

**Reference for a preliminary ruling from the Hessischer Verwaltungsgerichtshof
(Germany) lodged on 5 January 2011 - Federal Republic of Germany v Kaveh Puid**

(Case C-4/11)

Language of the case: German

Referring court

Hessischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Federal Republic of Germany

Defendant: Kaveh Puid

Questions referred

Is the first sentence of Article 3(2) of Regulation 343/2003,¹ pursuant to which a Member State is entitled to examine an asylum application made to it which, under Article 3(1) of the regulation, another Member State is responsible for ('the Member State assuming responsibility'), in derogation from that responsibility (the so-called 'right to assume responsibility'), to be interpreted as meaning that the duty of a Member State to exercise the right granted to it under that provision to the benefit of asylum-seekers can also be inferred from reasons not directly associated with the asylum-seeker himself or other particularities of an individual case, but which result from a situation in the Member State assuming responsibility which poses a threat to the fundamental rights of asylum-seekers under the Charter of Fundamental Rights of the European Union ('Charter of Fundamental Rights')?

If the first question should be answered in the affirmative:

Does the case where the Member State assuming responsibility has failed to satisfy in a serious manner and for an uncertain period of time one or several of the requirements laid down in 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) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13) provide relevant grounds for a Member State to be required to assume responsibility as a result of the situation in the Member State required to assume responsibility with a view to protecting the fundamental rights in Article 3(1), Article 4, Article 18, Article 19(2) and Article 47 of the Charter of Fundamental Rights?

If the second question should be answered in the negative:

Is there a duty on the part of the Member States to exercise their right under the first sentence of Article 3(2) of Regulation 343/2003 in view of the guarantees laid down in the Charter of Fundamental Rights referred to above at any rate if, in the Member State assuming responsibility, particularly serious deficiencies exist which could fundamentally compromise the procedural guarantees for asylum-seekers or pose a threat to the existence or the physical integrity of the transferred asylum-seeker?

If either the second or third question should be answered in the affirmative:

Does an enforceable personal right on the part of the asylum-seeker to force a Member State to assume responsibility result from the duty of the Member States to exercise their right under the first sentence of Article 3(2) of Regulation 343/2003?

¹ - 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).