

Defendant: Federal Republic of Germany

Questions referred

1. Can an individual toll-payer rely, before national courts, on compliance with the provisions regarding the calculation of the toll under Article 7(9) and Article 7a(1) and (2) of Directive 1999/62/EC as amended by Directive 2006/38/EC ⁽¹⁾ (regardless of the arrangements in Article 7a(3) in conjunction with Annex III thereto), if, in the statutory determination of tolls, the Member State did not fully comply with those provisions or incorrectly implemented them to the detriment of the toll-payer?
2. If Question 1 is to be answered in the affirmative:
 - (a) Can traffic police costs also be treated as costs of operating the infrastructure network within the meaning of the second sentence of Article 7(9) of Directive 1999/62/EC as amended by Directive 2006/38/EC?
 - (b) Does an overrun of the infrastructure costs which can be taken into account in the weighted average toll in the range of
 - (aa) up to 3.8%, in particular when account is taken of costs which cannot in principle be taken into account,
 - (bb) up to 6 %lead to a breach of the cost overrun prohibition under Article 7(9) of Directive 1999/62/EC as amended by Directive 2006/38/EC, with the result that national law is, to that extent, not applicable?
3. If Question 2(b) is to be answered in the affirmative:
 - (a) Is the judgment of the Court of Justice of 26 September 2000 (C-205/98, ⁽²⁾ paragraph 138) to be understood as meaning that a substantial cost overrun can ultimately no longer be offset by an ex post calculation of costs filed in judicial proceedings, which is intended to prove that the fixed toll rate ultimately does not actually exceed the costs which can be taken into account?
 - (b) If Question 3(a) is to be answered in the negative:

Is an ex post calculation of costs after the end of the calculation period to be based entirely on the actual costs and the actual toll revenue, that is to say, not on the assumptions made in this regard in the original predictive calculation?

⁽¹⁾ OJ 2006 L 15, p. 8.

⁽²⁾ OJ 2000 C 335, p. 10.

**Reference for a preliminary ruling from High Court (Ireland) made on 23 April 2019 — KS, MHK v
The International Protection Appeals Tribunal, the Minister for Justice and Equality, Ireland and the Attorney
General**

(Case C-322/19)

(2019/C 220/27)

Language of the case: English

Referring court

High Court (Ireland)

Parties to the main proceedings

Applicants: KS, MHK

Defendants: The International Protection Appeals Tribunal, the Minister for Justice and Equality, Ireland and the Attorney General

Questions referred

1. Where in interpreting one instrument of EU law that applies in a particular member state an instrument not applying to that member state is adopted at the same time, may regard be had to the latter instrument in interpreting the former instrument?
2. Does Art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU ⁽¹⁾ apply to a person in respect of whom a transfer decision under the Dublin III Regulation, Regulation (EU) No. 604/2013 ⁽²⁾, has been made?
3. Is a member state in implementing Art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU entitled to adopt a general measure that in effect attributes to applicants liable for transfer under the Dublin III Regulation, Regulation (EU) No. 604/2013, any delays on or after the making of a transfer decision?
4. Where an applicant leaves a member state having failed to seek international protection there and travels to another member state where he or she makes an application for international protection and becomes subject to a decision under the Dublin III Regulation, Regulation (EU) No. 604/2013, transferring him or her back to the first member state, can the consequent delay in dealing with the application for protection be attributed to the applicant for the purposes of Art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU?
5. Where an applicant is liable to transfer to another member state under the Dublin III Regulation, Regulation (EU) No. 604/2013, but that transfer is delayed due to judicial review proceedings taken by the applicant which have the consequence of suspending the transfer pursuant to a stay ordered by the court, can the consequent delay in dealing with the application for international protection be attributed to the applicant for the purposes of Art. 15 of the Reception Conditions Directive (Recast) 2013/33/EU, either generally or, in particular, where it may be determined in those proceedings that the judicial review is unfounded, manifestly or otherwise, or is an abuse of process?

⁽¹⁾ 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 2013, L 180, p. 96

⁽²⁾ 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, OJ 2013, L 180, p. 31

**Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 19 April 2019 —
Nobina Finland Oy**

(Case C-327/19)

(2019/C 220/28)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus