

**List of Relevant Asylum Judgments and Pending Preliminary References from the
Court of Justice of the European Union**
November 2012

The text provided in this list has been taken from the Court's judgments and pending reference questions and is also publicly available on the [Court's website](#). The Advocate Generals' opinions are also accessible on the Court's website.

Asylum Judgments from the Court of Justice of the European Union

Case C-133/06 European Parliament v Council of the European Union (Annulment of Arts 29(1) and (2) and 36(3) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13) , 6 May 2008)

1. Annuls Articles 29(1) and (2) and 36(3) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;

2. Orders the Council of the European Union to pay the costs;

3. Orders the French Republic and the Commission of the European Communities to bear their own costs.

Case C-19/08 Petrosian and others (interpretation of Articles 20(1)(d) and 20(2) of the Dublin Regulation, 2003/343/CE, 29 Jan. 2009):

Article 20(1)(d) and Article 20(2) of Regulation No 343/2003 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 are to be interpreted as meaning that, where the legislation of the requesting Member State provides for suspensive effect of an appeal, the period for implementation of the transfer begins to run, not as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, but only as from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent its implementation.

Case C-465/07 Elgafaji (interpretation of Council Directive 2004/83/EC, Article 15(c) on qualification of refugees, 17 Feb. 2009):

Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof, must be interpreted as meaning that:

– the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence

that he is specifically targeted by reason of factors particular to his personal circumstances;

– the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred

– reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.

Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 Abdulla and others (interpretation of Article 11(1)(e) of Council Directive 2004/83/EC, 2 March 2010):

1. Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:

– refugee status ceases to exist when, having regard to a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the person's fear of persecution for one of the reasons referred to in Article 2(c) of Directive 2004/83, on the basis of which refugee status was granted, no longer exist and that person has no other reason to fear being 'persecuted' within the meaning of Article 2(c) of Directive 2004/83;

– for the purposes of assessing a change of circumstances, the competent authorities of the Member State must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in Article 7(1) of Directive 2004/83 have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status;

– the actors of protection referred to in Article 7(1)(b) of Directive 2004/83 may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.

2. When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of Directive 2004/83, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.

3. In so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of Directive 2004/83 may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of that directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognized as being a refugee. However, that may normally be the case only when the reason for persecution is different from that accepted at the time

when refugee status was granted and only when there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage.

Case C-31/09 Bolbol (exclusion of Palestinians under Article 1D, Geneva Convention on refugee status, Council Directive 2004/83/EC, Article 12(1)(a), 17 June 2010):

For the purposes of the first sentence of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance.

Cases C-57/09 and C-101/09 B and D (exclusion and terrorism, Council Directive 2004/83/EC, Articles 12(2)(b) and (c), 9 Nov. 2010):

1. Article 12(2)(b) and (c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:

– the fact that a person has been a member of an organisation which, because of its involvement in terrorist acts, is on the list forming the Annex to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and that that person has actively supported the armed struggle waged by that organisation does not automatically constitute a serious reason for considering that that person has committed ‘a serious nonpolitical crime’ or ‘acts contrary to the purposes and principles of the United Nations’;

– the finding, in such a context, that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment on a case-by-case basis of the specific facts, with a view to determining whether the acts committed by the organization concerned meet the conditions laid down in those provisions and whether individual responsibility for carrying out those acts can be attributed to the person concerned, regard being had to the standard of proof required under Article 12(2) of the directive.

2. Exclusion from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on the person concerned representing a present danger to the host Member State.

3. The exclusion of a person from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on an assessment of proportionality in relation to the particular case.

4. Article 3 of Directive 2004/83 must be interpreted as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to Article 12(2) of the directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the directive.

Case C-431/10 Commission v Ireland (non-transposition of Council Directive 2005/85/EC, 7 April 2011)

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Ireland has failed to fulfill its obligations under Article 43 of that directive;

2. Orders Ireland to pay the costs.

Case C-69/10 Samba Diouf (interpretation of Council Directive 2005/85/EC, Article 39, on asylum procedures, 28 July 2011)

On a proper construction, Article 39 of Council Directive 2005/85/EC of 1 December on minimum standards on procedures in Member States for granting and withdrawing refugee status, and the principle of effective judicial protection, do not preclude national rules such as those at issue in the main proceedings, under which no separate action may be brought against the decision of the competent national authority to deal with an application for asylum under an accelerated procedure, provided that the reasons which led that authority to examine the merits of the application under such a procedure can in fact be subject to judicial review in the action which may be brought against the final decision rejecting the application – a matter which falls to be determined by the referring court.

Joined Cases C-411/10 N. S and C-493/10 M.E and others, concerning Dublin Regulation, 2003/343/CE, Article 3(1) and (2), 21 Dec. 2011)

1. The decision adopted by a Member State on the basis of Article 3(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, whether to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of that Regulation, implements European Union law for the purposes of Article 6 TEU and/or Article 51 of the Charter of Fundamental Rights of the European Union.

2. European Union law precludes the application of a conclusive presumption that the Member State which Article 3(1) of Regulation No343/2003 indicates as responsible observes the fundamental rights of the European Union.

-Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to 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 that provision.

-Subject to the right itself to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that regulation, entails that the Member State which should carry out that transfer must continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables

another Member State to be identified as responsible for the examination of the asylum application.

-The Member State in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, the first mentioned Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003.

3.Articles 1, 18 and 47 of the Charter of Fundamental Rights of the European Union do not lead to a different answer.

4.In so far as the preceding questions arise in respect of the obligations of the United Kingdom of Great Britain and Northern Ireland, the answers to the second to sixth questions referred in Case C-411/10 do not require to be qualified in any respect so as to take account of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom.

Case C-620/10 Kastrati (Kammarrätten i Stockholm- Migrationsöverdomstolen (Swedish) reference on Dublin Regulation, 2003/343/EC)

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 must be interpreted as meaning that the withdrawal of an application for asylum within the terms of Article 2(c) of that regulation, which occurs before the Member State responsible for examining that application has agreed to take charge of the applicant, has the effect that that regulation can no longer be applicable. In such a case, it is for the Member State within the territory of which the application was lodged to take the decisions required as a result of that withdrawal and, in particular, to discontinue the examination of the application, with a record of the information relating to it being placed in the applicant's file.

Joined Cases C-71/11 Y and C-99/11 Z (German Bundesverwaltungsgericht references on Council Directive 2004/83/EC, Article 9(1)(a))

1. Articles 9(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:

–not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union is capable of constituting an ‘act of persecution’ within the meaning of that provision of the Directive;

–there may be an act of persecution as a result of interference with the external manifestation of that freedom, and

–for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an ‘act of persecution’, the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia,

being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of Directive 2004/83.

2. Article 2(c) of Directive 2004/83 must be interpreted as meaning that the applicant's fear of being persecuted is well founded if, in the light of the applicant's personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.

Case C-179/11 CIMADE, Groupe d'information et de soutien des immigrés (GISTI) v Ministre de l'Intérieur, de l'Outre-Mer, des Collectivités Territoriales et de l'Immigration (Conseil d'État (French) reference on Council Directive 2003/9/EC)

1. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States must be interpreted as meaning that a Member State in receipt of an application for asylum is obliged to grant the minimum conditions for reception of asylum seekers laid down in Directive 2003/9 even to an asylum seeker in respect of whom it decides, under 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, to call upon another Member State, as the Member State responsible for examining his application for asylum, to take charge of or take back that applicant.

2. The obligation on a Member State in receipt of an application for asylum to grant the minimum reception conditions laid down in Directive 2003/9 to an asylum seeker in respect of whom it decides, under Regulation No 343/2003, to call upon another Member State, as the Member State responsible for examining his application for asylum, to take charge of or take back that applicant, ceases when that same applicant is actually transferred by the requesting Member State, and the financial burden of granting those minimum conditions is to be assumed by that requesting Member State, which is subject to that obligation.

Case C-277/11 M v Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Irish High Court reference on Council Directive 2004/83/EC, Article 4(1))

1. The requirement that the Member State concerned cooperate with an applicant for asylum, as stated in the second sentence of Article 4(1) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, cannot be interpreted as meaning that, where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that second application as well, the authority is on that basis obliged – before adopting its decision – to inform the applicant that it proposes to reject his application and notify him of the arguments on which it intends to base its rejection, so as to enable him to make known his views in that regard.

2. However, in the case of a system such as that established by the national legislation at issue in the main proceedings, a feature of which is that there are two separate

procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection respectively, it is for the national court to ensure observance, in each of those procedures, of the applicant's fundamental rights and, more particularly, of the right to be heard in the sense that the applicant must be able to make known his views before the adoption of any decision that does not grant the protection requested. In such a system, the fact that the applicant has already been duly heard when his application for refugee status was examined does not mean that that procedural requirement may be dispensed with in the procedure relating to the application for subsidiary protection.

Case C-245/11 K (Asylgerichtshof (Austria) reference on Dublin Regulation, 2003/343/EC, Articles 15, 15(1), 3(2))

In circumstances such as those in the main proceedings, Article 15(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 must be interpreted as meaning that a Member State which is not responsible for examining an application for asylum pursuant to the criteria laid down in Chapter III of that regulation becomes so responsible. It is for the Member State which has become the responsible Member State within the meaning of that regulation to assume the obligations which go along with that responsibility. It must inform in that respect the Member State previously responsible. This interpretation of Article 15(2) also applies where the Member State which was responsible pursuant to the criteria laid down in Chapter III of Regulation No 343/2003 did not make a request in that regard in accordance with the second sentence of Article 15(1) of that regulation.

Pending preliminary references before the Court of Justice of the European Union:

Case C-4/11 Puid (German Hessischer Verwaltungsgerichtshof reference on Dublin Regulation, 2003/343/EC, Article 3(2))

1. Is the first sentence of Article 3(2) of Regulation 343/2003, pursuant to which a Member State is entitled to examine an asylum application made to it which, under Article 3(1) of the regulation, another Member State is responsible for ('the Member State assuming responsibility'), in derogation from that responsibility (the so-called 'right to assume responsibility'), to be interpreted as meaning that the duty of a Member State to exercise the right granted to it under that provision to the benefit of asylum-seekers can also be inferred from reasons not directly associated with the asylum-seeker himself or other particularities of an individual case, but which result from a situation in the State assuming responsibility which poses a threat to the fundamental rights of asylum-seekers under the Charter of Fundamental Rights of the European Union ('Charter of Fundamental Rights')?

2. If the first question should be answered in the affirmative:

Does the case where the Member State assuming responsibility has failed to satisfy in a serious manner and for an uncertain period of time one or several of the requirements laid down in Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (OJ 2003 L 31, p. 18) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in

Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13) provide relevant grounds for a Member State to be required to assume responsibility as a result of the situation in the Member State required to assume responsibility with a view to protecting the fundamental rights in Article 3(1), Article 4, Article 18, Article 19(2) and Article 47 of the Charter of Fundamental Rights?

3. If the second question should be answered in the negative:

Is there a duty on the part of the Member States to exercise their right under the first sentence of Article 3(2) of Regulation 343/2003 in view of the guarantees laid down in the Charter of Fundamental Rights referred to above at any rate if, in the Member State assuming responsibility, particularly serious deficiencies exist which could fundamentally compromise the procedural guarantees for asylum-seekers or pose a threat to the existence or the physical integrity of the transferred asylum-seeker?

4. If either the second or third question should be answered in the affirmative:

Does an enforceable personal right on the part of the asylum-seeker to force a Member State to assume responsibility result from the duty of the Member States to exercise their right under the first sentence of Article 3(2) of Regulation 343/2003?

Case C-175/11 HID, BA v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General (Irish High Court reference on Council Directive 2005/85/EC)

1. Is a Member State precluded by the provisions of Council Directive 2005/85/EC of 1st December, 2005, or by general principles of European Union Law from adopting administrative measures which require that a class of asylum applications defined on the basis of the nationality or country of origin of the asylum applicant be examined and determined according to an accelerated or prioritised procedure?

2. Is Article 39 of the above Council Directive when read in conjunction with its Recital (27) and Article 267 TFEU to be interpreted to the effect that the effective remedy thereby required is provided for in national law when the function of review or appeal in respect of the first instance determination of applications is assigned by law to an appeal to the Tribunal established under Act of Parliament with competence to give binding decisions in favour of the asylum applicant on all matters of law and fact relevant to the application notwithstanding the existence of administrative or organisational arrangements which involve some or all of the following:

- The retention by a government Minister of residual discretion to override a negative decision on an application;
- The existence of organisational or administrative links between the bodies responsible for first instance determination and the determination of appeals;
- The fact that the decision making members of the Tribunal are appointed by the Minister and serve on a part-time basis for a period of three years and are remunerated on a case by case basis;
- The retention by the Minister of powers to give directions of the kind specified in §§ 12, 16(2B)(b) and 16(11) of the above Act?

The Advocate General's Opinion on this case was delivered on 6 September 2012.

Case C-528/11 Halaf (Administrativen sad Sofia-grad (Bulgaria) reference on the interpretation of Article 3(2) of Council Regulation 2003/ 343/EC)

1. Is Article 3(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 to be interpreted as meaning that it permits a Member State to assume responsibility for examining an asylum application where no personal circumstances exist in relation to the asylum seeker which establish the applicability of the humanitarian clause in Article 15 of that regulation and where the Member State responsible pursuant to Article 3(1) of that regulation has not responded to a request to take back the applicant pursuant to Article 20(1) of Regulation No 343/2003, given that that regulation does not contain any provisions concerning compliance with the principle of solidarity pursuant to Article 80 TFEU?

2. What is the content of the right to asylum under Article 18 of the Charter of Fundamental Rights of the European Union in conjunction with Article 53 of that Charter and in conjunction with the definition in Article 2(c) and recital 12 of Regulation No 343/2003?

3. Is Article 3(2) of Regulation No 343/2003, in relation to the obligation under Article 78(1) TFEU to comply with instruments under international law on asylum, to be interpreted as meaning that in the procedure for determining the Member State responsible pursuant to Regulation No 343/2003, the Member States are obliged to request the Office of the UNHCR to present its views, where facts and conclusions therefrom are set out in documents of that Office to the effect that the Member State responsible pursuant to Article 3(1) of Regulation No 343/2003 is in breach of provisions of European Union law on asylum?

If this question is answered in the affirmative, the following question might also be answered:

4. If such a request is not made to the Office of the UNHCR to present its views, does this constitute a substantial infringement of the procedure for determining the Member State responsible pursuant to Article 3 of Regulation No 343/2003 and an infringement of the right to good administration and the right to an effective legal remedy pursuant to Articles 41 and 47 of the Charter of Fundamental Rights of the European Union, specifically also in the light of Article 21 of Directive 2005/85/EC, which provides that that Office has the right to present its views when individual applications for asylum are examined?

Case C-364/11 Abed El Karem El Kott and Others (Fővárosi Bíróság (Hungary) reference on Council Directive 2004/83/EC)

1. Do the benefits of the Directive mean recognition as a refugee, or either of the two forms of protection covered by the Directive (recognition as a refugee and the grant of subsidiary protection), according to the choice made by the Member State, or, possibly, neither automatically but merely inclusion within the scope *ratione personae* of the Directive?

2. Does cessation of the agency's protection or assistance mean residence outside the agency's area of operations, cessation of the agency and cessation of the possibility of receiving the agency's protection or assistance or, possibly, an involuntary obstacle

caused by legitimate or objective reasons such that the person entitled thereto is unable to avail himself of that protection or assistance?

The Advocate General's Opinion on this case was delivered on 13 September 2012.

Case C-648/11 MA, BT, DA v Secretary of State for the Home Department (Court of Appeal (England & Wales)(Civil Division)(United Kingdom) reference on Council Regulation 343/2003/EC, Article 6)

In Regulation 343/2003/EC 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 L50 25 February 2003 p. I), where an applicant for asylum who is an unaccompanied minor with no member of his or her family legally present in another Member State has lodged claims for asylum in more than one Member State, which Member State does the second paragraph of article 6 make responsible for determining the application for asylum?

Case C-534/11 Mehmet Arslan v Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie (reference on Council Directive 2008/115/EC, Article 2(1) in conjunction with Recital 9)

1.Should Article 2(1), in conjunction with recital 9 of the preamble, of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals be interpreted to mean that this Directive does not apply to a third-country national who has applied for international protection within the meaning of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status?

2.If the answer to the first question is in the affirmative, must the detention of a foreign national for the purpose of return be terminated if he applies for international protection within the meaning of Directive 2005/85/EC and there are no other reasons to keep him in detention?

Case C-666/11 M and Others v Federal Republic of Germany (Oberverwaltungsgericht für das Land Nordrhein-Westfalen reference on Council Regulation 343/2003/EC, Articles 3(2),19(4) and Commission Regulation 1560/2003/EC,Article 9(2))

1.In court proceedings concerning a declaration of lack of responsibility and an order that he be removed to the Member State responsible in the view of the Member State in which an application for asylum was lodged (requesting Member State), may an asylum seeker rely on the fact that the transfer has not taken place within the time-limit of six months under Article 19(4) of Council Regulation (EC) No 343/2003 of 18 February 2003 and therefore that the responsibility lies with the requesting Member State?

2.Does a suicide attempt, even one which is faked, as a result of which transfer to the Member State responsible is not possible, constitute absconding within the meaning of the second sentence of Article 19(4) of Council Regulation (EC) No 343/2003?

3.In court proceedings concerning a declaration of lack of responsibility and an order that he be removed, may an asylum seeker rely on a transfer of responsibility under the second sentence of Article 9(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003?

4. If the requesting Member State informs the Member State responsible that the transfer which has already been organised has been postponed, but not that the transfer cannot be carried out within the time-limit of six months, does this prevent the transfer of responsibility under the second sentence of Article 9(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003?

5. Does the asylum seeker have a right, enforceable by him in the courts, to require a Member State to examine the assumption of responsibility under the first sentence of Article 3(2) of Council Regulation (EC) No 43/2003 and to inform him about the grounds for its decision?

Joined Cases C-201/12, C-200/12, C-199/12 X,Y,Z v Minister voor Immigratie en Asiel (Raad van State, reference on Council Directive 2004/83/EC)

1. Do foreign nationals with a homosexual orientation form a particular social group as referred to in Article 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304; 'the Directive')?

2. If the first question is to be answered in the affirmative: which homosexual activities fall within the scope of the Directive and, in the case of acts of persecution in respect of those activities and if the other requirements are met, can that lead to the granting of refugee status? That question encompasses the following subquestions:
a) Can foreign nationals with a homosexual orientation be expected to conceal their orientation from everyone in their country of origin in order to avoid persecution?
b) If the previous question is to be answered in the negative, can foreign nationals with a homosexual orientation be expected to exercise restraint, and if so, to what extent, when giving expression to that orientation in their country of origin, in order to avoid persecution? Moreover, can greater restraint be expected of homosexuals than of heterosexuals?
c) If, in that regard, a distinction can be made between forms of expression which relate to the core area of the orientation and forms of expression which do not, what should be understood to constitute the core area of the orientation and in what way can it be determined?

3. Do the criminalisation of homosexual activities and the threat of imprisonment, which are discriminatory by nature, as set out in the Code Pénal of Senegal, constitute an act of persecution as referred to in Article 9(1)(a) [Or. 13], read in conjunction with Article 9(2)(c) of the Directive? If not, under what circumstances would that be the case?

Case C-285/12 Aboubacar Diakite v Commissaire général aux réfugiés et aux apatrides (Conseil d'État (Belgium) reference on Article 15 Council Directive 2004/83)

1. Must Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees, or as persons who otherwise need international protection and the content of the protection granted, be interpreted as meaning that that provision offers protection only in a situation of 'internal armed conflict', as interpreted by international humanitarian law and, in particular, by reference to Common Article 3 of the four Geneva Conventions

of 12 August 1949 (for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field, for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, on the Treatment of Prisoners of War, and on the Protection of Civilian Persons in Time of War, respectively)?

2. If the concept of 'internal armed conflict' referred to in Article 15(c) of Directive 2004/83 is to be given an interpretation independent of Common Article 3 of the four Geneva Conventions of 12 August 1949, what, in that case, are the criteria for determining whether such an 'internal armed conflict' exists?

Case C-394/12 Shamsu Abdullahi (Asylgerichtshof (Austria) reference on Council Regulation 2003/343/EC Articles 19, 18, 10)

1. Is Article 19 in conjunction with Article 18 of Regulation (EC) No 343/2003 to be interpreted as meaning that, following the agreement of a Member State in accordance with those provisions, that Member State is the State responsible for examining the asylum application within the meaning of the introductory part of Article 16(1) of Regulation No 343/2003, or does European law oblige the national review authority where, in the course of an appeal or review procedure in accordance with Article 19(2) of Regulation (EC) No 343/2003, irrespective of that agreement, it comes to the view that another State is the Member State responsible pursuant to Chapter III of Regulation (EC) No 343/2003 (even where that State has not been requested to take charge or has not given its agreement), to determine that the other Member State is responsible for the purposes of its appeal or review procedure? In that regard, does every asylum seeker have an individual right to have his application for asylum examined by a particular Member State responsible in accordance with those responsibility criteria?

2. Is Article 10(1) of Regulation (EC) No 343/2003 to be interpreted as meaning that the Member State in which a first irregular entry takes place ('first Member State') must accept its responsibility for examining the asylum application of a third-country national if the following situation materialises:

3. A third-country national travels from a third country, entering the first Member State irregularly. He does not claim asylum there. He then departs for a third country. After less than three months, he travels from a third country to another EU Member State ('second Member State'), which he enters irregularly. From that second Member State, he continues immediately and directly to a third Member State, where he lodges his first asylum claim. At this point, less than 12 months have elapsed since his irregular entry into the first Member State.

Irrespective of the answer to Question 2, if the 'first Member State' referred to therein is a Member State whose asylum system displays systemic deficiencies equivalent to those described in the judgment of the European Court of Human Rights of 21 January 2011, *M.S.S.*, 30.696/09, is it necessary to come to a different assessment of the Member State with primary responsibility within the meaning of Regulation (EC) No 343/2003, notwithstanding the judgment of the European Court of Justice of 21 December 2011 in *Joined Cases C-411/10 and C-493/10 [NS v Secretary of State for the Home Department and ME and Others v Refugee Applications Commissioner]*? In particular, can it be assumed that a stay in such a Member State cannot from the outset constitute an event establishing responsibility within the meaning of Article 10 of Regulation (EC) No 343/2003?

Other related judgments

Case C-357/09 Kadzoev (interpretation of Council Directive 2008/115/EC, Articles 15(4)-(6), 30 Nov. 2009)

1. Article 15(5) and (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include a period of detention completed in connection with a removal procedure commenced before the rules in that directive become applicable.

2. A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Directive 2008/115.

3. Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.

4. Article 15(4) of Directive 2008/115 must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted.

5. Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.

6. Article 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.

Case C-61/11 Mrad (interpretation of Council Directive 2008/115/EC, Articles 15 and 16, 28 Apr. 2011)

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular Articles 15 and 16 thereof, must be interpreted as precluding a Member State's legislation, such as that at issue in the main proceedings, which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid

grounds, on the territory of that State, contrary to an order to leave that territory within a given period.

Joined Cases C-188/10 Melki and C-189/10 Abdeli (interpretation of Articles 67 and 267, TFEU, and Regulation 2006/562/EC, 16 Apr. 2010)

1. Article 267 TFEU precludes Member State legislation which establishes an interlocutory procedure for the review of the constitutionality of national laws, in so far as the priority nature of that procedure prevents – both before the submission of a question on constitutionality to the national court responsible for reviewing the constitutionality of laws and, as the case may be, after the decision of that court on that question – all the other national courts or tribunals from exercising their right or fulfilling their obligation to refer questions to the Court of Justice for a preliminary ruling. On the other hand, Article 267 TFEU does not preclude such national legislation, in so far as the other national courts or tribunals remain free:

- to refer to the Court of Justice for a preliminary ruling, at whatever stage of the proceedings they consider appropriate, even at the end of the interlocutory procedure for the review of constitutionality, any question which they consider necessary,
- to adopt any measure necessary to ensure provisional judicial protection of the rights conferred under the European Union legal order, and
- to disapply, at the end of such an interlocutory procedure, the national legislative provision at issue if they consider it to be contrary to European Union law.

It is for the referring court to ascertain whether the national legislation at issue in the main proceedings can be interpreted in accordance with those requirements of European Union law.

2. Article 67(2) TFEU, and Articles 20 and 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), preclude national legislation which grants to the police authorities of the Member State in question the power to check, solely within an area of 20 kilometres from the land border of that State with States party to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990, the identity of any person, irrespective of his behaviour and of specific circumstances giving rise to a risk of breach of public order, in order to ascertain whether the obligations laid down by law to hold, carry and produce papers and documents are fulfilled, where that legislation does not provide the necessary framework for that power to guarantee that its practical exercise cannot have an effect equivalent to border checks.