 and Article 22 of the Geneva Convention.

70 See Article 29 of Directive 2011/95. Article 29(2) of Directive 2011/95 states that 'by way of derogation from the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits which will then be provided at the same level and under the same eligibility conditions as nationals'. Also see Articles 23 and 24 of the Geneva Convention.

71 See Article 30 of Directive 2011/95. Also see Article 24 of the Geneva Convention.

72 Recital 41 of Directive 2011/95 provides that 'in order to enhance the effective exercise of the rights and benefits laid down in this Directive by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges with which they are confronted. *Such taking into account should normally not result in a more favourable treatment than that provided to their own nationals*, without prejudice to the possibility for Member States to introduce or retain more favourable standards'. Emphasis added.

73 However, according to that judgment, a situation of extreme material poverty can raise an issue under Article 3 ECHR and, in consequence, Article 4 of the Charter.

74 It is for the referring court to determine whether that claim is true.

142. It is clearly apparent from paragraph 261 of the judgment of the ECtHR of 21 January 2011, *M.S.S. v. Belgium and Greece* (CE:ECHR:2011:0121JUD003069609), that the fact that beneficiaries of international protection have difficulties due to their *lack of language skills and the lack of any support network* are relevant facts when assessing whether there has been treatment of the kind contrary to Article 3 ECHR (and, in consequence, Article 4 of the Charter).

143. It follows from the above considerations that because of the principle of mutual trust, it must be assumed that the treatment of beneficiaries of international protection in all Member States complies with the requirements of the Charter, the Geneva Convention and the ECHR. That presumption of compliance is stronger where a Member State transposes *de jure* and de facto the provisions of Chapter VII of Directive 2011/95 headed 'Content of international protection' which provides the beneficiaries at issue with a level of social welfare that is equivalent to or even higher than that provided for by the Geneva Convention. Even so, that presumption of compliance, particularly with Article 4 of the Charter, is not irrebuttable. In order to find that there are substantial grounds for believing that beneficiaries of international protection would be exposed to a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, on account of their living conditions in the Member State responsible under the Dublin III Regulation, those beneficiaries must be in *a particularly serious situation* resulting from systemic flaws affecting them in that Member State.

144. The determination of whether or not such a situation exists in the Member State responsible can be based only on a specific assessment of the facts and circumstances. The national court must take account of all the evidence submitted by the person concerned on *all the relevant facts* as they relate to the living conditions of beneficiaries of international protection in the Member State responsible, including laws and regulations and the way in which they are actually implemented. I consider that the existence of a single report from a non-governmental organisation on the living conditions in the Member State responsible is not sufficiently conclusive. In those circumstances, the national court must rely on other evidence and, if necessary, appoint an expert.

145. It is true that only the adoption of a genuine policy on international protection within the European Union with its own budget which would ensure uniform minimum living conditions for the beneficiaries of such protection would reduce, if not eliminate, the occurrence of cases such as that at issue in the main proceedings, by ensuring that the principle of solidarity and the fair sharing of responsibilities between Member States enshrined in Article 80 TFEU is a reality for the benefit not only of Member States, but above all of the human beings concerned. However, until then (the wait is likely to be a long one!), it is for Member States — including national courts — to ensure the full effectiveness of the rules currently in force as explained above.

VI. Conclusion

146. In the light of all the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Verwaltungsgerichtshof Baden-Württemberg, (Higher Administrative Court, Baden-Württemberg, Germany) as follows:

(1) 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 and Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that an applicant for international protection must have an effective and rapid remedy available to him which enables him to rely on the expiry of the six-month period as defined in Article 29(1) and (2) of that regulation that occurred after the transfer decision was adopted by pleading, where appropriate, that he did not abscond and, therefore, that that period could not be extended.

(2) Article 29(2) of Regulation No 604/2013 must be interpreted as meaning that provided an applicant for international protection has been informed of the restrictions on his right to move freely and of his obligations to report to the competent national authorities under the national provisions transposing Article 5 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection and Article 13(2)(a) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, the fact that he has ceased to reside, over a relatively long period, in the accommodation allocated to him so that those authorities were not informed of his whereabouts and therefore a planned transfer could not be carried out is sufficient, in my view, to extend the transfer time limit to 18 months.

(3) Article 29(2) of Regulation No 604/2013 and Article 9 of Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Regulation No 343/2003, as amended Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014, must be interpreted as meaning that where it is established that the person concerned has absconded, the requesting Member State may unilaterally extend the time limit of 6 months provided for in Article 29 of Regulation No 604/2013 to a maximum of 18 months provided that it informs the other Member State without delay of the postponement of the transfer in accordance with the detailed rules laid down in Article 9 of Regulation No 1560/2003. Under Article 9(2) of Regulation No 1560/2003, the requesting Member State must do so before the expiry of the six-month time limit laid down in Article 29(1) and (2) of Regulation No 604/2013. The person concerned must be an absconder on the date of the attempted transfer and on the date on which the requesting Member State informs the Member State responsible of that fact.

(4) The second sentence of Article 29(2) of Regulation No 604/2013 and Article 9(2) of Regulation No 1560/2003 must be interpreted as meaning that an extension of the transfer time limit arises solely as a result of the fact that the requesting Member State, before the expiry of the 6-month time limit, informs the Member State responsible that the person concerned has absconded and, at the same time, specifies an actual time limit, which may not exceed 18 months, by which the transfer will be carried out.

(5) The scope of EU law covers the question whether the transfer of an applicant for international protection to the Member State responsible under Article 29 of Regulation No 604/2013 is unlawful if, in the event of international protection being granted in that Member State, he would be exposed there, in view of the living conditions then to be expected, to a substantial risk of treatment of the kind referred to in Article 4 of the Charter of Fundamental Rights.

(6) A transfer of an asylum seeker to the Member State responsible under Article 29 of Regulation No 604/2013 is unlawful if, in the event of international protection status being granted in that Member State, he would be exposed there, in view of the living conditions then to be expected, to a serious risk of treatment of the kind referred to in Article 4 of the Charter of Fundamental Rights. Consequently, the transfer of an applicant for international protection within the framework of Regulation No 604/2013 can take place only in conditions which preclude that transfer from resulting in a substantial risk of the person concerned suffering inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights after the grant of international protection.

(7) Having regard to the principle of mutual trust, it must be assumed that the treatment of beneficiaries of international protection in all Member States complies with the requirements of the Charter of Fundamental Rights, the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951, which entered into force on 22 April 1954 and was supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967, which

entered into force on 4 October 1967, and the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. That presumption of compliance is stronger where a Member State transposes *de jure* and de facto the provisions of Chapter VII of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, that chapter being entitled 'Content of international protection' which provides the beneficiaries at issue with a level of social welfare that is equivalent to or even higher than that provided for by the Geneva Convention. Even so, that presumption of compliance, particularly with Article 4 of the Charter of Fundamental Rights, is not irrebuttable. In order to find that there are substantial grounds for believing that beneficiaries of international protection would be exposed to a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights, on account of their living conditions in the Member State responsible under Regulation No 604/2013, they must be in *a particularly serious situation* resulting from systemic flaws that affecting them in that Member State.

(8) The determination of whether or not such a situation exists in the Member State responsible is based solely on a specific assessment of the facts and circumstances. The national court must take account of all the evidence submitted by the person concerned on *all the relevant facts* as they relate to the living conditions of beneficiaries of international protection in the Member State responsible, including laws and regulations and the way in which they are actually implemented. The existence of a single report from a non-governmental organisation on the living conditions in the Member State responsible is not sufficiently conclusive. In those circumstances, the national court must rely on other evidence and, if necessary, appoint an expert.