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Barbara Kowalczyk
University of Wrocław, Poland
ORCID: 0000-0001-8012-1985
barbara.kowalczyk@uwr.edu.pl

The Limits Framing the Principle of Mutual Trust in the Event of Dublin III Transfers: Commentary on the Judgment of the Court of Justice of the European Union (Fourth Chamber) of 29 February 2024 in Case C-392/22 (*X v Staatssecretaris van Justitie en Veiligheid*)

Granice określające zasadę wzajemnego zaufania w przypadku przekazania w ramach systemu Dublin III. Glosa do wyroku Trybunału Sprawiedliwości Unii Europejskiej (Czwarta Izba) z dnia 29 lutego 2024 r. w sprawie C-392/22 (X przeciwko Staatssecretaris van Justitie en Veiligheid)

ABSTRACT

In the commented judgment, the Court of Justice of the European Union (CJEU) once again approached the balancing of mutual trust and fundamental rights of individuals in asylum cases, particularly in Dublin III transfers of asylum seekers. The presumption of trust implies that all Member States are considered safe countries for third-country nationals. The presumption of compliance by Member States with their EU law obligations is rebuttable; however, it applies only when "systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State occur, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union". In the judgment, the CJEU continues and strengthens the established jurisprudence regarding transfers under the Dublin III Regulation. The Court upheld the principle of mutual trust between EU Member States as essential for the functioning

CORRESPONDENCE ADDRESS: Barbara Kowalczyk, PhD, Dr. Habil., Associate Professor, Deputy Dean of the Faculty of Law, Administration and Economics, University of Wrocław, Faculty of Law, Administration and Economics, 22/26 Uniwersytecka, 50-145 Wrocław, Poland.

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of the Dublin system, while identifying another category of serious, potentially systemic flaws in the asylum procedure and in the reception conditions for applicants. Although the CJEU upheld the principle, in the commented judgment it introduced an interpretation of Article 3(2) of the Dublin III Regulation that requires competent authorities (courts) to conduct a more thorough verification of the legal and humanitarian situation in other Member States. The significance of the judgment is revealed in its impact on future jurisprudence. It also sheds light on recent changes in Polish asylum law.

Keywords: Common European Asylum System; Dublin III Regulation; the principle of mutual trust; fundamental rights

INTRODUCTION

The judgment of the Court of Justice of the European Union (CJEU)[1] concerns the interpretation of Article 3(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] This provision states that "Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible".

In its judgment, the CJEU once again addressed the balance between mutual trust (inter-state trust) and the fundamental rights of individuals in asylum cases, particularly in the context of Dublin III transfers of asylum seekers. Challenges related to mutual trust concerns are raised in appeals within the Dublin III procedure.

The principle of mutual trust is one of the cornerstones of the European legal space. The concept is a basis as well as a prerequisite to create such space. It has been said to be of fundamental importance in EU law. It is rooted in the founding values of the Union and has constitutional significance.[3] Despite such pivotal importance, it lacks a clear normative basis. The principle as such does not appear in the EU Treaties, but a certain definition can be derived from Article 4(3) of the Treaty of European Union (TEU) and the case law of the CJEU. The CJEU's

[1] Judgment of the Court of 29 February 2024, C-392/22, *X v Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2024:195.

[2] OJ L 180/31, 29.6.2013, hereinafter: the Dublin III Regulation.

[3] See Opinion of Advocate General Sharpston delivered on 31 October 2019, C-715/17, C-718/17 and C-719/17, *European Commission v Republic of Poland and Others*, ECLI:EU:C:2019:917.

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Opinion 2/13 on the EU accession to the European Convention on Human Rights (ECHR) mentions that mutual trust is a specific characteristic arising "from the very nature" of EU law as a sort of natural consequence of the independence and the autonomy of EU jurisdiction, on "the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the EU that implements them will be respected".[4] The CJEU continues: "That principle requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law".[5] "Thus, when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU".[6]

The principle of mutual trust is an organising principle of a system of (implicit) mutual recognition in the fields of migration and asylum law, but it is not restricted to this system. It finds applicability in both rights-conferring measures and rights-restricting measures (as to the third-country nationals), but its use is most prominent in relation to coercive measures, particularly forcible transfers between Member States of asylum seekers under the Dublin III Regulation.[7] Within the Common European Asylum System (CEAS), the principle of mutual trust implies that Member States establish mutual trust in the quality and lawfulness of each other's laws and practices, including fundamental rights, in relation to asylum.

[4] Opinion of the Court of 18 December 2014, Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ECLI:EU:C:2014:2454, para. 168.

[5] *Ibidem*, para. 191.

[6] *Ibidem*, para. 192. V. Moreno-Lax stressed that "Particularly after Opinion 2/13, the 'exceptionalisation' of fundamental rights has translated into an 'obligation to presume' such compliance, so that, 'save in exceptional cases', a MS cannot check whether another MS has 'actually, in a specific case', observed its fundamental rights obligations" (V. Moreno-Lax, *Mutual (Dis-)Trust in EU Migration and Asylum Law: The Exceptionalisation of Fundamental Rights*, [in:] *Fundamental Rights in the EU Area of Freedom, Security and Justice*, eds. S. Iglesias Sánchez, M. González Pascual, Cambridge 2021, p. 2).

[7] *Ibidem*, p. 1.

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For the implementation of the Dublin III Regulation, the presumption of trust more specifically implies that all Member States – all respecting the principle of non-refoulement – are considered safe countries for third-country nationals (for the asylum seekers).[8] This presumption is accompanied by the automaticity of decisions. Member States recognize each other's laws and practices and cooperate without the need to establish additional guarantees and controls. However, the application of an irrebuttable presumption that the fundamental rights of the applicant for international protection are observed in the Member State which, pursuant to the Dublin III Regulation, is designated as responsible for examining the application, is incompatible with the duty to interpret and apply that regulation in a manner consistent with fundamental rights.[9] As a consequence, Article 3(2) of the Dublin III Regulation states that the presumption of compliance by Member States with their EU law obligations is rebuttable. However, it applies only when "systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State occur, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union". The two cumulative conditions, set out in the second subparagraph of Article 3(2) of the Dublin III Regulation, must be satisfied in order to prevent the transfer of an applicant for international protection. They have been interpreted by the CJEU on many occasions in cases it has had to handle.

In the commented judgment, the CJEU needed to build on its previous case law, mainly the seminal judgment of 21 December 2011, C-411/10 i C-493/10 (*N.S. and Others*; where it identified the principle on which the second subparagraph of Article 3(2) of the Dublin III Regulation rests), and the judgments: of 7 June 2016, C-63/15 (*Ghezelbash*),[10] of 16 February 2017, C-578/16 (*PPU C.K. and Others*),[11] and of 19 March 2019, C-163/17 (*Jawo*).[12] Nevertheless, the discussed case differs from those previous ones. As the Advocate General R. de la Tour noticed in his opinion, "the transfer is said to have been rendered impossible by the commission, by the Member State normally responsible, of serious and systematic infringements of the fundamental rights of third-country nationals at its borders".[13] There are two

[8] Preamble to Recital 3 of the Dublin III Regulation.

[9] See judgment of the Court of 21 December 2011, C-411/10 and C-493/10, *N.S. and Others*, ECLI:EU:C:2011:865, paras 99, 100, and 105.

[10] ECLI:EU:C:2016:409.

[11] ECLI:EU:C:2017:127.

[12] ECLI:EU:C:2019:218.

[13] Opinion of Advocate General Richard de la Tour delivered on 13 July 2023, C-392/22, *X v Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2023:579, para. 3.

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types of such practices in question, namely summary refoulement (pushbacks)[14] and detention at border control posts.[15]

FACTUAL AND LEGAL BACKGROUND OF THE JUDGMENT

The case originated from a request for a preliminary ruling under Article 267 TFEU[16] from the Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (District Court, The Hague, sitting in 's-Hertogenbosch, Netherlands) concerning a Syrian national (X) who had applied for international protection first in Poland (an application for international protection of 9 November 2021) and subsequently in the Netherlands (22 November 2021). On 20 January 2022, the Kingdom of the Netherlands requested the Republic of Poland to take back the applicant pursuant to Article 18(1)(b) of the Dublin III Regulation. On 1 February 2022, Poland accepted that request pursuant to Article 18(1)(c) of that regulation. By a decision of 20 April 2022, the State Secretary declined to consider the application for international protection lodged by X in the Netherlands, on the ground that Poland was responsible for examining that application, and rejected the arguments put forward by the applicant in objecting to his transfer. X brought an action against that decision before the referring court, for an order prohibiting his transfer to Poland. The applicant challenged this transfer on the grounds that Poland's practices at its border, including pushbacks to third countries and detention at border control posts, posed a real risk of inhuman or degrading treatment, thereby violating Article 4 of the EU Charter of Fundamental Rights. In detail, the applicant claimed to have been subjected to pushbacks to Belarus on three occasions after entering Polish territory, one of which was at night. He was eventually able to enter Poland together with two members of his family on 7 November 2021. He had stayed in the woods before being picked up and handed over to border guards. He adds that, while staying in the woods, his living conditions had become unbearable. He had agreed to his fingerprints being taken under the threat of refoule-

[14] The definition of pushbacks (push back) provided by the European Migration Network is as follows: "Various measures taken by states which result in migrants, including applicants for international protection, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement" (European Commission, *EMN Asylum and Migration Glossary*, 11.6.2025, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary_en, access: 23.5.2025).

[15] "In the EU asylum context, confinement (i.e., deprivation of liberty) of an applicant for international protection by an EU Member State within a particular place, where the applicant is deprived of their personal liberty" (*ibidem*).

[16] Treaty on the Functioning of the European Union (consolidated version, OJ C 202/47, 7.6.2016).

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ment to Belarus and on the advice of an organisation, unaware that this amounted to making an application for international protection. The applicant stated that he had then been held in detention for approximately one week in the border guard centre, like all other applicants for international protection, where he had been very badly treated, particularly because of a lack of food and the absence of any medical checks. He claimed that he did not complain to the Polish authorities about the poor treatment because it had been inflicted on him by the Polish authorities themselves. X had indicated that he was afraid that his fundamental rights would be infringed again if he were to be transferred to Poland. Moreover, X had claimed that the Polish courts were not independent.

The District Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling: "(1) Should the [Dublin III] Regulation, in view of recitals 3, 32, and 39 thereof, and read in conjunction with Articles 1, 4, 18, 19, and 47 of the [Charter], be interpreted and applied in such a way that the principle of inter-State trust is not divisible, so that serious and systematic infringements of EU law committed by the potentially responsible Member State, before transfer, with respect to third-country nationals who are not (yet) Dublin returnees absolutely preclude transfer to that Member State? (2) If the answer to the [first] question is in the negative, should Article 3(2) of the [Dublin III] Regulation, read in conjunction with Articles 1, 4, 18, 19, and 47 of the [Charter], be interpreted as meaning that, if the Member State potentially responsible infringes EU law in a serious and systematic way, the transferring Member State cannot, within the framework of [that regulation], rely blindly on the principle of inter-State trust but must eliminate all doubts or must demonstrate that, after the transfer, the applicant will not be placed in a situation which is contrary to Article 4 of the [Charter]? (3) What evidence can the applicant use in support of his arguments that Article 3(2) of the [Dublin III] Regulation precludes his transfer, and what standard of proof should be applied? In the light of the references to the Union acquis in the recitals of [that regulation], does the transferring Member State have a duty of cooperation or verification, or, in the event of serious and systematic infringements of fundamental rights with respect to third-country nationals, is it necessary to obtain individual guarantees from the Member State responsible that the applicant's fundamental rights will (indeed) be respected after the transfer? Is the answer to this question different if the applicant lacks evidence in so far as he is unable to support his consistent and detailed statements with documents, when he cannot be expected to do so, given the nature of the statements? (4) Is the answer to [the third question] different if the applicant demonstrates that complaining to the authorities and/or recourse to legal remedies in the responsible Member State will not be possible and/or effective?"

The referring court pointed out that practices such as pushbacks and detention at the border are contrary to the Member States' obligations under the Geneva Convention on Refugee Status of 1951, the Convention for the Protection of Human

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Rights and Fundamental Freedoms of 1950, and the EU Charter of Fundamental Rights. They are also contrary to the obligation to process every application for international protection and undermine the principle of mutual trust and the operation of the CEAS. The reason behind this view is, among others, the conviction that especially pushbacks encourage third-country nationals to circumvent the Member States which adopt those practices. The referring court did not have doubts that systemic infringements of fundamental rights were taking place in Poland with respect to an applicant and to third-country nationals generally. In such a situation, the main issue to solve is whether the competent authority must refrain from taking a decision to transfer someone to that Member State, or whether the principle of mutual trust continues to apply fully. If it does not, the question is whether the requesting Member State that wishes to proceed with that transfer is to satisfy itself that, if transferred, the applicant for international protection concerned will not be exposed to a risk of treatment contrary to Article 4 of the EU Charter of Fundamental Rights.

Invoking Recitals 3, 20, 32, and 39 of the Dublin III Regulation, and based on Article 3, Article 5(1) to (3), Article 21, and Article 22 of the Dublin III Regulation, the CJEU issued a judgment.

REPLY OF THE CJEU TO THE PRELIMINARY QUESTIONS

The Court (Fourth Chamber) ruled as follows.

The second subparagraph of Article 3(2) of the Dublin III Regulation must be interpreted as meaning that the fact that the Member State responsible for examining a third-country national's application for international protection has carried out pushbacks with respect to third-country nationals seeking to make such applications at its border and has detained them at its border control posts does not in itself preclude the transfer of that third-country national to that Member State. The transfer of that third-country national to that Member State must, however, be ruled out if there are substantial grounds for believing that he or she would, during his or her transfer or thereafter, face a real risk of being subjected to such practices, and that those practices are, depending on the circumstances, which it is for the competent authorities and any court or tribunal which may be seised of an action against the transfer decision to assess, capable of placing that third-country national in so grave a situation of extreme material poverty that it may be equated with the inhuman or degrading treatment prohibited by Article 4 of the EU Charter of Fundamental Rights.

The Dublin III Regulation, read in the light of Article 4 of the EU Charter of Fundamental Rights, must be interpreted as meaning that:

- the Member State which has sought to have an applicant for international protection taken back by the Member State responsible and wishes to trans-

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fer that applicant to the latter Member State must, before it can carry out that transfer, take into consideration all of the information provided to it by that applicant, in particular as regards the possible existence of a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, at the time of that transfer or thereafter;
- the Member State wishing to carry out the transfer must cooperate in establishing the facts and/or verify the truth of those facts;
- that Member State must refrain from carrying out that transfer if there are substantial grounds for believing that there is a real risk of such treatment in the event of transfer;
- that Member State may nevertheless seek to obtain individual guarantees from the Member State responsible and, if such guarantees are provided and appear to be both credible and sufficient to rule out any real risk of inhuman or degrading treatment, may carry out that transfer.

The CJEU judged that the fourth question is inadmissible.

THE ARGUMENTS RAISED BY THE CJEU

The Court recalled the fundamentals of the principle of mutual trust, stressing that "EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the EU law that implements them will be respected, and that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised by the Charter, including Articles 1 and 4 of the Charter, which enshrine one of the fundamental values of the European Union and its Member States, namely human dignity, which includes, inter alia, the prohibition of inhuman or degrading treatment".[17] Then the Court indicated the importance of the principle of mutual trust between Member States, saying that "it allows an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law".[18] In the context of the CEAS, and in particular the Dublin III Regulation, "it must be presumed that the treatment of applicants for international

[17] Judgment of the Court of 29 February 2024, C-392/22, para. 43.
[18] *Ibidem*, para. 44.

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protection in all Member States complies with the requirements of the Charter, the Geneva Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms".[19] Nevertheless, the Court noted that "that system may, in practice, experience major operational problems in a given Member State, meaning that there is a substantial risk that applicants for international protection may, when transferred to that Member State, be treated in a manner incompatible with their fundamental rights".[20]

As to the practice of summary refoulement (pushbacks), the Court definitely stated that it is contrary to Article 6 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.[21] "That provision, which concerns access to the procedure for the grant of international protection, constitutes one of the cornerstones of the Common European Asylum System and is part of EU legislation giving concrete form to the fundamental right enshrined in Article 18 of the Charter to qualify as a beneficiary of international protection, provided that the conditions required by EU law are met (…) That provision means that any third-country national or stateless person has the right to make an application for international protection, including at the borders of a Member State, by expressing his or her wish to benefit from international protection to one of the authorities referred to in that provision. That right must be recognised, even if he or she is staying illegally on that territory and irrespective of the prospects of success of such a claim".[22] The Court confirmed also that a practice of pushbacks "is incompatible with that fundamental element of the Common European Asylum System, in that it prevents the right to make an application for international protection from being exercised, and, accordingly, prevents the progress, in accordance with the rules laid down by EU legislation, of the process of making and examining such an application".[23] According to the furher argumentation, a practice of pushbacks may also be incompatible with the principle of non-refoulement. The Court explained that this principle, "under which nobody can be sent back to persecution, is guaranteed, as a fundamental right, in Article 18 of the Charter, read in conjunction with Article 33 of the Geneva Convention, and in Article 19(2) of the Charter (…) A practice of pushbacks is therefore incompatible with that principle only if it consists in sending persons seeking to make, in the European Union, an application for international protection to a third country on whose territory they incur the risk of persecution referred to above".[24]

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[19] *Ibidem*, para. 45.
[20] *Ibidem*, para. 46.
[21] OJ L 180/60, 29.6.2013.
[22] Judgment of the Court of 29 February 2024, C-392/22, para. 51.
[23] *Ibidem*, para. 52.
[24] *Ibidem*, para. 53.

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Regarding the practice of detention at border control posts, the Court argued, based on Directive 2013/33/EU,[25] the Dublin III Regulation, and the previous case law, that "the power of the competent national authorities to detain third-country nationals is strictly circumscribed. A detention measure may thus be ordered or extended only in compliance with the general and abstract rules laying down the conditions and procedures governing such a measure".[26] In addition, the third-country national cannot be detained where a less coercive measure can be applied effectively.[27] Taking account of these arguments, the Court stated that practices of pushback and of detention at border control posts "are incompatible with EU law and constitute serious flaws in the asylum procedure and in the reception conditions for applicants".[28] However – the Court aimed at the point – "it does not necessarily follow that those flaws satisfy the two cumulative conditions, set out in the second subparagraph of Article 3(2) of the Dublin III Regulation, that must be satisfied in order to prevent the transfer of an applicant for international protection to the Member State in which those practices exist".[29] As it results from the previous case law, flaws could be described as "systemic" only if deficiencies remain in place and concern, generally, the asylum procedure and the reception conditions applicable to applicants for international protection or, at the very least, to certain groups of applicants for international protection as a whole.

Concerning the second condition (a risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter of Fundamental Rights), the Court reitered, based on the previous case law, that it is met only in the most extreme of situation – a situation of extreme material poverty that would not allow the applicant to meet his or her most basic needs, such as, inter alia, food, personal hygiene and a place to live, and that would undermine his or her physical or mental health or put him or her in a state of degradation incompatible with human dignity, placing him or her in a situation of such gravity that it may be equated with inhuman or degrading treatment.[30]

Answering the next question, the Court recalled the general provisions and scheme of Dublin III Regulation, stressing that applicants for international protection are involved in the process of determining the Member State responsible. Due to a lack of specific requirements as to the nature and evidentiary value of the information which the applicant may present in the context of his or her involvement in the process, any evidence provided by the applicant to establish the existence of

[25] 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 (OJ L 180/96, 29.6.2013).

[26] Judgment of the Court of 29 February 2024, C-392/22, paras 54 and 55.

[27] *Ibidem*, para. 56.

[28] *Ibidem*, para. 57.

[29] *Ibidem*.

[30] See *ibidem*, para. 63.

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a risk of treatment contrary to Article 4 of the EU Charter of Fundamental Rights must be taken into consideration. It is for the judicial authorities of the Member State to assess, on the basis of information that is objective, reliable, specific and properly updated, and having regard to the standard of protection of fundamental rights guaranteed by EU law, whether the deficiencies in the asylum system relied on do exist.[31] Moreover, the Member State required to carry out the process of determining the Member State responsible may find it necessary to take into consideration, on its own initiative, relevant information of which it is aware in order to decide on the application of the second subparagraph of Article 3(2) of the Dublin III Regulation. In addition that Member State must cooperate in establishing the facts by assessing whether that risk is real, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, if necessary by taking into account, on its own initiative, relevant information of which it cannot be unaware concerning any systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in the Member State responsible.[32] The Member State wishing to carry out the transfer may also seek to obtain individual guarantees that are sufficient to exclude that risk.[33]

SIGNIFICANCE OF THE JUDGMENT AND FURTHER CONCLUSIONS

The significance of the judgment under discussion can be considered in two aspects. First, it continues and strengthens the established jurisprudence regarding transfers under the Dublin III Regulation. The Court upheld the principle of mutual trust between EU Member States as essential for the functioning of the Dublin system, stating that the mere fact that "the Member State responsible for examining a third-country national's application for international protection has carried out pushbacks with respect to third-country nationals seeking to make such applications at its border and has detained them at its border control posts does not in itself preclude the transfer of that third-country national to that Member State". Nevertheless, this judicial stance does not mean that mutual trust between EU states can legitimize practices that erode fundamental rights, even during hybrid migration crises. In this regard, it must be emphasized that the Court recognized that the pushback procedure and detention at the border of individuals seeking international protection are practices contrary to international and European law, and constitute another category of serious, potentially "systemic flaws in the asy-

[31] *Ibidem*, para. 76.
[32] *Ibidem*, para. 77.
[33] *Ibidem*, para. 80.

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lum procedure and in the reception conditions for applicants" in a Member State.[34] The judgment thus addresses the question of another type of rights violation and systemic deficiencies in the asylum system in which mutual trust can be rebutted. While the significance of the judgment in *Jawo* case lays, i.a., in the extention of protection to individuals after they obtained international protection (thus covering living conditions not only during asylum procedures and reception conditions, but also as beneficiaries of international protection),[35] the current judgment focuses on circumstances occurring before the submission of the application for international protection – that is, prior to the initiation of the Dublin procedure. The Court did not exclude the possibility that the aforementioned illegal practices (pushbacks or detention) might persist against the applicants even after their transfer, which raises the risk of violating the fundamental principle of refugee law – the principle of non-refoulement – within the framework of the Dublin procedure. In the present case, as regards the first of two conditions, it will be for the referring court to examine whether the flaws established in Poland remain in place and whether they concern, generally, the asylum procedure and the reception conditions applicable to applicants for international protection or, at the very least, to certain groups of applicant for international protection as a whole, such as the group of persons seeking international protection after crossing or having attempted to cross the border between Poland and Belarus.

Having said this, the Court stressed that in the assessment, the situation that must be considered is the situation in which the applicant concerned would risk

[34] The European Court of Human Rights has condemned pushback practices of European states as collective expulsions and ruled them unlawful in several judgments (e.g., see judgment of the ECtHR of 23 July 2020, *M.K. and Others v Poland*, Applications no. 40503/17, 42902/17 and 43643/17). The Court ruled the violation of Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention. The Court also held that there had been a violation of Article 13 taken in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4.

[35] In the judgment *Jawo*, the CJEU extended the scope of the assessment to be carried out by the court hearing an action challenging a transfer decision on the basis that the Common European Asylum System and the principle of mutual trust depend on the guarantee that "the application of that system will not result, at any stage and in any form, in a serious risk of infringements of Article 4 of the Charter". That provision containing a general and absolute prohibition on inhuman and degrading treatment. Consequently, that assessment must relate as much to the risk of inhuman or degrading treatment faced by the applicant at the time of the transfer as to the risk he or she faces, as an applicant, while the application is under examination, and, following determination of the application, as a beneficiary of refugee status or subsidiary protection, or as a third-country national awaiting removal, if international protection is refused. For more on the judgment, see M. Kowalski, *W oczekiwaniu na reformę Wspólnego Europejskiego Systemu Azylowego. Glosa do wyroku TS z dnia 19 marca 2019 r., C-163/17*, "Europejski Przegląd Sądowy" 2020, no. 12, pp. 32–39; I.M. Wróbel, *Extreme Material Poverty as a Negative Prerequisite for the Transfer of an Applicant for International Protection to the Competent Member State and for the Rejection of an Application for the Grant of Refugee Status as Being Inadmissible*, "Review of European and Comparative Law" 2019, vol. 37(2), pp. 139–161.

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finding himself or herself during his or her transfer to the Member State responsible or thereafter, and not his or her situation when he or she originally entered the territory of that Member State.[36] This is a position consistently maintained by the court that the competent authority is to carry out a two-stage assessment. The first stage consists in an evaluation of whether the applicant would face a real risk of being subjected to inhuman or degrading treatment, on the basis of information that is objective, reliable, specific and properly updated. That information must enable the competent authority to assess the functioning of the asylum system in the Member State responsible and, in particular, whether there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, in the reception and taking charge of applicants, and, where applicable, whether the individual guarantees which that Member State is able to offer are adequate and sufficient. The second stage of the assessment must enable the competent authority to evaluate, in a concrete and precise manner, whether there are substantial grounds for believing that the person concerned would face such a real risk of being subjected to inhuman or degrading treatment by reason of the treatment he or she would receive during the examination of the application and upon conclusion of that examination. That evaluation requires an individual, prospective assessment of the risk to which the person concerned would be exposed. As regards the continuation of the previous case law, it should also be noted that, by repeatedly referring in its reasoning to the *Jawo* judgment, the Court has upheld its position that the presumption underlying the Dublin system may only be rebutted if the individual would be exposed to a situation of extreme material deprivation that would not allow them to meet their most basic needs. It can therefore be stated that the established standard covers exceptional cases. In this regard, the Court held that the threshold was only met where such deficiencies, in light of all the circumstances of the individual case, attained a particularly high level of severity beyond a high degree of insecurity or a significant degradation of living conditions.

Although the Court upheld the principle of mutual trust between EU Member States, in the commented judgment it introduced an interpretation of Article 3(2) of the Dublin III Regulation that requires competent authorities (courts) to con-

[36] Judgment of the Court of 29 February 2024, C-392/22, para. 64. In the circumstances of the case "the referring court will have to examine, first, whether there are substantial grounds for believing that the applicant in the main proceedings would, in the event of transfer, face a real risk of again being taken to the border between Poland and Belarus and of being subjected there to a pushback to Belarus, possibly after being detained at a border control post, and, secondly, whether such measures or such practices would expose him to a situation of extreme material poverty that would not allow him to meet his most basic needs, such as, inter alia, food, personal hygiene and a place to live, and that would undermine his physical or mental health or put him in a state of degradation incompatible with human dignity, placing him in a situation of such gravity that it may be equated with inhuman or degrading treatment" (*ibidem*, para. 63).

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duct a more thorough verification of the legal and humanitarian situation in other Member States. Specifically, in addressing evidentiary issues, the Court required that all information provided by the applicant, whose status in the Dublin procedure is not limited to passively awaiting the findings between the concerned states, be taken into account. Moreover, the Court stated that the Member State intending to carry out a transfer should cooperate in establishing the facts or verify their accuracy, meaning that the competent authority (court) should independently consider the available information, including *ex officio*, in order to assess the risk.[37] There is no doubt that this stance will have an impact on administrative and judicial practice. In this regard it is worth stressing that in the light of the judgment, such an assessment should already take place in the administrative phase of adopting the transfer decision. It constitutes an obligation for the national authority to obtain and assess such objective, reliable, specific and properly updated information, followed by the need to obtain individual guarantees from the responsible Member State. In any case, the burden of establishing the substantial grounds for believing that a transfer under the Dublin III Regulation would result in a violation of Article 4 of the EU Charter of Fundamental Rights does not rest entirely on the applicant. The fact that the principle of mutual trust is not absolute (but is divisable) is also supported by the possibility of requesting individual guarantees from the responsible Member State and then assessing whether these are both credible and sufficient to exclude any real risk of inhuman or degrading treatment. Only under such conditions can the applicant be transferred to the responsible Member State.

To sum up, the judgment under discussion shows that the principle of mutual trust is divisible both horizontally and vertically. Although the Court consistently underlines the value and importance of the principle for the CEAS, one may wonder whether the answer to the question of whether there is a risk that the principle of mutual trust will be replaced by the principle of inter-state distrust is still negative. The issue of the limits framing the principle of mutual trust concerns the problem of newly identified types of systemic flaws in national asylum systems, as well as the activism of national authorities and the depth of findings and their assessment with regard to the situation in another EU Member State.

Second, the significance of the judgment is revealed in its impact on the future jurisprudence. It may serve as a reference point for other cases challenging transfers under the Dublin system. For instane, the judgment of 19 December 2024, Cases C-185/24 and C-189/24 (*Tudmur*),[38] in which the Court answered a preliminary question regarding the admissibility of a transfer in a situation where a Member State has decided to suspend the acceptance of applicants for asylum under the Dublin system (through unilateral moratoria), adresses the interpretation of the

[37] On the sources of information, see I.M. Wróbel, *op. cit*., pp. 147–148.

[38] ECLI:EU:C:2024:1036.

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concept of "systemic flaws" and evidentiary requirements in a similar way. The Court ruled that Article 3(2), second paragraph, of the Dublin III Regulation "must be interpreted as meaning that it may not be found that there are, in the Member State designated as responsible under the criteria set out in Chapter III of that regulation, systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, on the sole ground that that Member State has unilaterally suspended the taking charge of and taking back of those applicants. Such a finding may only be made following an analysis of all the relevant data on the basis of information that is objective, reliable, specific and properly updated".

The Court reitered that, apart from the mandatory assessment of the conditions in the potentially responsible Member State by the court or tribunal hearing the case, based on information that is objective, reliable, specific and properly updated, that court or tribunal must also take into consideration, of its own motion, any relevant information of which it is aware in order to determine whether the second subparagraph of Article 3(2) of the Dublin III Regulation is applicable.[39] The Court also stated that the Member State designated as responsible under the criteria set out in Chapter III of the Dublin III Regulation cannot discharge itself, by a mere unilateral announcement, of its responsibilities under that regulation, since such a possibility would lead to those criteria being disregarded and would thus risk jeopardising the proper functioning of the system put in place by that regulation. Moreover, to consider that it may be inferred from such a unilateral announcement that there are systemic flaws in the asylum procedure and in the reception conditions for applicants, resulting in a serious risk of inhuman or degrading treatment, to the point of preventing all transfers of applicants for international protection to the Member State responsible and involving a transfer of responsibility of that Member State to the Member State of secondary movement, would be likely to encourage such movements by inducing applicants to continue their migratory journey to another Member State which they believe will offer more favourable conditions. Accordingly, the fact that the Member State has unilaterally suspended the taking charge of and taking back of applicants for international protection is not capable, in itself, of justifying the finding of systemic flaws in the asylum procedure and in the reception conditions for applicants for international protection in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter of Fundamental Rights.[40] Consequently, even in such a case, it is for the court or tribunal hearing an action challenging a transfer decision to carry out an assessment of the existence of such systemic flaws and of the risk of

[39] *Ibidem*, para. 39.
[40] *Ibidem*, paras 42 and 43.

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inhuman or degrading treatment within the meaning of Article 4 of the EU Charter of Fundamental Rights in the circumstances specified by the previous case law.

The judgment under discussion also sheds light on recent changes in Polish asylum law in the context of "systemic flaws" in the asylum system. As of 27 March 2025, an amendment to the Act on granting protection to foreigners within the territory of the Republic of Poland came into force.[41] It introduces, among others, a legal basis for the temporary and territorial restriction (suspension) on the foreigner's right to apply for international protection (to submit an application for international protection).[42] The conditions are as follows: instrumentalization (as defined in Article 2(6a) thereof) is taking place;[43] the actions undertaken as part of that instrumentalization constitute a serious and genuine threat to the security of the State or society; the introduction of this restriction is necessary to eliminate the threat to security or society; and no other measures are sufficient to eliminate it. The Act provides for several exemptions, for instance for unaccompanied minors, pregnant women, or in a situation where, in the opinion of the Border Guard (based on discretionary power), the applicant is clearly at risk of serious harm in the country from which he or she has arrived directly to Poland. The Council of Ministers' Regulation of 27 March 2025[44] introduced this instrument at the state border with the Republic of Belarus for 60 days. Subsequently, the Council of Ministers extended the restriction eight times, each time for a further 60-day period.[45]

All actors consulted on the draft legislation expressed unequivocally negative opinions regarding the possibility of restricting (suspending) the right to submit an application for international protection, indicating that it violates the Constitution of the Republic of Poland, international law, and EU law,[46] including the newly adopted Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14

[41] Act of 21 February 2025 amending the Act on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2025, item 389).

[42] The plans for the suspension of asylum applications form part of Poland's strategy on migration for 2025–2030, approved by the Government on 15 October 2024. See Kancelaria Prezesa Rady Ministrów, *„Odzyskać kontrolę. Zapewnić bezpieczeństwo" – strategia migracyjna na lata 2025–2030*, 17.10.2024, https://www.gov.pl/web/premier/odzyskac-kontrole-zapewnic-bezpieczenstwo---strategia-migracyjna-na-lata-2025---2030 (access: 19.5.2025).

[43] The concept of instrumentalisation has only recently become regulated in EU law. See Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 (OJ L 2024/1359, 22.5.2024).

[44] Regulation of the Council of Ministers of 27 March 2025 on the temporary restriction of the right to submit an application for international protection (Journal of Laws 2025, item 390).

[45] The last Regulation of the Council of Ministers was issued in July 2026. See Regulation of 13 July 2026 on the extension of the temporary restriction of the right to submit an application for international protection (Journal of Laws 2026, item 945).

[46] This holds for UNHCR, Ombudsman, Helsinki Foundation for Human Rights, Supreme Bar Council, and National Chamber of Legal Advisers. See all opinions in Sejm RP, X kadencja, Rządowy

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May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, constituting a part of the Pact on Migration and Asylum.[47] This position should be endorsed. The core problem in the context of application of the Dublin III Regulation is the fact that a suspension of the right to submit an application for international protection is incompatible with a fundamental element of the CEAS, in that it prevents the right to make an application for international protection from being exercised, and, accordingly, prevents the progress of the process of making and examining such an application in accordance with the rules laid down by EU legislation. In the situation of suspending the right to submit an application for international protection, even in the presence of a few exceptions provided for in the Act, there is no individual assessment of the risk of refoulement. The suspension prevents the verification of individual circumstances, which is contrary to the CJEU judgment in Case C-392/22.

To conclude, the very principle of mutual trust and its significance for the European legal space cannot be questioned in any way. Within the CEAS, it is particularly challenging for the CJEU to balance the application of this core principle against the requirements of fundamental rights protection, without encouraging secondary migration or penalizing those Member States that comply with their obligations under European and international law. The concept of mutual trust between states has evolved, increasingly adopting the perspective of fundamental rights protection.[48] For a long time, arguments based on rights violations were rejected by the Court as undermining the presumption of compliance (respect for rights), eroding the foundations of trust, and effectively hindering cooperation.[49] Nowadays, the answer to the question concerning the conditions (prerequisites) for mutual trust between states can be found in the evolving case law of the CJEU, which highlights the relationship between mutual trust and the respect for fundamental rights.

projekt ustawy o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Druk nr 924, https://www.sejm.gov.pl/sejm10.nsf/druk.xsp?nr=924 (access: 10.5.2025).

[47] States have a range of tools available to respond to security concerns in the situation of instrumentalisation, which must in all cases uphold human rights, including the right to seek asylum, as protected by international law and EU Charter on Fundamental Rights. Another words, based on the new EU instrumentalisation rules, Member States are not able to suspend the right to seek asylum. See more I. Goldner Lang, *Instrumentalisation of Migrants: It Is Necessary to Act, but How?*, https://eumigrationlawblog.eu/instrumentalisation-of-migrants-it-is-necessary-to-act-but-how (access: 5.6.2025).

[48] See C. Rizcallah, *The Principle of Mutual Trust and the Protection of Fundamental Rights in the Area of Freedom, Security and Justice: A Critical Look at the Court of Justice's Stone-by-Stone Approach*, "Maastricht Journal of European and Comparative Law" 2023, vol. 30(3), pp. 255–272.

[49] E. Xanthopoulou, *Mutual Trust and Rights in EU Criminal and Asylum Law: Three Phases of Evolution and the Uncharted Territory Beyond Blind Trust*, "Common Market Law Review" 2018, vol. 55(2), p. 490.

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ABSTRAKT

W glosowanym wyroku Trybunał Sprawiedliwości Unii Europejskiej (TSUE) po raz kolejny zajął się kwestią równowagi między wzajemnym zaufaniem a prawami podstawowymi jednostek w sprawach azylowych, w szczególności przekazywania osób ubiegających się o azyl na mocy rozporządzenia Dublin III. Zasada wzajemnego zaufania opiera się na domniemaniu, że wszystkie państwa członkowskie są uważane za kraje bezpieczne dla obywateli państw trzecich. Domniemanie przestrzegania przez państwa członkowskie ich zobowiązań wynikających z prawa Unii Europejskiej jest wzruszalne, lecz ma to zastosowanie tylko wtedy, gdy „w procedurze azylowej i w warunkach przyjmowania wnioskodawców w tym państwie członkowskim występują wady systemowe, powodujące pojawienie się ryzyka nieludzkiego lub poniżającego traktowania w rozumieniu art. 4 Karty Praw Podstawowych Unii Europejskiej". W wyroku TSUE kontynuuje i wzmacnia ustaloną linię orzeczniczą dotyczącą transferów na mocy rozporządzenia Dublin III. Trybunał podtrzymał zasadę wzajemnego zaufania między państwami członkowskimi Unii Europejskiej jako fundamentalną dla

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funkcjonowania systemu dublińskiego, jednocześnie identyfikując jeszcze jedną kategorię poważnych, potencjalnie systemowych wad w procedurze azylowej i w warunkach przyjmowania wnioskodawców. Chociaż TSUE podtrzymał tę zasadę, w komentowanym wyroku wprowadził wykładnię art. 3 ust. 2 rozporządzenia Dublin III, która wymaga, aby właściwe organy (sądy) przeprowadziły dokładniejszą weryfikację sytuacji prawnej i humanitarnej w innych państwach członkowskich. Znaczenie wyroku ujawnia się w jego wpływie na przyszłe orzecznictwo. Ponadto rzuca światło na ostatnie zmiany wprowadzone w polskim prawie azylowym.

Słowa kluczowe: Wspólny Europejski System Azylowy; rozporządzenie Dublin III; zasada wzajemnego zaufania; prawa podstawowe

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