

criteria in Chapter III of that regulation, to examine an application for asylum even though no circumstances exist which establish the applicability of the humanitarian clause in Article 15 of that regulation. That possibility is not conditional on the Member State responsible under those criteria having failed to respond to a request to take back the asylum seeker concerned.

2. The Member State in which the asylum seeker is present is not obliged, during the process of determining the Member State responsible, to request the Office of the United Nations High Commissioner for Refugees to present its views where it is apparent from the documents of that Office that the Member State indicated as responsible by the criteria in Chapter III of Regulation No 343/2003 is in breach of the rules of European Union law on asylum.

(¹) OJ C 370, 17.12.2011.

Judgment of the Court (Second Chamber) of 8 May 2013
(request for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) London — United Kingdom) — Olaitan Ajoke Alarape, Olukayode Azeez Tijani v Secretary of State for the Home Department

(Case C-529/11) (¹)

(Freedom of movement for persons — Regulation (EEC) No 1612/68 — Article 12 — Divorced spouse of a national of a Member State who has worked in another Member State — Adult child pursuing his studies in the host Member State — Right of residence of parent who is national of a non-Member State — Directive 2004/38/EC — Articles 16 to 18 — Right of permanent residence of family members of a Union citizen who are not nationals of a Member State — Legal residence — Residence based on Article 12 above)

(2013/C 225/20)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber) London

Parties to the main proceedings

Applicants: Olaitan Ajoke Alarape, Olukayode Azeez Tijani

Defendant: Secretary of State for the Home Department

Intervening party: AIRE Centre

Re:

Request for a preliminary ruling — Upper Tribunal (Immigration and Asylum Chamber) London — Interpretation of

Article 12 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ 1968 L 257, p. 2) — Right of residence, following her divorce from a national of another Member State having exercised his right to free movement, of a national of a non-Member State responsible for care of her child, the latter being more than 21 years old and studying in the host Member State — Meaning of 'parent who is primary carer for a child' — Criteria for assessment

Operative part of the judgment

1. The parent of a child who has attained the age of majority and who has obtained access to education on the basis of Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, as amended by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004, may continue to have a derived right of residence under that article if that child remains in need of the presence and care of that parent in order to be able to continue and to complete his or her education, which it is for the referring court to assess, taking into account all the circumstances of the case before it;
2. Periods of residence in a host Member State which are completed by family members of a Union citizen who are not nationals of a Member State solely on the basis of Article 12 of Regulation No 1612/68, as amended by Directive 2004/38, where the conditions laid down for entitlement to a right of residence under that directive are not satisfied, may not be taken into consideration for the purposes of acquisition by those family members of a right of permanent residence under that directive.

(¹) OJ C 370, 17.12.2011.

Judgment of the Court (Third Chamber) of 30 May 2013
(request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie

(Case C-534/11) (¹)

(Area of freedom, security and justice — Directive 2008/115/EC — Common standards and procedures for returning illegally staying third-country nationals — Applicability to asylum seekers — Possibility of keeping a third-country national in detention after an application for asylum has been made)

(2013/C 225/21)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Mehmet Arslan

Defendant: Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie

Re:

Request for a preliminary ruling — Nejvyšší správní soud (Czech Republic) — Interpretation of Art. 2(1) in conjunction with recital 9 in the preamble to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98) — Scope — Detention of a third-country national staying illegally on the territory of a Member State with a view to his removal where he has made an application for asylum within the meaning of 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)

Operative part of the judgment

1. Article 2(1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with recital 9 in the preamble, must be interpreted as meaning that that directive does not apply to a third-country national who has applied for international protection within the meaning of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status during the period from the making of the application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known.
2. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers and Directive 2005/85 do not preclude a third-country national who has applied for international protection within the meaning of Directive 2005/85 after having been detained under Article 15 of Directive 2008/115 from being kept in detention on the basis of a provision of national law, where it appears, after an assessment on a case-by-case basis of all the relevant circumstances, that the application was made solely to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return.

**Judgment of the Court (Fifth Chamber) of 27 June 2013
(request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v Codirex Expeditie BV**

(Case C-542/11) ⁽¹⁾

(Community Customs Code — Regulation (EEC) No 2913/92 — Goods in temporary storage — Non-Community goods — External Community transit procedure — Point at which a customs-approved treatment or use is assigned — Acceptance of the customs declaration — Release of the goods — Customs debt)

(2013/C 225/22)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: Codirex Expeditie BV

Re:

Request for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 50 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Goods in temporary storage having been declared for placing under the external Community transit procedure — Point at which a customs-approved treatment or use is assigned

Operative part of the judgment

Articles 50, 67 and 73 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that the point at which non-Community goods, covered by a customs declaration accepted by the customs authorities for placing under the external Community transit procedure and having the status of goods in temporary storage, are placed under that customs procedure and thereby assigned a customs-approved treatment or use is the moment at which they are released.

⁽¹⁾ OJ C 65, 3.3.2012.

⁽¹⁾ OJ C 25, 28.1.2012.