



## Reports of Cases

### Case C-18/16

K.

v

**Staatssecretaris van Veiligheid en Justitie**

(Request for a preliminary ruling  
from the rechtbank Den Haag zittingsplaats Haarlem)

(Reference for a preliminary ruling — Standards for the reception of applicants for international protection — Directive 2013/32/EU — Article 9 — Right to remain in a Member State during the examination of the application — Directive 2013/33/EU — First subparagraph of Article 8(3)(a) and (b) — Detention — Verification of identity or nationality — Determination of the elements on which the application for international protection is based — Validity — Charter of Fundamental Rights of the European Union — Articles 6 and 52 — Restriction — Proportionality)

Summary — Judgment of the Court (Fourth Chamber), 14 September 2017

*Border controls, asylum and immigration — Asylum policy — Standards for the reception of applicants for international protection — Directive 2013/33 — First subparagraph of Article 8(3)(a) and (b) — Detention of a person seeking international protection, in order to determine or verify his or her identity or nationality, or in order to determine elements on which the request is based and which cannot be obtained otherwise — Assessment of that provision in the light of Articles 6 and 52 of the Charter of Fundamental Rights of the European Union — Validity*

*(Charter of Fundamental Rights of the European Union, Arts 6 and 52(1) and (3); European Parliament and Council Directive 2013/33, Arts 8(3), first para., (a) and (b) and 9(1))*

The examination of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection has disclosed nothing capable of affecting the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union.

In that regard, it should be noted that the limitation on the exercise of the right to liberty resulting from the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33 is provided for by EU legislation and that it does not affect the essence of the right to liberty laid down in Article 6 of the Charter. The first subparagraph of Article 8(3)(a) and (b) of that directive does not render the guarantee of that right less secure and — as is apparent from the wording of the provision and recital 15 of the directive — the power that it confers on Member States enables them to detain an applicant only on the basis of his individual conduct and under the exceptional circumstances referred to in the same provision, those circumstances also being circumscribed by all the conditions set out in Articles 8 and 9 of the directive (see, by analogy, judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraphs 51 and 52). In that regard, it is apparent both from the wording and

context of Article 8 of Directive 2013/33 and from its legislative history that that power is subject to compliance with a series of conditions whose aim is to create a strictly circumscribed framework in which such a measure may be used.

The limitations on the exercise of the right conferred by Article 6 of the Charter contained in the first subparagraph of Article 8(3)(a) and (b) of that directive are also not disproportionate to the aims pursued. In that regard, it should be noted that the first subparagraph of Article 8(3)(a) and (b) is based on a fair balance between the general interest objective pursued, namely the proper functioning of the Common European Asylum System, allowing applicants who are genuinely in need to be granted international protection and refusing, on the one hand, applications from those who do not satisfy the conditions and, on the other hand, interference with the right to liberty resulting from a detention measure. Although the proper functioning of the Common European Asylum System requires, in practice, that the competent national authorities have at their disposal reliable information relating to the identity or nationality of the applicant for international protection and to the elements on which his application is based, that provision cannot justify detention measures being decided without those national authorities having previously determined, on a case-by-case basis, whether they are proportionate to the aims pursued.

(see paras 35, 41, 47, 48, 54, operative part)