

APPEAL FOR REVISION OR, FAILING THAT, FOR ANNULMENT OF A  
DECISION OF THE MINISTRY OF THE INTERIOR  
BEFORE THE ADMINISTRATIVE COURT

To the Ladies and Gentlemen President(s) and Judges composing the Administrative Court of and in Luxembourg.

Has the honor of very respectfully setting forth before you, through the intermediary of his undersigned representative, Maître Sanae IGRI, Attorney at Law, residing at 54, Route de Longwy, L-4750 Pétange, at whose office domicile is elected, and who hereby constitutes herself,

For

Mr. Mahesh Jagannath KAMATH, born on 28 November 1992 in Ulhasnagar (India), of Indian nationality, currently residing in the detention center.

The applicant hereby lodges, by the present, an appeal for revision before your Administrative Court against the decision of the Minister of Home Affairs dated 18 February 2026 not to examine his application for international protection within the meaning of the law of 18 December 2015 relating to international protection and temporary protection, hereinafter referred to as “the amended law of 18 December 2015”, and to transfer him to Switzerland designated as the Member State responsible for examining his application.

(Exhibit No. 1: Decision of the Minister of Home Affairs dated 18 February 2026)

The said decision refused to examine the applicants’ application for international protection dated 16 September 2022 and ordered his transfer to Switzerland on the basis of Article 28, paragraph (1) of the law of 18 December 2015, and Article 18(1)(d) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 (hereinafter “the Dublin III Regulation”).

This decision causes harm and grievances to the applicant and does not meet the criteria and conditions required by law.

#### I – AS TO THE FACTS AND BACKGROUND

Mr. Mahesh Jagannath KAMATH is an Indian national who risked being subjected to inhuman and degrading treatment in India, having regard to his profession as a journalist and the content of his articles denouncing the system in place.

He therefore left his country of origin on 28 February 2020 in order to seek international protection in Europe.

Indeed, it appears that the comparison of his fingerprints with the EURODAC database revealed several previous applications in Switzerland, respectively on 1 March 2020, 14

August 2023, 7 October 2024 and 16 May 2025, as well as an application in Italy dated 21 December 2023 and an application in Germany dated 23 January 2024.

(Exhibit No. 2: Extract from the EURODAC file)

Accordingly, the individual arrived in Luxembourg in the hope of finally being received and protected, and therefore of having his asylum application accepted.

Thus, on 21 October 2025, Mr. Mahesh Jagannath KAMATH lodged an application for international protection in Luxembourg.

(Exhibit No. 3: Certificate of submission of his application for international protection dated 21 October 2025)

A Dublin III interview was conducted on 27 October 2025 in order to facilitate the process of determining the responsible State.

(Exhibit No. 4: Dublin III interview report dated 27 October 2025)

A take back request was sent to the Swiss authorities on 25 November 2025 on the basis of Article 18(1)(b) of the Dublin III Regulation and was accepted on 26 November 2025 pursuant to Article 18(1)(d).

(Exhibit No. 5: Take back request addressed to the Swiss authorities dated 25 November 2025)

The application for international protection lodged by the applicant was rejected by decision of the Minister of Home Affairs dated 7 March 2025, on the ground that the Grand Duchy of Luxembourg does not have jurisdiction to examine said application on the basis of Article 28(1) of the law of 18 December 2015 and Article 18(1)(d) of the aforementioned Dublin III Regulation.

In the same decision, the Minister informed the applicant that he would be transferred to Switzerland, the State deemed responsible for examining his application.

However, the applicant had expressly requested the application of Article 17(1) of the Dublin III Regulation and had transmitted to the Luxembourg authorities the entirety of his Swiss file consisting of 419 pages.

He also set out in detail his particular situation in Switzerland, where he was subjected to ill-treatment.

That his situation requires the granting of asylum in view of the persecution and the risk of inhuman and degrading treatment that he could suffer in the event of return to India.

However, the Swiss authorities have already refused Mr. Mahesh Jagannath KAMATH's application for international protection.

It appears that the outcome would be similar in the event of his return to Switzerland.

Despite these elements, the contested decision orders his transfer to said country.

## II – ON THE DECISION ORDERING THE TRANSFER TO SWITZERLAND

### 1. As to the failure to comply with procedural guarantees during the Dublin interview

#### a) In law

The Dublin III Regulation (Regulation (EU) No 604/2013) governs the procedures relating to the determination of the Member State responsible for examining an asylum application.

Article 4 of the aforementioned Regulation provides for the right to information and states that:

“1. As soon as an application for international protection is lodged within the meaning of Article 20(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation, and in particular:

(a) of the objectives of this Regulation and the consequences of lodging another application in a different Member State as well as the consequences of moving from one Member State to another during the phases in which the Member State responsible under this Regulation is determined and the application for international protection is examined;

(b) of the criteria for determining the Member State responsible, of the hierarchy of such criteria during the different steps of the procedure and of their duration, including of the fact that an application for international protection lodged in a Member State may lead to that Member State being designated responsible under this Regulation even if such responsibility is not based on those criteria;

(c) of the personal interview pursuant to Article 5 and of the possibility of providing information on the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant may provide such information;

(d) of the possibility to challenge a transfer decision and, where applicable, to request a suspension of the transfer;

(e) of the fact that the competent authorities of the Member States may exchange data concerning him or her solely for the purpose of fulfilling their obligations arising from this Regulation;

(f) of the existence of the right of access to data concerning him or her and the right to request that such data be rectified if they are inaccurate or erased if they have been unlawfully processed, as well as the procedures to be followed in order to exercise those rights, including the contact details of the authorities referred to in Article 35 and of the national data protection authorities competent to examine complaints relating to the protection of personal data.

2. The information referred to in paragraph 1 shall be given in writing, in a language that the applicant understands or may reasonably be supposed to understand.

Member States shall use the common brochure drawn up for that purpose pursuant to paragraph 3.

3. Where necessary for the proper understanding of the applicant, the information shall also be communicated orally, for example during the personal interview referred to in Article 5.”

However, pursuant to Article 5 of said Regulation, an interview must be conducted in compliance with the required conditions with the asylum seeker prior to the transfer decision, in order to enable an effective determination of the Member State responsible.

Article 5 provides that:

“1. In order to facilitate the process of determining the Member State responsible, the Member State carrying out this determination shall conduct a personal interview with the applicant. The interview shall also ensure that the applicant properly understands the information supplied to him or her in accordance with Article 4.

2. The personal interview may be omitted where:

(a) the applicant has absconded; or

(b) after having received the information referred to in Article 4, the applicant has already provided by other means the information relevant to determining the Member State responsible. The Member State dispensing with the personal interview shall give the applicant the opportunity to present any further information relevant to correctly determining the Member State responsible before a transfer decision is taken in accordance with Article 26(1).

3. The personal interview shall take place in good time and, in any event, before any transfer decision is taken in accordance with Article 26(1).

4. The personal interview shall be conducted in a language that the applicant understands or may reasonably be supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.

5. The personal interview shall take place under conditions that ensure appropriate confidentiality. It shall be conducted by a person qualified under national law.

6. The Member State conducting the personal interview shall draw up a summary containing at least the main information supplied by the applicant during the interview. This summary may take the form of a report or a standard form. The Member State shall ensure that the”

“the applicant and/or the legal counsel or another advisor representing the applicant have timely access to the summary.”

b) In fact

In the present case, during the so-called “Dublin interview” of Mr. Mahesh Jagannath KAMATH, no interpreter was present. The interview took place exclusively between the case officer and the applicant, without offering a translation into a language he fully understands.

Although some exchange may have occurred in English, Mr. KAMATH did not have linguistic assistance sufficient to ensure that his statements were accurately understood and recorded, particularly regarding elements he considered decisive for determining the responsible Member State.

At the end of the interview, a summary document was presented to him for signature. Mr. KAMATH expressly requested a translation or, at the very least, a precise explanation of the content before signing. This request was allegedly not granted. He was then reportedly informed that his refusal to sign would be noted in the official record.

Under these circumstances, his refusal to sign should not be interpreted as a lack of cooperation, but as the direct consequence of the absence of guarantees regarding the understanding of the content of the document submitted.

Furthermore, Mr. Mahesh Jagannath KAMATH reports that during the interview, several of his responses were interrupted, and certain details he considered relevant were not included in the summary prepared. When he requested that some elements be explicitly mentioned, his request was allegedly denied.

It should be emphasized that the personal interview constitutes a crucial stage of the Dublin procedure, as it conditions the correct determination of the responsible Member State and, where applicable, the adoption of a transfer decision.

Any breach of the procedural guarantees governing this interview is likely to affect the legality of the subsequent procedure.

In light of these elements, it appears that the requirements set out in Articles 4 and 5 of Regulation (EU) No 604/2013 were not fully respected, particularly concerning the right to comprehensible information and the right to an interpreter ensuring effective communication.

Consequently, Mr. Mahesh Jagannath KAMATH requests that these irregularities be taken into account in the examination of his situation and that any subsequent decision be made in strict compliance with the procedural guarantees provided under European Union law.

The contested ministerial decision is therefore subject to revision, so that a new personal interview may be conducted in full respect of the procedural guarantees of the applicant.

2. Regarding the violation of Article 4 of the Charter of Fundamental Rights of the European Union of 7 December 2000 and Article 3 of the European Convention on Human Rights of 4 November 1950

a) In law

Whereas Article 28(1) of the aforementioned law of 18 December 2015 provides that:

“If, pursuant to Regulation (EU) No 604/2013, the Minister considers that another Member State is responsible for examining the application, he shall defer ruling on the application until the decision of the responsible country on the request for taking charge or taking back. Where the requested Member State accepts {...} the taking back of the applicant, the Minister shall notify the person concerned of the decision to transfer them to the responsible Member State and not to examine their application for international protection.”

Whereas, however, under Article 3(2), second subparagraph, of Regulation (EU) No 604/2013:

“Where it is impossible to transfer an applicant to the Member State originally designated as responsible because there are serious reasons to believe that there are systemic deficiencies in the asylum procedure and reception conditions 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 Member State carrying out the determination of the responsible Member State shall continue the examination of the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.”

Whereas according to Article 4 of the aforementioned Charter of Fundamental Rights:

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

Whereas the same text specifies in Article 52(3) that:

“{...} The Charter contains rights corresponding to rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, {...}”

Whereas this is the case regarding the right not to be subjected to torture and to inhuman or degrading treatment or punishment, which is guaranteed by Article 3 of the aforementioned Convention.

In this regard, the European Court of Human Rights has notably held that treatment is inhuman when \**“law enforcement authorities intentionally destroyed {...} the applicants’ property, depriving them of their means of subsistence and forcing them to leave their village.”*<sup>\*1</sup>

Furthermore, it follows from the consistent case law of the Court that a “treatment is considered ‘degrading’ if it humiliates or debases an individual, or if it demonstrates a lack of...”

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<sup>1</sup> ECHR, *Ilhan v. Turkey*, 9 November 2004, §108; Guide on Article 3 of the ECHR, 31 August 2022, §18.

\*“of respect for his or her human dignity, or diminishes it, or if it causes the person to feel fear, anxiety, or inferiority likely to break his or her moral and physical resistance. It may be sufficient that the victim is humiliated in his or her own eyes, even if not in the eyes of others.”<sup>\*2</sup>

The Court added in the same judgment that if “the question of whether the treatment is intended to humiliate or debase the victim is another factor to be considered, the absence of such an intent does not, however, definitively preclude a finding of a violation of Article 3.”

b) In fact

Considering that the contested ministerial decision ordered the transfer of Mr. KAMATH to Switzerland.

It should therefore be emphasized that the asylum system in Switzerland has been repeatedly and consistently criticized by international organizations and Swiss media, highlighting systemic deficiencies both in the procedure and in reception conditions.

Indeed, in its analysis entitled “A rigid regime in federal centres and very short deadlines” published in 2020, Amnesty International<sup>3</sup> criticizes the functioning of the new Swiss asylum system which came into effect in 2019.

The organization notes that:

“The very short deadlines in the accelerated procedure make it difficult for asylum seekers to effectively assert their rights.”

“We consider that various aspects of the procedure and the functioning of the centres are problematic, notably the very short deadlines and the very strict regime of the federal centres.”

It also emphasizes that:

“Residents have little room to organize their daily lives independently. Intrusions into privacy in the name of security are considerable (regular room searches, sometimes at night and without knocking beforehand, body searches each time a person enters the reception centre, and regular searches of children and babies). Amnesty regularly receives complaints regarding the rude and/or discourteous behavior of security service employees (Securitas, Protectas, etc.) towards asylum seekers.”

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<sup>2</sup> ECHR, M.S.S. v. Belgium, 21 January 2011, §220; Guide on Article 3 of the ECHR, 31 August 2022, §19.

<sup>3</sup>

<https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2020/un-regime-rigide-dans-les-centres-federaux-et-des-delais-tres-courts>

“The regime applied in the federal asylum centres is excessively strict and may infringe the fundamental rights of the persons concerned.”

Furthermore:

“There is still no reliable concept for the systematic and proactive recognition of specific vulnerabilities (trauma, medical issues, LGBTI refugees, etc.), and in some federal centres there is a lack of access to doctors who can carry out medical examinations relevant to asylum law within the limited time available.”\*

“The new asylum procedure carries the risk of becoming a closed system: the time constraints in a tightly scheduled procedure encourage standardization of procedures and routine.”

“Switzerland continues to rely on an overly rigid application of the Dublin Regulation and, in the case of rejected asylum seekers, on an emergency aid system with unbearable living conditions and strong psychological pressure, pushing them to return home, even to countries such as Afghanistan or Eritrea.”

(Exhibit No. 6: Amnesty International Report, “A rigid regime in federal centres and very short deadlines”, 2020)

Additionally, Swissinfo, in its article entitled “Campaigners find flaws in Switzerland’s new asylum system”<sup>4</sup>, reports that human rights organizations consider the new system likely to infringe procedural rights of asylum seekers and specifically notes that:

“These criticisms are supported by statistics from the Federal Administrative Court (FAC), competent for appeals against asylum decisions (...) The judges ruled that ‘SEM had not established the facts with sufficient precision regarding the grounds for asylum’ or that there were ‘gaps in the investigation of medical issues.’”

(Exhibit No. 7: SWI swissinfo.ch article, “Campaigners find flaws in Switzerland’s new asylum system”, 2019)

These elements notably demonstrate that the brevity of procedural deadlines is likely to prevent an individualized and thorough examination of the fears raised, in violation of the procedural guarantees inherent to the right to asylum.

It should be emphasized that in its report published in May 2021, Amnesty International sounded the alarm regarding the federal asylum centres (CFA). The organization states:

“Amnesty International sounds the alarm and urges measures to end human rights violations in the federal asylum centres.”

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<https://www.swissinfo.ch/eng/society/campaigners-find-flaws-in-switzerland-s-new-asylum-system/46189542>

(Exhibit No. 8: Amnesty International Report on violence and human rights violations in federal asylum centres, May 2021)

Indeed:

“Amnesty International conducted an in-depth investigation into the violence perpetrated against asylum seekers housed in Swiss federal reception centres. This investigation reveals serious ill-treatment inflicted by security personnel. In light of these findings, Amnesty International sounds the alarm concerning the human rights violations suffered by asylum seekers, notably unaccompanied minors, and calls on the Swiss government to take urgent action to put an end to these abuses.”

“The testimonies of ill-treatment collected from victims—including children, as well as current and former security staff, and other professionals working in the centres—are deeply concerning. Beyond complaints of physical violence, mistreatment, and punishments, they also expressed concern about hostility, prejudice, and racism directed at certain individuals.”

\*“Swiss authorities must take measures to strengthen their prevention mechanisms and implement robust and proactive monitoring systems, specifically aimed at protecting all persons housed in asylum centres from ill-treatment and racist abuse. We urgently call for all allegations of human rights violations to be subject to prompt, thorough, and impartial investigations, for those responsible for these abuses to be held accountable, and for victims to obtain redress.”\*<sup>5</sup>

(Exhibit No. 9: Amnesty International press release, “Switzerland: Amnesty International sounds the alarm and urges action to put an end to human rights violations in federal asylum centres”, 19 May 2021)

The Swiss press also echoed these findings. Le Nouvelliste reported<sup>6</sup>:

“A damning report by Amnesty International on the federal centres”

and highlighted that:

“In the federal asylum centres in Switzerland: mistreatment, beatings, physical restraint, racist and xenophobic remarks, detention in a metal container in a state of hypothermia euphemistically called a ‘reflection room’, falsified reports on incidents. Six of the individuals interviewed required hospital care. Others were denied medical treatment.”

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<https://www.amnesty.org/en/latest/news/2021/05/switzerland-amnesty-international-sounds-the-alarm-and-urges-action-to-put-an-end-to-human-rights-violations-in-federal-asylum-centres/>

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<https://www.lenouvelliste.ch/suisse/asile-le-rapport-accablant-damnesty-international-sur-les-centres-federaux-1074516>

(Exhibit No. 10: Le Nouvelliste article, “Damning report by Amnesty International on federal centres”, 2021)

Swissinfo<sup>7</sup> reports that:

“Amnesty International criticizes the weak protection in Swiss asylum centres”

highlighting that:

“The country has, however, been repeatedly criticized for its treatment of refugees and asylum seekers. An investigation conducted by Amnesty International revealed abuses committed by private security officers against persons housed in federal reception centres and highlighted systemic deficiencies in the management of these centres.”

(Exhibit No. 11: SWI swissinfo.ch article, “Amnesty International criticizes the weak protection in Swiss asylum centres”, 2021)

These elements reveal a structural problem directly affecting material reception conditions and respect for human dignity.

Furthermore, according to an article published by Swissinfo, Swiss observers have criticized the administrative detention conditions for rejected asylum seekers, describing them as close to a prison regime<sup>8</sup>, stating that:

“Any person whose asylum application is rejected in Switzerland may be placed in administrative detention for a maximum period of 18 months. Legally, detention conditions in these facilities are supposed to differ significantly from those of penal institutions. In practice, however, this is often not the case, according to the Swiss Observatory on Asylum and Foreigners Law.”

(Exhibit No. 12: SWI swissinfo.ch article regarding criticisms of administrative detention of rejected asylum seekers, 2021)

The detention of persons who have committed no criminal offence but fall under immigration law must remain exceptional and strictly proportionate. If such practice becomes structural, it may constitute treatment contrary to Article 3 of the European Convention on Human Rights.

According to the aforementioned article:

“The Swiss Observatory on Asylum and Foreigners Law (SBAA) criticized the detention conditions of rejected asylum seekers, stating that they are often indistinguishable from penal detention.”

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<https://www.swissinfo.ch/eng/business/amnesty-criticises-poor-protection-at-swiss-asylum-centres/47472516>

<sup>8</sup> <https://www.swissinfo.ch/eng/swiss-abroad/switzerland-today/89545910>

“When an asylum application is rejected, the person concerned may be placed in administrative detention for a maximum period of 18 months—not as a punishment, but to secure their departure.”

Finally, it should be emphasized that in its 2019 annual report on Switzerland<sup>9</sup>, Amnesty International noted that:

“Switzerland also violates the United Nations Convention on the Rights of the Child with respect to administrative detention for the purpose of removal, insofar as the legislation continues to allow the detention of minors aged 15 to 18 for a maximum period of one year.”

(Exhibit No. 13: Amnesty International Annual Report 2019 on Switzerland)

Furthermore, it should be recalled that in the present case, Mr. KAMATH is the father of two minor children residing in Switzerland with their mother. However, during his stay in Switzerland, the applicant did not benefit from effective protection of family unity, even though his situation called for careful and individualized consideration in light of his personal and family ties.

It should be noted that the Swiss authorities did not ensure, in his case, the effective respect of the right to family life as guaranteed by Article 8 of the European Convention on Human Rights. Indeed, no concrete measures were taken to preserve or promote the maintenance of family bonds between Mr. KAMATH and his children, and his situation was not assessed in accordance with the requirements deriving from this Convention provision.

On this point, it should be noted that in the aforementioned annual report on Switzerland, Amnesty International observes that:

“According to the Federal Council, for persons admitted on a provisional basis, not only travel to the country of origin but also all travel abroad should be prohibited. Amnesty also considers this measure (...) as an unacceptable interference with individual freedom and with the rights to family life and private life. It should be noted that the status of persons admitted on a provisional basis in Switzerland is generally subject to far more restrictive conditions than the ‘subsidiary protection’ known in other European countries. The strict requirements for economic independence make family reunification practically impossible for many persons admitted on a provisional basis for long years.”

Indeed, the European Court of Human Rights in Strasbourg has found Switzerland guilty of violating refugees’ right to family life.

More specifically:

“The European Court of Human Rights (ECtHR) criticized Switzerland for rejecting refugees’ family reunification requests on the grounds that they depended on social assistance (...) the Strasbourg Court concluded that Switzerland had violated Article 8 of the”

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<sup>9</sup>

<https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2020/rapport-annuel-suisse>

\*“European Convention on Human Rights, regarding the right to respect for private and family life (...) They were admitted to the country on a provisional basis because it was

established that they would be at risk of ill-treatment if returned to their country of origin. Unlike refugees who have been granted refugee status, persons admitted on a provisional basis are only entitled to family reunification if they do not receive social assistance. In the case of the four refugees, the Swiss authorities refused their family reunification requests on the grounds that this condition was not met. (...) The Court found that the Swiss authorities 'had not struck a fair balance between, on the one hand, the applicants' interest in being reunited with close family members in Switzerland and, on the other hand, the interest of the community as a whole in controlling immigration to protect the country's economic well-being.'\*\*10

(Exhibit No. 14: Article on the European Court of Human Rights ruling condemning Switzerland for violation of Article 8 ECHR, 2023)

It therefore follows from all these consistent sources that the procedures impose excessively short deadlines, compromising the effective exercise of the right of defense.

That the federal asylum centres are characterized by a strict regime, restrictions on liberty, and credible allegations of violence.

That administrative detention exhibits features close to a penal regime.

That NGOs and independent observers denounce repeated violations of the fundamental rights of asylum seekers.

These elements, coming from recognized international organizations and Swiss media, do not constitute isolated incidents but reveal systemic deficiencies affecting the reception system and asylum procedure in Switzerland.

Accordingly, the above-cited elements constitute evidence or well-founded indications that Mr. Mahesh Jagannath KAMATH, due to his status as an asylum seeker in Switzerland, risks being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter and Article 3 of the aforementioned Convention.

Moreover, Mr. KAMATH has suffered discrimination and ill-treatment in Switzerland, particularly in the municipality of Nurensdorf, which has profoundly affected his self-esteem and mental health. He also faced a situation of homelessness, as the Swiss State did not provide adequate reception conditions upon his arrival, nor did it guarantee his right to private and family life.

In accordance with the consistent case law of the European Court of Human Rights, the existence of systemic deficiencies in the asylum system of the responsible State must lead the requesting State to suspend the transfer.

It is therefore imperative to re-examine the decision to transfer him to a country that does not respect minimum standards of treatment for refugees and where he could be exposed to serious

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[https://www.swissinfo.ch/eng/politics/court-finds-switzerland-guilty-of-violating-refugees-right-to-family-life/48640408?utm\\_source=chatgpt.com](https://www.swissinfo.ch/eng/politics/court-finds-switzerland-guilty-of-violating-refugees-right-to-family-life/48640408?utm_source=chatgpt.com)

“violations of his fundamental rights as provided in Article 4 of the Charter of Fundamental Rights of the European Union and Article 3 of the European Convention on Human Rights and Fundamental Freedoms.”

It should therefore be considered that Luxembourg must make use of the discretionary clause provided in Article 17 of the Dublin III Regulation and take charge of the asylum application of Mr. Mahesh Jagannath KAMATH, in order to ensure the effective respect of his fundamental rights.

The contested ministerial decision is thus subject to revision due to violations of the aforementioned Articles 4 and 3.

3. Regarding the application of the discretionary clause provided in Article 17(1) of Regulation (EU) No 604/2013

a) In law

It should be noted, subsidiarily, that the Minister of Immigration and Asylum should have applied the discretionary clause provided in Article 17 of the aforementioned Regulation.

According to the text:

“By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection presented to it by a third-country national {...}, even if that examination does not fall within its responsibility under the criteria set out in this Regulation.”

Although this constitutes a discretionary power of the Minister, it cannot escape all control by the administrative judge.

Indeed, it is well-established case law that:

\*“It is the responsibility of the administrative judge to verify whether the reasons invoked or resulting from the file are sufficient to justify the contested decision, so that when the authority has erred, based on data that is legally or factually incorrect, regarding its options and the limits of its discretionary power, the decision in question must be annulled, provided that such an error on the part of the administrative authority actually results from the elements submitted to the court. Furthermore, in the context of reviewing discretionary powers, the court may only sanction a disproportion if it is manifest.”\*11

b) In fact

In the present case, Mr. Mahesh Jagannath KAMATH filed his application for international protection in Luxembourg.

Mr. KAMATH requests the application of Article 17(1) of the Dublin III Regulation in order to have the State of the Grand Duchy of Luxembourg assume responsibility for his application.

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<sup>11</sup> TA, 29 March 2021, 1st Chamber, No. 45611 of the register.

international protection, despite the ongoing administrative procedures concerning his transfer to Switzerland.

It is essential to emphasize that the Swiss State has already rejected Mr. KAMATH's protection request.

Indeed, the previous rejection of his application provides no indication that his claim would be favorably examined in Switzerland, and therefore such a transfer would not be appropriate in this regard.

A transfer to Switzerland would thus expose the applicant to a real and foreseeable risk of removal to India in the near future.

Although the Dublin transfer might appear to bring him closer to his two children residing in Switzerland, in reality it constitutes a prelude to removal to his country of origin.

Such a prospect of removal to India, consequent to the transfer to Switzerland, necessarily raises a serious question regarding the principle of non-refoulement.

In this case, the transfer to Switzerland, far from ensuring family stability, creates a serious risk of the father being removed from European territory, which would constitute a disproportionate interference with the right to respect for family life as provided by Article 8 of the European Convention on Human Rights and would disregard the best interests of the child.

Moreover, it should be recalled that Mr. Mahesh Jagannath KAMATH risks suffering inhuman and degrading treatment if transferred to Switzerland due to the reception conditions for asylum seekers in that country, which, as previously reported, constitute inhuman and degrading treatment.

Such a decision would expose Mr. KAMATH to extreme precariousness in a context of legal and administrative uncertainty, likely to compromise his fundamental rights and his application for international protection.

The assumption of responsibility for the applicant by the Swiss authorities will clearly be deficient.

The application of the discretionary clause under Article 17(1) of the Dublin III Regulation is, in this case, the fairest solution and the one most consistent with protecting the applicant's rights.

Finally, it should be emphasized that if the Grand Duchy of Luxembourg were to make use of the discretion provided in Article 17(1) of the Dublin III Regulation and decide to examine the

applicant's international protection request itself, he would benefit from a real and effective opportunity to have his application examined within a new and comprehensive procedural framework.

Such responsibility would maintain a genuine chance of obtaining international protection and prevent a transfer to Switzerland from almost automatically leading to his removal to India and the severing of his family ties.

Under these circumstances, the Minister committed a manifest error of judgment by excluding any application of the sovereignty clause provided in Article 17(1) of the aforementioned Regulation.

The harmful consequences of this refusal for the applicant make the refusal decision manifestly disproportionate in its effects compared to the intended objective.

Accordingly, the contested decision must be annulled or, at the very least, reformed.

#### FOR THESE REASONS

The applicant respectfully requests that the Tribunal:

- Accept the present appeal in its form;
- Declare it justified on the merits;
- Consequently, reform the decision of 18 February 2026 of the Ministry of the Interior, Directorate General of Immigration;
- Alternatively, annul the contested decision in its entirety for violation of the law, or, failing that, for abuse or misuse of power, or, alternatively, for manifest error of judgment;
- Declare that the State of the Grand Duchy of Luxembourg is the responsible State for the substantive examination of the applicant's request for international protection and that there is no reason to proceed with his transfer to Switzerland;
- Acknowledge that the applicant reserves all other rights, remedies, and actions.

Done at Pétange, 24 February 2026

Maître Sanae IGRI

Attorney at Law