



## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

7 June 2016\*

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national — Article 12 — Issue of residence documents or visas — Article 27 — Remedies — Extent of judicial scrutiny)

In Case C-63/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Den Haag (District Court, The Hague, Netherlands), made by decision of 2 February 2015, received at the Court on 12 February 2015, in the proceedings

**Mehrdad Ghezelbash**

v

**Staatssecretaris van Veiligheid en Justitie,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, L. Bay Larsen (Rapporteur), J.L. da Cruz Vilaça, A. Arabadjiev, C. Toader, D. Šváby and F. Biltgen, Presidents of Chambers, J.-C. Bonichot, M. Safjan, E. Jarašiūnas, C.G. Fernlund, C. Vajda and S. Rodin, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 December 2015,

after considering the observations submitted on behalf of:

- Mr Ghezelbash, by Y.G.F.M. Coenders, P.J. Schüller and A. Eikelboom, advocaten,
- the Netherlands Government, by M.K. Bulterman, H. Stergiou and B. Koopman, acting as Agents,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Greek Government, by M. Michelogiannaki, acting as Agent,
- the French Government, by F.X. Bréchet and D. Colas, acting as Agents,

\* Language of the case: Dutch.

- the Swedish Government, by A. Falk, acting as Agent,
- the European Commission, by M. Condou-Durande, R. Troosters and K. Simonsson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 March 2016,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 27 of 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).
- 2 The request has been made in proceedings between Mr Mehrdad Ghezlbash, an Iranian national, and the Staatssecretaris van Veiligheid en Justitie (State Secretary for Security and Justice, the Netherlands) ('the State Secretary') concerning the latter's decision to refuse Mr Ghezlbash's application for a residence permit for a fixed period on grounds of asylum.

### **Legal framework**

#### *Regulation (EC) No 343/2003*

- 3 Article 19(1) and (2) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1) provided as follows:

'1. Where the requested Member State accepts that it should take charge of an applicant, the Member State in which the application for asylum was lodged shall notify the applicant of the decision not to examine the application, and of the obligation to transfer the applicant to the responsible Member State.

2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. ... This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.'

#### *Regulation No 604/2013*

- 4 Recitals 1, 4, 5, 9, 19 and 40 of Regulation No 604/2013 state as follows:

'(1) A number of substantive changes are to be made to [Regulation No 343/2003]. ...

...

(4) The Tampere conclusions [of the European Council at its special meeting on 15 and 16 October 1999] also stated that the [Common European Asylum System] should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

...

(9) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying [Regulation No 343/2003], while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system. ...

...

(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.

...

(40) Since the objective of this Regulation, namely the establishment of 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, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 [TEU]. ...'

5 Article 3(1) and (2) of Regulation No 604/2013 is worded as follows:

'1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants 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 determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.'

6 Article 4(1) of Regulation No 604/2013 provides as follows:

'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 of:

...

- (b) the criteria for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;
- (c) the personal interview pursuant to Article 5 and the possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;
- (d) the possibility to challenge a transfer decision and, where applicable, to apply for a suspension of the transfer;

...'

7 Article 5(1) to (3) and (6) of Regulation No 604/2013 states as follows:

'1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 4.

2. The personal interview may be omitted if:

- (a) the applicant has absconded; or
- (b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

3. The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

...

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.’
- 8 For the purpose of determining the Member State responsible within the meaning of Article 3(1) of Regulation No 604/2013, Chapter III of the regulation sets out a list of objective criteria in hierarchical order.
- 9 Article 7(1) of Regulation No 604/2013 provides as follows:
- ‘The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.’
- 10 Article 12(1) and (4) of Regulation No 604/2013 is worded as follows:
- ‘1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.
- ...
4. Where the applicant is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him or her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.
- ...’
- 11 Chapter IV of Regulation No 604/2013 establishes rules governing the bringing together of dependent persons and discretionary clauses.
- 12 Article 21 of Regulation No 604/2013 is worded as follows:
- ‘1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.
- ...
3. In the cases referred to in paragraphs 1 and 2, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the applicant’s statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.
- ...’
- 13 Article 22(2) to (5) of Regulation No 604/2013 provides as follows:
- ‘2. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

...

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.'

<sup>14</sup> Article 26 of Regulation No 604/2013 is worded as follows :

'1. Where the requested Member State accepts to take charge of or to take back an applicant ... the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. ...

2. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, where applicable, and on the time limits applicable for seeking such remedies and for carrying out the transfer ...

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not been already communicated.

3. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.'

<sup>15</sup> Article 27 of Regulation No 604/2013 provides as follows:

'1. The applicant ... shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

(a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or

(b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or

(c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period

of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

4. Member States may provide that the competent authorities may decide, acting ex officio, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.

5. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.

6. Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved. ...'

16 Article 29(1) of Regulation No 604/2013 states as follows:

'The transfer of the applicant ... from the requesting Member State to the Member State responsible shall be carried out ... as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

...'

17 Article 36(1) and (4) of Regulation No 604/2013 is worded as follows :

'1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

(a) exchanges of liaison officers;

(b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants.

...

4. If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable time in such a way as to eliminate any incompatibilities observed.'

18 Article 37 of Regulation No 604/2013 provides that it is possible for Member States to have recourse to a conciliation procedure where they cannot resolve a dispute on any matter related to the application of the regulation.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

19 After making submissions to the Netherlands authorities on 3 March 2014, Mr Ghezelbash filed an application for a residence permit for a fixed period, on grounds of asylum, on 4 March 2014.

- 20 As a search in the EU Visa Information System (VIS) disclosed that the French Republic's External Representation in Iran had granted Mr Ghezelbash a visa covering the period from 17 December 2013 to 11 January 2014, the State Secretary requested the French authorities, on 7 March 2014, to take charge of Mr Ghezelbash on the basis of Regulation No 604/2013.
- 21 The French authorities accepted the request to take charge of Mr Ghezelbash on 5 May 2014.
- 22 Mr Ghezelbash made further submissions to the Netherlands authorities on 15 May 2015 and, on that occasion, was questioned more closely. In a written statement of 20 May 2014, he requested the State Secretary to examine his application under the extended asylum application procedure in order to allow him to submit original documents proving that he returned to Iran and remained there from 19 December 2013 to 20 February 2014, that is after visiting France, which means, according to the applicant, that France was not the Member State responsible for examining his asylum application.
- 23 By decision of 21 May 2014, the State Secretary rejected Mr Ghezelbash's application for a residence permit for a fixed period on grounds of asylum.
- 24 On 22 May 2014, Mr Ghezelbash brought proceedings challenging that decision and requested the judge dealing with interim relief proceedings at the Rechtbank Den Haag (District Court, The Hague) to adopt an interim measure. Moreover, on 28 May 2014 he produced various items of circumstantial evidence to show that he had returned to Iran after his stay in France, namely a declaration from his employer, a doctor's certificate and a contract relating to the sale of immovable property.
- 25 By decision of 13 June 2014, the judge dealing with interim relief proceedings at the Rechtbank Den Haag (District Court, The Hague) granted Mr Ghezelbash's application for an interim measure and ordered that the effects of the State Secretary's decision of 21 May 2014 be suspended.
- 26 The referring court considers that that decision should be annulled on account of a failure on the part of the administration to exercise due care and attention, formal defects and failure to state adequate reasons, on the basis that the State Secretary should have examined Mr Ghezelbash's asylum application under the extended asylum application procedure in order to take full account of the documents produced by him. However, for the purpose of determining whether the legal effects of the annulled decision must be maintained, the referring court is of the view that it is also required to determine whether Mr Ghezelbash is entitled to challenge the French Republic's responsibility to examine his asylum application after that Member State has accepted that responsibility.
- 27 Furthermore, the referring court observes that, during the interview of 3 March 2014, Mr Ghezelbash was informed of the obligation he was under to produce evidence for the purpose of determining the Member State responsible in such general terms that he could not be criticised for failing to indicate, at that stage of the procedure, the documents that he produced subsequently. The request sent to the French authorities for charge to be taken of Mr Ghezelbash was therefore premature or, at the very least, incomplete, and it follows that those authorities took a decision on that request with no knowledge of the documents provided by the asylum seeker.
- 28 In those circumstances, the Rechtbank Den Haag (District Court, The Hague) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) What is the scope of Article 27 of Regulation No 604/2013, whether or not read in conjunction with recital 19 of that regulation?

Does an asylum seeker — in a situation such as that in the present case, in which the foreign national was confronted with the request for assumption of responsibility to deal with the asylum application only after that request had been agreed to, and that foreign national submits evidence, subsequent to the agreement to that request, which could lead to the conclusion that it is the requesting Member



State, and not the requested Member State, which is responsible for examining the application for asylum, and the requesting Member State subsequently does not examine those documents or forward them to the requested Member State — have the right, pursuant to that article, to an (effective) legal remedy against the application of the criteria for determining the Member State responsible laid down in Chapter III of Regulation No 604/2013?

- (2) On the assumption that, under Regulation No 604/2013, or under the operation of Regulation No 343/2003, the foreign national is in principle not entitled to invoke the incorrect application of the criteria for determining the Member State responsible when the requested Member State has agreed to a request to take charge, is the defendant correct in its contention that an exception to that assumption may be contemplated only in the case of family situations as referred to in Article 7 of Regulation No 604/2013, or is it conceivable that there may also be other special facts and circumstances on the basis of which the foreign national may be entitled to invoke the incorrect application of the criteria for determining the Member State responsible?
- (3) If the answer to Question 2 is that, in addition to family situations, there are other circumstances which could lead to the foreign national being entitled to invoke the incorrect application of the criteria for determining the Member State responsible, can the facts and circumstances described in [paragraph 27 above] constitute such special facts and circumstances?

### Consideration of the questions

#### *Question 1*

- 29 By its first question, the referring court seeks to ascertain, in essence, whether Article 27(1) of Regulation No 604/2013, read in the light of recital 19 of that regulation, is to be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, in particular the criterion relating to the grant of a visa set out in Article 12 of the regulation.
- 30 Article 27(1) of Regulation No 604/2013 provides that the asylum seeker is to have the right to an effective remedy in the form of an appeal or a review, on points of fact and law, against a transfer decision before a court or tribunal.
- 31 It is apparent from the correlation table in Annex II to Regulation No 604/2013 that that provision corresponds to Article 19(2) of Regulation No 343/2003.
- 32 In its judgment of 10 December 2013 in *Abdullahi* (C-394/12, EU:C:2013:813), the Court held that Article 19(2) of Regulation No 343/2003 was to be interpreted as meaning that the only way an asylum seeker can challenge the responsibility of a Member State, as Member State of the asylum seeker's first entry into EU territory, is by pleading systemic flaws in the asylum procedure and in the conditions for the reception of asylum seekers in that latter Member State, which provide substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights.
- 33 The referring court is uncertain as to the relevance of that judgment in determining the scope of Article 27(1) of Regulation No 604/2013 in a situation such as that in the case before it.

- 34 As a preliminary point, it should be noted that, with regard to the rights enjoyed by an asylum seeker, Regulation No 604/2013 differs in essential respects from Regulation No 343/2003, which was applicable in the case giving rise to the judgment of 10 December 2013 in *Abdullahi* (C-394/12, EU:C:2013:813).
- 35 The scope of the appeal provided for in Article 27(1) of Regulation No 604/2013 must therefore be determined in the light of the wording of the provisions of that regulation, its general scheme, its objectives and its context, in particular its evolution in connection with the system of which it forms part (see, to that effect, judgment of 10 December 2013 in *Abdullahi*, (C-394/12, EU:C:2013:813, paragraph 51).
- 36 It is apparent from the wording of Article 27(1) of Regulation No 604/2013 that the legal remedy provided for in that article must be effective and cover questions of both fact and law. Moreover, the drafting of that provision makes no reference to any limitation of the arguments that may be raised by the asylum seeker when availing himself of that remedy. The same applies to the drafting of Article 4(1)(d) of that regulation, concerning the information that must be provided to the applicant by the competent authorities as to the possibility of challenging a transfer decision.
- 37 In particular, it is clear that the EU legislature did not provide for any specific link or, a fortiori, any exclusive link between the legal remedies established in Article 27 of Regulation No 604/2013 and the rule, now set out in Article 3(2) of that regulation, which limits the possibilities for transferring an applicant to the Member State initially designated as responsible where there are systemic flaws in the asylum procedure and in the reception conditions for asylum seekers 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.
- 38 Furthermore, the scope of the remedy available to an asylum seeker against a decision to transfer him is made clear in recital 19 of Regulation No 604/2013, the content of which did not appear in Regulation No 343/2003.
- 39 That recital states that, in order to ensure compliance with international law, the effective remedy introduced by Regulation No 604/2013 in respect of transfer decisions should cover (i) the examination of the application of that regulation and (ii) the examination of the legal and factual situation in the Member State to which the asylum seeker is to be transferred.
- 40 While the second examination mentioned in that recital refers only to the review of the situation prevailing in the Member State to which the applicant is to be transferred and is designed to check that it is not impossible to proceed with the transfer of the applicant for the reasons set out in Article 3(2) of the regulation, the first examination mentioned in that recital is designed to ensure, more generally, review of the proper application of the regulation.
- 41 It is apparent from the general scheme of Regulation No 604/2013 that its application is based essentially on the conduct of a process for determining the Member State responsible as designated by the criteria listed in Chapter III of the regulation.
- 42 Thus, according to recitals 4, 5 and 40 of Regulation No 604/2013, the objective of the regulation is to establish a clear and workable method based on objective, fair criteria both for the Member States and for the persons concerned for determining the Member State responsible for examining an asylum application. It follows, in particular, from Articles 3(1) and 7(1) of the regulation that the Member State responsible is, in principle, the Member State indicated by the criteria set out in Chapter III of the regulation. Moreover, Chapter IV of the regulation identifies specifically the situations in which a Member State may be deemed responsible for examining an asylum application by way of derogation from those criteria.

- 43 The crucial importance, for the application of Regulation No 604/2013, of the process for determining the Member State responsible on the basis of the criteria laid down in Chapter III of the regulation is confirmed by the fact that Article 21(1) of the regulation provides that it is possible for the Member State with which an application for international protection has been lodged to request another Member State to take charge of an asylum seeker only if the first Member State considers that the second is responsible for the examination of the application. Moreover, under Article 21(3) of the regulation, the request for charge to be taken of the applicant must include evidence enabling the authorities of the Member State requested to check whether it is responsible on the basis of the criteria laid down in the regulation. Similarly, it is apparent from Article 22 of Regulation No 604/2013 that the response to such a request must be based on an examination of the elements of proof and circumstantial evidence whereby the criteria laid down in Chapter III of the regulation are applied.
- 44 Accordingly, the reference in recital 19 of Regulation No 604/2013 to the examination of the application of the regulation in an appeal against a transfer decision for which provision is made in Article 27(1) of the regulation must be understood as being intended to ensure, in particular, that the criteria for determining the Member State responsible laid down in Chapter III of the regulation are correctly applied, including the criterion for determining responsibility set out in Article 12 of the regulation.
- 45 That conclusion is supported by the general thrust of the developments that have taken place in the system for determining the Member State responsible for examining an asylum application made in one of the Member States ('the Dublin system') as a result of the adoption of Regulation No 604/2013 and by the objectives of the regulation.
- 46 Thus, with regard, first, to those developments, it should be noted that, as the EU legislature has introduced or enhanced various rights and mechanisms guaranteeing the involvement of asylum seekers in the process for determining the Member State responsible, Regulation No 604/2013 differs, to a significant degree, from Regulation No 343/2003, which was applicable in the case which gave rise to the judgment of 10 December 2013 in *Abdullahi* (C-394/12, EU:C:2013:813).
- 47 In the first place, Article 4 of Regulation No 604/2013 confers a right on the applicant to be informed of, inter alia, the criteria for determining the Member State responsible and the relative importance of those criteria, including the fact that an application for international protection lodged in one Member State may result in that Member State becoming the Member State responsible, even if that designation of responsibility is not based on those criteria.
- 48 In the second place, Article 5(1), (3) and (6) of Regulation No 604/2013 provides that the Member State carrying out the determination of the Member State responsible must, in a timely manner and, in any event, before a transfer decision has been taken, conduct a personal interview with the asylum seeker and ensure that the applicant or the counsellor representing him has access to a written summary of the interview. Pursuant to Article 5(2) of the regulation, the interview does not have to take place if the applicant has already provided the information relevant to the determination of the Member State responsible and, in that case, the Member State in question must give the applicant the opportunity to present any further information which may be relevant for the correct determination of the Member State responsible before a decision is taken to transfer the applicant.
- 49 In the third place, Section IV of Chapter VI of Regulation No 604/2013, entitled 'Procedural safeguards', sets out at considerable length the arrangements for the notification of transfer decisions and the rules governing the remedies available in respect of such decisions, matters which were not covered with the same degree of detail in Regulation No 343/2003.

- 50 It is apparent from Article 27(3) to (6) of Regulation No 604/2013 that, in order to ensure that those remedies are effective, the asylum seeker must, inter alia, be given the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal and have legal assistance.
- 51 It follows from the foregoing that the EU legislature did not confine itself, in Regulation No 604/2013, to introducing organisational rules simply governing relations between Member States for the purpose of determining the Member State responsible, but decided to involve asylum seekers in that process by obliging Member States to inform them of the criteria for determining responsibility and to provide them with an opportunity to submit information relevant to the correct interpretation of those criteria, and by conferring on asylum seekers the right to an effective remedy in respect of any transfer decision that may be taken at the conclusion of that process.
- 52 As regards, second, the objectives of Regulation No 604/2013, it is apparent from recital 9 thereof that, while it confirms the principles underlying Regulation No 343/2003, Regulation No 604/2013 is intended to make the necessary improvements, in the light of experience, not only to the effectiveness of the Dublin system but also to the protection afforded applicants under that system, to be achieved, inter alia, by the judicial protection enjoyed by asylum seekers.
- 53 A restrictive interpretation of the scope of the remedy provided in Article 27(1) of Regulation No 604/2013 might, inter alia, thwart the attainment of that objective by depriving the other rights conferred on asylum seekers by that regulation of any practical effect. Thus, the requirements laid down in Article 5 of the regulation to give asylum seekers the opportunity to provide information to facilitate the correct application of the criteria for determining responsibility laid down by the regulation and to ensure that such persons are given access to written summaries of interviews prepared for that purpose would be in danger of being deprived of any practical effect if it were not possible for an incorrect application of those criteria — failing, for example, to take account of the information provided by the asylum seeker — to be subject to judicial scrutiny.
- 54 In that context, the making of an application under Regulation No 604/2013 cannot, as the Advocate General observed in point 74 of her Opinion, be equated with forum shopping, which the Dublin system seeks to avoid (judgment of 21 December 2011 in *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraph 79). Indeed, the court hearing such an application will not be required to make a Member State that is to the asylum seeker's liking responsible for the examination of the asylum application, but to verify whether the criteria for determining responsibility laid down by the EU legislature have been applied correctly.
- 55 It should be noted in that regard that if it were established in the course of such an examination that an error had been made, that could have no bearing on the principle of mutual trust between Member States on which the Common European Asylum System is based (see, to that effect, judgment of 10 December 2013 in *Abdullahi*, C-394/12, EU:C:2013:813, paragraphs 52 and 53), as such a finding would simply mean that the Member State to which the applicant was to be transferred was not the Member State responsible within the meaning of the criteria laid down in Chapter III of Regulation No 604/2013.
- 56 Furthermore, with regard to the objective of establishing a method for the swift determination of the Member State responsible without compromising the objective of processing asylum applications rapidly, referred to in recital 5 of Regulation No 604/2013, it is true that the bringing of an action may possibly postpone the definitive conclusion of the process for determining the Member State responsible.
- 57 However, the Court has previously held, in the context of Regulation No 343/2003, that the EU legislature did not intend that the judicial protection enjoyed by asylum seekers should be sacrificed to the requirement of expedition in processing asylum applications (see, to that effect, judgment of

29 January 2009 in *Petrosian*, C-19/08, EU:C:2009:41, paragraph 48). That finding applies, a fortiori, with regard to Regulation No 604/2013, as the EU legislature significantly enhanced, by that regulation, the procedural safeguards granted to asylum seekers under the Dublin system.

- 58 It should be observed in that regard that the risk that the conclusion of the procedure for the determination of the Member State responsible may be excessively delayed as a result of the scrutiny of the correct application of the criteria for determining responsibility is limited by the fact that such scrutiny must be carried out within the framework established by Regulation No 604/2013, in particular Article 22(4) and (5), which provides (i) that the requirement of proof should not exceed what is necessary for the proper application of the regulation and (ii) that if there is no formal proof, the responsibility of the requested Member State should be acknowledged if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish its responsibility.
- 59 Moreover, as regards the risk of delay in implementing transfer decisions, it is apparent from Article 27(3)(c) of Regulation No 604/2013 that, by specifying that the Member States are to provide that the person concerned has the opportunity to request, within a reasonable period of time, a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal, the EU legislature acknowledges that the Member States may decide that the lodging of an appeal against a transfer decision does not, of itself, have suspensory effect with regard to the transfer, which may therefore go ahead without waiting for the examination of the appeal, provided that suspension has not been requested or the request for suspension has been refused.
- 60 Lastly, in the light of developments in the Dublin system as a result of Regulation No 604/2013, the fact that the rules applicable to asylum applications have been harmonised, albeit to a minimal degree (see, to that effect, judgment of 9 November 2010 in *B and D*, C-57/09 and C-101/09, EU:C:2010:661, paragraph 114), cannot, in itself, result in an interpretation that limits the scope of the remedy provided for in Article 27 of the regulation.
- 61 In the light of all the foregoing considerations, the answer to the first question is that Article 27(1) of Regulation No 604/2013, read in the light of recital 19 of the regulation, must be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, in particular the criterion relating to the grant of a visa set out in Article 12 of the regulation.

### *Questions 2 and 3*

- 62 In the light of the answer to the first question, there is no need to answer the second and third questions.

### **Costs**

- 63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Article 27(1) of 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, read in the light of recital 19 of**

**the regulation, must be interpreted as meaning that, in a situation such as that in the main proceedings, an asylum seeker is entitled to plead, in an appeal against a decision to transfer him, the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the regulation, in particular the criterion relating to the grant of a visa set out in Article 12 of the regulation.**

[Signatures]