Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

26 July 2017*

(Reference for a preliminary ruling — Regulation (EU) No 604/2013 — Determination of the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national — Arrival of an exceptionally large number of third-country nationals wishing to obtain international protection — Organisation by the authorities of a Member State of the crossing of the border for the purpose of transit to another Member State — Entry authorised by way of derogation for humanitarian reasons — Article 13 — Irregular crossing of an external border — Period of 12 months from the crossing of the border — Article 27 — Remedy — Scope of judicial review — Article 29 — Period of six months for the purpose of effecting the transfer — Running of the periods — Use of an appeal — Suspensory effect)

In Case C-490/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vrhovno sodišče (Supreme Court, Slovenia), made by decision of 13 September 2016, received at the Court on 16 September 2016, in the proceedings

A.S.

v

Republika Slovenija,

THE COURT (Grand Chamber),

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

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 28 March 2017,

after considering the observations submitted on behalf of:

– A.S., by M. Nabergoj and S. Zbičajnik, svetovalca za begunce,

– the Slovenian Government, by N. Pintar Gosenca, B. Jovin Hrastnik and A. Vran, acting as Agents,

– the Greek Government, by T. Papadopoulou, acting as Agent,

* Language of the case: Slovenian.

– the French Government, by E. Armoët, acting as Agent,

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

– the Hungarian Government, by M.M. Tátrai and M.Z. Fehér, acting as Agents,

– the Austrian Government, by G. Hesse, acting as Agent,

– the United Kingdom Government, by C. Crane, acting as Agent, assisted by C. Banner, Barrister,

– the Swiss Government, by U. Bucher, acting as Agent,

– the European Commission, by M. Condou-Durande and by M. Žebre and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 June 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 13(1), 27(1) and 29(2) 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').

2 The request has been made in proceedings between A.S., a Syrian national, and Republika Slovenija (Republic of Slovenia) concerning the latter's decision not to examine the application for international protection brought by A.S.

Legal context

3 Recitals 4, 5 and 19 of the Dublin III Regulation are worded as follows:

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

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

…

(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law

is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.'

4 Article 1 of the Regulation provides as follows:

'This Regulation lays down 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 ("the Member State responsible").'

5 The second subparagraph of Article 3(2) of that regulation states:

'Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.'

6 Article 7(2) of that regulation states:

'The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State.'

7 Article 12 of the Dublin III Regulation establishes a criterion for determining the Member State responsible for the issue of residence documents or visas.

8 Article 13(1) of that regulation, headed 'Entry and/or stay', provides:

'Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No 603/2013 [of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ 2013 L 180, p. 1)], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place.'

9 Article 21(1) of the Dublin III Regulation states:

'Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 14 of Regulation (EU) No 603/2013, the request shall be sent within two months of receiving that hit pursuant to Article 15(2) of that Regulation.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.'

10 Article 23(2) and (3) of the Dublin III Regulation is worded as follows:

'2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.'

11 Article 26(1) of the Dublin III Regulation provides the following:

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

12 Article 27(1) and (3) of that regulation provides:

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

…

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

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

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

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

13 Article 29(1) and (2) of that regulation is worded as follows:

‘1. The transfer of the applicant … from the requesting Member State to the Member State responsible shall be carried out … 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).

…

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.’

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

14 A.S. left Syria for Lebanon, before travelling across Turkey, Greece, the former Yugoslav Republic of Macedonia, and Serbia. He crossed the border between that last State and Croatia in 2016. The Croatian authorities arranged for him to be transported to the Slovenian border.

15 A.S. entered Slovenia on 20 February 2016. The Slovenian authorities then handed him over to the Austrian authorities. The latter, however, refused him entry to Austria.

16 On 23 February 2016, A.S. lodged an application for international protection in Slovenia.

17 The Slovenian authorities asked the Croatian authorities to take charge of A.S. on the basis of Article 21 of the Dublin III Regulation. The Croatian authorities acceded to that request on 20 May 2016.

18 On 14 June 2016, the Ministrstvo za notranje zadeve (Ministry of the Interior, Slovenia) decided not to examine A.S.’s application for international protection, on the grounds that he must be transferred to Croatia, which is the Member State responsible for examining that application in accordance with the criteria set out in Article 13(1) of the Dublin III Regulation, since A.S. had irregularly crossed the Croatian border coming from a third country.

19 A.S. challenged that decision before the Upravno sodišče (Administrative Court, Slovenia). On 4 July 2016, that court dismissed that action, while at the same time suspending enforcement of the decision of the Ministry of the Interior of 14 June 2016 pending a final decision in the main proceedings. A.S. then lodged an appeal before the referring court.

20 In those circumstances, the Vrhovno sodišče (Supreme Court, Slovenia) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does judicial protection under Article 27 of [the Dublin III Regulation] concern also the interpretation of the conditions of the criterion under Article 13(1), when one Member State has decided that it will not examine the application for international protection, and another Member State has already assumed responsibility for examining the applicant’s application on the same basis, and when the applicant challenges this?

(2) Is the condition of irregular crossing under Article 13(1) of [the Dublin III Regulation] to be interpreted independently and autonomously, or rather in conjunction with Article 3(2) 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 (OJ 2008 L 348, p. 98)] and Article 5 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) (OJ 2006 L 105, p. 1), as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p. 1)], which define irregular crossing of the border, and must that interpretation be applied in relation to Article 13(1) of [the Dublin III Regulation]?

(3) In view of the answer to the second question, is the concept of irregular crossing under Article 13(1) of [the Dublin III Regulation] in the circumstances of the present case to be interpreted as meaning that there is no irregular crossing of the border where the public authorities of a Member State organise the crossing of the border with the aim of transit to another Member State …?

(4) In the event that the answer to the third question should be in the affirmative, is Article 13(1) of [the Dublin III Regulation] consequently to be interpreted as prohibiting sending a national of a third State back to the [Member] State where he initially entered EU territory?

(5) Is Article 27 of [the Dublin III Regulation] to be interpreted as meaning that the periods fixed by Article 13(1) and Article 29(2) [of that regulation] do not run when the applicant exercises the right to judicial protection, a fortiori when that also involves a question for a preliminary ruling, or when the national court is awaiting the answer of the Court of Justice of the European Union to such a question which has been submitted in another case? In the alternative, would time start to run in such a case, but the Member State responsible would not be entitled to refuse reception?'

Procedure before the Court

21 The referring court requested that this request for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court's Rules of Procedure.

22 On 27 September 2016, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, the Court decided that it was unnecessary to grant that request.

23 By decision of 22 December 2016, the President of the Court ordered that the present case should be accorded priority treatment.

Consideration of the questions referred

The first question

24 By its first question, the referring court asks, in essence, whether, on a proper construction of Article 27(1) of the Dublin III Regulation, an applicant for international protection may, in an appeal against a decision to transfer him, plead incorrect application of the criterion for determining responsibility relating to the irregular crossing of a Member State's border, laid down in Article 13(1) of that regulation.

25 Article 27(1) of the Dublin III Regulation states that the applicant for international protection is to 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.

26 The scope of the remedy available to the applicant for international protection against a decision to transfer him is made clear in recital 19 of that regulation, which states that, in order to ensure compliance with international law, the effective remedy introduced by that regulation in respect of transfer decisions should cover both the examination of the application of that regulation and the examination of the legal and factual situation in the Member State to which the applicant is to be transferred (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraphs 38 and 39).

27 In that regard, the Court held in paragraph 61 of the judgment of 7 June 2016, *Ghezelbash* (C-63/15, EU:C:2016:409) that, in the context of an appeal against a transfer decision, the applicant for international protection was entitled to plead the incorrect application of one of the criteria for determining responsibility for the examination of the application for international protection laid down in Chapter III of the Dublin III Regulation.

28 In that judgment, the Court drew no distinction between the various criteria laid down in that chapter, which include the criterion concerning the irregular crossing of the border of a Member State set out in Article 13(1) of that regulation.

29 It is true that only the criterion set out in Article 12 of that regulation was directly at issue in the case giving rise to that judgment.

30 However, the reasons given by the Court in the same judgment also apply, *mutatis mutandis*, to the criterion set out in Article 13(1) of the same regulation.

31 Accordingly, it should be noted, in particular, that the criteria set out in Articles 12 and 13 of the Dublin III Regulation play a comparable role in the conduct of the process for determining the Member State responsible laid down by that regulation and, therefore, in the application of that regulation (see, to that effect, judgment of 7 June 2016, *Ghezelbash*, C-63/15, EU:C:2016:409, paragraphs 41 to 44).

32 Likewise, the developments that have taken place in the system for determining the Member State responsible for examining an application for international protection made in one of the Member States and the objectives of that system, noted by the Court at paragraphs 45 to 59 of the judgment of 7 June 2016, *Ghezelbash* (C-63/15, EU:C:2016:409), are also relevant for review of the application of Article 13 of that regulation.

33 As regards the fact, highlighted by the referring court, that in the case in the main proceedings another Member State had already accepted responsibility for the examination of the application for international protection concerned, it should be stressed that, pursuant to Article 26(1) of the Dublin III Regulation, the person concerned may be notified of the transfer decision only after the requested Member State has agreed to take charge of or to take back that person.

34 In those circumstances, that fact does not mean that judicial review of the transfer decision regarding the application of the criteria set out in Chapter III of that regulation is excluded, for otherwise Article 27(1) of that regulation would be deprived of most of its practical effect. Furthermore, it must be noted that, in the case giving rise to the judgment of 7 June 2016, *Ghezelbash* (C-63/15, EU:C:2016:409), the requested Member State had expressly accepted that it was responsible for the examination of the application for international protection under consideration.

35 It follows from all the foregoing considerations that the answer to the first question referred is that, on a proper construction of Article 27(1) of the Dublin III Regulation, read in the light of the 19th recital of that regulation, an applicant for international protection is entitled, in an appeal against a decision

to transfer him, to plead incorrect application of the criterion for determining responsibility relating to the irregular crossing of the border of a Member State, laid down in Article 13(1) of that regulation.

Concerning the second and third questions

36 By its second and third questions, which may appropriately be examined together, the referring court asks, in essence, whether, on a proper construction of Article 13(1) of the Dublin III Regulation, read, where appropriate, in conjunction with the provisions of Regulation No 562/2006, as amended by Regulation No 610/2013, and those of Directive 2008/115, a third-country national whose entry has been tolerated by the authorities of a first Member State faced with an exceptionally large number of third-country nationals wishing to transit through that Member State in order to make an application for international protection in another Member State, without fulfilling the entry conditions in principle required in that first Member State, must be regarded as having 'irregularly crossed' the border of that first Member State, within the meaning of that provision.

37 As a preliminary point, it should be noted that it is apparent from paragraphs 41 to 58 of the judgment given today, *Jafari* (C-646/16), that admitting a third-country national into the territory of a Member State in a situation such as that at issue in the case in the main proceedings cannot be treated as a 'visa' situation, within the meaning of Article 12 of the Dublin III Regulation.

38 As regards the interpretation of Article 13(1) of that regulation, it follows, first, from paragraphs 60 to 72 of that judgment that, while the measures adopted by the EU for the control of borders and of immigration are useful background for interpreting that provision, the fact remains that the full significance of the term 'irregular crossing' of the border of a Member State, within the meaning of that regulation, cannot in principle be directly inferred from those measures.

39 Next, it is clear from paragraphs 73 to 92 of that judgment that a third-country national admitted to the territory of a first Member State, without satisfying the entry conditions in principle required in that Member State, for the purpose of transit to another Member State in order to lodge an application for international protection there, must be regarded as having 'irregularly crossed' the border of that first Member State, within the meaning of Article 13(1) of the Dublin III Regulation, whether that crossing has been tolerated or authorised in breach of the applicable rules or authorised on humanitarian grounds and by derogation from the entry conditions in principle imposed on third-country nationals.

40 Lastly, the fact that the border crossing took place in a situation notable for the arrival of an exceptionally large number of third-country nationals wishing to obtain international protection can have no effect on the interpretation or application of that provision (judgment given today, *Jafari*, C-646/16, paragraphs 93 to 100).

41 However, it must be noted that, pursuant to Article 3(2) of the Dublin III Regulation and Article 4 of the Charter of Fundamental Rights of the European Union, an applicant for international protection must not be transferred to the Member State responsible if that transfer entails a real risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that Article 4 (see, to that effect, judgment of 16 February 2017, *C.K and Others*, C-578/16 PPU, EU:C:2017:127, paragraph 65). A transfer might, therefore, not be effected if, following the arrival of an exceptionally large number of third-country nationals wishing to obtain international protection, such a risk existed in the Member State responsible.

42 It follows that the answer to the second and third questions is that, on a proper construction of Article 13(1) of the Dublin III Regulation, a third-country national whose entry has been tolerated by the authorities of a first Member State faced with the arrival of an exceptionally large number of third-country nationals wishing to transit through that Member State in order to lodge an application

for international protection in another Member State, without satisfying the entry conditions in principle required in that first Member State, must be regarded as having 'irregularly crossed' the border of that first Member State, within the meaning of that provision.

The fourth question

43 In view of the answer to the second and third questions, there is no need to answer the fourth question.

The fifth question

44 By its fifth question, the referring court asks, in essence, whether, on proper construction of Article 13(1) and Article 29(2) of the Dublin III Regulation, the periods laid down in those provisions continue to run after an appeal has been lodged against the transfer decision concerned, including when the court hearing that appeal has decided to seek a preliminary ruling from the Court.

45 Article 13(1) of the Dublin III Regulation, which appears in Chapter III of that regulation, concerning the criteria for determining the Member State responsible, states, in its second sentence, that the responsibility of a Member State based on the criterion of irregular crossing of the border of a Member State is to cease 12 months after the date of that crossing.

46 Article 29(2) of that regulation, which appears in section VI of Chapter VI the same regulation, concerning transfers, provides that if the transfer from the requesting Member State to the Member State responsible does not take place within the six months' time limit, the Member State responsible is to be relieved of its obligation to take charge of or to take back the person concerned and responsibility is then to be transferred to the requesting Member State.

47 It is apparent from those two provisions that the periods which they lay down are both intended to limit in time the responsibility of a Member State under the Dublin III Regulation.

48 Nonetheless, it follows both from the wording of those provisions and from their place in that regulation that they apply during two different stages of the procedure established by that regulation.

49 Accordingly, the time limit referred to in Article 13(1) of the Dublin III Regulation constitutes a condition for the application of the criterion laid down by that provision and it must be ensured that it is observed in the procedure for determining the Member State responsible, after which a transfer decision may, if appropriate, be taken.

50 On the other hand, Article 29(2) of that regulation relates to the enforcement of the transfer decision and may be applied only once the principle of transfer has been established, that is to say, at the earliest when the requested Member State has accepted the request to take charge or take back.

51 The respective rules for those two periods must, therefore, be explained, taking into account their specific objectives within the procedure established by that regulation.

52 As regards, in the first place, the time limit laid down by Article 13(1) of the Dublin III Regulation, it must be noted that Article 7(2) of that regulation states that the Member State responsible is to be determined in accordance with the criteria set out in Chapter III of that regulation on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State.

53 Therefore, the last sentence of Article 13(1) of that regulation must be interpreted as meaning that the Member State whose external border has been irregularly crossed by a third-country national can no longer be held responsible, on the basis of that provision, if the period of 12 months following the irregular crossing of that border has already expired on the date when the applicant first lodged his or her application for international protection with a Member State.

54 In those circumstances, the lodging of an appeal against a transfer decision, which necessarily postdates the notification of that decision and therefore the lodging of an application for international protection, cannot, by its very nature, have any effect on the running of the period laid down in Article 13(1) of the Dublin III Regulation.

55 In a situation such as that at issue in the main proceedings, in which an application for international protection was lodged less than 12 months after the irregular crossing of the border of a Member State, the rule set out in the last sentence of Article 13(1) of the Dublin III Regulation does not prevent the application of that criterion for determining responsibility.

56 As regards, in the second place, the time limit laid down in Article 29(2) of the Dublin III Regulation, it follows, on the one hand, from the relationship between the various paragraphs of that article and, on the other, from the lack of any clarification in that provision as to the time from which that period starts to run, that that provision specifies only the consequences of the expiry of the period for effecting the transfer, laid down in Article 29(1) of that regulation (see, by analogy, judgment of 29 January 2009, *Petrosian*, C-19/08, EU:C:2009:41, paragraph 50).

57 Article 29(1) of the Dublin III Regulation allows for the consequences of the possible lodging of an appeal by providing that the period of six months for effecting the transfer runs from the final decision on an appeal or review when suspensory effect is granted in accordance with Article 27(3) of that regulation.

58 Consequently, the lodging of an appeal which, like that at issue in the case in the main proceedings, has been granted suspensory effect, implies that the period for effecting the transfer will not, in principle, expire until six months after the intervention of a final decision on that appeal.

59 In view of the foregoing, the answer to the fifth question is that, on a proper construction of Article 13(1), second sentence, of the Dublin III Regulation, read together with Article 7(2) of that regulation, the lodging of an appeal against a transfer decision has no effect on the running of the period laid down in Article 13(1).

60 On a proper construction of Article 29(1) and (2) of that regulation, the lodging of such an appeal means that the period laid down by those provisions does not start to run until the final decision on that appeal, including when the court hearing the appeal has decided to request a preliminary ruling from the Court of Justice, as long as that appeal has suspensory effect in accordance with Article 27(3) of that regulation.

Costs

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

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

1. **On a proper construction of Article 27(1) of Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 of that regulation, an applicant for international protection is entitled, in an appeal against a decision to transfer him, to plead incorrect application of the criterion for determining responsibility relating to the irregular crossing of the border of a Member State, laid down in Article 13(1) of that regulation.**

2. **On a proper construction of Article 13(1) of Regulation No 604/2013, a third-country national whose entry has been tolerated by the authorities of a first Member State faced with the arrival of an exceptionally large number of third-country nationals wishing to transit through that Member State in order to lodge an application for international protection in another Member State, without satisfying the entry conditions in principle required in that first Member State, must be regarded as having 'irregularly crossed' the border of that first Member State, within the meaning of that provision.**

3. **On a proper construction of Article 13(1), second sentence, of Regulation No 604/2013, read together with Article 7(2) of that regulation, the lodging of an appeal against a transfer decision has no effect on the running of the period laid down in Article 13(1).**

   On a proper construction of Article 29(1) and (2) of that regulation, the lodging of such an appeal means that the period laid down by those provisions does not start to run until the final decision on that appeal, including when the court hearing the appeal has decided to request a preliminary ruling from the Court of Justice, as long as that appeal had suspensory effect in accordance with Article 27(3) of that regulation.

[Signatures]