Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

16 February 2017 [1]

(Reference for a preliminary ruling — Area of freedom, security and justice — Borders, asylum and immigration — Dublin system — Regulation (EU) No 604/2013 — Article 4 of the Charter of Fundamental Rights of the European Union — Inhuman or degrading treatment — Transfer of a seriously ill asylum seeker to the State responsible for examining his application — No substantial grounds for believing that there are proven systemic flaws in that Member State — Obligations imposed on the Member State having to carry out the transfer)

In Case C-578/16 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vrhovno sodišče (Supreme Court, Slovenia), made by decision of 28 October 2016, received at the Court on 21 November 2016, in the proceedings

**C. K.,**

**H. F.,**

**A. S.**

v

**Republika Slovenija,**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça (Rapporteur), President of the Chamber, M. Berger, A. Borg Barthet, E. Levits and F. Biltgen, Judges,

Advocate General: E. Tanchev,

Registrar: M. Aleksejev, Administrator,

having regard to the request of the referring court of 28 October 2016, received at the Court on 21 November 2016, that the reference for a preliminary ruling be dealt with under the urgent procedure pursuant to Article 107 of the Rules of Procedure of the Court,

having regard to the decision of 1 December 2016 of the Fifth Chamber to grant that request,

having regard to the written procedure and further to the hearing on 23 January 2017,

1 — Language of the case: Slovene.

after considering the observations submitted on behalf of:

— C. K., H. F. and A. S., initially by Z. Kojić, and subsequently by M. Nabergoj, svetovalca za begunce,

— the Slovenian Government, by N. Pintar Gosenca and A. Vran, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by L. Cordì, avvocato dello Stato,

— the United Kingdom Government, by C. Crane, acting as Agent, and D. Blundell, Barrister,

— the European Commission, by M. Condou-Durande and M. Žebre, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 February 2017,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 3(2) and 17(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 (OJ 2013 L 180, p. 31) ('the Dublin III Regulation'), Article 267 TFEU and Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 This request has been made in proceedings between, on the one hand, C. K., H. F. and their child A. S. and, on the other hand, the Republika Slovenija (Republic of Slovenia), represented by its Ministry of the Interior, concerning the transfer of those persons to Croatia, designated as the Member State responsible for examining their application for international protection in accordance with the provisions of the Dublin III Regulation.

### Legal context

#### *International law*

*The Geneva Convention*

3 Article 33 of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 [*United Nations Treaty Series*, Vol. 189, p. 150, No 2545 (1954), supplemented by the Protocol relating to the Status of Refugees, concluded in New York on 31 January 1967] ('the Geneva Convention'), entitled 'Prohibition of expulsion or return ("refoulement")', provides in paragraph 1:

'No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

*The ECHR*

4 Under the heading 'Prohibition of torture', Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), provides:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

## *EU law*

*The Charter*

5 Under Article 1 of the Charter, entitled 'Human dignity':

'Human dignity is inviolable. It must be respected and protected.'

6 Article 4 of the Charter, entitled 'Prohibition of torture and inhuman or degrading treatment or punishment', states:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

7 Paragraph 2 of Article 19 of the Charter, entitled 'Protection in the event of removal, expulsion or extradition', provides:

'No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.'

8 Article 51 of the Charter, entitled 'Field of application', provides in paragraph 1:

'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.'

9 Article 52 of the Charter, entitled 'Scope and interpretation of rights and principles', provides in paragraph 3:

'In so far as this Charter contains rights which correspond to rights guaranteed by the [ECHR], the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.'

*The Dublin III Regulation*

10 The Dublin III Regulation, which entered into force on 19 July 2013, replaced 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) ('the Dublin II Regulation') with effect from 1 January 2014.

11 Recitals 4, 5, 9, 32 and 39 of the Dublin III Regulation state:

‘(4) The Tampere conclusions 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 [the Dublin II Regulation], 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. … A comprehensive “fitness check” should be foreseen by conducting an evidence-based review covering the legal, economic and social effects of the Dublin system, including its effects on fundamental rights.

…

(32) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.

…

(39) This Regulation respects the fundamental rights and observes the principles recognized by the [Charter]. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the [Charter] as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.’

12 Article 3 of that regulation, entitled ‘Access to the procedure for examining an application for international protection’, provides:

‘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 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], 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.

…’

13 Chapter III of the Dublin III Regulation contains the criteria for determining the Member State responsible for examining an asylum application. This chapter includes, inter alia, Article 12 of that regulation, entitled 'Issue of residence documents or visas', which provides in paragraph 2:

'Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection …'

14 Article 17 of that regulation, entitled 'Discretionary clauses', provides in paragraph 1:

'By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.

…'

15 Chapter VI of the Dublin III Regulation is entitled 'Procedures for taking charge and taking back'. It contains, inter alia, Articles 27, 29, 31 and 32 of that regulation.

16 Article 27 of that regulation, entitled 'Remedies', provides in paragraph 1:

'The applicant or another person as referred to in Article 18(1)(c) or (d) 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.'

17 Section VI of Chapter VI of the Dublin III Regulation, dealing with transfers of applicants to the Member State responsible, contains Article 29 of that regulation, entitled 'Modalities and time limits', which provides:

'1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, 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).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

…

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.

…

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. … '

18 Within that Section VI, Article 31 of that regulation, entitled 'Exchange of relevant information before a transfer is carried out', provides:

'1. The Member State carrying out the transfer of an applicant … shall communicate to the Member State responsible such personal data concerning the person to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.

2. The transferring Member State shall, in so far as such information is available to the competent authority in accordance with national law, transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;

… '

19 Also in Section VI, Article 32 of the Dublin III Regulation, entitled 'Exchange of health data before a transfer is carried out', provides in paragraph 1:

'For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

… '

*The implementing regulation*

20 Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 (OJ 2003 L 222, p. 3), as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 (OJ 2014 L 39, p. 1) ('the implementing regulation'), contains the detailed rules for the application of the Dublin II Regulation and, now, the Dublin III Regulation.

21 Chapter III of the implementing regulation is entitled 'Transfers'. That chapter includes Articles 8 and 9 of that regulation.

22 Article 8 of that regulation, entitled ‘Cooperation on transfers’, provides:

‘1. ‘It is the obligation of the Member State responsible to allow the asylum seeker’s transfer to take place as quickly as possible and to ensure that no obstacles are put in his way. That Member State shall determine, where appropriate, the location on its territory to which the asylum seeker will be transferred or handed over to the competent authorities, taking account of geographical constraints and modes of transport available to the Member State making the transfer. In no case may a requirement be imposed that the escort accompany the asylum seeker beyond the point of arrival of the international means of transport used or that the Member State making the transfer meet the costs of transport beyond that point.

2. The Member State organising the transfer shall arrange the transport for the asylum seeker and his escort and decide, in consultation with the Member State responsible, on the time of arrival and, where necessary, on the details of the handover to the competent authorities. The Member State responsible may require that three working days’ notice be given.

3. The standard form set out in Annex VI shall be used for the purpose of transmitting to the responsible Member State the data essential to safeguard the rights and immediate needs of the person to be transferred. This standard form shall be considered a notice in the meaning of paragraph 2.’

23 Under Article 9 of that regulation, entitled ‘Postponed and delayed transfers’:

‘1. The Member State responsible shall be informed without delay of any postponement due either to an appeal or review procedure with suspensive effect, or physical reasons such as ill health of the asylum seeker, non-availability of transport or the fact that the asylum seeker has withdrawn from the transfer procedure.

1a. Where a transfer has been delayed at the request of the transferring Member State, the transferring and the responsible Member States must resume communication in order to allow for a new transfer to be organised as soon as possible, in accordance with Article 8, and no later than two weeks from the moment the authorities become aware of the cessation of the circumstances that caused the delay or postponement. In such a case, an updated standard form for the transfer of the data before a transfer is carried out as set out in Annex VI shall be sent prior to the transfer.

2. A Member State which, for one of the reasons set out in Article 29(2) of [the Dublin III Regulation], cannot carry out the transfer within the normal time limit of six months from the date of acceptance of the request to take charge or take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect, shall inform the Member State responsible before the end of that time limit. Otherwise, the responsibility for processing the application for international protection and the other obligations under [the Dublin III Regulation] falls to the requesting Member State, in accordance with Article 29(2) of that Regulation.

…’

24 Annexes VI and IX to the implementing regulation contain, respectively, the standard forms for the transfer of data and exchange of health data prior to a transfer pursuant to the Dublin III Regulation.

*The 'reception' directive*

25 The purpose 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 (OJ 2013 L 180, p. 96) ('the "reception" directive') is, in accordance with Article 1 thereof, to lay down standards for the reception of applicants for international protection in Member States.

26 Article 17 of that directive, entitled 'General rules on material reception conditions and health care', provides:

'1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21 …

…'

27 Article 18 of that directive, entitled 'Modalities for material reception conditions', provides in paragraph 3:

'Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres referred to in paragraph 1(a) and (b).'

28 Under Article 19 of the 'reception' directive, entitled 'Health care':

'1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.

2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.'

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

29 It is apparent from the decision to refer and from the material in the case file and arguments at the hearing held before the Court that, on 16 August 2015, C. K., a national of the Syrian Arab Republic, and H. F., a national of the Arab Republic of Egypt, entered the territory of the European Union by means of a visa validly issued by the Republic of Croatia. It is also apparent that, after a short stay in that Member State, they crossed the Slovenian border equipped with false Greek identification. C. K. and H. F. were subsequently admitted to the reception centre for asylum seekers in Ljubljana (Slovenia) and each submitted an asylum application to the Ministry of the Interior of the Republic of Slovenia. It is again apparent from that information that C. K. was pregnant at the time of her entry into the territory of Slovenia.

30 On 28 August 2015, the Slovenian authorities, taking the view that the Republic of Croatia was, pursuant to Article 12(2) of the Dublin III Regulation, the Member State responsible for examining the application for asylum of the appellants in the main proceedings, sent a request to the authorities of that Member State to take charge of them. By reply of 14 September 2015, the Republic of Croatia accepted its responsibility in regard to those persons.

31 Taking into account the advanced pregnancy of C. K., the Republic of Slovenia did not, however, pursue the procedure under the Dublin III Regulation until after 20 November 2015, the date on which the appellant in the main proceedings gave birth to her child A. S. An application for international protection was made for the latter on 27 November 2015, and this was dealt with together with those of C. K. and H. F.

32 On 20 January 2016, the Ministry of the Interior issued a decision refusing to examine the applications for asylum of the appellants in the main proceedings and ordering their transfer to the Republic of Croatia.

33 By judgment of 2 March 2016, the Upravno sodišče (Administrative Court, Slovenia) annulled that decision and referred the case back for re-examination by instructing the competent authorities to obtain an assurance from the Republic of Croatia that C. K., H. F. and their child would have access to adequate medical care in that Member State.

34 A request to that effect was sent by the Slovenian authorities to the Republic of Croatia on 30 March 2016. By reply of 7 April 2016, the Republic of Croatia gave an assurance that the appellants in the main proceedings would receive accommodation, adequate care and any necessary medical treatment in Croatia.

35 On 5 May 2016, the Ministry of the Interior adopted a new decision refusing to examine the applications for asylum of the appellants in the main proceedings and ordering their transfer to the Republic of Croatia.

36 The appellants in the main proceedings brought an appeal against that decision before the Upravno sodišče (Administrative Court). They also requested that court to suspend provisionally the enforcement of that decision until a final judicial decision had been adopted on the substance.

37 In the context of that appeal, the appellants in the main proceedings claimed in particular that their transfer would have negative consequences for the state of health of C. K., also likely to affect the well-being of her new-born child. In this regard, they argued, supported by a number of medical certificates, that C. K. had had a high-risk pregnancy and that she has suffered psychiatric difficulties since giving birth. A specialist psychiatrist, it was stated, had accordingly diagnosed her as having post-natal depression and periodic suicidal tendencies. Furthermore, it is apparent from several medical opinions that the poor state of health of C. K. is mainly caused by uncertainty regarding her status and the resulting stress. Moreover, it was stated, the deterioration in her psychological state could result in aggressive behaviour on her part towards herself and others, which might, as the case may be, require hospital care. The illness suffered by C. K., according to that psychiatrist, required that she and her child remain at the reception centre in Ljubljana to receive care there.

38 By judgment of 1 June 2016, the Upravno sodišče (Administrative Court) annulled the decision to transfer the appellants in the main proceedings. By an order of the same day, that court also suspended the enforcement of that decision until a final judicial decision had been adopted on the substance of the dispute.

39 The Ministry of the Interior thereupon brought an appeal against that judgment before the Vrhovno sodišče (Supreme Court, Slovenia). On 29 June 2016, that court amended the judgment at first instance and confirmed that transfer decision. As regards the care that the state of health of C. K. requires, it held that it was apparent from a report of the Office of the United Nations High Commissioner for Refugees (UNHCR), received pursuant to a request by the Slovenian authorities, that the situation in the Republic of Croatia concerning the reception of asylum seekers was good. According to that report, that Member State had, in, inter alia, Kutina (Croatia), an accommodation

centre designed specifically for vulnerable persons, where asylum seekers had free access to medical care provided by a doctor regularly visiting the centre or, in the event of emergencies, by the local hospital or even, if necessary, by the hospital in Zagreb (Croatia).

40 As regards other allegations of the appellants in the main proceedings, according to which they were victims of racially motivated remarks and abuse in Croatia, the Vrhovno sodišče (Supreme Court) held that they had not demonstrated that there were substantial grounds for believing that, in Croatia, systemic flaws existed in the asylum procedure and in the conditions for the reception of asylum seekers that were likely to give rise, for the latter, to a risk of inhuman or degrading treatment within the meaning of Article 3(2) of the Dublin III Regulation. Moreover, neither the EU institutions nor the UNHCR regarded the situation in that Member State as critical.

41 The judgment of the Vrhovno sodišče (Supreme Court) subsequently became final. However, the appellants in the main proceedings lodged a constitutional appeal with the Ustavno sodišče (Constitutional Court, Slovenia).

42 By decision of 28 September 2016, that court held that, admittedly, it had not been proven in this case that there are, in Croatia, systemic flaws in the asylum procedure and in the conditions for the reception of applicants within the meaning of Article 3(2) of the Dublin III Regulation. Nevertheless, it held, this was not the only ground that could be invoked by the appellants in the main proceedings to show that their transfer to that Member State would expose them to a real risk of inhuman or degrading treatment.

43 In accordance with recital 32 of that regulation, Member States must, according to that court, respect the requirements of Article 33(1) of the Geneva Convention as well as Article 3 of the ECHR and the relevant case-law of the European Court of Human Rights. However, those requirements are wider than the criterion of systemic flaws laid down by Article 3(2) of that regulation, which, moreover, relates only to the situation in which it is impossible for the Member States to proceed with any transfer of the asylum seekers to a particular Member State. In the event that, apart from the case referred to in that provision, the transfer of an asylum seeker to another Member State would result in an infringement of those fundamental requirements, the Member States are required to apply the discretionary clause laid down in Article 17(1) of the Dublin III Regulation.

44 It follows, according to that court, that there is an obligation on the competent authorities and the national court to examine all the circumstances of significance for observance of the principle of non-refoulement, including the state of health of the person concerned, in the case where an asylum seeker claims that the Member State responsible for his application is not a 'safe State' for him. In that context, those authorities must take into account the applicant's personal situation in Slovenia and assess whether the mere fact of transferring that person might in itself be contrary to the principle of non-refoulement.

45 Consequently, according to the Ustavno sodišče (Constitutional Court), since, in the case before it, the appellants in the main proceedings claimed that further movement of C. K. would adversely affect her state of health, submitting several medical opinions in support of their statements, the Vrhovno sodišče (Supreme Court) could not confine itself, as it did, to taking account of the state of health of C. K. as part of the assessment of the situation in Croatia, but also should have verified whether the transfer to that Member State, considered in isolation, was compatible with Article 3 of the ECHR. By failing to assess the claims and the evidence submitted by the appellants in the main proceedings in that regard, that court disregarded their right, recognised by the Constitution of the Republic of Slovenia, to be accorded 'equal protection in law'. On those grounds, the Ustavno sodišče (Constitutional Court) set aside the judgment of the Vrhovno sodišče (Supreme Court) and referred the case in the main proceedings back to that court for judgment in accordance with the considerations set out in its decision.

46 Finding that the Ustavno sodišče (Constitutional Court) had not referred a question to the Court of Justice for a preliminary ruling before making its decision of 28 September 2016, and nevertheless having doubts as to the compatibility with EU law of the considerations developed in that decision by the constitutional court, the Vrhovno sodišče (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the interpretation of the rules relating to the application of the discretionary clause under Article 17(1) of the Dublin III Regulation, having regard to the nature of that provision, ultimately a matter for the courts and tribunals of the Member State, and do those rules release the courts and tribunals against whose decisions there is no judicial remedy from the obligation to refer the case to the Court of Justice under the third paragraph of Article 267 of the Treaty on the Functioning of the European Union?

In the alternative, if the answer to the above question is in the negative:

(2) Is the assessment of circumstances under Article 3(2) of the Dublin III Regulation (in a case such as the one forming the subject matter of the present reference for a preliminary ruling) sufficient to satisfy the requirements of Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union, in conjunction with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 33 of the Geneva Convention?

In connection with that question:

(3) Does it follow from the interpretation of Article 17(1) of the Dublin III Regulation that the application of the discretionary clause by the Member State is mandatory for the purposes of ensuring effective protection against an infringement of the rights under Article 4 of the Charter of Fundamental Rights of the European Union in cases such as the one forming the subject matter of the present reference for a preliminary ruling, and that such application prohibits the transfer of the applicant for international protection to a competent Member State which has accepted its competence in accordance with that regulation?

If the answer to the above question is in the affirmative:

(4) Can the discretionary clause under Article 17(1) of the Dublin III Regulation be used as a basis permitting an applicant for international protection, or another person, in a transfer procedure under that regulation, to make a claim that that provision should be applied, which the competent authorities and courts and tribunals of the Member State must assess, or are those administrative authorities and courts and tribunals required to establish the circumstances cited of their own motion?'

**The urgent preliminary ruling procedure**

47 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.

48 In support of this request, that court claims, in essence, that, taking into account the state of health of C. K., the question of her status should be resolved as rapidly as possible.

49 In this respect, it should be observed, in the first place, that the present reference for a preliminary ruling concerns the interpretation of the Dublin III Regulation, which was adopted on the basis of, inter alia, Article 78(2)(e) TFEU, a provision contained in Title V of Part Three of the FEU Treaty on the area of freedom, security and justice. It may, therefore, be dealt with under the urgent preliminary ruling procedure.

50 In the second place, the possibility that the appellants in the main proceedings may be transferred to the Republic of Croatia before the end of an ordinary preliminary ruling procedure cannot be ruled out in the present case. In response to a request by the Court of Justice for clarification, made on the basis of Article 101(1) of its Rules of Procedure, the referring court stated that, even though, at first instance, the Upravno sodišče (Administrative Court) had ordered, at the request of those persons, the suspension of enforcement of the decision to transfer the persons concerned, there is no judicial measure suspending the enforcement of that decision at the current stage of the national proceedings.

51 In those circumstances, the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure was granted, in accordance with the decision taken, on 1 December 2016, by the Fifth Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General.

## Consideration of the questions referred

### *Question 1*

52 By its first question, the referring court asks, in essence, whether Article 17(1) of the Dublin III Regulation must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is governed solely by national law and the interpretation given to it by the constitutional court of that Member State, or whether it is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU.

53 In that respect, it must be recalled that the Court has already held, with regard to the 'sovereignty clause' under Article 3(2) of the Dublin II Regulation, the terms of which coincide, in essence, with those of the 'discretionary clause' laid down in Article 17(1) of the Dublin III Regulation and the interpretation of which is, accordingly, transposable to the latter, that the discretion which it allows the Member States is an integral part of the system for determining the Member State responsible developed by the EU legislature ('the Dublin system'). It follows that a Member State implements EU law, within the meaning of Article 51(1) of the Charter, also when it makes use of that clause (see judgment of 21 December 2011, *N. S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 64 to 68). Consequently, the application of the 'discretionary clause' laid down in Article 17(1) of the Dublin III Regulation does indeed involve an interpretation of EU law, within the meaning of Article 267 TFEU.

54 In the light of the foregoing considerations, the answer to the first question is that Article 17(1) of the Dublin III Regulation must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU.

### *Questions 2, 3 and 4*

55 By its second, third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4 of the Charter must be interpreted as meaning that, in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical

illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article. In the affirmative, the referring court expresses uncertainty as to whether the Member State concerned would be required to apply the 'discretionary clause' laid down in Article 17(1) of that regulation and itself examine the asylum application at issue.

56 As a preliminary point, it should be recalled that, in accordance with Article 3(1) of the Dublin III Regulation, an application for asylum lodged by a national of a third country or by a stateless person in the territory of any one of the Member States, is, in principle, examined by the single Member State which the criteria set out in Chapter III indicate as being responsible.

57 The Dublin system, of which that regulation forms part, seeks, as is apparent from recitals 4 and 5 thereof, to make it possible, in particular, 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 processing applications for international protection expeditiously.

58 In that context, a Member State with which an asylum application has been lodged is required to follow the procedures laid down in Chapter VI of that regulation for the purposes of determining the Member State responsible for examining that application, to call upon that Member State to take charge of the applicant concerned and, once that request has been accepted, to transfer that person to the Member State.

59 However, in accordance with the settled case-law of the Court, the rules of secondary EU law, including the provisions of the Dublin III Regulation, must be interpreted and applied in a manner consistent with the fundamental rights guaranteed by the Charter (see, by analogy, as regards the Dublin II Regulation, judgment of 21 December 2011, *N. S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 77 and 99). The prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the Charter, is, in that regard, of fundamental importance, to the extent that it is absolute in that it is closely linked to respect for human dignity, which is the subject of Article 1 of the Charter (see, to that effect, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 85 and 86).

60 In its judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865, paragraphs 86 to 94 and 106), the Court stressed that the transfer of asylum seekers within the framework of the Dublin system may, in certain circumstances, be incompatible with the prohibition laid down in Article 4 of the Charter. It thus held that an asylum seeker would run a real risk of being subjected to inhuman or degrading treatment, within the meaning of that article, in the event of a transfer to a Member State in which there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the conditions for the reception of applicants. Consequently, in accordance with the prohibition laid down in that article, the Member States may not carry out transfers within the framework of the Dublin system to a Member State in the case where they cannot be unaware that such flaws exist in that Member State.

61 It follows from recital 9 of the Dublin III Regulation that the EU legislature took note of the effects of the Dublin system on the fundamental rights of asylum seekers. It is again apparent that the EU legislature intended, by adopting that regulation, to make the necessary improvements, in the light of experience, not only to the effectiveness of that system, but also to the protection granted to asylum seekers under that system.

62 The Court has, therefore, already held that, with regard to the rights granted to asylum seekers, the Dublin III Regulation differs in essential respects from the Dublin II Regulation (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraph 34).

63 As regards the fundamental rights that are conferred on them, in addition to the codification, in Article 3(2) of the Dublin III Regulation, of the case-law arising from the judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), referred to in paragraph 60 of the present judgment, the EU legislature stressed, in recitals 32 and 39 of that regulation, that the Member States are bound, in the application of that regulation, by the case-law of the European Court of Human Rights and by Article 4 of the Charter.

64 More specifically, as regards decisions to transfer, first, the EU legislature made their legality subject to the granting, inter alia, to the asylum seeker concerned, in Article 27 of the Dublin III Regulation, of the right to an effective remedy before a court against that decision, the scope of which covers both the factual and legal circumstances surrounding it. Secondly, it set out, in Article 29 of that regulation, the rules for those transfers in greater detail, something which it had not done in the Dublin II Regulation.

65 It follows from all of the preceding considerations that the transfer of an asylum seeker within the framework of the Dublin III Regulation can take place only in conditions which preclude that transfer from resulting in a real risk of the person concerned suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter.

66 In that regard, it is not possible to exclude from the outset the possibility that, given the particularly serious state of health of an asylum seeker, his transfer pursuant to the Dublin III Regulation may result in such a risk for him.

67 It must be recalled that the prohibition of inhuman or degrading treatment laid down in Article 4 of the Charter corresponds to that laid down in Article 3 of the ECHR and that, to that extent, its meaning and scope are, in accordance with Article 52(3) of the Charter, the same as those conferred on it by that convention.

68 It follows from the case-law of the European Court of Human Rights relating to Article 3 of the ECHR, which must be taken into account when interpreting Article 4 of the Charter (see, to that effect, judgment of 21 December 2011, *N. S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 87 to 91), that the suffering which flows from naturally occurring illness, whether physical or mental, may be covered by Article 3 of the ECHR if it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible, provided that the resulting suffering attains the minimum level of severity required by that article (see, to that effect, ECtHR, 13 December 2016, *Paposhvili v. Belgium*, CE:ECHR:2016:1213JUD004173810, § 174 and 175).

69 Taking account of the general and absolute nature of Article 4 of the Charter, those points of principle are also relevant in the context of the Dublin system.

70 In that regard, it must be stated, as regards the reception conditions and the care available in the Member State responsible, that the Member States bound by the 'reception' directive, including the Republic of Croatia, are required, including in the context of the procedure under the Dublin III Regulation, in accordance with Articles 17 to 19 of that directive, to provide asylum seekers with the necessary health care and medical assistance including, at least, emergency care and essential treatment of illnesses and of serious mental disorders. In those circumstances, and in accordance with the mutual confidence between Member States, there is a strong presumption that the medical treatments offered to asylum seekers in the Member States will be adequate (see, by analogy, judgment of 21 December 2011, *N. S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 78, 80 and 100 to 105).

71 In the present case, neither the decision to refer nor the material in the case file shows that there are substantial grounds for believing that there are systemic flaws in the asylum procedure and the conditions for the reception of asylum seekers in Croatia, with regard to access to health care in particular, which is, moreover, not alleged by the appellants in the main proceedings. On the contrary, it is apparent from that decision that the Republic of Croatia has, in, inter alia, the town of Kutina, a reception centre designed specifically for vulnerable persons, where they have access to medical care provided by a doctor and, in urgent cases, by the local hospital or even by the hospital in Zagreb. Furthermore, it appears that the Slovenian authorities have obtained from the Croatian authorities an assurance that the appellants in the main proceedings would receive any necessary medical treatment.

72 Moreover, while it is possible that, for certain acute and specific medical illnesses, appropriate medical treatment is available only in certain Member States (see, by analogy, judgment of 5 June 2014, *I*, C-255/13, EU:C:2014:1291, paragraphs 56 and 57), the appellants in the main proceedings have not alleged that this is the case as far as they are concerned.

73 That said, it cannot be ruled out that the transfer of an asylum seeker whose state of health is particularly serious may, in itself, result, for the person concerned, in a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter, irrespective of the quality of the reception and the care available in the Member State responsible for examining his application.

74 In that context, it must be held that, in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in his state of health, that transfer would constitute inhuman and degrading treatment, within the meaning of that article.

75 Consequently, where an asylum seeker provides, particularly in the context of an effective remedy guaranteed to him by Article 27 of the Dublin III Regulation, objective evidence, such as medical certificates concerning his person, capable of showing the particular seriousness of his state of health and the significant and irreversible consequences to which his transfer might lead, the authorities of the Member State concerned, including its courts, cannot ignore that evidence. They are, on the contrary, under an obligation to assess the risk that such consequences could occur when they decide to transfer the person concerned or, in the case of a court, the legality of a decision to transfer, since the execution of that decision may lead to inhuman or degrading treatment of that person (see, by analogy, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 88).

76 It is, therefore, for those authorities to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned. In this regard, in particular in the case of a serious psychiatric illness, it is not sufficient to consider only the consequences of physically transporting the person concerned from one Member State to another, but all the significant and permanent consequences that might arise from the transfer must be taken into consideration.

77 In that context, the authorities of the Member States concerned must verify whether the state of health of the person at issue may be protected appropriately and sufficiently by taking the precautions envisaged by the Dublin III Regulation and, in the affirmative, must implement those precautions.

78 It is apparent from the case-law of the European Court of Human Rights that Article 3 of the ECHR does not, in principle, require a Contracting State to refrain from proceeding with the removal or expulsion of a person where he is fit to travel and provided that the necessary appropriate measures, adapted to the person's state of health, are taken in that regard (see, to that effect, ECtHR, 4 July 2006, *Karim v. Sweden*, CE:ECHR:2006:0704DEC002417105, § 2, and 30 April 2013, *Kochieva and Others v. Sweden*, CE:ECHR:2013:0430DEC007520312, § 35).

79 With more specific regard to the circumstances in which the psychiatric difficulties that an asylum seeker is facing reveal that he has suicidal tendencies, the European Court of Human Rights has held, on several occasions, that the fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the contracting State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised (see ECtHR, 7 October 2004, *Dragan and Others v. Germany*, CE:ECHR:2004:1007DEC003374303, § 1; 4 July 2006, *Karim v. Sweden*, CE:ECHR:2006:0704DEC002417105, § 2, and 30 April 2013, *Kochieva and Others v. Sweden*, CE:ECHR:2013:0430DEC007520312, § 34).

80 As regards those precautions, it must be emphasised that the Member State having to carry out the transfer may cooperate with the Member State responsible, in accordance with Article 8 of the implementing regulation, in order to ensure that the asylum seeker concerned receives health care during and after the transfer.

81 In this regard, the Member State carrying out the transfer must be able to organise it in such a way that the asylum seeker concerned is accompanied, during transportation, by adequate medical staff with the necessary equipment, resources and medication, so as to prevent any worsening of his health or any act of violence by him towards himself or other persons.

82 That Member State must also be able to ensure that the asylum seeker concerned receives care upon his arrival in the Member State responsible. In that respect, it must be recalled that Articles 31 and 32 of the Dublin III Regulation require the Member State carrying out the transfer to communicate to the Member State responsible such information concerning the state of health of the asylum seeker as to allow that Member State to provide him with the immediate health care required in order to protect his vital interests.

83 The standard form set out in Annex VI to the implementing regulation and the common health certificate found in Annex IX to that regulation may thus be used to inform the Member State responsible that the asylum seeker concerned requires medical assistance and care upon his arrival, as well as all the relevant aspects of his illness and the care which that illness will make necessary in the future. In that case, that information must be communicated within a reasonable period of time before the transfer is carried out, in order to provide the Member State responsible with sufficient time to take the necessary measures. The Member State carrying out the transfer may, in addition, obtain from the Member State responsible the confirmation that the necessary care will be fully available upon arrival.

84 If the court having jurisdiction finds that those precautions are sufficient to exclude any real risk of inhuman or degrading treatment in the event of transferring the asylum seeker concerned, it will be for that court to take the necessary measures to ensure that they are implemented by the authorities of the requesting Member State before the person concerned is transferred. Where necessary, that person's state of health should be reassessed before the transfer is carried out.

85 On the other hand, if the taking of those precautions is, regard being had to the particular seriousness of the illness of the asylum seeker concerned, not sufficient to ensure that his transfer will not result in a real risk of a significant and permanent worsening of his state of health, it is for the authorities of the Member State concerned to suspend the execution of that person's transfer for such time as his state of health renders him unfit for such a transfer.

86 In that regard, it must be recalled that, in accordance with Article 29(1) of the Dublin III Regulation, the transfer of the applicant from the requesting Member State to the Member State responsible is to be carried out as soon as 'practically possible'. As is apparent from Article 9 of the implementing regulation, the ill health of the asylum seeker is specifically regarded as a 'physical reason' capable of justifying postponement of the transfer.

87 If the state of health of the asylum seeker concerned does not permit his transfer, it is then for the requesting Member State, in accordance with that provision, to inform the Member State responsible without delay of the postponement of the transfer due to the condition of that asylum seeker.

88 Where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting Member State may choose to conduct its own examination of his application by making use of the 'discretionary clause' laid down in Article 17(1) of the Dublin III Regulation (see, to that effect, judgment of 30 May 2013, *Halaf*, C-528/11, EU:C:2013:342, paragraph 38). The fact nevertheless remains that that provision, read in the light of Article 4 of the Charter, cannot be interpreted, in a situation such as that at issue in the main proceedings, as meaning that it implies an obligation on that Member State to make use of it in that way.

89 In any event, if the state of health of the asylum seeker concerned does not enable the requesting Member State to carry out the transfer before the expiry of the six-month period provided for in Article 29(1) of the Dublin III Regulation, the Member State responsible would be relieved of its obligation to take charge of the person concerned and responsibility would then be transferred to the first Member State, in accordance with paragraph 2 of that article.

90 It is for the referring court to determine, in the main proceedings, whether the state of health of C. K. is of such seriousness that there are substantial grounds for believing that her transfer would result for her in a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter. In the affirmative, it will be for the referring court to eliminate those grounds by ensuring that the precautions referred to in paragraphs 81 to 83 of the present judgment are taken before the transfer of C. K. or, if necessary, that the transfer of that person is suspended until her state of health permits it.

91 In that context, the Commission's argument that it follows from Article 3(2) of the Dublin III Regulation that only the existence of systemic flaws in the Member State responsible is capable of affecting the obligation to transfer an asylum seeker to that Member State is unfounded.

92 Nothing in the wording of that provision suggests that the intention of the EU legislature had been to regulate any circumstance other than that of systemic flaws preventing any transfer of asylum seekers to a particular Member State. That provision cannot, therefore, be interpreted as excluding the possibility that considerations linked to real and proven risks of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, might, in exceptional situations such as those envisaged in the present judgment, have consequences for the transfer of a particular asylum seeker.

93 Moreover, such a reading of Article 3(2) of the Dublin III Regulation would be, first, irreconcilable with the general character of Article 4 of the Charter, which prohibits inhuman or degrading treatment in all its forms. Secondly, it would be manifestly incompatible with the absolute character of that prohibition if the Member States could disregard a real and proven risk of inhuman or degrading treatment affecting an asylum seeker under the pretext that it does not result from a systemic flaw in the Member State responsible.

94 Likewise, the interpretation of Article 4 of the Charter in the present judgment is not invalidated by the judgment of 10 December 2013, *Abdullahi* (C-394/12, EU:C:2013:813, paragraph 60), in which the Court held, with regard to the Dublin II Regulation, in essence, that, in circumstances such as those of the case giving rise to that judgment, the only way in which an asylum seeker could call his transfer into question was by pleading systemic flaws in the Member State responsible. Apart from the fact that the Court has held, as recalled in paragraph 62 of the present judgment, that, with regard to the rights enjoyed by an asylum seeker, the Dublin III Regulation differs in essential respects from the Dublin II Regulation, it must be recalled that that judgment was delivered in a case involving a

national who had not claimed, before the Court of Justice, any particular circumstances indicating that his transfer would, in itself, be contrary to Article 4 of the Charter. The Court thereby merely recalled its previous judgment of 21 December 2011, *N. S. and Others* (C-411/10 and C-493/10, EU:C:2011:865), concerning the impossibility of proceeding with any transfer of asylum seekers to a Member State experiencing systemic flaws in the asylum procedure or the conditions for their reception.

95 Finally, that interpretation fully respects the principle of mutual trust since, far from affecting the existence of a presumption that fundamental rights are respected in each Member State, it ensures that the exceptional situations referred to in the present judgment are duly taken into account by the Member States. Moreover, if a Member State were to proceed with the transfer of an asylum seeker in such situations, the resulting inhuman and degrading treatment would not be attributable, directly or indirectly, to the authorities of the Member State responsible, but to the first Member State alone.

96 In the light of all of the foregoing considerations, the answer to Questions 2, 3 and 4 is that Article 4 of the Charter must be interpreted as meaning that:

— even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of the Dublin III Regulation can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;

— in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;

— it is for the authorities of the Member State having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk of a significant and permanent worsening of his state of health, it is for the authorities of the Member State concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer, and

— where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting Member State may choose to conduct its own examination of that person's application by making use of the 'discretionary clause' laid down in Article 17(1) of the Dublin III Regulation.

97 Article 17(1) of that regulation, read in the light of Article 4 of the Charter, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that Member State to apply that clause.

## Costs

98 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fifth Chamber) hereby rules:

1. **Article 17(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 must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU.**

2. **Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:**

   — **even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Regulation No 604/2013 can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;**

   — **in circumstances in which the transfer of an asylum seeker with a particularly serious mental or physical illness would result in a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman and degrading treatment, within the meaning of that article;**

   — **it is for the authorities of the Member State having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions to ensure that the transfer takes place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular seriousness of the illness of the asylum seeker concerned, the taking of those precautions is not sufficient to ensure that his transfer does not result in a real risk of a significant and permanent worsening of his state of health, it is for the authorities of the Member States concerned to suspend the execution of the transfer of the person concerned for such time as his condition renders him unfit for such a transfer; and**

   — **where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting Member State may choose to conduct its own examination of that person's application by making use of the 'discretionary clause' laid down in Article 17(1) of Regulation No 604/2013.**

   **Article 17(1) of Regulation No 604/2013, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that Member State to apply that clause.**

[Signatures]