

Question referred

Are Article 2(1) and 2(2)(a) and Article 6(1) of Directive 2000/78/EC⁽¹⁾ and the principles of legal certainty, maintenance of established rights and effectiveness of EU law to be interpreted as precluding national legislation — such as that at issue in the main proceedings — under which the first adjustment of the retirement pension of the group of civil servants who became entitled to a retirement pension ('total pension' under the Pensionsgesetz 1965 ('the 1965 Law on pensions')) as from 1 December 2021 at the latest is to be made with effect only from 1 January of the second calendar year following the commencement of entitlement to the retirement pension, whereas the first adjustment of the retirement pension of the group of civil servants who became or will become entitled to a retirement pension ('total pension' under the 1965 Law on pensions) as from 1 January 2022 is to be made with effect already from 1 January of the first calendar year following the commencement of entitlement to the retirement pension?

⁽¹⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

**Request for a preliminary ruling from the Tribunale ordinario di Bologna (Italy) lodged on
7 February 2022 — BU v Ministero dell'Interno, Dipartimento per le Libertà civili e
l'Immigrazione — Unità Dublino**

(Case C-80/22)

(2022/C 158/09)

Language of the case: Italian

Referring court

Tribunale ordinario di Bologna

Parties to the main proceedings

Applicant: BU

Defendant: Ministero dell'Interno, Dipartimento per le Libertà civili e l'Immigrazione — Unità Dublino

Questions referred

1. What legal consequences does EU law provide for in the event of infringement, by the requesting Member State in the context of a take back procedure under Article 18(1)(b) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013, ⁽¹⁾ of the obligation to provide information laid down in Article 4 or the obligation to conduct a personal interview with the applicant under Article 5 thereof, and in particular, must Articles 4 and 5 of Regulation (EU) 604/2013 be interpreted:
 - as meaning that failure to provide the information leaflet required under Article 4(2) to a person who meets the conditions described in Article 23 or failure to conduct a personal interview with the applicant under Article 5 of the regulation in itself renders the transfer decision irremediably unlawful and thus places on the requesting Member State responsibility to take a decision on the application for international protection;
 - or as meaning that the unlawfulness of the transfer decision is subject to it being alleged and proven that the procedure would have had a different outcome if the authority of the requesting Member State had fulfilled the obligations laid down in Articles 4 and 5 of Regulation (EU) 604/2013;
 - or as meaning that in no event is the authority of the requesting Member State obliged to afford a foreign national subject to a procedure for transfer to the requested Member State the safeguards relating to information and participation laid down in Articles 4 and 5 of Regulation (EU) 604/2013?
2. Must Article 27(1) of Regulation (EU) 604/2013, alone or in conjunction with the Charter of Fundamental Rights of the European Union ('the Charter'), be interpreted:
 - as imposing an obligation to afford a foreign national subject to a procedure for transfer to the requested Member State the safeguards laid down in Articles 4 and 5 of the regulation as instrumental in protecting the right to an effective remedy against a transfer decision;

— and, if so, as meaning that the court seised with the application for annulment of the transfer decision under Article 27 of Regulation (EU) 604/2013 is entitled to re-examine the substance of the decision by which the administrative authority of the requested Member State has, pursuant to the criteria for determining responsibility set out in Chapter III of the regulation, established its responsibility for taking a decision on the application for international protection submitted by the applicant?

(¹) 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).
